

Reformulation of the Investigative Mechanism for Medical Personnel in Alleged Malpractice Resulting in Patient Death Based on the Due Process of Law Principle in the New 2026 Criminal Procedure Code

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authority. This reconstruction is expected to harmonize criminal procedure law and health law and ensure a balance between the protection of medical personnel, patient rights, and legal certainty in the Indonesian criminal justice system.

Abstract: *This study aims to analyze and reconstruct the legal standing of professional organization recommendations in the investigation of medical personnel suspected of causing patient death from the perspective of reforming Indonesian criminal procedure law. The research problem arises from the disharmony of norms between the investigator's authority in criminal procedure law and the provisions of Law Number 17 of 2023 concerning Health, specifically Article 308 which requires a recommendation from the Professional Disciplinary Council before legal proceedings against medical personnel are carried out. In practice, this provision is often interpreted as an absolute requirement (de facto) that has the potential to limit the investigator's authority as regulated in criminal procedure law and create legal uncertainty. This study uses a normative juridical method with a statutory and conceptual approach. The results show that normatively, professional organization recommendations do not have binding force as a requirement for initiating an investigation, but rather only serve as a form of persuasive expert testimony. However, the formulation of norms in Article 308 of the Health Law which uses the phrase "a recommendation must first be requested" creates normative ambiguity and a conflict of authority between law enforcement officials and professional organizations. Therefore, this study proposes a legal reconstruction through a mandatory consultative model with a double-gate mechanism approach, namely an ethical/disciplinary screening mechanism that runs parallel to criminal investigations without eliminating the investigator's*

Keywords: *Medical Personnel, Investigation, Criminal Procedure Code 2026, Criminal Procedure Law Update, Health Law*

Introduction

The development of criminal law and criminal procedural law in Indonesia shows significant dynamics along with the changing paradigm of the rule of law as stated in Article 1, paragraph (3) of the 1945 Constitution. (Ningsih, 2025) The criminal procedural law system which was originally rooted in Het Herziene Inlandsch Reglement was then codified through Law Number 8 of 1981 concerning Criminal Procedural Law (Efendi, 2023) which in Article 1 number 5 defines an investigation as a series of actions to search for and find

events suspected of being a crime to determine whether or not an investigation can be carried out. (Ilyas, 2024) However, the old Criminal Procedure Code was often criticized as an instrument that was still oriented towards state power (state-oriented) and did not fully guarantee the protection of human rights, especially in the early stages of the criminal justice process. (Saputra, 2025) Fundamental reforms were then implemented through Law Number 20 of 2025 concerning the Criminal Procedure Code, which came into effect on January 2, 2026, explicitly revoking the old Criminal Procedure Code and directing the criminal procedure system towards the principles of due process of law and transparent law enforcement. (Hadianto, 2025) This reform is inseparable from the enactment of Law Number 1 of 2023 concerning the Criminal Code, which came into effect in 2026, thus demanding harmonization between substantive and formal criminal law as a unified national criminal law system. (M. Z. Abdullah, 2020) In this context, an urgent need arose to adapt criminal procedure law to the characteristics of specific sectors, including the health sector.

The characteristics of criminal acts in the health sector are complex and differ from those of general crimes, as medical procedures are essentially professional actions based on scientific standards (*lex artis*) and not solely legal. (Ririhena, 2016) In practice, not every patient death can be automatically classified as a criminal offense, as there are fundamental differences between malpractice, medical risks, and complications inherent in medical procedures. (Widiyanto, 2021) This is regulated in Law Number 29 of 2004 concerning Medical Practice, which emphasizes that medical personnel carry out their profession based on professional standards and standard operating procedures, and are subject to ethical and disciplinary mechanisms. Thus, the position of medical personnel is unique because it lies at the intersection of criminal law and professional ethics, making the legal approach used distinct from conventional criminal offenses. (Gunawan, 2023)

In law enforcement practice, a recommendation mechanism has been developed by professional organizations as a preliminary instrument for assessing whether a medical professional's actions constitute an ethical or disciplinary violation before proceeding to the criminal realm. These recommendations are essentially the result of an internal professional assessment of an ethical and administrative nature, but in practice, they are often treated as an informal prerequisite for law enforcement officials to determine whether an investigation can be conducted. (Widjayanto, 2025) Problems arise because this mechanism lacks a clear normative basis in the old Criminal Procedure Code or Law Number 20 of 2025 concerning the Criminal Procedure Code, thus reflecting living law rather than positive law. (Fitira, 2025) This situation creates normative ambiguity regarding the legal status of these recommendations, whether they are binding or merely a consideration, which ultimately impacts legal certainty in the investigative process.

The legal problems become even more complex when professional organization recommendations are used as a determining factor in initiating investigations into medical personnel suspected of causing patient deaths. (Asmara, 2025) In the context of criminal procedure law, the authority to determine the existence of a suspected crime should rest with investigators as representatives of the state, as reflected in the principle of *dominus litis* in the criminal justice system. When professional recommendations become a *de facto* prerequisite, this has the potential to undermine the principle of equality before the law and

open up opportunities for professional impunity. (Edwin, 2025) Conversely, if recommendations are completely ignored, there is a risk of excessive criminalization of medical personnel who are actually acting according to professional standards. Therefore, a tension arises between professional protection and criminal law enforcement, which demands clear normative boundaries.

This tension becomes even more relevant in the context of the new provisions in Law Number 20 of 2025 concerning the Criminal Procedure Code, which emphasizes the protection of human rights from the investigation stage and strengthens the accountability of law enforcement officials. The new Criminal Procedure Code introduces various control mechanisms for investigators' actions, including restrictions on coercive measures and strengthening the rights of suspects, as reflected, among other things, in the provisions regarding restrictions on arrests in Article 97 and broader pretrial regulations. However, the new Criminal Procedure Code does not explicitly regulate the role of professional organization recommendations in the investigation process, creating a legal vacuum in the context of medical personnel cases. On the other hand, regulations in health law and medical practice recognize the importance of ethical and disciplinary mechanisms as part of the professional accountability system, creating the potential for conflicting norms between criminal procedure law and health sector law. (Zaqy, 2026)

This disharmony ultimately has both practical and theoretical impacts on law enforcement. For medical personnel, the lack of clarity in the investigative mechanism can raise fears of criminalization, potentially disrupting healthcare practices. For patients and the public, the existence of professional recommendations that lack clear legal status can hinder access to justice, especially in cases of patient death suspected of being due to medical negligence. Systemically, this condition creates legal uncertainty that contradicts the principles of the rule of law. (Wicaksono, 2025) Therefore, a legal reconstruction is needed that can emphasize the position of professional organization recommendations in the investigation process, limit the authority of each actor proportionally, and harmonize Law Number 20 of 2025 concerning the Criminal Procedure Code with laws and regulations in the health sector in order to achieve a balance between the protection of medical personnel, justice for patients, and legal certainty in the Indonesian criminal justice system.

Methodology

The research method used in this study is normative juridical research, namely legal research that places law as a norm or rule that applies in the system of legislation and legal doctrine, to find, construct, and provide arguments for legal norms that regulate the position of professional organization recommendations in the investigation process of medical personnel suspected of causing patient death. The approaches used include a statutory approach and a conceptual approach. The statutory approach is carried out by systematically reviewing all relevant laws and regulations, especially Law Number 20 of 2025 concerning the Criminal Procedure Code, Law Number 1 of 2023 concerning the Criminal Code, Law Number 17 of 2023 concerning Health, Law Number 29 of 2004 concerning Medical Practice, as well as various implementing regulations and professional ethics provisions related to the mechanism of examination of health workers, to identify synchronization, norm conflicts, and legal gaps in the regulation of the authority of

investigators and professional organizations. Meanwhile, a conceptual approach is used to build a theoretical foundation through a review of fundamental concepts such as due process of law, equality before the law, legal certainty, professional legal protection, *dominus litis*, *lex artis*, as well as the theory of authority and the theory of legal harmonization, which are obtained from the opinions of scholars, doctrines, scientific journals, and previous research results. Through a combination of these two approaches, this research is directed to produce a legal prescription regarding the ideal model of norm renewal and harmonization related to the status of professional organization recommendations in the investigation stage, to be able to provide legal certainty, protection for medical personnel, and guarantee access to justice for patients within the framework of reforming Indonesian criminal procedure law.

Result and Discussion

Normative Construction of the Position of Professional Organization Recommendations in Investigations of Alleged Patient Deaths by Medical Personnel

The role of professional organization recommendations in investigations into alleged patient deaths by medical personnel must first be understood through the normative construction of the Indonesian health legal system, which positions the medical profession as possessing ethical and disciplinary autonomy. Law Number 17 of 2023 concerning Health stipulates that the enforcement of professional discipline for medical personnel is carried out by a government-established council, the Professional Disciplinary Council. This is reflected in Article 304, which affirms that the council has the authority to determine whether or not there has been a violation of professional discipline. Furthermore, regulations regarding this council are contained in Articles 304 through 309, which emphasize its quasi-judicial function in assessing compliance with professional standards, service standards, and standard operating procedures. In this context, the recommendations produced by the council are essentially a form of administrative-professional decision that serves as an initial assessment of the medical personnel's actions, not as a determination of the existence of a criminal offense. (M. a. Abdullah, 2025)

Conceptually, professional organization recommendations are a manifestation of ethical and disciplinary authority, which is fundamentally different from criminal authority. Within the framework of health law, a disciplinary violation is defined as an action that violates professional standards, service standards, and standard operating procedures as stipulated in Minister of Health Regulation Number 3 of 2025. Therefore, its scope is limited to professional aspects, not criminality. Therefore, the recommendations produced by the Professional Disciplinary Council must be understood as a form of *lex artis*-based assessment, which doctrinally falls into the category of expert opinion, not criminal evidence as defined in Article 184 of the old Criminal Procedure Code. Therefore, normatively, these recommendations cannot be classified as stand-alone evidence but rather as part of the considerations in the legal process. (Nadeak, 2024)

From a criminal procedure law perspective, the authority to determine whether or not a criminal event has occurred rests with the investigator, as affirmed in Article 1, point 5 of Law Number 8 of 1981 concerning the Criminal Procedure Code, which states that an

investigation aims to determine whether an incident can be escalated to the investigation stage. This authority reflects the principle of *dominus litis*, where the state, through law enforcement officials, has full authority to determine whether to initiate criminal proceedings. However, in practice, recommendations from professional organizations are often positioned as an informal prerequisite before conducting an investigation, even though normatively, there is not a single provision in the old Criminal Procedure Code that requires professional recommendations as a basis for initiating an investigation. This indicates a shift from positive law to sociological practices (living law), which in turn creates legal uncertainty. (Munib, 2018)

In recent developments, Law Number 20 of 2025 concerning the Criminal Procedure Code maintains the essential authority of investigators in determining suspected criminal acts, with an emphasis on protecting human rights and accountability of the legal process from the initial stage. However, the new Criminal Procedure Code does not explicitly regulate the role of recommendations from professional organizations in the investigation process of medical personnel, creating a legal vacuum in the context of the relationship between criminal procedure law and health law. On the other hand, in state practice, the Constitutional Court has interpreted the Professional Disciplinary Council's recommendations as an assessment of the fulfillment of professional standards, which serve as the basis for consideration before initiating legal proceedings, but are not intended to hinder criminal law enforcement. This demonstrates that recommendations serve an important function, but are not an absolute requirement.

From a legal system perspective, there is a clear separation between ethical, disciplinary, and criminal authority. Ethical authority rests with professional organizations, which assess morality and compliance with codes of ethics; disciplinary authority rests with the Professional Disciplinary Council, which assesses compliance with professional standards; and criminal authority rests with law enforcement officials, who determine whether unlawful acts meet the elements of a crime. These three regimes should operate in a complementary, not subordinate, manner. However, when professional recommendations are made a prerequisite for investigation, a shift in authority occurs that potentially violates the principle of equality before the law by creating special treatment for certain professions that is not experienced by other legal subjects.

Based on this normative construction, it can be concluded that, from a positive legal perspective (*ius constitutum*), recommendations from professional organizations during the investigation phase do not have the status of administrative requirements or binding evidence, but rather serve only as persuasive expert opinions to assist law enforcement officials in understanding technical medical aspects. However, the unclear provisions in the new Criminal Procedure Code and the strengthening of the role of the Professional Disciplinary Council in Law Number 17 of 2023 concerning Health, particularly regarding the need for recommendations in the context of medical personnel accountability, indicate a normative ambiguity regarding the limits of this authority. This ambiguity is a crucial point that requires legal reconstruction, as it has the potential to create dualism of authority

between professional organizations and law enforcement officials in determining whether or not an investigation can be conducted against medical personnel.

Problems of Disharmony of Authority between Investigators and Professional Organizations from the Perspective of the 2026 Criminal Procedure Code

The problematic disharmony of authority between investigators and professional organizations in the context of handling alleged patient deaths by medical personnel is rooted in the clash of two legal regimes with differing legitimacy bases: criminal procedure law and health law. From a criminal procedure law perspective, investigative authority explicitly rests with law enforcement officials, as defined in Article 1, number 5, of Law Number 8 of 1981 concerning the Criminal Procedure Code, which mandates investigators to determine whether or not a crime has occurred. This authority reflects the principle of *dominus litis*, where the state has full control over criminal proceedings. However, in practice, following the enactment of Law Number 17 of 2023 concerning Health, specifically Article 308, normative intervention has emerged in the form of a requirement to obtain a recommendation from the Professional Disciplinary Council before proceeding with legal proceedings, thus creating overlapping authority between professional institutions and law enforcement officials. This tension becomes even more apparent when Article 308 paragraphs (1) and (5) of Law Number 17 of 2023 concerning Health use the phrases "a recommendation must first be requested" and "an investigation can only be conducted after a recommendation has been obtained," which normatively positions a recommendation as a procedural prerequisite in criminal proceedings. This formulation of the norm has the potential to reduce the authority of investigators as stipulated in the Criminal Procedure Code, because it implicitly grants non-law enforcement agencies initial authority to assess the feasibility of a criminal case. In the context of the theory of authority, this condition can be categorized as a form of over-delegated authority, namely the delegation of state authority to entities that lack the legitimacy of law enforcement, thus potentially giving rise to irregularities in the criminal justice system.

From the perspective of the principle of due process of law, the existence of a recommendation as a *de facto* or *de jure* requirement in the investigative process raises serious issues related to procedural fairness. It is as criticized in the constitutional review of Article 308 of the Health Law, which is deemed to potentially violate Article 28D paragraph (1) of the 1945 Constitution by hindering public access to justice through a swift and certain legal mechanism. When the continuation of a legal process depends on a recommendation that must be submitted by a specific party, even the medical personnel concerned, there is the potential for procedural inequality that contradicts the principle of justice. Thus, this norm not only creates administrative obstacles but also potentially reduces the victim's constitutional right to legal protection.

Furthermore, from the perspective of equality before the law, the application of recommendations as a prerequisite in cases involving medical personnel creates special treatment that is not applied to other legal entities. In the criminal law system, everyone suspected of committing a crime should be treated equally before the law without additional discriminatory mechanisms. However, with Article 308 of the Health Law,

medical personnel receive different treatment because the criminal process against them must go through an additional mechanism in the form of a professional assessment. While this argumentatively aims to protect medical personnel from criminalization, normatively, it can create a legal antinomy, namely a conflict between the general principles of criminal law and specific provisions in health law.

This disharmony also reflects a conflict of norms, both horizontally and vertically. Horizontally, there is a conflict between Law Number 20 of 2025 concerning the Criminal Procedure Code, which emphasizes the authority of investigators, and Law Number 17 of 2023 concerning Health, which requires professional recommendations. Vertically, the norms in the Health Law have the potential to conflict with constitutional principles in the 1945 Constitution, particularly regarding guarantees of legal certainty and justice. This situation creates a legal vacuum and legal conflict, because there are no norms that expressly regulate how the relationship between the two legal regimes should be implemented in practice. As a result, law enforcement officers are in a dilemma between following the provisions of the Criminal Procedure Code or complying with specific provisions in health law.

The implications of this disharmony of authority have far-reaching implications for the law enforcement system. For medical personnel, the existence of a recommendation mechanism provides protection against the risk of criminalization, but on the other hand, it creates dependence on administrative processes that can delay case resolution. For patients or victims, this mechanism has the potential to hinder access to justice because the legal process becomes dependent on the very party being sued. Systemically, this condition creates legal uncertainty during the investigation stage, which contradicts the purpose of the law itself. Therefore, it can be concluded that legal tensions and uncertainty of authority in practice are not solely caused by a lack of norms, but by a misalignment of normative construction between criminal procedure law and health law, which requires comprehensive legal reconstruction to restore balance between professional protection and criminal law enforcement.

Reconstruction of the Arrangement of Recommendations of Professional Organizations in Investigations of Medical Personnel Based on Criminal Procedure Law Reforms

Reconstructing regulations regarding the role of professional organization recommendations in medical investigations must begin with a reaffirmation of the basic principle of criminal procedure law, which states that the authority to determine the existence of a suspected crime remains with investigators as representatives of the state, as stipulated in Article 1, number 5 of the Criminal Procedure Code. However, Article 308(1) of Law No. 17 of 2023 on Health, which requires a recommendation from the Professional Disciplinary Council before legal proceedings can begin, highlights the need to more proportionally recalibrate the relationship between investigators, medical experts, and professional organizations. Therefore, the ideal model to be developed is a coordinative-complementary model, in which professional organizations do not take over the investigator's authority but instead serve as providers of technical expert testimony to ensure that medical procedures comply with professional standards.

Within this framework, the status of professional organization recommendations needs to be emphasized as mandatory consultative, meaning they must be requested but are not binding. This is crucial to maintain a balance between the principle of due process of law and the protection of the medical profession. Normatively, recommendations should be considered as part of the expert testimony evidence as stipulated in Article 184 of the Criminal Procedure Code, not as an administrative requirement determining whether an investigation can be conducted. This assertion is also in line with the Constitutional Court's interpretation that the Professional Disciplinary Council's recommendations constitute an assessment of professional standards that are considered before legal proceedings, but should not be an obstacle to criminal law enforcement.

As a concrete step towards norm reconstruction, it is necessary to amend or add provisions to the new Criminal Procedure Code (Law Number 20 of 2025) by including a specific article governing the handling of criminal cases in the medical field. The proposed norm formulation is: (1) In the case of investigations into alleged criminal acts committed by medical personnel, investigators are required to request expert testimony from the Professional Disciplinary Council; (2) Information as referred to in paragraph (1) is not binding and does not delay the investigator's authority to take legal action; (3) In urgent circumstances, investigators may conduct investigations without waiting for recommendations, while still observing the principle of prudence. This formulation aims to eliminate the ambiguity of Article 308 of the Health Law, which tends to place recommendations as an absolute requirement, while maintaining the integration of the criminal legal system.

In addition to changing norms in the Criminal Procedure Code (KUHAP), vertical and horizontal harmonization is also needed through a revision or reinterpretation of Article 308 of Law Number 17 of 2023 concerning Health. The phrase "a recommendation must first be requested" needs to be reinterpreted to "a recommendation may be requested as a professional consideration," to avoid creating a conflict between norms and the Criminal Procedure Code. Another alternative is the creation of implementing regulations (Government Regulations or Police Chief Regulations) that technically regulate the procedure for requesting recommendations to avoid hindering the investigative process. This step aligns with the need for further elaboration of Article 308, which to date remains open to multiple interpretations.

Ideal legal reconstruction needs to adopt the concept of a double-gate mechanism, a two-stage mechanism consisting of ethical/disciplinary screening and criminal investigation, running in parallel and coordinated. In this model, the Professional Disciplinary Council functions to conduct rapid assessments (for example, within the 14-day time limit as stipulated in Article 308 paragraph (7) of the Health Law), while investigators can still begin the investigation process without having to wait for an absolute recommendation. A concrete action that can be taken is the development of joint guidelines between the Police, the Prosecutor's Office, and the Ministry of Health that regulate the process of handling medical cases, including standards for requesting expert testimony, time limits, and inter-agency coordination mechanisms.

The design of this reconstruction must be able to strike a balance between three primary interests: protecting medical personnel, fulfilling the rights of victims or patients, and legal certainty for the state. For medical personnel, this system provides protection through the involvement of experts who understand professional standards, thereby avoiding unfounded criminalization. For patients, this system ensures access to justice without excessive administrative obstacles. For the state, this reconstruction fully restores investigative authority to law enforcement officials in accordance with the principle of *dominus litis*. Thus, the ideal future legal formulation (*ius constituendum*) is a system that places recommendations from professional organizations as a consultative supporting instrument, not as a determinative requirement, so that a fair, balanced, and integrated criminal justice system is created within the framework of reforming Indonesian criminal procedural law.

Conclusion

Based on the discussion, it can be concluded that the position of professional organization recommendations in the investigation of alleged patient deaths by medical personnel is not normatively binding as an absolute requirement for initiating criminal proceedings, but rather must be positioned as a consultative instrument that functions to provide technical assessments regarding the conformity of medical actions with professional standards, service standards, and standard operating procedures. In positive law, the authority to determine whether or not a criminal act is suspected remains with investigators based on the principle of *dominus litis* as regulated in criminal procedure law, while professional organizations and the Professional Disciplinary Council only have authority in the realm of ethics and discipline. The tension that has arisen in practice is caused by the disharmony of norms between Law Number 20 of 2025 concerning the Criminal Procedure Code and Article 308 of Law Number 17 of 2023 concerning Health, which creates ambiguity regarding whether recommendations are mandatory and binding or merely professional considerations. This ambiguity has resulted in legal uncertainty, the potential for excessive criminalization of medical personnel, and obstacles to access to justice for patients. Therefore, the novelty of this research lies in the reconstruction of the mandatory consultative model through a double-gate mechanism, namely an ethical/disciplinary screening mechanism that runs parallel to criminal investigations, thereby maintaining a balance between the protection of medical personnel, victims' rights, and state authority in law enforcement.

The research suggests the need for concrete legislative and institutional action. Legislatively, lawmakers need to immediately harmonize the new Criminal Procedure Code (KUHAP) and the Health Law, either through revising Article 308 of Law Number 17 of 2023 or by adding a specific article to the KUHAP that explicitly regulates the handling of suspected medical crimes. The ideal formulation would be to place professional organization recommendations as mandatory expert testimony, but without delaying or eliminating the investigator's authority. Institutionally, joint guidelines should be immediately developed between the Police, the Prosecutor's Office, the Ministry of Health,

and the Professional Disciplinary Council that regulate the time limit for providing recommendations, procedures for requesting expert opinions, standards for initial assessments of medical cases, and coordination procedures during investigations. Furthermore, establishing a permanent coordination forum for handling medical cases is a strategic step to prevent overlapping authority in the field. With these steps, the future legal system will better guarantee legal certainty, reduce conflicts of authority, prevent disproportionate criminalization of professions, and simultaneously ensure that patients' rights to justice remain effectively protected.

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