

POLICY ANALYSIS OF THE MINISTER OF HEALTH REGULATION ON THE ENFORCEMENT OF PROFESSIONAL DISCIPLINE FOR MEDICAL AND HEALTH PERSONNEL BASED ON THE PRINCIPLE OF LEGAL CERTAINTY

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Abstract

This study investigates the legal ramifications of Minister of Health Regulation Number 3 of 2025 concerning the principles of legal certainty and the hierarchy of laws and regulations in Indonesia. The analysis concentrates on governing provisions professional disciplinary infractions, specifically Article 4, paragraph (2), which confers upon the Minister of Health extensive latitude to define or augment categories of disciplinary violations, lacking definitive constraints or explicit delegation from superior legal instruments, specifically Law Number 17 of 2023 on Health and Government Regulation Number 28 of 2024. This kind of regulatory construction shows an abuse of power that goes beyond the technical and operational functions that were given to it and adds new substantive norms, making it an ultra vires act according to authority theory and normative hierarchy. Based on Hans Kelsen's idea of a hierarchy of norms, the study says that ministerial rules are only valid if they follow higher norms. Furthermore, according to Gustav Radbruch's view on legal certainty, norms that give people unlimited power make things unclear and hard to predict for medical professionals who are subject to the law. This makes the law less of a clear and reliable guide. The study finds that regulatory provisions that go beyond the authority given to them put legal certainty and the legal system's coherence at serious risk. They need to be changed to bring back normative consistency and protect professional discipline within a rule-of-law framework.

Keywords: Legal Certainty; Hierarchy of Norms; Ultra Vires; Ministerial Regulation; Professional Discipline; Health Law.

1. INTRODUCTION

According to the Law on the Formation of Laws and Regulations (Republic of Indonesia Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 on the Formation of Laws and Regulations), the evolution of Indonesian law showcases a hierarchical system of norms that is systematically structured and reveals a tight relationship among legislative instruments. Not only does this structure reflect a hierarchical relationship between statutes and technical regulations, but it also has normative implications, as all regulatory formulations are obligated to conform to and be in line with the boundaries set by higher-level norms. Because regulations are lower on the normative hierarchy, they must be extremely careful when drafting them, since even small changes or additions to their power can throw off the overall consistency of the law.

The principle of *lex superior derogat legi inferiori*, which states that higher-ranking legal norms prevail over lower-ranking ones in the event of a conflict, is clearly applicable to Ministerial Regulations within Indonesia's legislative hierarchy. As a result, Ministerial Regulations can only cover issues that are either directly transferred from, or constitute the implementation of, higher-level regulations such as statutes or Government Regulations. By limiting Ministerial Regulations to their designated functions, this principle protects the integrity of the country's legal system and prevents them from establishing any new standards, but instead function solely as technical elaborations so as not to conflict with the established normative framework.

Nevertheless, the practice of drafting ministerial regulations in the health sector demonstrates a tendency toward an expansion of substantive regulatory content. Issues with far-reaching effects on the public's, healthcare providers', and institutions' rights and responsibilities are common in ministerial regulations. This condition gives rise to serious concerns regarding the limits of ministerial authority and the potential occurrence of an *ultra vires* exercise of power.

Consistency, clarity, and the submission of governmental powers to law are essential for a state to be governed by the rule of law, which in turn ensures legal certainty. When ministerial regulations exceed the limits of their conferred authority, both the principle of legality and legal certainty are placed at risk. Accordingly, this study is significant in critically examining the phenomenon of the expansion of substantive content in ministerial regulations within the health sector and its implications for legal certainty from the perspective of administrative law.

2. METHODOLOGY

This study employs normative legal research, namely a form of legal research conducted through the examination of library materials or secondary data. Normative legal research analyzes various legal aspects, including legal theories and the statutory regulations in force that are relevant to the issues under investigation. Peter Mahmud Marzuki argues that the goal of normative legal research is to find applicable legal principles, doctrines, and rules to resolve the current legal problems. Based on this definition, this study follows the standards of normative legal research since it does not include empirical or field research but rather analyzes legal materials found in libraries

3. FINDINGS AND DISCUSSION

3.1. The Position of Ministerial Regulations in Administrative Law

Within Indonesia's constitutional system, the position and authority of ministers, including the Minister of Health, derive from the President's constitutional attribution as stipulated in the 1945 Constitution and Law Number 39 of 2008 on State Ministries. Ministers act as assistants to the President in administering specific governmental affairs; consequently, all ministerial authority is delegative in nature and subordinate

to higher-level laws and regulations. Within the framework of the normative hierarchy, Ministerial Regulations are permitted to govern only technical–operational aspects as the direct implementation of statutes or government regulations, in accordance with the principle of *lex superior derogat legi inferiori*. These limitations are intended to preserve the coherence of the legal system, ensure legal certainty, and prevent the occurrence of an *ultra vires* exercise of authority in regulatory formation.

In this regard, the purpose of Ministerial Regulation no. 3 of 2025 on the Enforcement of Professional Discipline for Medical Personnel is to strengthen monitoring systems and the implementation of professional discipline in the healthcare industry. Problematically, neither Government Regulation No. 28 of 2024 nor its formulation provides a clear mandate for the regulation relating to the categorization of professional disciplinary infractions, as outlined in Article 4 paragraph (1). This creates judicial concerns. This situation gives rise to uncertainty as to whether the provision remains within the scope of implementing authority or instead constitutes the creation of new norms beyond the mandate conferred. Accordingly, such regulatory provisions require critical examination to ensure that the minister’s technical regulatory function remains consistent with the principles of the rule of law, legal certainty, and legitimate limits of authority.

3.2. Expansion of the Substantive Content of Ministerial Regulations in the Health Sector

The overstepping of authority in the substantive content of Minister of Health Regulation Number 3 of 2025 becomes evident when the regulation is no longer confined to technical operational arrangements, but instead establishes new norms with substantive effects. Within the system of legislative formation, ministerial authority is inherently limited and may only be exercised on the basis of clear delegation from statutes or their implementing regulations. However, the provisions concerning types of professional disciplinary violations in Regulation Number 3 of 2025 lack explicit authorization from statutory law, thereby carrying the potential to alter the previously established structure of authority. This condition indicates an expansion of regulatory content that exceeds the bounds of legitimate ministerial authority.

From the perspective of Hans Kelsen’s theory of the hierarchy of norms (*Stufenbau des Recht*), Ministerial Regulations, as norms situated at a lower level, must derive their legitimacy and validity from higher-ranking norms. Every subordinate norm is required to “flow” from the regulation above it and must not create new primary norms. The analysis demonstrates that Article 4 paragraph (2) of Minister of Health Regulation Number 3 of 2025 grants excessively broad discretion to the Minister of Health to determine or expand the types of disciplinary violations without clear limitations and in the absence of explicit delegation. Theoretically, this situation fulfills the characteristics of an *ultra vires* act, as the minister is positioned no longer as an implementer of norms, but as a creator of substantive norms that properly fall within the authority of the legislature.

From the perspective of the principles of legality and legal certainty, regulatory provisions that allow for the unilateral addition of types of violations carry the potential to generate uncertainty and arbitrariness in the enforcement of professional discipline among healthcare professionals. Gustav Radbruch's legal philosophy emphasizes that legal certainty constitutes a fundamental value of a state governed by the rule of law and must be upheld through clarity of norms, consistency of the normative hierarchy, and the predictability of sanctions. Provisions that lack clear limitations and a well-defined legal basis of authority risk undermining legal protection for healthcare professionals and disrupting the stability of the legal system.

3.3. Implications for Legal Certainty

In principle, ministerial regulations within the Indonesian legal system are positioned as implementing norms that must derive their authority from, and remain subordinate to, higher-level laws and regulations. When Minister of Health Regulation Number 3 of 2025 contains provisions that exceed the scope of statutory delegation, such a condition gives rise to conflicts within the normative hierarchy and violates the principle of *lex superior derogat legi inferiori*. This overextension of authority indicates that the norms formulated are no longer technical operational in nature, but have entered the realm of substantive norm-making, which properly falls within the domain of statutes or government regulations. Accordingly, from the perspective of the legal system, such provisions are inherently affected by defects of legitimacy.

With respect to the normative hierarchy, such circumstances open the possibility for corrective review through the mechanism of judicial review by the Supreme Court. The annulment of norms that are *ultra vires* does not merely affect the formal validity of the regulation, but also entails significant consequences, particularly in the enforcement of disciplinary measures against medical professionals. When a norm is susceptible to annulment, legal uncertainty becomes unavoidable, as legal subjects are placed in a situation of ambiguity regarding applicable standards of conduct and the sanctions that may be imposed. This condition demonstrates that issues of authority are not merely administrative in nature, but are directly linked to the effectiveness and credibility of law enforcement.

From the perspective of Gustav Radbruch's theory, the uncertainty generated by vague norms that exceed their conferred authority runs counter to one of the fundamental values of law, namely legal certainty. Norms that allow excessively broad interpretation risk shifting the function of law from a clear normative guide into an instrument of arbitrary power. In the context of the medical profession, such uncertainty carries serious implications, as it may generate excessive fear, create conflicts with professional ethical standards, and lead to disharmony between administrative regulations and professional norms. Ultimately, these conditions undermine the very objectives of professional development and protection.

The reconstruction of the Minister of Health Regulation to ensure alignment with the normative hierarchy and statutory delegation constitutes a strategic measure to

restore the integrity of the legal system. Harmonizing the definitions of disciplinary violations with statutory law, reaffirming the limits of ministerial authority, and engaging relevant stakeholders are key steps toward producing regulations that are lawful, clear, and accountable. Within the framework of Hans Kelsen's *Stufenbau* theory and Radbruch's values of law, such reconstruction not only enhances the structural conformity of norms but also upholds a balance between legal certainty, justice, and utility. Accordingly, the resulting regulation is expected to support the fair, consistent, and sustainable enforcement of professional discipline within the medical profession.

4. CONCLUSION

Regarding the regulation of categories of professional disciplinary violations, as stated in Article 4 paragraph (2), Ministerial Regulation Number 3 of 2025 contains provisions that exceed the authority of the Ministry of Health. The Minister is granted the authority to determine or add categories of violations by this provision, which is considered an *ultra vires* act, since there are no clear limitations and no explicit delegation from Law Number 17 of 2023 or Government Regulation Number 28 of 2024. The chain of command and the certainty of the law are both jeopardized by such an abuse of power. According to Hans Kelsen's hierarchy of norms theory, ministerial regulations can only be legitimate if they are based on norms at a higher level. Meanwhile, according to Gustav Radbruch, norms that confer unrestricted authority generate legal uncertainty for medical professionals as legal subjects and weaken the function of law as a clear and reliable normative guide.

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