

Legality of Anesthesia Assistance in Surgical and Anesthesia Health Services in Hospital

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Abstract

There is a demand from the community for quality health services, but the number of anesthesia service providers is still small. This poses a problem considering that it is the anesthesiologist who must accept the delegation of authority for medical anesthesia procedures. From these problems, this research aims to analyze the arrangements for assisting anesthesia services in hospitals and analyze the legal consequences for hospitals that employ health workers in anesthesia services that are not in accordance with competence and statutory regulations. This research method uses a normative juridical approach with statutory, conceptual and comparative approaches. The results showed that anesthesia services were only recognized after having applied a bachelor's degree in anesthesiology nursing and having certification in the form of Anesthesia Administration Registration Certificate and Anesthesia Management Practice License which are renewed every 5 years. Anesthesia service assistants who have a certificate must be able to carry out their professional authority responsibilities which include pre-anesthesia, intra-anesthesia and post-anesthesia authority by applying 5 competency standards which include legal ethics and patient safety; self-development and professionalism; effective communication; scientific basis of biomedical sciences, anesthesiology, and instrumentation; and clinical skills.

Keywords: anesthesia-nurse, surgical-health-service, hospital

INTRODUCTION

Anesthesia services are one of the most vital health services for operative procedures in health facilities, especially in hospitals. Considering this, professional and competent health workers are needed. According to the Decree of the Minister of Health of the Republic of Indonesia No. HK.01.07/MENKES/722/2020 concerning professional standards for anesthetists, anesthesia services are medical procedures that must be carried out by health workers who have the expertise and authority in their field, namely specialist doctors in anesthesiology, who can be assisted in carrying out them. by other health workers, namely anesthetists.

According to Minister of Health Regulation No. 519 of 2011, anesthesiology specialist doctors are "doctors who have completed an anesthesiology specialist education program at a recognized educational institution or are graduates from abroad and who have received a Registration Certificate (STR) and Practice Permit (SIP)". The government continues to strive and endeavor to meet the need for the number of specialist anesthetists by providing scholarship assistance to prospective students in specialist medical education programs, especially anesthesia. The problem is, the long educational process that participants in the specialist anesthesiologist education program take means that the regeneration of this profession is not fast, so that many health facilities do not have specialist anesthesiologists.

According to Minister of Health Regulation No. 18 of 2016, an anesthetist is "any person who has completed education in the field of anesthesia nursing or anesthesia care in accordance with the provisions of statutory regulations". Anesthetists are different from nurse anesthetists. According to the Minister of Health of the Republic of Indonesia Regulation No. 31 of 2013, an anesthetist nurse is every person who has graduated from Nurse Anesthesia education in accordance with statutory provisions. The difference between nurse anesthetists and anesthetists began when PPNI submitted an objection letter to the Directorate General of Higher Education, Ministry of Education and Culture regarding Nomenclature D4 Anesthesia Nursing regarding the use of the term "nursing" which was considered inappropriate. This is because D4 Anesthesia Nursing graduates are anesthesia nurses, not anesthesia technicians. Based on the objection letter, the Director General of Higher Education, Ministry of Education and Culture decided that:

- a) In accordance with Law No. 36/2014, Anesthetists are included in the Medical Technician group, not the Nursing group.
- b) The D4 Anesthesiology Nursing Study Program is included in the health group, not the nursing group.
- c) Learning Achievements for D4 Anesthesia Study Program graduates place more emphasis on fulfilling competencies as an Anesthesia Practitioner, not as an Anesthesia Nurse.
- d) The professional organization that oversees anesthetists is not PPNI, but the Association of Anesthetists (IPAI).

Anesthesiologist health workers in carrying out their professional practice are only allowed to work within the scope of class A, B, C and D hospital type health facilities in accordance with the law on health, health workers law Permenkes Number 519 of 2011 concerning guidelines for the implementation of anesthesiology and therapy services intensive and Minister of Health Regulation Number 18 of 2016 concerning the implementation of the work of anesthetists is a legal product issued by the government as a basis for health workers in carrying out the practice of professional anesthesia services in health facilities.

There is a number of necessary stage _ followed For can carry out task as stylist anesthesia at the facility health that is a stylist anesthesia must registered , first is with have a Registration Certificate (STR), after That must take care of the Permit Practice Stylist Anesthesia (SIPPA) is issued from service health city / district place facility health the are ,

next is certification in the field arrangement anesthesia in accordance mandate of Law No. 36 of 2014 (hereinafter referred to as the Health Workers Law) is a competency test as referred to in paragraph (1) is organized by the college tall Work The same with organization profession , institution training, or institution accredited certification. This was done government For increase quality source Power man especially power health stylist professional and competent anesthetists in the field anesthesia.

Based on Articles 10 and 11 of Minister of Health Number 18 of 2016, authority stylist anesthesia There is three viz *pre* anesthesia (before anesthesia), *intra* anesthesia (during the anesthesia process) and *post* anesthesia (after the anesthesia process), that 's fine directly, delegation and collaboration. The procedure for delegation of authority is also regulated as intended in articles 12-16 that the anesthetist can carry out service in action a nestession below supervision on delegation authority in a way mandate from an anesthesiology specialist or other doctor; and/or government assignments as needed. Delegation of authority based on the government can only be carried out in health service facilities owned by the government and regional governments. This thing based on assignment government if has there is doctor specialist ological anesthesia authority to perform services based on government assignments does not apply.

Delegation of authority from doctors to other health workers in accordance with regulation legislation namely the Law concerning power health chapter 62 which reads " *Health workers in carrying out their practices must be in accordance with their authority based on their competence* " , as well article 65 which reads " *In carrying out service health can be obtained accept delegation action medical from power medical* " . One type of health worker in question is an anesthetist.

Today, the government is trying its best to meet the need for health services in the community, including in the field of anesthesia. Currently, anesthetists are urgently needed in 3,000 hospitals throughout Indonesia, both private and state. The need for anesthetists in Indonesia currently reaches 21,426. Hospital type health facilities are categorized based on class by the Ministry of Health, namely class A hospitals, class B hospitals, C hospitals and class D hospitals. Based on data from the Ministry of Health of the Republic of Indonesia in 2021, during 2017-2021 the number of hospitals in Indonesia there was an increase of 9.6%. In 2017 the number of hospitals was 2,776, increasing to 3,042 in 2021. The number of hospitals in Indonesia as of 2021 consists of 2,522 General Hospitals (RSU) and 520 Special Hospitals (RSK). The government continues to strive to improve health services in hospitals by increasing human resources (HR) through education and training organized by professional organizations in collaboration with higher education institutions. The hope is that health workers will be more competent to carry out their professional practices professionally in accordance with the mandate of applicable laws and regulations.

The Indonesian Health Workers Council (MTKI) is a government institution that issues Registration Certificates (STR) for health workers. Based on data from the Online Portfolio Information System on February 27 2023, the number of Anesthetists in Indonesia has now reached 5358 members and the number of specialist anesthetists in Indonesia working in hospitals in 2021 is 2,843 people. The number of anesthesia specialist doctors in Surabaya is not sufficient. This can be seen from the frequent delegation of authority from specialist anesthesia doctors to anesthesia practitioners and even to nurse anesthetists to carry out medical anesthesia procedures. Law no. 29 of 2004 concerning Medical Practice contains criminal sanctions and fines for anyone who carries out medical practice which gives the public the impression that they are a doctor who has a Registration Certificate (STR). Apart from that, public demands for the provision of quality, effective and efficient health services are also needed. This provision certainly creates polemics considering the fate of anesthesia nurses and

anesthesia administrators who must receive delegation of authority or provide assistance with anesthesia medical procedures.

Based on the new regulations in Minister of Health Number 18 of 2016, it states that: "In an emergency, the anesthetist can carry out anesthesia services outside of his authority in order to reduce pain, stabilize the patient's condition, and after that first aid must refer the patient to more competent health personnel."

It is considered that this regulation cannot be used as a legal basis for legalizing medical anesthesia procedures for anesthesia practitioners in carrying out health services. Currently, many anesthesia service activities in Indonesia are still carried out by anesthetists, both emergency and non-emergency, in government hospitals or private hospitals. If anesthesia services provided by anesthetists are only limited to emergencies, the first step is to stabilize the patient's condition and reduce pain, then they must refer to more competent health personnel, and these service activities are only carried out in government-owned hospitals, then what happens? non-emergency in government hospitals, as well as anesthesia services provided in private hospitals, whether emergency or non-emergency.

Based on the background explanation above, the aim of writing this article is to analyze the legal consequences for hospitals that employ health workers for anesthesia services who do not comply with competence and regulations.

RESEARCH METHODS

The type of research used is normative research. Normative research or doctrinal research is research that provides a systematic explanation of the rules governing a particular legal category, analyzing the relationship between statutory regulations, court decisions, legal theory and the opinions of scholars. This research will provide a systematic explanation of the characteristics and legal aspects of anesthesiologists who work in health facilities without specialist anesthesiologists. This research uses 3 (three) approaches, namely the statutory approach, the conceptual approach and the comparative approach. First, a legislative approach will be carried out by reviewing all laws and regulations related to the legal issue being handled so as to open up the opportunity to study whether there is consistency and conformity between one law and other laws. For this research, a legislative approach was used between the Health Law, Government Regulations, and the Decree of the Indonesian Minister of Health in determining legal protection related to the practice of anesthesia. Second, the conceptual approach originates from the views and doctrines that develop in legal science so that it will find ideas that give rise to legal understanding, legal concepts and legal principles that are relevant to the issue at hand. Third, a comparative approach is carried out by comparing existing laws and regulations, for example in Indonesia, with one or several laws and regulations in other countries. It can also be compared with the decisions of competent judicial institutions in one country with those in other countries. Or by comparing the implementation of laws and regulations that regulate the same legal material in one country or several other countries.

RESULT AND DISCUSSION

Health is very necessary for humans, without health life is meaningless. Health isn't everything, but everything without health is nothing. Health terminology according to the World Health Organization, hereinafter referred to as WHO: "Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity. Government has a responsibility for the health of their peoples which can be fully filled only be

the provision of adequate health and social measures". The definition of health according to Law of the Republic of Indonesia Number 36 of 2009 concerning Health is defined as a state of health, physically good, mental, spiritual and social which enables everyone to live a productive life socially and economically. Health is everyone's right. To fulfill people's right to a healthy life, the Government provides health service facilities. Health service facilities that provide complete health including promotive, preventive, curative and rehabilitative services are hospitals. Health jurisdictions are currently increasingly common.

To compensate for this, health workers who work in hospitals must work according to professional standards and have a practice permit as a legality for their practice. This has been explained in Article 13 paragraph (2) of the Hospital Law which explains that certain health workers who work in hospitals are required to have permits in accordance with the provisions of statutory regulations.

One of the health workers currently needed by many hospitals is anesthetists, who are medical personnel whose function is to assist specialist anesthetists in carrying out surgery. Based on existing regulations in Indonesia, anesthetists must fulfill 3 (three) requirements in order to be able to carry out their profession properly, which include the following:

1. Meet competency standards

In CHAPTER III KPK Number HK.01.07/MENKES/722/2020 it can be seen that the competence of anesthetists has been divided into 5 (five) competency components, which include legal ethics and patient safety, self-development and professionalism, effective communication, scientific basis of science biomedicine, anesthesiology and instrumentation, and specialty skills. So anesthetists are required to implement these five aspects if they become health workers serving patients.

2. Carry out anesthesia in accordance with the authority granted by statutory regulations
According to Article 10 of Minister of Health Regulation no. 18 of 2016 explains that the professional authority to practice anesthesia is only to provide pre-anesthesia, intra-anesthesia and post-anesthesia services. Pre-anesthesia services are the task of carrying out pre-anesthesia management assessments, which include, for example, preparing patient administration, checking vital signs, examining and assessing the patient's physical status, analyzing assessment results and formulating patient problems, evaluating pre-anesthesia service management actions, and so on. Meanwhile, intra-anesthesia services are the task of the anesthetist to monitor equipment and medicines in accordance with the anesthesia technique plan, monitor the general condition of the patient as a whole, and document all actions taken so that all actions are recorded properly and correctly. Then, the post-anesthesia management service is the task of the anesthesia director, who, for example, plans post-anesthesia management actions, administers pain management according to the instructions of an anesthesiologist, monitors the patient's condition, evaluates the results of the patient's condition, and so on as regulated in Article 11 of Minister of Health Regulation No. 18 of 2016.
3. Have a license to practice which is updated regularly Article 13 "(2) Certain health workers who work in hospitals are required to have permits in accordance with statutory provisions."

From the provisions of Article 13 paragraph (2) of the Hospital Law, it can be seen that every particular health worker, such as an anesthetist who works in a hospital, is required to have a permit in accordance with the provisions of statutory regulations. These regulations can be found by referring to Minister of Health Regulation No. 18 of 2016. In this regulation, it can be seen from Article 2 to Article 9 which explains that every anesthetist is required to have 2 (two) permits, namely STRPA and SIPPA. According to Article 8 paragraph (1), SIPPA is valid as long as STRPA is still in effect and can be extended again as long as it meets the requirements. If an anesthetist does

not have these two permits, then based on Article 9 paragraph (1), every head of a health service facility is prohibited from employing an anesthetist who does not have a SIPPA, Nurse Anesthesia Practice License, hereinafter abbreviated.

Civil Liability for Hospitals that Employ Health Personnel for Anesthesia Services that Do Not Comply with Competencies and Regulations

Based on the statement made by Budi Sampurna as Head of the Legal, Advocacy and Mediation Compartment of the Indonesian Hospital Association (PERSI), he said that basically the hospital is the one who is legally responsible for any negligence in a hospital. Budi Sampurna explained that hospitals can be held responsible under civil law for negligence that occurs in hospitals, because hospitals have strong control over all hospital resources, and hospitals are also responsible for everything. However, he also mentioned that there are exceptions to hospital responsibilities as regulated in the Hospital Law. "Hospitals cannot be required to carry out their duties in order to save human lives, this is based on the provisions of Article 45 of Law no. 44 of 2009 concerning Hospitals," he said. The statement explained by Budi Sampurna is in accordance with the provisions contained in Article 46 of the Hospital Law which explains that hospitals are legally responsible for all losses incurred due to negligence committed by health workers at the hospital. So that according to civil law the hospital can be held responsible for any negligence that occurs in the hospital in the form of liability compensation. This civil legal responsibility applies after it is proven that the anesthetist who distorted the service (malpractice) is detrimental to the patient is a worker who is the hospital's subordinate, unless otherwise specified in the hospital's internal regulations. So, if anesthesia practitioners practice without a license in a hospital and the patient suffers losses due to this negligence, then the hospital must pay all compensation as determined by law.

Criminal Responsibility for Hospitals that Employ Health Personnel for Anesthesia Services that Do Not Comply with Competencies and Regulations

Basically, criminal liability for hospitals that employ health workers in anesthesia services that do not comply with competence and regulations can be divided into 2 (two) forms which are seen from the legal relationship between the hospital and the anesthesia practitioner.

1. Anesthesia practitioners have a legal relationship and are subordinate to the hospital
In this case, the hospital is also responsible under administrative law if the substitute anesthetist has a legal relationship and is a subordinate of the hospital. Hospitals will be subject to sanctions in accordance with the provisions of Article 82 paragraph (2) of the health Personnel Law which explains that every health service facility that does not implement the provisions of Article 26 paragraph (2), Article 53 paragraph (1), Article 70 paragraph (4), and Article 74 were subject to administrative sanctions. Then, the provisions of Article 74 also explain that leaders of health service facilities are prohibited from allowing health workers who do not have STRPA and permits to practice in health service facilities. Administrative sanctions can generally be imposed in the form of a verbal warning against the hospital, a written warning against the hospital, revocation of the hospital's operational permit.
2. Anesthetists have no legal relationship with the hospital and are only an alternative option to specialist anesthetists
If the anesthetist does not have a legal relationship with the hospital, then the hospital is not responsible under criminal law for practices without a license carried out by the anesthetist at the hospital. This is because criminal law adheres to the doctrine of personal liability (individual responsibility) and moreover there is no agreement between both

parties. So that the criminal sanctions as stipulated in Article 86 paragraph (1) of the Health Personnel Law are the responsibility of the anesthetist.

Apart from the reasons above, the reason the hospital is not legally responsible for administrative practices without a permit or not in accordance with the competency standards of anesthetists carried out by anesthetists in the hospital is because the number of anesthetists is not large, so the anesthetists sometimes change the position of the anesthetists. in another hospital without the knowledge of the hospital, and the replacement is usually at the will of the anesthesiology specialist. In cases like this the hospital is not responsible under administrative law, because there is no legal relationship between the substitute anesthetist and the hospital.

Administration Responsibility for Hospitals that Employ Health Personnel in Services Inappropriate Anesthesia _ with Competency and Regulation

If a hospital employs health workers in anesthesia services that do not comply with competence and regulations, the hospital may be subject to administrative responsibility. This can be known by referring to Article 29 paragraph (2) of the Hospital Law which explains that: Article 29 "(2) Violations of the obligations as intended in paragraph (1) are subject to administrative sanctions in the form of:

- a. reprimand;
- b. written warning; or
- c. fines and revocation of hospital permits."

The violations referred to in paragraph Article 29 paragraph (1) of the Hospital Law which can be categorized as hospital actions that violate obligations in providing health personnel include letters b, g and m which read as follows:

- 1. b. provides safe, quality, anti-discriminatory and effective health services by prioritizing the interests of patients in accordance with hospital service standards
- 2. g. creates, implement and maintain quality standards for health services in hospitals as a reference in serving patients
- 3. m. respect and protect patient rights;

From the explanation above, it can be seen that hospitals have an obligation to provide safe health services for patients in accordance with hospital service standards and guarantee patient rights. Based on the regulations regarding competency standards for anesthetists, it can be seen that anesthetists are required to have certification or practice permits and carry out all their obligations and competencies. If a hospital has a working relationship with an anesthetist that does not meet these three requirements, the hospital cannot fulfill its obligations as regulated in Article 29 paragraph (1) of the Hospital Law. So the hospital can receive administrative sanctions in the form of a warning, written warning or fine and revocation of the hospital's license.

CONCLUSION

Based on the findings in the research, the conclusion of the research results is that the legal consequences for hospitals that employ health workers in anesthesia services who do not comply with competence and regulations can be divided into 3 (three) legal consequences in the form of civil, criminal and administrative sanctions. Based on civil sanctions, hospitals can be sued for compensation by patients due to negligence committed by health workers after it is proven that the anesthetist who distorted the service (malpractice) harmed the patient is a worker who is the hospital's subordinate. In terms of criminal sanctions, if the hospital is proven

to legally have a legal relationship with the anesthetist, the hospital can be subject to a criminal fine as regulated in Article 82 paragraph (2) of the Health Personnel Law, however, if the hospital can prove that it does not have a legal relationship with an anesthetist, the anesthetist may be subject to a fine as stipulated in Article 86 paragraph (1) of the Health Personnel Law. Meanwhile, in terms of administrative sanctions, hospitals that do not carry out various obligations as regulated in 29 paragraph (1) of the Hospital Law can be subject to administrative sanctions in the form of warnings, written warnings, or fines and revocation of the hospital's license.

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