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Legal Uncertainty in Professional Disciplinary Council Recommendations for Patient Civil Claims Under Indonesia's 2023 Health Law

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ABSTRACT
Law Number 17 of 2023 on Health introduced a Professional Disciplinary Council (Majelis Disiplin Profesi, MDP) recommendation mechanism for civil claims arising from medical and health services. Article 308(2) requires a recommendation where medical or health personnel are held civilly liable for conduct that allegedly harms a patient, while Article 308(4) provides that the recommendation is issued after the defendant, or an authorized representative, submits a written request. This study examines whether that procedural design satisfies the requirements of legal certainty, procedural fairness, and effective access to justice. It employs normative legal research using statutory, conceptual, and case approaches. Primary legal materials include Law Number 17 of 2023, Government Regulation Number 28 of 2024, Minister of Health Regulation Number 3 of 2025, and recent Constitutional Court decisions concerning Article 308. The analysis shows that the MDP mechanism has a legitimate protective rationale: professional standards should be assessed by a competent disciplinary body before medical conduct is treated as legal fault. Nevertheless, the allocation of procedural initiative to the defendant, the absence of an express consequence for failure to request a recommendation, and uncertainty regarding the recommendation's effect on judicial examination create a structural risk of inconsistent civil procedure. The article argues that the problem is not the existence of professional review itself, but the incomplete legal architecture governing its relationship with the court. It proposes a court-triggered referral mechanism, a strict time limit, a non-preclusive consequence for defendant inaction, and an explicit rule that MDP recommendations inform but do not bind judicial determinations of civil liability.

Keywords: Legal Certainty; Professional Disciplinary Council; Medical Liability; Civil Procedure; Access to Justice; Patient Rights.

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INTRODUCTION

Indonesia's health-law architecture changed substantially with the enactment of Law Number 17 of 2023 on Health. Among its most consequential innovations is the creation of a professional-disciplinary screening mechanism for legal disputes involving medical personnel and health workers. Article 308 seeks to reconcile two interests that are both legally legitimate: protecting health professionals from claims that disregard the technical standards of medical practice and preserving patients' right to pursue legal remedies when healthcare conduct causes compensable harm. This balance is constitutionally significant because the right to legal certainty and equal treatment before the law is protected by Article 28D(1) of the 1945 Constitution, while health itself is constitutionally protected under Article 28H(1) (Constitution of the Republic of Indonesia of 1945, 1945; Law Number 17 of 2023 on Health, 2023).

The central difficulty lies in the procedural design of Article 308(2) and Article 308(4). Article 308(2) requires an MDP recommendation when medical or health personnel are held civilly responsible for acts or omissions connected with healthcare services that allegedly harm a patient. Article 308(4), however, places the initiative for requesting that recommendation in the hands of the medical or health professional who has already become the defendant, or a person authorized by that defendant. The text therefore creates an unusual procedural sequence: the patient may initiate a

civil action, but an additional statutory process relevant to the continuation or assessment of the dispute depends upon the opposing party's subsequent action. The provision does not expressly state what follows if the defendant does not request the recommendation, nor does it clearly specify whether the recommendation is a formal admissibility requirement, a procedural prerequisite to substantive examination, an expert assessment, or merely one item of evidence (Law Number 17 of 2023 on Health, 2023; Siregar et al., 2024; Sudarmanto et al., 2025).

Recent scholarship has already identified important dimensions of this problem. Amiati, Halim, and Hassim examine ambiguity in the 2023 Health Law from the perspective of legal redress for malpractice victims; Siregar and colleagues conceptualize the MDP as a possible primum remedium; Sudarmanto and colleagues analyze the relationship between professional discipline and legal proceedings; and Fitira, Subekti, and Isharyanto examine the recommendation as a form of quasi-investigative professional assessment (Amiati et al., 2024; Fitira et al., 2025; Siregar et al., 2024; Sudarmanto et al., 2025). These studies establish that the MDP is not merely an internal professional body: its recommendation occupies an interface between disciplinary assessment and formal adjudication. What remains insufficiently examined is the specific civil-procedural paradox created by assigning the recommendation request to the defendant while leaving the consequences of defendant inaction and the recommendation's judicial effect underdetermined.

The issue became more significant after the implementing framework was completed through Government Regulation Number 28 of 2024 and Minister of Health Regulation Number 3 of 2025, which institutionalized the MDP and the enforcement of professional discipline (Government Regulation Number 28 of 2024 on the Implementation of Law Number 17 of 2023 on Health, 2024; Minister of Health Regulation Number 3 of 2025 on the Enforcement of Professional Discipline for Medical and Health Personnel, 2025). In January 2026, the Constitutional Court rejected a broad constitutional challenge to Article 308 in Decision Number 156/PUU-XXII/2024, reasoning that professional review serves the legitimate aim of preventing the inappropriate criminalization or legal exposure of healthcare professionals whose conduct complies with professional standards. A later challenge focused on the civil dimensions of Article 308 was declared inadmissible in Decision Number 161/PUU-XXIII/2025 (*Decision Number 156/PUU-XXII/2024*, 2026; *Decision Number 161/PUU-XXIII/2025*, 2026). These decisions preserve the statutory mechanism, but they do not eliminate the need for a doctrinal analysis of how the mechanism should operate within ordinary civil procedure.

Accordingly, this article addresses two research questions. First, how should the MDP recommendation requirement under Article 308(2) and (4) be legally characterized within the structure of patient civil litigation? Second, what juridical consequences arise from the absence of an express mechanism for defendant inaction, and how should the provision be reformulated to protect both professional integrity and patient access to justice? The article's contribution is to shift the discussion from whether professional disciplinary review should exist to how its procedural architecture should be designed. It argues that a defensible model must preserve technical professional assessment while preventing the defendant from acquiring de facto control over the plaintiff's access to an effective judicial determination.

Literature Review And Theoretical Framework

1. Legal Certainty and Normative Determinacy

Legal certainty requires more than the formal existence of a rule. A legal norm must be sufficiently clear, accessible, and predictable to guide the conduct of those subject to it and to constrain discretionary decision-making by public authorities. Fuller links legality to requirements such as clarity, congruence, and the possibility of compliance, while Raz emphasizes that the rule of law depends on rules capable of guiding behavior through relative stability and prospective intelligibility. Tamanaha similarly treats predictability and restraint of arbitrary power as central elements of the rule-of-law tradition (Fuller, 1969; Raz, 1977; Tamanaha, 2004). In this article, legal certainty is therefore evaluated through three questions: whether Article 308 identifies who must act, whether it defines when the required action must occur, and whether it determines the legal consequences when the prescribed process is not completed.

This framework is directly relevant to Article 308 because ambiguity in a procedural norm may be more consequential than ambiguity in a purely substantive standard. When a provision governs the conditions under which a court may proceed, uncertainty can affect not only the parties' substantive rights but also the very availability and timing of adjudication. Indonesian scholarship likewise recognizes that legal certainty must operate together with justice rather than as an abstract formal value (Nur, 2023). The proper question is thus not simply whether Article 308 has a protective purpose, but whether its procedural formulation enables patients, defendants, lawyers, the MDP, and judges to predict the steps required for a lawful and fair civil process.

2. Procedural Justice and Access to Justice

Justice in civil adjudication requires a fair distribution of procedural opportunities as well as a substantively defensible outcome. Rawls's account of justice as fairness provides a general normative basis for rejecting institutional arrangements that systematically advantage one party without adequate justification (Rawls, 1999). In access-to-justice scholarship, Cappelletti and Garth emphasize that formal rights are ineffective where procedural design prevents or disproportionately burdens their exercise (Cappelletti & Garth, 1978). Contemporary Indonesian scholarship similarly treats access to justice as requiring a meaningful opportunity to invoke judicial institutions and obtain a determination without unreasonable procedural barriers (Majida & Rakhman, 2024).

Applied to medical civil litigation, this principle does not mean that patients must be relieved of all procedural requirements. Medical disputes often require technical evaluation, and professional review can reduce the risk that an adverse clinical outcome is automatically treated as negligence. The fairness problem arises when the operation of a mandatory or functionally necessary step depends exclusively on the party whose interests may be served by delay or non-initiation. The analytical focus must therefore be on procedural symmetry: whether both parties retain a reasonable opportunity to advance the case, whether the process contains safeguards against strategic inaction, and whether the court remains institutionally capable of managing the dispute.

3. Professional Discipline, Medical Liability, and Judicial Adjudication

Professional discipline and civil liability perform different legal functions. Disciplinary review asks whether professional conduct complied with professional standards, service standards, competence requirements, and applicable procedures. Civil liability, by contrast, requires a judicial determination of legally relevant fault or

breach, causation, harm, and the appropriate remedy. Indonesian health-law scholarship has repeatedly emphasized the need to distinguish professional evaluation from legal responsibility even where the two processes interact (Fauziah et al., 2025; Siregar, 2023; Syarief, 2023). The MDP can therefore provide highly relevant expert assessment without displacing the court's authority to determine civil liability.

This distinction is essential to the argument developed below. If an MDP recommendation is treated as equivalent to a binding determination of civil fault, the court risks becoming subordinated to an administrative-professional body. If, at the opposite extreme, the recommendation has no procedural or evidentiary relevance, the statutory mechanism loses its protective function. A coherent interpretation must occupy the middle ground: professional assessment should inform the judicial process, while legal responsibility remains a matter for independent adjudication (Fitira et al., 2025; Sudarmanto et al., 2025).

METHOD

This study employs normative legal research, treating law as an interconnected system of statutes, implementing regulations, constitutional norms, judicial decisions, and legal principles (Soekanto & Mamudji, 2013). Three approaches are used. First, the statutory approach examines Article 308 of Law Number 17 of 2023 together with Government Regulation Number 28 of 2024 and Minister of Health Regulation Number 3 of 2025. Second, the conceptual approach evaluates the recommendation mechanism through the principles of legal certainty, procedural justice, access to justice, professional accountability, and judicial independence. Third, a case approach considers Constitutional Court Decision Number 156/PUU-XXII/2024 and Decision Number 161/PUU-XXIII/2025 as contemporary constitutional context for the operation of Article 308 (*Decision Number 156/PUU-XXII/2024*, 2026; *Decision Number 161/PUU-XXIII/2025*, 2026; Government Regulation Number 28 of 2024 on the Implementation of Law Number 17 of 2023 on Health, 2024; Law Number 17 of 2023 on Health, 2023; Minister of Health Regulation Number 3 of 2025 on the Enforcement of Professional Discipline for Medical and Health Personnel, 2025).

The legal materials consist of primary materials, including constitutional and statutory provisions, implementing regulations, and Constitutional Court decisions, and secondary materials, including books and peer-reviewed legal scholarship on health law, professional discipline, legal certainty, and access to justice. The materials are analyzed qualitatively through doctrinal interpretation and legal reasoning. The analysis proceeds in four stages: identifying the normative sequence established by Article 308; distinguishing the professional and judicial functions of the MDP recommendation; testing the sequence against legal-certainty and procedural-fairness standards; and formulating a regulatory model that preserves professional protection without impairing effective patient redress.

RESULTS AND DISCUSSION

1. The Normative Architecture of the MDP Recommendation in Civil Claims

Law Number 17 of 2023 reorganized the legal framework for professional discipline in the health sector. Article 304 establishes the disciplinary body, while Article 308 connects professional assessment to criminal and civil legal processes. For civil disputes, Article 308(2) provides that where medical personnel or health workers are held responsible for acts or omissions related to healthcare services that cause civil harm to a patient, a recommendation must be requested from the MDP. Article 308(4)

then states that the recommendation is issued after the medical or health professional, or a person authorized by that professional, submits a written request concerning the lawsuit brought by the patient, the patient's family, or their representative (Law Number 17 of 2023 on Health, 2023).

Two features are legally important. First, unlike Article 308(1), which expressly uses language indicating that a recommendation must be sought before criminal processing, Article 308(2) does not use identical temporal wording for civil claims. This supports the interpretation that a patient may register a civil lawsuit without first obtaining an MDP recommendation. The government's argument in the constitutional litigation similarly emphasized that the civil action may be filed before the recommendation is requested (*Decision Number 156/PUU-XXII/2024*, 2026). Second, however, Article 308(4) still makes the professional defendant the actor who initiates the recommendation process. The law therefore separates the patient's power to file from the defendant's power to activate a statutory assessment that may materially affect the subsequent handling of the case.

The implementing regulations strengthen the institutional basis of the MDP but do not eliminate this structural feature. Government Regulation Number 28 of 2024 provides the broader implementation framework for professional discipline, and Minister of Health Regulation Number 3 of 2025 regulates disciplinary enforcement and the provision of recommendations (Government Regulation Number 28 of 2024 on the Implementation of Law Number 17 of 2023 on Health, 2024; Minister of Health Regulation Number 3 of 2025 on the Enforcement of Professional Discipline for Medical and Health Personnel, 2025). This development is important because the Article 308 mechanism can no longer be dismissed as an incomplete statutory idea awaiting implementation. It is now an operational component of Indonesia's health-law system. The remaining question is whether its connection to civil procedure is formulated with sufficient precision.

The protective rationale behind the mechanism is legitimate. Medical treatment is not ordinarily an obligation to guarantee a particular outcome; it is an obligation to exercise professional competence, diligence, and care according to applicable standards. A specialized disciplinary body is institutionally better positioned than a lay litigant to assess whether the clinical conduct was consistent with professional standards. This is why scholarship has described the MDP as a potential primum remedium or professional screening mechanism (Fitri & Hoesein, 2025; Siregar et al., 2024). The existence of professional review is therefore rational. The legal problem arises from the allocation, timing, and effect of the request rather than from the idea of professional assessment itself.

2. The Core Ambiguity: Who Controls the Recommendation Process?

Article 308 produces a procedural asymmetry because the plaintiff initiates the lawsuit but the defendant controls the initiation of the MDP recommendation. That asymmetry would not necessarily be problematic if the law expressly specified the consequence of defendant inaction. It does not. The text does not state that the court may request the recommendation on its own initiative, that the patient may request it when the defendant fails to do so, that the MDP process is deemed waived after a particular period, or that the lawsuit must proceed regardless of the missing recommendation (Fitira et al., 2025; Law Number 17 of 2023 on Health, 2023). The resulting uncertainty is not hypothetical; it concerns the basic legal pathway by which a filed claim moves toward examination and judgment.

From the perspective of legal certainty, this omission creates at least three interpretive possibilities. The first is a strict-prerequisite interpretation, under which the court should not proceed to substantive examination until the recommendation exists. The second is an evidentiary interpretation, under which the case may proceed and the recommendation is treated as an expert professional assessment if and when it is produced. The third is a defendant-protection interpretation, under which failure to request the recommendation amounts to the defendant's loss of a statutory procedural protection rather than a defect attributable to the plaintiff. Each interpretation is plausible within part of the statutory scheme, yet each produces materially different consequences. A legal system that leaves this issue entirely to ad hoc judicial construction risks inconsistent outcomes in comparable disputes (Fuller, 1969; Raz, 1977; Sudarmanto et al., 2025).

The Constitutional Court's 2026 decision does not make the issue disappear. Decision Number 156/PUU-XXII/2024 rejected the constitutional challenge to Article 308 and accepted the legitimacy of an MDP recommendation as a mechanism for protecting healthcare professionals and ensuring that professional standards are assessed before legal responsibility is imposed (*Decision Number 156/PUU-XXII/2024*, 2026). That conclusion addresses constitutionality at the level of legislative purpose and structure. It does not, however, provide a complete rule for every civil-procedural consequence of Article 308(4). Decision Number 161/PUU-XXIII/2025 is also significant because the applicants expressly raised the risk that a defendant could avoid or delay a recommendation, but the Court declared the application inadmissible and therefore did not resolve the merits of that narrower procedural complaint (*Decision Number 161/PUU-XXIII/2025*, 2026).

For this reason, the article characterizes the problem as normative indeterminacy rather than a simple absence of law. There is a rule, an institution, and an implementing regulation. The uncertainty concerns the relationship among those elements: how a judicially filed claim, a defendant-controlled request, an MDP recommendation, and the court's authority should interact. This is precisely the type of legal uncertainty that can generate divergent practices even where all actors are attempting to comply with the same statute.

3. Juridical Implications for Patient Rights and Civil Procedure

The first juridical implication is the risk of impaired access to an effective judicial remedy. A patient's right to commence litigation is not necessarily extinguished by Article 308(2), particularly because the civil paragraph does not expressly require the recommendation before filing. Nevertheless, access to justice includes more than the ability to lodge documents with a court; it includes a practical pathway toward adjudication (Cappelletti & Garth, 1978; Majida & Rakhman, 2024). If the court treats the recommendation as necessary to continue substantive examination and the defendant alone can initiate the process, the patient's case may become procedurally dependent on an adverse party.

Second, the rule can generate unequal procedural incentives. The defendant has a legitimate interest in invoking professional assessment to demonstrate compliance with standards. Yet where the statute provides no consequence for failure to invoke that mechanism, inaction may become strategically attractive. It is neither necessary nor appropriate to assume bad faith by medical professionals; the legal problem exists because a sound procedural system should not rely on the goodwill of a party whose litigation interests may conflict with procedural progression. Legal design should

minimize opportunities for strategic delay regardless of which party might benefit from them (Rawls, 1999; Widjaja, 2025).

Third, Article 308 raises questions regarding judicial independence and the evidentiary status of the MDP recommendation. The MDP is competent to assess professional discipline, but a civil court determines legal liability. The recommendation should therefore answer a technical-professional question: whether the conduct complied with applicable professional standards, service standards, and procedures. It should not determine the final existence of civil liability, because that determination also requires judicial assessment of causation, legally cognizable loss, defenses, and the appropriate remedy (Fitira et al., 2025; Siregar, 2023; Sudarmanto et al., 2025). Treating the recommendation as binding would risk transferring an essentially judicial function to a professional-disciplinary body; treating it as irrelevant would defeat the rationale for requiring it.

Fourth, ambiguity affects defendants as well as patients. Medical personnel need certainty about whether requesting a recommendation is a right, a duty, a procedural defense, or an indispensable statutory step. A vague mechanism can expose professionals to inconsistent expectations across courts and can undermine the very protective purpose that Article 308 was designed to serve. Indonesian scholarship on the new Health Law has repeatedly identified the importance of regulatory clarity and harmonization in protecting medical personnel while maintaining accountability (Amiati et al., 2024; Fitri & Hoesein, 2025; Syarief, 2023). A reform that clarifies the process is therefore not anti-professional; it strengthens legal protection for both sides.

4. A Rational Reformulation: Professional Review without Procedural Capture

A coherent reformulation should begin by preserving the central policy choice made by the legislature: disputes concerning alleged medical harm should benefit from a professional assessment of compliance with healthcare standards. The reform should not abolish the MDP recommendation. Instead, it should redesign the relationship between the recommendation and the civil court so that the assessment is reliably obtained without making the viability of the case depend on unilateral defendant action. This approach is consistent with the Constitutional Court's recognition that professional review has a legitimate protective purpose (*Decision Number 156/PUU-XXII/2024*, 2026).

First, the initiation mechanism should be court-triggered once a civil claim falling within Article 308(2) is registered and the defendant has appeared or been properly summoned. The court clerk or panel of judges should transmit a standardized referral to the MDP, while both parties retain the right to submit relevant professional materials. This design removes the conflict of interest inherent in exclusive defendant initiation without transferring the substantive burden of proof from the plaintiff. It also ensures that every qualifying dispute follows the same procedural pathway.

Second, the law or an implementing procedural rule should prescribe a strict and enforceable period for the MDP to issue its recommendation. If the recommendation is not issued within that period for reasons not attributable to the plaintiff, the court should be authorized to continue the case, drawing on other expert evidence where necessary. A deadline without a consequence for expiry is insufficient. The legal consequence should therefore be explicit: delay by the MDP or failure by the defendant to cooperate must not cause dismissal or indefinite suspension of the patient's claim.

Third, the legal status of the recommendation should be defined as authoritative professional evidence rather than a binding determination of civil liability. The court

should be required to consider the MDP's assessment of professional standards and to give reasons if it departs from that assessment, but the court must retain authority over legal fault, causation, damages, and remedies. This model respects professional expertise while preserving the constitutional function of adjudication. It also aligns with scholarship warning against an unclear overlap between disciplinary and judicial processes (Fitira et al., 2025; Siregar et al., 2024; Sudarmanto et al., 2025).

Fourth, the regulatory framework should expressly state that the absence of a recommendation cannot be attributed to the patient when the patient has filed the claim and complied with all procedural obligations within the patient's control. This rule would eliminate the possibility that defendant inaction transforms a protective mechanism into a barrier to redress. It would also provide judges with a clear interpretive instruction, thereby advancing predictability, equal procedural treatment, and institutional accountability (Cappelletti & Garth, 1978; Fuller, 1969; Tamanaha, 2004).

These reforms achieve a more rational balance than either extreme. Eliminating professional review altogether would underprotect medical personnel and ignore the specialized nature of healthcare standards. Making the review entirely dependent on the defendant would underprotect patients and create avoidable procedural uncertainty. A court-triggered, time-limited, non-binding but authoritative professional assessment better reconciles the objectives of patient protection, professional security, and judicial independence. It also converts Article 308 from a potentially fragmented interface into a coordinated mechanism of medical dispute resolution.

CONCLUSION

Article 308 of Law Number 17 of 2023 reflects a legitimate legislative objective: medical and health professionals should not be exposed to civil liability without an informed assessment of whether their conduct complied with relevant professional standards. The MDP recommendation is therefore rational as an institutional bridge between professional discipline and legal adjudication. The central problem is not the existence of the recommendation, but the incomplete procedural architecture created by Article 308(2) and (4). The patient may initiate the civil action, yet the defendant is assigned the initiative to request the professional recommendation; the statute does not expressly regulate the consequence of defendant inaction; and the recommendation's precise effect on judicial examination remains insufficiently defined. These features create a risk of inconsistent interpretation and weaken legal certainty for patients, defendants, and courts alike.

A legally coherent reform should preserve professional review while preventing procedural dependence on a single litigating party. The preferred model is a court-triggered referral to the MDP, combined with a strict decision period, an express rule that delay or defendant non-cooperation does not bar the claim, and a clear statement that the MDP recommendation constitutes authoritative professional evidence rather than a binding judgment on civil liability. This approach retains the substantive protection intended by the 2023 Health Law while ensuring that access to justice, procedural fairness, and judicial independence remain effective. In this form, the MDP can function as a genuine professional safeguard without becoming a procedural gatekeeper whose operation is capable of frustrating the patient's right to obtain a civil determination.

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