

Application of the Principle of *Lex Specialis Derogat Legi Generali* in Cases of Medical Malpractice in Law Number 17 Of 2023 Concerning Health

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Medical malpractice is a legal issue in the health sector that often sparks debate regarding the accountability mechanisms for healthcare workers. In practice, the resolution of malpractice cases is often directly linked to general criminal provisions in the Criminal Code (KUHP), even though the health sector already has specific regulations through Law Number 17 of 2023 concerning Health. This raises issues regarding the application of the *lex specialis derogat legi generali* principle in law enforcement against medical personnel. This study aims to analyze the application of the *lex specialis derogat legi generali* principle in medical malpractice cases based on Law Number 17 of 2023 concerning Health and its implications for legal protection for medical personnel and patients. The study uses a normative legal research method with a statute approach and a conceptual approach . The results of the study indicate that the application of the principle of *lex specialis derogat legi generali* places the mechanism for enforcing professional discipline as the initial stage in handling alleged medical malpractice through the Professional Disciplinary Council as regulated in Article 304 of Law Number 17 of 2023 concerning Health, the implementation of which is further regulated in Government Regulation Number 28 of 2024 and Regulation of the Minister of Health Number 3 of 2025. This mechanism is used to assess alleged violations based on professional standards, service standards, standard operating procedures, and professional ethics before applying administrative, civil, or criminal liability based on Law Number 1 of 2023 concerning the Criminal Code. The application of this principle provides legal certainty for medical personnel through a professional assessment mechanism, while still guaranteeing legal protection for patients through the fulfillment of their rights, enforcement of professional discipline, and the right to demand accountability if a violation is proven.

Keywords : Medical Malpractice, Law Number 17 of 2023, *Lex specialis derogat legi generali*.

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1. Introduction

Health is a human right guaranteed in the Preamble and Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which affirms the right of every person to obtain health services, as well as Article 34 paragraph (3) which affirms the state's responsibility in providing adequate health service facilities. In addition, Article 28E paragraph (2) and Article 28F also guarantee the right to make choices and the right to obtain information (Awangga, *Perlindungan Hukum Terhadap Pasien Rawat Inap Berdasarkan Undang-Undang Nomor 44 Tahun 2009 tentang Rumah Sakit*, 2023). These three rights are known as *the right to health care* , *the right to self-determination* , and *the right to information* , which are the basis for legal protection in the provision of health services. Therefore, the relationship between medical personnel and patients is not only a professional service relationship, but also a legal relationship that guarantees protection of the rights and obligations of each party (Soge, 2023).

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The health law reform through Law Number 17 of 2023 transforms the regulatory system that was previously scattered across various sectoral laws into a single, integrated legal regime (Rifki, 2025). Through *an omnibus law approach*, Article 454 of this law revokes eleven laws in the health sector, including Law Number 29 of 2004 concerning Medical Practice, Law Number 36 of 2009 concerning Health, Law Number 44 of 2009 concerning Hospitals, and several other sectoral laws (Soge, 2023). This integration places regulations regarding medical personnel, health workers, health care facilities, medical practices, and the provision of health care services within a single legal framework, thereby reducing regulatory overlap and providing more complete legal certainty (Natalia, Miarsa, & Felixs, 2026).

The implementation of health services continues to face increasing complaints of alleged malpractice. In a working meeting with Commission IX of the Indonesian House of Representatives on July 2, 2025, the Minister of Health stated that the Ministry of Health received 51 complaints of alleged malpractice during the 2023-2025 period. Twenty-four cases resulted in patient death, while the majority of complaints related to violations of standard operating procedures, non-compliance with professional standards, professional incompetence, and poor communication between medical personnel and patients (Muliawati, 2025). These complaints demonstrate that medical disputes continue to frequently arise in health care practices.

Medical disputes are not synonymous with malpractice. Medical disputes arise when a patient or their family disputes the healthcare services they received, while malpractice requires a deviation from professional standards, service standards, standard operating procedures, or negligence that can be legally accounted for. This distinction determines the resolution path used, as not every medical dispute ends in a criminal case or civil suit. (Sudarmanto, Nurmardiansyah, Nugroho, & Siregar, 2025).

Law Number 17 of 2023 provides a specific mechanism for assessing alleged professional misconduct through Article 304. This provision regulates the enforcement of professional discipline by the Professional Disciplinary Council (MDP), which is authorized to examine complaints and determine whether or not disciplinary violations have occurred by medical and healthcare personnel. Assessment of medical actions is primarily based on professional discipline aspects based on professional standards, service standards, codes of ethics, and standard operating procedures before being linked to other forms of legal accountability.

The provisions regarding the Professional Disciplinary Council were further elaborated in Government Regulation Number 28 of 2024, which implements Law Number 17 of 2023 concerning Health. This Government Regulation governs the Professional Disciplinary Council's position, authority, examination procedures, and decision-making procedures. The authority to receive complaints, conduct investigations, and determine the existence or absence of disciplinary violations constitutes a special mechanism applicable only within the health law regime.

Minister of Health Regulation Number 3 of 2025 concerning the Enforcement of Professional Discipline for Medical and Health Workers then complements this mechanism by regulating the forms of professional disciplinary violations, examination procedures, types of disciplinary sanctions, and the implementation of decisions of the Professional Disciplinary Council. The presence of this regulation provides clearer parameters in assessing alleged disciplinary violations by medical personnel so that handling alleged malpractice does not solely rely on a criminal approach. In addition to the mechanism for enforcing professional disciplinary action, Law Number 17 of 2023 also opens up dispute resolution through alternative dispute resolution as stipulated in Article 310. This provision only regulates non-litigation dispute resolution options and does not regulate the determination of the existence or absence of malpractice or criminal liability of medical personnel.

Legal issues arise when allegations of malpractice are linked to the criminal provisions of Law Number 1 of 2023 concerning the Criminal Code. The Criminal Code regulates general criminal liability for any act that meets the elements of a crime, while Law Number 17 of 2023 specifically regulates the procedures for assessing alleged professional misconduct through the Professional Disciplinary Council. This difference in scope raises questions about the relationship between the two laws in handling allegations of malpractice, particularly whether a professional disciplinary hearing should take precedence over the application of criminal provisions.

The unique characteristic of Law Number 17 of 2023 lies in the establishment of a professional discipline enforcement mechanism not found in Law Number 1 of 2023 concerning the Criminal Code. The Professional Disciplinary Council is authorized to assess whether or not there has been a disciplinary violation based on professional standards, while the Criminal Code only regulates criminal consequences if all elements of a crime have been met. This difference in function positions Law Number 17 of 2023 as *lex specialis* in handling allegations of medical malpractice, while Law Number 1 of 2023 functions as *lex generalis*, applied if the alleged violation develops into a criminal offense.

Previous research still focuses on aspects of handling medical professional errors and doctors' legal responsibilities. Albertus D. Soge concluded that Law Number 17 of 2023 concerning Health has provided better legal protection for medical personnel, although there are still several provisions that are not in line with the Health law paradigm (Soge, 2023). Meanwhile, Anneke Catlynne Gunawan et al. examined the civil liability of doctors through the doctrine of *informed consent* and medical complications (Gunawan, Grace, & Prisia, 2026). In contrast to these studies, this study focuses on the application of the principle of *lex specialis derogat legi generali* in cases of medical malpractice based on Law Number 17 of 2023 concerning Health and its implications for legal protection for medical personnel and patients.

Based on this description, this research raises the title " Application of the Principle of *Lex Specialis Derogat Legi Generali* in Cases of Medical Malpractice in Law Number 17 of 2023 concerning Health".

The problems raised in this research are:

1. *lex specialis derogat legi generali* applied in cases of medical malpractice based on Law Number 17 of 2023 concerning Health?
2. What are the implications of the application of the principle of *lex specialis derogat legi generali* on legal protection for medical personnel and patients in cases of medical malpractice?

2. Research Methods

This study uses a normative legal research method with a statutory approach *and* a conceptual approach . Normative legal research is legal research conducted by reviewing library materials or secondary data (Azizah & Awangga, 2025). In this study, the statutory approach is used to analyze the provisions of Law Number 17 of 2023 concerning Health and other laws and regulations related to medical malpractice and the application of the principle of *lex specialis derogat legi generali* . Meanwhile, the conceptual approach is used to examine the concept of medical malpractice, legal protection, and the principle of *lex specialis derogat legi generali* based on doctrine and expert opinions (Marzuki, 2021).

The legal materials used consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 17 of 2023 concerning Health, the Criminal Code, the Civil Code, and other laws and regulations related to health services. Secondary legal materials include books, scientific journals, research results, and scientific works discussing health law, medical malpractice, and the principle of *lex specialis derogat legi generali* . Tertiary legal materials include legal dictionaries, encyclopedias, and other reference sources that support the research (Azizah & Awangga, 2025).

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The collection of legal materials was carried out through a literature study by reviewing various relevant laws and regulations and literature (Soekanto & Mamudji, 2019). Furthermore, all legal materials were analyzed qualitatively using normative legal analysis methods through interpretation of applicable legal provisions, then systematically compiled to answer the problem (Ibrahim, 2006) regarding the application of the principle of *lex specialis derogat legi generali* in cases of medical malpractice based on Law Number 17 of 2023 concerning Health and its implications for legal protection for medical personnel and patients.

3. Results and Discussion

Application of the Principle of *Lex Specialis Derogat Legi Generali* in Medical Malpractice Cases Based on Law Number 17 of 2023 concerning Health

The principle of *lex specialis derogat legi generali* is one of the principles of preference in law which determines that special provisions override general provisions as long as they regulate the same object, subject and scope. (Wahyuni, 2022). Bagir Manan explained that this principle gives priority to regulations that are specifically formed to regulate certain legal fields so that the application of the law is in accordance with the characteristics of the event. the law being faced (Manan, 2004). The existence of special norms does not eliminate the validity of general norms, but rather determines the order of application of law when there is overlapping regulation (Hadjon & Djatmiati, 2014).

In the health sector, this principle is relevant because the legal relationship between medical personnel, health workers, patients, and health care facilities has characteristics not found in criminal law or civil law in general. Health care services are provided based on professional standards, service standards, standard operating procedures, and a professional code of ethics, which serve as the basis for assessing medical actions. (Poernomo, 2013) This specificity is accommodated in Law Number 17 of 2023 concerning Health as a legal regime that regulates the provision of health services comprehensively, including a mechanism for enforcing professional discipline as a basis for resolving alleged violations in the health sector (Djatkiko, Sanjaya, & Hidayati, 2023).

The enactment of Law Number 17 of 2023 concerning Health is part of the national health legal system reform carried out through *an omnibus law approach*. Through Article 454, this law revokes eleven laws in the health sector, including Law Number 29 of 2004 concerning Medical Practice, Law Number 36 of 2009 concerning Health, Law Number 44 of 2009 concerning Hospitals, and several other sectoral regulations. The unification of these various regulations aims to build a more integrated health legal system, reduce overlapping norms and provide legal certainty in the provision of health services. Through this integrated regulation, all aspects of health service delivery, from medical personnel, health workers, health care facilities, to legal protection mechanisms and dispute resolution, are placed under the same legal regime.

The legal relationship between medical personnel and patients does not always result in healthcare services that meet the expectations of both parties. Differences in perception regarding diagnoses, medical procedures, treatment outcomes, and communication during healthcare can give rise to medical disputes. Medical disputes are disagreements that arise during the provision of healthcare services between patients and medical personnel, healthcare professionals, or healthcare facilities. Therefore, medical disputes have a broader scope than malpractice, encompassing all forms of disputes related to healthcare services.

Not every medical dispute can be classified as malpractice. Medical procedures are essentially professional endeavors carried out based on professional standards, service standards, standard operating procedures, and advances in medical science. Therefore, they still carry medical risks and the possibility of complications. Furthermore, medical disputes can also involve alleged violations of

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professional discipline, civil liability, or criminal liability, depending on the nature of the problem. Therefore, the harm experienced by a patient does not automatically constitute a basis for declaring malpractice.

These different characteristics require a special mechanism to assess suspected violations in health care practices. (Awangga, 2025) Law Number 17 of 2023 concerning Health places the assessment of medical personnel's compliance with professional standards, service standards, standard operating procedures, and codes of ethics as the initial step before determining the applicable form of legal accountability. Based on this, Article 304 establishes a Professional Disciplinary Council as an institution authorized to examine and determine whether or not there have been violations of professional discipline, before allegations of malpractice escalate into administrative, civil, or criminal proceedings.

Article 304 of Law Number 17 of 2023 concerning Health establishes a special mechanism for enforcing professional discipline through the Professional Disciplinary Council (MDP). The establishment of the MDP is based on the characteristics of health services, which relate not only to legal aspects but also involve professional standards, service standards, standard operating procedures, codes of ethics, and scientific considerations in medical practice. Therefore, alleged violations in medical procedures cannot be assessed solely based on a general legal approach but require professional judgment to determine whether the medical personnel's actions comply with applicable professional standards.

The existence of the MDP differentiates the mechanism for handling alleged malpractice from the criminal law enforcement process. Investigators, public prosecutors, and judges have the authority to assess whether the elements of a crime have been met, while the MDP is responsible for assessing medical personnel's compliance with professional standards. This structure places the professional disciplinary enforcement mechanism as the initial stage before administrative, civil, or criminal liability is imposed. According to the author, this mechanism embodies the application of the principle of *lex specialis derogat legi generali* because it provides a professional assessment system specifically regulated in Law Number 17 of 2023 concerning Health and is not found in the general criminal law regime.

As an implementing regulation for Law Number 17 of 2023 concerning Health, Government Regulation Number 28 of 2024 provides more detailed provisions regarding the institution of the Professional Disciplinary Council (MDP). These provisions cover the MDP's position as an institution accountable to the Minister of Health, its membership structure, and the scope of its duties in enforcing professional discipline among medical and healthcare personnel. This clarity in the institutional structure provides certainty regarding the institution authorized to assess alleged violations of professional discipline.

In addition to regulating the institution, Government Regulation Number 28 of 2024 also stipulates the authority and procedures for inspections conducted by the MDP. The MDP is authorized to receive and verify complaints, conduct inspections, request information and necessary evidence, and determine whether or not there has been a violation of professional discipline. These regulations establish a systematic inspection procedure so that assessments of medical personnel's actions are not based solely on the consequences, but rather through an evaluation of their compliance with professional standards, service standards, and standard operating procedures.

Government Regulation Number 28 of 2024 operationalizes the provisions of Article 304 of Law Number 17 of 2023 concerning Health so that the professional discipline enforcement mechanism can be implemented effectively in practice. By regulating organizational structure, authority, inspection procedures, and decision-making mechanisms, this Government Regulation provides an operational basis for the MDP in carrying out its functions. Thus, Government Regulation Number 28 of 2024 does not create new norms, but rather ensures that the specific mechanisms stipulated in Law Number 17 of 2023

can be implemented consistently as part of the implementation of the principle of *lex specialis derogat legi generali*.

Minister of Health Regulation Number 3 of 2025 is an implementing regulation that technically regulates the mechanism for enforcing professional discipline for medical and healthcare personnel. Unlike Law Number 17 of 2023, which establishes the basis for the establishment of the Professional Disciplinary Council (MDP), and Government Regulation Number 28 of 2024, which regulates its institutions and authorities, this Ministerial Regulation provides guidelines regarding examination procedures, assessment parameters, types of disciplinary violations, and sanctions that can be imposed on medical and healthcare personnel. These regulations ensure that the disciplinary enforcement process has uniform standards and can be applied consistently.

One of the important elements of Minister of Health Regulation Number 3 of 2025 is Article 4, which establishes the parameters for violations of professional discipline. This provision not only identifies the types of violations but also provides an objective measure for the MDP in assessing whether the actions of medical personnel have deviated from professional standards, service standards, standard operating procedures, professional authority, or other professional obligations. With these parameters, the assessment of suspected malpractice does not depend on the perceptions of the parties or the resulting consequences, but rather on the conformity of medical actions to applicable professional standards.

In addition to establishing the parameters for violations, Minister of Health Regulation No. 3 of 2025 also regulates the procedures for inspections conducted by the MDP, from receiving a complaint, examining evidence, examining the parties, and making a decision. This mechanism ensures that every complaint against a medical professional is investigated through a transparent, objective procedure based on professional judgment. Thus, allegations of malpractice are not immediately directed towards criminal liability but are first tested through professional disciplinary mechanisms.

The results of the MDP examination then serve as the basis for imposing disciplinary sanctions as stipulated in Article 28 of Minister of Health Regulation Number 3 of 2025. The type of sanction is adjusted according to the level of violation proven after the examination process. This regulation demonstrates that the goal of enforcing professional discipline is not merely to impose sanctions on medical personnel, but also to maintain professionalism, the quality of health services, and patient protection through the consistent application of professional standards.

The regulatory framework in Minister of Health Regulation No. 3 of 2025 demonstrates that the assessment of suspected malpractice begins with an examination of the professional aspects of medical procedures. Parameters regarding professional standards, service standards, standard operating procedures, and professional authority serve as the basis for distinguishing whether an action constitutes a medical risk, a complication, a violation of professional discipline, or has developed into another form of legal liability. This approach differs from the mechanism in Law No. 1 of 2023 concerning the Criminal Code, which focuses on proving the elements of a criminal act without providing a tool to assess medical personnel's compliance with professional standards.

Minister of Health Regulation No. 3 of 2025 is an instrument that strengthens the character of Law No. 17 of 2023 as *lex specialis* in the health sector. Its specificity lies not only in the establishment of the MDP, but also in the provision of parameters, examination procedures, and assessment standards specifically designed to assess the actions of medical personnel. Such instruments are not found in the general criminal law regime, so allegations of malpractice must first be examined through professional disciplinary mechanisms before being linked to administrative, civil, or criminal liability.

Law Number 17 of 2023 concerning Health and Law Number 1 of 2023 concerning the Criminal Code have different regulatory scopes. Law Number 17 of 2023 regulates the provision of healthcare services, professional standards, service standards, standard operating procedures, and the mechanism for enforcing professional discipline through the Professional Disciplinary Council. In contrast, the Criminal Code regulates acts that fulfill the elements of a crime and their criminal liability without regulating professional standards in healthcare practice. This difference in scope places the two laws in a complementary, rather than mutually exclusive, role.

In handling alleged malpractice, Law Number 17 of 2023 places the assessment of medical actions as the initial step through a professional disciplinary mechanism. The MDP examines whether medical personnel's actions comply with professional standards, service standards, standard operating procedures, and professional authority as stipulated in the health legal regime. This examination aims to differentiate between medical risks, complications, and violations of professional discipline so that any harm experienced by patients is not automatically classified as a criminal offense.

If the examination results show no violation of professional discipline, then medical procedures performed according to standards cannot be considered malpractice simply because they cause harm or unintended results. Conversely, if the MDP finds a violation of professional discipline, these results serve as the basis for determining further accountability according to the nature of the violation. Under certain conditions, such violations can result in administrative sanctions or civil liability. If the act also meets the elements of a criminal offense as stipulated in the Criminal Code or other criminal provisions, the criminal law enforcement process can continue through investigation, prosecution, and trial in court.

This construction demonstrates that the application of the Criminal Code is not overridden by Law Number 17 of 2023 concerning Health. The Criminal Code continues to function as general criminal law (*lex generalis*), which regulates criminal liability when the elements of a crime have been fulfilled. Meanwhile, Law Number 17 of 2023 functions as a special law (*lex specialis*) because it provides a professional assessment mechanism not regulated in the Criminal Code. Thus, the relationship between the two laws is not a substitute relationship, but rather a hierarchical relationship, where the specific mechanisms within the health legal regime precede the application of general criminal provisions.

In addition to establishing a mechanism for enforcing professional discipline, Law Number 17 of 2023 also opens up dispute resolution through alternative dispute resolution mechanisms as stipulated in Article 310. This provision only regulates the procedures for resolving disputes between patients and medical personnel outside of court and does not determine whether or not a violation of professional discipline or a criminal offense has occurred. Therefore, Article 310 does not form the basis for applying the principle of *lex specialis derogat legi generali* in alleged medical malpractice, but rather merely complements the dispute resolution mechanism within the health law regime.

Based on the above discussion, the application of the principle of *lex specialis derogat legi generali* in alleged medical malpractice places Law Number 17 of 2023 concerning Health as the basis for the initial assessment of medical personnel's actions through a professional disciplinary enforcement mechanism. This mechanism distinguishes medical risks, complications, violations of professional discipline, and alleged criminal acts based on professional standards, service standards, and standard operating procedures. If the assessment results indicate an act that meets the elements of a criminal act, then the provisions of Law Number 1 of 2023 concerning the Criminal Code are applied as *lex generalis*. Thus, the principle of *lex specialis derogat legi generali* is applied through the introduction of a special mechanism in Law Number 17 of 2023 before the enactment of general criminal law provisions.

Implications of the Application of the Principle of *Lex Specialis Derogat Legi Generali* on Legal Protection for Medical Personnel and Patients in Cases of Medical Malpractice

The application of the principle of *lex specialis derogat legi generali* in handling allegations of medical malpractice not only determines the order of application of legal norms but also establishes a legal protection mechanism for medical personnel and patients. The position of Law Number 17 of 2023 concerning Health as *lex specialis* places the enforcement of professional discipline through the Professional Disciplinary Council (MDP) as the initial mechanism for assessing alleged violations before imposing administrative, civil, or criminal liability. This mechanism creates a more objective assessment process because it is based on professional standards, service standards, standard operating procedures, and professional ethics .

These implications demonstrate that legal protection under Law Number 17 of 2023 focuses not only on the final outcome of dispute resolution but also on the assessment process. Legal protection is provided equally to medical personnel and patients through mechanisms tailored to the characteristics of healthcare services. Thus, the application of the principle of *lex specialis derogat legi generali* not only resolves normative conflicts but also establishes a fairer and more proportional legal protection system .

a. Implications for Legal Protection of Medical Personnel

The application of the principle of *lex specialis derogat legi generali* has implications for legal protection for medical personnel through an assessment mechanism tailored to the characteristics of healthcare services. This protection is realized not only through recognition of the rights of medical personnel, but also through assessment based on professional standards, service standards, standard operating procedures, professional ethics, and patient health needs. Thus, medical personnel's actions are not simply judged based on the consequences for the patient, but are first tested for their compliance with applicable professional standards.

This legal protection is affirmed in Article 273 of Law Number 17 of 2023 concerning Health, which grants medical personnel the right to legal protection as long as they practice in accordance with professional standards. This protection is conditional and does not confer immunity, but rather ensures that every medical action is objectively assessed based on professional standards before being linked to other forms of legal liability.

This guarantee is reinforced through Article 304 of Law Number 17 of 2023, which establishes the Professional Disciplinary Council (MDP), and Articles 721 to 723 of Government Regulation Number 28 of 2024, which regulate forms of legal protection, enforcement of professional discipline, legal assistance, and dispute resolution. These regulations provide procedural certainty that allegations of malpractice are first examined through professional disciplinary mechanisms before developing into administrative, civil, or criminal liability. This mechanism also reduces the potential for criminalization of medical personnel who have practiced according to professional standards, considering that not every loss or unexpected clinical outcome is the result of professional error.

According to the author , the main implication of the application of the principle of *lex specialis derogat legi generali* to legal protection for medical personnel lies in the creation of legal certainty through a professional assessment mechanism before the application of general legal provisions. Thus, legal protection is provided not only in the form of recognition of rights, but also through the guarantee that any alleged malpractice is examined objectively based on professional standards before determining administrative, civil, or criminal liability .

b. Implications for Legal Protection for Patients

The application of the principle of *lex specialis derogat legi generali* also has implications for legal protection for patients through mechanisms tailored to the characteristics of healthcare services. This protection is realized not only through recognition of patient rights but also through an objective assessment mechanism for alleged violations by medical personnel based on professional standards, service standards, standard operating procedures, and professional ethics. Thus, any alleged malpractice is not assessed solely on the basis of the harm experienced by the patient, but through an examination process that considers the professional aspects of healthcare practice.

This legal protection is reflected in Law Number 17 of 2023 concerning Health, which grants patients the right to receive safe, high-quality healthcare services, complete information regarding medical procedures, and informed consent. Furthermore, patients have the right to file complaints if they suspect violations in healthcare services. Fulfilling these rights is a form of preventative protection to ensure patients receive care that meets professional and service standards.

Legal protection for patients is also realized through a professional disciplinary enforcement mechanism as stipulated in Article 304 of Law Number 17 of 2023 concerning Health and its implementing regulations. Through this mechanism, every patient complaint is first examined by the Professional Disciplinary Council (MDP) to determine whether or not there has been a violation of professional discipline. If the examination results indicate a violation that gives rise to legal liability, the patient can still seek dispute resolution through alternative dispute resolution mechanisms as stipulated in Article 310 or through administrative, civil, or criminal mechanisms in accordance with statutory provisions.

According to the author, the primary implication of the application of *the lex specialis derogat legi generali principle* to legal protection for patients lies in the availability of an objective assessment mechanism to distinguish between medical risks, complications, violations of professional discipline, and malpractice. This mechanism ensures that any alleged violation is assessed based on professional standards before determining the form of legal liability, thus protecting the patient's right to justice without compromising legal certainty for medical personnel.

Based on this discussion, the application of the principle of *lex specialis derogat legi generali* in Law Number 17 of 2023 concerning Health has implications for legal protection for medical personnel and patients through mechanisms tailored to the characteristics of healthcare services. For medical personnel, legal protection is realized through professional assessment based on professional standards before administrative, civil, or criminal liability is imposed. On the other hand, patients continue to receive protection through guarantees of their rights, mechanisms for enforcing professional discipline, and access to dispute resolution and accountability for proven violations.

4. Conclusion

Based on all the discussions above, the conclusion is:

- a. The application of the principle of *lex specialis derogat legi generali* in cases of alleged medical malpractice under Law Number 17 of 2023 concerning Health places the professional disciplinary enforcement mechanism as the initial stage in assessing the actions of medical personnel. This specificity is realized through the establishment of a Professional Disciplinary Council based on Article 304 of Law Number 17 of 2023, the implementation of which is further regulated in Government Regulation Number 28 of 2024 and Regulation of the Minister of Health Number 3 of 2025. Through this mechanism, alleged malpractice is first assessed based on professional

standards, service standards, standard operating procedures, and professional ethics before administrative, civil, or criminal liability is applied.

- b. The application of the principle of *lex specialis derogat legi generali* has implications for legal protection for medical personnel and patients through mechanisms tailored to the characteristics of healthcare services. For medical personnel, this principle provides legal certainty through professional assessment by the Professional Disciplinary Council before administrative, civil, or criminal liability is imposed. On the other hand, patients continue to receive legal protection through guarantees of their rights, mechanisms for enforcing professional discipline, and the right to seek dispute resolution and demand accountability if violations are proven.

Suggestion

- a. The government through the Ministry of Health needs to optimize the implementation of the professional discipline enforcement mechanism as regulated in Article 304 of Law Number 17 of 2023 concerning Health, Government Regulation Number 28 of 2024, and Regulation of the Minister of Health Number 3 of 2025. This optimization can be done by strengthening the capacity of the Professional Discipline Council, preparing uniform technical guidelines, and improving coordination with law enforcement officials so that the handling of alleged malpractice takes place consistently in accordance with the principle of *lex specialis derogat legi generali*.
- b. Healthcare facilities, professional organizations, and medical personnel need to strengthen the implementation of professional standards, service standards, standard operating procedures, and the fulfillment of patient rights, including the provision of adequate information and effective complaint mechanisms. These efforts are expected to strengthen legal protection for medical personnel and patients while minimizing disputes and allegations of medical malpractice.

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