

**PERLINDUNGAN HUKUM DAN HAK IMUNITAS TENAGA MEDIS
DARI TINDAK KEKERASAN PASIEN DAN KELUARGA PASIEN
TERHADAP TENAGA MEDIS DI RUMAH SAKIT BERDASARKAN
PERATURAN UNDANG-UNDANG KESEHATAN**

*Legal Protection and Immunity Rights of Medical Professionals Against Acts of
Violence by Patients and Patients' Families in Hospitals Based on Health*

Legislation

TESIS

Diajukan untuk Memenuhi Salah Satu Syarat
Memperoleh Gelar Magister Hukum

Disusun Oleh:

Nama : Teddy Tjahyanto
NPM : 248040067
Konsentrasi : Hukum Kesehatan

Di Bawah Bimbingan

Dr. Hj. N. Ike Kusmiati, S.H., M.Hum



**PROGRAM STUDI MAGISTER ILMU HUKUM
PASCASARJANA UNIVERSITAS PASUNDAN
BANDUNG**

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ABSTRAK

TEDDY TJAHYANTO

248040067

(PROGRAM STUDI MAGISTER ILMU HUKUM)

Kekerasan yang dilakukan pasien dan keluarga pasien terhadap tenaga medis di rumah sakit menimbulkan persoalan mengenai kecukupan konstruksi hukum yang tersedia bagi tenaga medis. Penelitian ini bertujuan untuk mengetahui dan menganalisis dua permasalahan, yaitu bentuk perlindungan hukum dan hak imunitas tenaga medis dari tindak kekerasan pasien dan keluarga pasien di rumah sakit, serta implementasi, hambatan, dan solusinya berdasarkan peraturan perundang-undangan.

Penelitian ini merupakan penelitian hukum normatif dengan spesifikasi deskriptif analitis. Metode pendekatan yang digunakan adalah pendekatan yuridis normatif yang menempatkan hukum tertulis sebagai titik tolak, dengan menelaah asas hukum, sistematika hukum, serta taraf sinkronisasi vertikal dan horizontal peraturan perundang-undangan, dilengkapi pendekatan konseptual. Data dikumpulkan melalui studi dokumen terhadap bahan hukum primer, sekunder, dan tersier, serta wawancara dengan narasumber sebagai bahan nonhukum penunjang. Analisis dilakukan secara yuridis kualitatif melalui penafsiran gramatikal, sistematis, dan teleologis, dengan penarikan kesimpulan secara deduktif menggunakan silogisme hukum.

Hasil penelitian menunjukkan bahwa perlindungan hukum bagi tenaga medis berbentuk perlindungan preventif dan represif yang bertumpu pada Pasal 28A, Pasal 28G, dan Pasal 28H Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 273 ayat (1) huruf a, huruf d, dan huruf f serta ayat (2) dan Pasal 189 ayat (1) huruf s Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan, Pasal 721, Pasal 728, dan Pasal 731 Peraturan Pemerintah Nomor 28 Tahun 2024 tentang Peraturan Pelaksanaan Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan, Pasal 466 sampai dengan Pasal 471 Kitab Undang-Undang Hukum Pidana, serta Pasal 1365 dan Pasal 1366 Kitab Undang-Undang Hukum Perdata, yang berkedudukan saling melengkapi dan bukan *lex specialis*. Hak imunitas tenaga medis bersifat fungsional, yaitu melekat sepanjang tenaga medis bekerja sesuai standar dan etika profesi, dan bukan kekebalan mutlak. Perlindungan tersebut telah tersedia, tetapi belum memadai karena normanya masih deklaratif, keberlakuannya bergantung pada peraturan pelaksana yang belum lengkap, dan pemberatan pidana berbasis fungsi belum menjangkau tenaga medis secara setara. Hambatan yang tampak pada institusi yang diteliti berupa belum seragamnya perangkat operasional dan pemahaman atas hak imunitas fungsional. Solusinya ditempuh melalui operasionalisasi hak dalam Pasal 273, penegasan sanksi atas pelanggaran kewajiban rumah sakit dalam Pasal 189, pertimbangan pemberatan pidana berbasis fungsi, serta pelengkapan peraturan pelaksana.

Kata Kunci: **Perlindungan Hukum, Hak Imunitas, Tenaga Medis, Tindak Kekerasan, Rumah Sakit**

ABSTRACT

TEDDY TJAHYANTO

248040067

(Magister of Law)

Violence committed by patients and their families against medical personnel in hospitals raises the question of whether the available legal construction adequately protects medical personnel. This research aims to examine and analyze two problems, namely the form of legal protection and the immunity right of medical personnel against acts of violence by patients and their families in hospitals, and the implementation, obstacles, and solutions based on statutory regulations.

This research is normative legal research with descriptive analytical specifications. The approach used is the normative juridical approach, which takes written law as its point of departure by examining legal principles, legal systematics, and the degree of vertical and horizontal synchronization of statutory regulations, complemented by a conceptual approach. Data were collected through documentary study of primary, secondary, and tertiary legal materials, as well as interviews with resource persons as supporting non-legal materials. The analysis was conducted qualitatively in a juridical manner through grammatical, systematic, and teleological interpretation, with conclusions drawn deductively by means of legal syllogism.

*The results show that legal protection for medical personnel takes the form of preventive and repressive protection resting upon Articles 28A, 28G, and 28H of the 1945 Constitution of the Republic of Indonesia, Article 273 paragraph (1) letters a, d, and f and paragraph (2) and Article 189 paragraph (1) letter s of Law Number 17 of 2023 concerning Health, Articles 721, 728, and 731 of Government Regulation Number 28 of 2024 concerning the Implementing Regulations of Law Number 17 of 2023 concerning Health, Articles 466 through 471 of the Criminal Code, and Articles 1365 and 1366 of the Civil Code, which are mutually complementary rather than *lex specialis*. The immunity right of medical personnel is functional, attached as long as they work in accordance with professional standards and ethics, and is not absolute immunity. Such protection is available but not yet adequate, because the norms remain declaratory, their operation depends on incomplete implementing regulations, and function-based criminal aggravation does not reach medical personnel equally. The obstacles observed in the institutions studied are the non-uniform availability of operational instruments and the uneven understanding of functional immunity. The solution lies in operationalizing the rights under Article 273, affirming sanctions for breaches of hospital obligations under Article 189, considering function-based criminal aggravation, and completing the implementing regulations.*

Keywords: Legal Protection, Immunity Rights, Medical Personnel, Acts of Violence, Hospital