



LEGAL CERTAINTY REGARDING HOME CARE MEDICAL PRACTICES

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ABSTRACT

The practice of home care medicine in Indonesia has experienced rapid growth in line with the increasing demand for home-based health services. However, to date, there are no specific regulations that explicitly govern this practice within the national legal system. This study aims to analyze the legal vacuum surrounding home care and its implications for legal certainty, medical professional accountability, and patient protection. The method used is normative legal research with a legislative and conceptual approach. The data was obtained through the collection and analysis of legal materials, namely: primary legal materials (laws and regulations), secondary legal materials (research journals and books), and tertiary legal materials (legal dictionaries). The results of the study show that home care practices are carried out without a specific legal basis, thereby creating legal uncertainty and the potential for medical ethics violations. The absence of regulations also hinders the integration of these services into the JKN financing system and widens the gap in access to health services. The implications of these findings emphasize the urgency of formulating a comprehensive, adaptive, and inclusive regulatory framework to ensure the quality of home care services, protect patient rights, and strengthen the national health system. The designed regulations need to consider legal, ethical, technological, and social justice aspects in the implementation of home-based medical services.

Keywords: empty norms; home care; medical practice

How to cite (in APA style)

Utama, K. T. W., Adiatmika, I. P. G., & Kartika, I. G. A. P. (2026). Legal Certainty Regarding Home Care Medical Practices. *Indonesian Journal of Global Health Research*, 8(1), 927–932. <https://doi.org/10.37287/ijghr.v8i1.504>.

INTRODUCTION

In recent years, home care has emerged as an important alternative in healthcare models, offering more individualized and responsible care to meet the needs of the community, especially the general public and those suffering from chronic diseases. Home care allows patients to receive care in a clean and healthy environment, which can improve their quality of life and satisfaction. This is particularly relevant because it shows that many patients have health conditions that require more comprehensive care and are more easily integrated into a home environment than conventional healthcare facilities such as hospitals, which are often overwhelmed by the number of patients and the severity of their health conditions.

Home care, as a health service provided in the patient's home, covers various aspects such as promotive, preventive, curative, and rehabilitative care. The main objective of home care is to improve the quality of life of patients and their families, as well as to optimize individual health functions. This approach is increasingly becoming the preferred choice in healthcare as the need for ongoing care for the elderly and those suffering from chronic conditions grows. Home care practices have developed significantly in various developed countries, including Canada, Japan, and Australia. In this context, mature and integrated regulations in national health policies are crucial to ensure that these services are operated by competent healthcare professionals, maintain high service standards, and enforce strict oversight mechanisms. These regulations establish a strong foundation for ensuring patient safety and medical accountability, which are critical components in the safe and efficient implementation of home care practices.

Although there are no specific laws and regulations governing home care medical practices, home care medical practices are still widely used in Indonesia by several health and medical institutions. Regulations such as Law No. 29 of 2004 concerning Medical Practice and Law No. 36 of 2009 concerning Health provide general guidelines, but do not specifically regulate how to carry out duties, comply with legal requirements, and protect patients and medical personnel in the context of home care.

The lack of clarity regarding regulations in Indonesia governing the practice of home care medicine causes various problems for both patients and caregivers. For doctors and health workers who practice at home, there is a considerable legal risk due to the absence of legal documents that confirm the recognition and separation of existing professional responsibilities. Based on existing research, there are problems related to home care regulations that further lead to a lack of legal compliance in the provision of services, which potentially contributes to the insecurity of health workers. This is important in home care, where care is often provided outside the desired location. From an ethical point of view, home care poses complex challenges. Limited space and closer interaction with family members of patients require healthcare workers to change the application of the medical code of ethics, particularly in decision-making, information control, and regulation between various conflicting interests. Existing ethical guidelines do not specifically address the practice of home care, so doctors and medical personnel in practice are often caught in ethical dilemmas.

In addition, financing is also an important issue in the development of home care in Indonesia. Most home care services are currently private, and patients or their families pay for them directly. The integration of home care services into national financing schemes such as the National Health Insurance (JKN) is still very limited. This situation leads to unequal access to services, especially for low-income groups. Without regulations that support long-term and systematic financing, home care could become an exclusive service that only a small number of people can use. Various regulations indirectly related to home care, such as Minister of Health Regulation No. 9 of 2014 concerning Clinics and Minister of Health Regulation No. 148 of 2010 concerning the Implementation of Home Nursing Services, already recognize the existence of this service. However, these regulations do not yet provide detailed provisions on the management of home care medical practices, service quality standards, or oversight and legal protection mechanisms for doctors and patients in this practice.

Therefore, there is an urgent need to review and formulate comprehensive regulations regarding home care medical practices in Indonesia. This review will make an important contribution in clarifying the legal status of home care practices, regulating professional responsibilities and patient protection, and supporting the development of a more inclusive and higher quality healthcare system. Research that fills this regulatory gap can also serve as a basis for policymakers to formulate health policies that are adaptive to the dynamics of future medical service needs. This research has several objectives, including to analyze medical practice regulations in Indonesia. To analyze legal certainty regarding home care medical practice in Indonesia.

METHOD

This study uses normative legal research methods, which aim to examine and analyze legal aspects related to home care medical practices in Indonesia. This method was chosen because the focus of the study is on the study of regulations, legislation, and legal principles governing home care practices, including ethical aspects and legal protection for medical personnel and patients. The research data was obtained through the collection of various relevant sources, such as books, laws, scientific papers, articles, as well as information from the internet and related media. All collected data, both primary and secondary, was analyzed qualitatively to understand the social and legal context surrounding the issue.

RESULT

Legal Regulations on Medical Practice

According to Hippocrates, the medical profession is a combination or blend of science and art. Diagnosis, for example, is an art in itself for doctors, because after listening to a patient's complaints, doctors will use their imagination and carefully observe their patients. The medical profession is one that requires mastery of knowledge and clinical skills, the implementation of which must comply with applicable rules and ethics. Doctors must have systematic thinking skills, which are related to the orderly and logical analysis of a problem so that doctors can identify the cause of the problem. The professional attitude of a doctor is one of propriety, respect, and the ability to perform their work well in accordance with existing standards. A professional doctor must prioritize the well-being of patients, even above their own personal interests. Professional behavior is part of the competencies that a doctor must master. Mastery of competencies that include attitude, knowledge, and skills in a balanced manner will enable a doctor to be competent and perform optimally.

With the enactment of Law Number 17 of 2023 concerning Health, Law Number 29 of 2004 concerning Medical Practice, Law Number 36 of 2009 concerning Health, Law Number 44 of 2009 concerning Hospitals, Law No. 18 of 2014 concerning Mental Health, Law No. 36 of 2014 concerning Health Workers, Law No. 38 of 2014 concerning Nursing, and Law No. 4 of 2019 concerning Midwifery are revoked and declared invalid. Law Number 17 of 2023 concerning Health stipulates the requirements for the practice of medicine, including the registration of doctors and ethics in the provision of health services. These provisions are binding on doctors in their practice, so they are required to comply with the rules that have been established to maintain medical quality and safety.

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Research findings indicate that the lack of specific regulations on home care medical practices in Indonesia has created a regulatory vacuum that impacts legal certainty and the protection of the medical profession, highlighting the need for legal regulatory adaptation to protect doctors providing home care services. Clearer and more consistent regulations are needed to accommodate developments in healthcare services. Easy access to hospital services, especially in the context of a pandemic, requires more appropriate legal protection for doctors who provide home care services. The increasing demand and benefits of home care practices also emphasize the importance of addressing the gap between current regulations and practices.

DISCUSSION

Legal Regulations on Medical Practice

Law Number 17 of 2023 concerning Health provides a strong legal basis for regulating medical practice in hospitals. In an effort to provide safe, quality, and equitable health services, legal protection is essential to ensure that the rights and interests of patients and doctors are well protected. Based on the provisions of Article 260 of the Health Law, doctors and dentists are registered with the Indonesian Medical Council. Only registered doctors are allowed to practice. Registered doctors and dentists have a Registration Certificate (STR), which gives them official permission to practice medicine or dentistry. However, to practice in a specific location, doctors and dentists are required to have a Practice Permit (SIP) issued by the District/City Health Office. It should be noted that doctors and dentists are only allowed to have three practice locations. Obligations are a form of accountability that must be fulfilled by all parties in order to implement agreed regulations or agreements. In general, obligations are defined as an individual's responsibility for certain moral or legal issues. Obligations are divided into perfect obligations and imperfect obligations. Perfect obligations are essentially legal obligations, while imperfect obligations are essentially moral in nature. Perfect obligations are always related to the rights of others, while imperfect obligations are not. From a legal perspective, obligations are duties assigned or determined by law to individuals or legal entities.

The obligation to hold a SIP is regulated in Article 263 paragraph (1) of Law Number 17 of 2023 concerning Health, which reads: "Certain types of medical personnel and health workers are required to have a license in order to practice their profession." Article 263 paragraph (2) continues, stating: "The license referred to in paragraph (1) shall be granted in the form of a SIP." The Indonesian Medical Council (KKI) has issued regulations set forth in Article 36 of Indonesian Medical Council Regulation Number 1 of 2005 concerning the Registration of Doctors and Dentists, which states: "Every doctor or dentist who practices medicine in Indonesia must have a practice license." The requirements for obtaining a SIP are regulated in Article 264 paragraph (1) of Law Number 17 of 2023 concerning Health, which reads: "To obtain a SIP as referred to in Article 263 paragraph (2), certain Medical and Health Personnel must have: an STR and a place of practice." Based on these provisions, a SIP will be issued and granted once an individual has officially become a doctor, as evidenced by the possession of an STR. The STR and SIP form an integrated unit that must be possessed to practice medicine. Regarding the processing of the SIP, Article 37 states: "The practice license referred to in Article 36 is issued by the authorized health official in the district/city where the medical or dental practice is carried out. The practice license for doctors or dentists as referred to in paragraph (1) is only granted for a maximum of 3 (three) locations." Article 312 of Law Number 17 of 2023 concerning Health clearly states that: "Everyone is prohibited from: Using identities in the form of titles or other forms that give the impression to the public that they are Medical Personnel or Health Personnel who have STR and/or SIP; Using tools, methods, or other means in providing services to the public that give the impression that the person concerned is a Medical or Health Worker who has an STR and/or SIP; and Practicing as a Medical or Health Worker without having an STR and/or SIP." However, there are exceptions for registered doctors and dentists who can provide medical services or medical procedures to patients who need them without having to have a SIP. But they must notify the local District/City Health Office in the following cases: When incidentally requested by a health care facility to provide medical services to patients who need them; When providing disaster relief; When performing social service; or When receiving an assignment from the Health Office.

In the field of healthcare, doctors can be held accountable for any actions that harm patients due to negligence or carelessness when performing medical procedures that are considered harmful to patients. All violations committed by healthcare professionals must be resolved through the applicable legal process. It can shift from a violation of administrative legal obligations to a criminal offense. This law was created with the aim of preventing doctors or dentists from making mistakes in their practice and preventing victims. If it can be proven that a violation of Law Number 17 of 2023 concerning Health has been committed and constitutes a criminal offense, then criminal sanctions will be imposed in accordance with the criminal offense proven to have been committed by the health worker. The large number of doctors practicing without a Practice License results in legal uncertainty for health service users. From a legal perspective, criminal acts involving doctors practicing without a practice license are specific criminal acts because they are only directed at individuals who have the qualifications of a doctor or dentist. Law Number 17 of 2023 concerning Health has regulated several witnesses related to this, including: Article 439 "Any person who is not a Medical or Health Worker practicing as a Medical or Health Worker who has a SIP shall be punished with imprisonment of up to 5 (five) years or a maximum fine of Rp500,000,000.00 (five hundred million rupiah)." Article 441 Paragraph (1) "Any person who uses an identity in the form of a title or other form that gives the impression to the public that they are a Medical Practitioner or Health Worker who has an STR and/or SIP as referred to in Article 312 letter a shall be punished with a maximum imprisonment of 5 (five) years or a fine of up to Rp500,000,000.00 (five hundred million rupiah)." Article 441 Paragraph (2) "Any person who uses tools, methods, or other means in providing services to the public that give the impression that the person concerned is a Medical Practitioner or Health Worker who has obtained an STR and/or SIP as referred to in Article 312 letter b shall be punished with imprisonment of up to 5 (five) years or a maximum fine of Rp500,000,000.00 (five hundred million rupiah)." Article 442 "Any person who employs medical personnel and/or health workers who do not have a SIP as referred to in Article 312 letter c shall be

punished with imprisonment of up to 5 (five) years or a maximum fine of Rp500,000,000.00 (five hundred million rupiah).

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This situation is in line with the view that clear regulations are a fundamental element in ensuring the accountability of medical services, especially in the context of services outside formal health facilities such as hospitals and clinics. Without explicit regulations, home care practices in Indonesia are not recognized as a form of medical service equivalent to conventional services, leading to a blurred perception of the limits of doctors' authority and responsibilities. Based on the interpretation of Law Number 17 of 2023 concerning Health, the practice of home care medicine has not been explicitly recognized in Indonesian positive law as a form of medical service equivalent to conventional services. This has led to legal ambiguity regarding the limits of authority, responsibility, and evaluation mechanisms for doctors who provide medical services in patients' homes. From a legal reasoning perspective, this normative regulatory vacuum indicates the weakness of the legal system's response to the dynamics of modern health services, which demand flexibility, personalization, and closeness to patients.

Theoretically, the absence of explicit regulations on home care practices contradicts the principle of progressive law as stated by Satjipto Rahardjo, who emphasizes that the law should be responsive to social changes, especially in vital sectors such as health. A legal system that does not anticipate the reality of home-based health services indirectly creates legal ambiguity, which can open up opportunities for ethical violations, medical disputes, and medical practices that do not meet professional standards. Therefore, the interpretation of these results confirms that the state has a constitutional obligation to formulate regulations that not only guarantee legal protection for all parties, but also reflect the real needs of the community for inclusive and equitable access to health services.

Furthermore, the results of this study contribute significantly to strengthening the legal theory framework that emphasizes the importance of adaptive and functional legal regulations in responding to the dynamics of medical services. In this context, the practice of home care medicine, which has developed in practice without a specific legal basis, is concrete evidence of the law's failure to adapt to modern healthcare needs. This reinforces the argument that the health law system in Indonesia still tends to be stagnant and reactive, not in line with the responsive law approach that views law as an instrument to proactively address social needs. Rigid regulations that are limited to conventional forms of service can have implications for structural injustice in society. This is due to the fact that legal restrictions on alternative forms of healthcare, such as home care, can hinder people's access to more humane and affordable services that are appropriate to the context of patients' needs at home.

CONCLUSION

Based on research that has been conducted, medical practice is only regulated in general terms in Article 260 of Law No. 17 of 2023 concerning health. However, with the development of the times, various health services with various innovations have emerged, one of which is the practice of home care medicine, for which there are no specific regulations in Indonesia governing the practice of home care medicine. The practice of home care medicine is still largely regulated by general legal provisions because currently there are no comprehensive and clear regulations that determine the form, methods, and responsibilities of the services in question. The implications of this norm are serious in terms of legal compliance, protection of medical personnel, and patient safety for those receiving services outside of conventional health institutions. As public demand for more personalized, flexible, and community-based healthcare services increases, legal regulations have been unable to keep pace with rapid advances in social and technological transformation in the healthcare sector. According to the general framework of legal theory, the results of this study highlight the importance of a responsive legal paradigm that is based not only on normative principles but also on the role of law in resolving specific problems faced by the general public. It is

also clear that without clear legal guidelines, home care practices will continue to operate informally and without standardization, with a high risk of failure in administrative, legal, and ethical contexts. Therefore, a regulatory framework is not only necessary but also essential in protecting patients' rights, ensuring medical professional accountability, and developing a more inclusive and flexible healthcare system in response to changes over time.

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