

LEGAL PROTECTION FOR HEALTH WORKERS IN HANDLING EMERGENCY PATIENTS

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Abstract

The research in this article aims to determine legal protection for health workers who treat emergency patients. This research was conducted using a qualitative, normative and descriptive approach. Data was collected through literature study. The results show that, ethically and legally, health workers are obliged to help all emergency patients, even if they do so without the consent of the patient or their family, because the goal is to save lives and prevent patients from becoming disabled. Health workers who do this must receive legal protection. The author's suggestion is that all health facilities develop standard operational procedures for handling emergency patients which serve as a legal basis for health workers providing assistance to emergency patients.

Keywords: Legal protection, Health workers, Emergency patients

INTRODUCTION

Every human being cannot predict what will happen to him. Disaster can come to anyone and wherever someone is. Natural disasters, accidents, or other disasters can cause someone to be hospitalized. Because emergency conditions are life threatening, patients must be treated immediately without waiting. Medical personnel must be fast, precise, qualified and accountable (Kumalasari, 2022). Emergency patients who experience bleeding and do not receive immediate help will continue to lose a lot of blood, causing death.

Every health worker is required to be careful in providing medical assistance to patients so that nothing undesirable happens and malpractice does not occur. Incidents called medical negligence can be prosecuted. Conditions like this are often known to the public as medical malpractice. The term medical malpractice is currently unknown in positive law in force in Indonesia. Legal experts then provide several definitions about this malpractice, one of which then divides medical malpractice into two groups:

1. Intentional medical malpractice.
2. Medical malpractice due to negligence.

However, there are also other legal experts who consider that medical malpractice is medical malpractice that occurs due to negligence or the competence of medical personnel is below standard. (Sutarno, 2014). One thing that health workers must do to avoid prosecution or malpractice is to obtain approval for medical treatment from the patient or family after the patient or family has explained the illness and the medical action that will be carried out, this is called informed consent. Informed consent means that a health worker provides information about the disease and medical treatment that will be given and the patient or family gives consent or consent to the action after receiving an explanation from the health worker. (Wardhani, 2014).

Informed consent It is an obligation that health workers must fulfill in providing medical assistance. This informed consent contains approval for medical actions provided by the patient or family (Sutarno, 2014). Explanations given by health workers regarding medical procedures for patients are based on the patient's condition at the time the medical procedure is carried out, patients who are sick are emotionally unstable. Conditions like this require a detailed explanation from health workers to patients before deciding whether to agree to the medical treatment they will receive (Eutheriana, 2016).

Health workers must obtain approval from the patient and family before carrying out medical procedures because if something undesirable happens to the patient being treated, a condition like this will be a dilemma for health workers to provide assistance to emergency patients. On the one hand, they must provide immediate assistance because the condition is serious. An emergency can threaten the patient's life. On the other hand, health workers must first obtain approval for medical action from the patient or family. Based on these conditions, all medical personnel have the right to receive guaranteed legal protection in providing assistance to patients, especially emergency patients, as long as the medical treatment provided by the health personnel is in accordance with existing medical service procedures and standards. Guaranteed legal protection for health workers in providing medical assistance to patients, especially patients in emergency conditions, will create a feeling of calm and comfort for health workers who are working so that health workers can use all their best abilities when providing help in accordance with the best health service procedures and standards. which ultimately results in the best service for patients without health workers being burdened with the threat of lawsuits for the medical assistance they provide.

The purpose of writing this article is to analyze and evaluate the extent to which existing laws provide protection for health workers when they treat patients in emergency conditions. This research seeks to identify applicable regulations, examine the implementation of the law in medical practice, and evaluate the effectiveness of the protection provided.

RESEARCH METHODS

Preparing articles is a scientific activity based on certain methods, systematics and thinking which has the aim of studying one or another legal phenomenon through analysis, conducting in-depth examinations based on legal facts and seeking solutions to existing problems. Normative juridical research is the type of research applied in this article. Normative juridical research uses library legal research; this involves examining bibliographic material or secondary data (Johnny Ibrahim, 2005; Syahrum, 2022). Legislation is the main source in this research. This method is usually used to review legal regulations that are still lacking or allow irregularities in technical arrangements and implementation in the field.

In research and writing articles, a conceptual approach can offer a perspective for analyzing problem solving from the perspective of the legal concepts behind it or the values contained in regulations. The conceptual method is used when there is no legal rule for the problem at hand. Ultimately, this method allows researchers to examine legal concepts originating from a particular legal system. This approach originates from perspectives and ideas that have developed in legal science. This is important because an understanding of these perspectives and ideas is used as a basis for building legal arguments to resolve legal problems (Marzuki, 2021). After providing an understanding, concept or legal principle that is relevant to the problem at hand, this perspective and theory will help explain the concept.

RESULT & DISCUSSION

In the world of health, the relationship between health workers and patients is based on ethics. The moral foundations that govern the relationship between health workers and the patients they help are the main focus of discussions about ethics in the health sector. This relationship concept becomes a standard of behavior for health workers in making clinical decisions about medical procedures in various situations (Afandi, 2017).

Ethics provides direction to humans to prioritize conscience in every action, so that all actions carried out are included in good actions, not bad and wrong things based on moral values obtained from the process of social life from the beginning of human life up to current conditions. Every profession, including the health profession, has its own moral code, a code of ethics. If members of a professional organization are found to have violated the code of ethics, they will be punished or sanctioned, and they can even be expelled from the professional organization by the members of the profession themselves who are represented by a council or organizational disciplinary council. a specially chosen or designated profession (Faizzah et al., 2023; Harahap, 2022). The principles of professional ethics consist of at least 3 things, as follows:

1. Principle of responsibility.

Every health worker as a professional when carrying out their duties is required to be responsible in two directions:

- a. Carry out work and get results with the aim that each professional will work as best as possible based on standards above average to produce excellent work.
Work that can be held accountable for the process and results of professional demands. Carrying out work effectively and efficiently will be responsible for carrying out the work.
- b. The effects of the profession one carries out on the lives of other people or society in general. Every health worker is required to be responsible for the consequences arising from his profession, place of work, colleagues and family. Health workers have an obligation to do things that do not harm the interests of other people, but will provide benefits to other people.

2. Principle justice

Referring to this principle of justice, every health worker will be required to give to anyone what that person is entitled to when the health worker carries out his profession. This demand means that justice must be applied as long as the health worker carries out his profession whenever and wherever. Every health worker must not violate the rights of other people, institutions or other countries. On the other hand, all health workers are required to respect the rights of others.

3. Principle of autonomy.

This principle of autonomy places demands on all health workers to always have freedom in carrying out their professional duties. The professional organization in which the health worker joins the professional association has responsibility for the implementation of the profession of all its members, however, those most responsible are the health workers themselves. The principle of autonomy demands that each professional organization as a whole be free from interference from the government or any other party that would affect the freedom of its members in carrying out their profession. (Amin, 2017)

Indonesia is a country of law, we can see this from the many laws and regulations that regulate every activity of its citizens. These laws and regulations will ultimately provide a guarantee of legal certainty, every action taken by a citizen must not be in conflict with the applicable laws and regulations, an example of an action which must not be in conflict with the laws and regulations or may not be in conflict with the law is when Health care providers who carry out medical procedures on patients must obtain informed consent from the patient or family.

If a health worker performs medical procedures on a patient without the consent of the patient or his family, it is contrary to the Medical Practice Act. According to Article 52 of the Medical Practice Law, informed consent is a patient's right that must be given to patients (Kumalasari, 2022b). This is emphasized again in Article 351 of the Criminal Code which states that medical actions carried out by health workers can be categorized as abuse if they are carried out without the consent of the patient or family.

Medical treatment for patients in emergency conditions must be given immediately, this is in accordance with the professional oath of health workers, namely the obligation to save the lives of patients who need help, which is also emphasized according to the Criminal Code (Criminal Code) Article 304, they must not abandon humans. Article 304 of the Criminal Code reads: "Anyone who deliberately places or leaves someone in a miserable condition, even though according to the law that applies to him or because of agreement, he is obliged to provide life, care or maintenance to that person, is threatened with imprisonment for a maximum of two years and eight month or a maximum fine of three hundred rupiah."

In an emergency situation, health workers cannot force consent from the patient, especially if the patient is found to be unconscious and at that time there is no guardian or family accompanying the patient. This dilemmatic condition requires health workers to act quickly, on the other hand, there must be approval for medical action from the patient or family. In principle, medical personnel have an obligation to obtain consent from the patient or the patient's family to carry out medical procedures, in conditions like the one above where the patient is in a time-saving condition, meaning that time is an important factor in saving the patient. Conditions like this imply that if staff are late in optimizing the time to carry out medical procedures, it will cause conditions that are not good for the patient, resulting in disability and even death of the patient. In conditions like these, health workers can waive informed consent if the patient is in a condition that needs to be rescued immediately with medical action without consent, because no one can give approval for medical action at that time. (Ramadhan & Nugraha, 2021).

Every health worker is expected to provide maximum medical action to all patients by explaining the patient's condition, the medical action to be carried out and obtaining approval for medical action before carrying out medical action on the patient, but this is different if the patient's condition is emergency, the health worker's priority action is to save life or prevent the patient from becoming disabled, because health workers are racing against death and it is not possible to explain the patient's condition or obtain approval for medical treatment because the patient is unconscious or there is no family or guardian accompanying the patient at that time (Kumalasari, 2022a). So health workers continue to prioritize patient safety as the main priority in their consideration of providing medical treatment to the patient.

When medical personnel encounter patients in emergency conditions where the patient cannot give consent because they are unconscious and do not have family to accompany them, they face a difficult situation for them. On the one hand, if there is no informed consent, medical personnel have violated the Medical Practice Act and can be subject to criminal threats, but ironically, medical personnel cannot also obtain informed consent. On the other hand, failure to provide immediate assistance can result in the patient's death or disability. (Kumalasari, 2022a).

When treating emergency patients, health workers must act quickly, precisely and with quality to save the patient's life or disability. As part of the Health Law, Medical Practice Law, and Minister of Health Regulation Number 290/Menkes/Per/III/2008 concerning Approval of Medical Procedures, medical personnel must obtain the patient's consent to carry out medical procedures before carrying out medical procedures on the patient. Without this approval, medical personnel cannot be legally blamed for the medical procedures they perform on patients. Consent to medical procedures usually comes in two forms: First, informed consent (spoken), which includes verbal and written consent; second, implied (embedded) consent, which includes consent in normal and emergency situations (Ismail, 2019). Implied consent means a medical action carried out by a health worker on a patient who is in a critical or unconscious condition (Busro, 2018). Even though written approval has not been obtained, informed consent can also be a basis for health workers to provide medical assistance.

Health workers can anticipate demands for all medical procedures given to patients in several ways. These actions include:

1. First informed consent.

In carrying out their professional duties, health workers have informed consent as one of the obligations that health workers must fulfill. For patients in emergency situations, informed consent is not required because the priority for health workers is saving lives and preventing patients from becoming disabled. In emergency conditions, medical procedures are carried out without informed consent, health workers have an obligation to provide an explanation as soon as possible to the patient after the patient is conscious or to the closest family. (Ismail, 2019).

The position of informed consent is very important to protect health workers in carrying out their duties because it protects them from complaints from patients, including the families of patients who are given medical assistance. This is because every action carries risks, and it is important for health workers to be given information about the aims and benefits of medical procedures as well as the risks, for both the patient and the outgoing party. (Wahjuni & Sari, 2022; Wahyudi, 2020). So the patient and family have the right to receive an explanation about their illness and the benefits of the medical treatment provided and the risks. If the patient is in an emergency condition, this information must still be provided immediately after the emergency condition has passed or the patient is conscious or the family is at the location where the medical action is being given and is possible. to be given information including consent for further action.

2. Both medical records.

Every patient served at a health facility has their own medical record. Medical records created for each patient have various benefits:

- a. Benefits to patient treatment.
- b. Benefits of improving service quality.
- c. Educational and research benefits.
- d. Benefits of financing.
- e. Benefits of Health statistics.
- f. Benefits of proving legal, disciplinary and ethical issues.

So, because the existence of medical records is very beneficial, health workers are required to write medical records completely and in detail, write down all the medical actions carried out and carry out all the written medical actions because apart from being useful for the patient, they are also very beneficial for the patient.

3. The third thing that is done is *volenti non fit iniura* or assumption of risk, namely an assumption that is known beforehand about the existence of a high medical risk to the patient if a medical action is performed on him. A complete explanation has been given from the doctor and it turns out that the patient or family agrees (informed consent), if a risk occurs that has been previously suspected, then the doctor cannot be held responsible for his medical actions and frees the doctor and hospital from legal action (Ismail, 2019).
4. The four *es ipsa loquitur* are directly related to the burden of proof (*onus*, burden of proof). This means that the burden of proof is shifted from the plaintiff, namely the patient or family member, to the defendant, namely the medical personnel. In cases of obvious negligence that can be known by a lay person or according to general knowledge that there is a defect, wound or injury caused by medical negligence, the plaintiff does not need to prove that the medical procedure carried out was not negligent or wrong. (Ismail, 2019).

Medical personnel have the responsibility to fulfill statutory orders to save patients when carrying out medical procedures in emergency situations. Kind people who help someone in an emergency must also be legally protected (Mangkey, 2014).

Research from the literature that was carried out then found a solution to the dilemmatic conditions experienced by all health workers, especially those working in the emergency unit of health facilities. Juridically, there is a solution in accordance with Article 4 paragraph (1) of Minister of Health Regulation Number 290/Menkes/Per/III/2008 which reads: "In emergency situations, to save the patient's life and/or prevent disability, no approval of action from the patient or family is required." . As the next legal basis which then provides a guarantee of legal certainty obtained from all health workers and provides a feeling of security for health workers who provide assistance, especially to emergency patients, is Article 1354 of the Civil Code, medical actions without obtaining the patient's consent are permitted, this action is called *zaakwarming* or guardianship. Voluntary, namely "If a person voluntarily, without being asked, after taking care of another person's affairs, either with or without that person's knowledge, then secretly commits himself to continue taking care of those affairs so that the person is able to take care of them himself." (Kumalasari, 2022a). So with the guarantee of legal certainty, all health workers will optimally use their abilities to provide the best assistance to patients, including patients in emergency conditions.

CONCLUSION

In principle, health workers are obliged to obtain approval for medical treatment from the patient or family, but in emergency conditions, approval for medical treatment is not required because the main priority is saving the patient's life. In article 4 paragraph (1) of

Minister of Health Regulation Number 290/Menkes/Per/III/2008 and the Civil Code, the principle of *zaakwarneming* or voluntary guardianship is the basis for legal protection for health workers in providing assistance to patients in emergency conditions.

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