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Position of Informed Consent in Emergency Handling of Patients in Hospital

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Abstract
The Indonesian Constitution mandates that health must be the main thing in continuous sustainable development. Therefore, in order to create a good health law system, doctors must respect whatever the patient's choice is, because if informed consent has occurred, then the rights and obligations between the doctor and the patient arise. However, the position of informed consent becomes unclear when there is emergency treatment of patients in hospitals. The problem studied is how is the position of informed consent in emergency treatment of patients in hospitals in law in Indonesia and the United States? The research method used is normative. The results of the study show that the position of informed consent in emergency treatment of patients in hospitals in law in Indonesia and the United States is different. In the health law system in Indonesia, the position of informed consent in emergency treatment of patients in hospitals is considered given, so that doctors who perform medical actions in order to save lives or prevent disability of a person in an Emergency and/or disaster are exempt from claims for compensation. A different thing happens in the health legal system in the United States, where the position of informed consent in emergency patient care in hospitals remains very important in law, because the legal consequences if informed consent is not given, are that the medical action is considered an act of abuse (intentionally) against the patient which causes the doctor and hospital to become parties who can be held legally responsible if the patient feels disadvantaged.

Keywords: Informed Consent, Emergency, Indonesia, United States

INTRODUCTION

Health is one of the primary indicators of a nation's development and overall well-being (Iorwena & Kaja, 2023). Given this, health should be a top priority in continuous sustainable development. As healthy living is a fundamental human right, enshrined in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that everyone has the right to a decent life, both physically and mentally, to housing, and to a good and healthy environment, as well as the right to health services (Affandi, 2019). This provision is further strengthened by Article 34 paragraph (3) of the 1945 Constitution, which states that "The state is responsible for providing adequate health 1 services and public facilities." Therefore, the government is not only obligated to provide affordable and accessible healthcare services but also to ensure that these services are equitable for all Indonesian citizens (Nuraeni et al., 2024). 1. jurnal.utu.ac.id jurnal.utu.ac.id Adequate and equitable healthcare services include access to health services and healthcare that are essential for health, such as access to clean water, nutrition, healthy housing, sanitation, healthy environments and workplaces, education, and information (Wahhoepramono, 2012). One of the main providers of these health services is doctors.

Medical practice in Indonesia is regulated by Law Number 17 of 2023 concerning Health (Health Law), which aims to provide legal protection for doctors in carrying out their duties and for patients who use the services of doctors (Pramesuari & Agus, 2023). Based on Article 273 letter a of the Health Law, doctors have the right to legal protection from lawsuits as long as they carry out their duties in accordance with professional standards, service standards, standard operating procedures, and professional ethics, as well as the needs of the patient.

Based on this provision, as long as a doctor carries out their duties in accordance with professional standards and standard operating procedures, the doctor cannot be sued administratively, civilly, or criminally. Before performing a medical procedure, a doctor must first obtain the patient's consent through a process called informed consent.

Informed consent is the agreement given by a patient and/or their family based on information and explanation about the medical procedure to be performed on the patient (Siswanti, 2013). The legal basis for informed consent is Article 274 letter b and Article 293 of the Health Law, which contains information or explanations in the form of diagnosis and medical procedures, the purpose of the medical procedure, alternative treatments and their risks, the risks and complications that may occur, and the prognosis of the procedure.

A doctor cannot impose their will on a patient, even if it is in accordance with their knowledge or for the patient's own good. Doctors must respect any choice made by the patient, because what distinguishes a doctor from a criminal offense is informed consent (Ratman, 2013). Once informed consent has been obtained, there arises a question of the rights and obligations between the doctor and the patient. This gives rise to a legal relationship between the doctor and the patient due to medical factors, which subsequently gives rise to an agreement known as a therapeutic agreement.

A therapeutic agreement is a treatment agreement, because one party (the patient) wishes to be cured and the other party (the doctor) wishes to treat the patient and seek the patient's recovery. This agreement is born based on an agreement between both parties without any error, coercion or fraud, and serves as the law for both parties and must be carried out in good faith (Ohoiwutun, 2007).

A therapeutic agreement carried out using informed consent involves medical personnel (doctors) and patients. In carrying out this therapeutic agreement, both parties must be responsible and fulfill their respective obligations. However, on the one hand, both parties are also given rights by law, so that both parties also receive legal protection (Lubis, 2022).

The position of informed consent before a doctor performs a medical procedure is very important, even in the United States, as in the case of Mary E. Schoendorff vs. The Society of the New York Hospital, which could result in a doctor and hospital being sued by the patient, because after the surgical procedure, the patient experienced other symptoms of illness, while the informed consent procedure was not carried out correctly (Hanafiah & Amir, 2018).

The same thing also happened in Indonesia, in the case of Dr. Dewa Ayu Sasiary Prawan, Dr. Hendry Simanjutak, and Dr. Hendy Siagian, who were sentenced to 10 months in prison for performing an emergency caesarean section to save the patient and the baby in her womb, even though in the end, after the baby was successfully delivered, the patient's condition worsened and about 20 minutes later, she died (Sutrisno & Dewi, 2016).

Based on these two cases in different countries, it can be seen how important informed consent is before a doctor performs a medical procedure. However, it becomes a problem when the patient is in a critical condition and unconscious and the family cannot be contacted, while the patient must immediately receive help for the patient's safety without having to obtain prior consent, so that informed consent is not carried out in the therapeutic agreement. Yet, informed consent in a therapeutic agreement is an obligation for doctors in accordance with the mandate of the Health Law.

RESEARCH METHODS

This research is essentially normative legal research, as the target of this research is the law or normative norms in the form of legal principles and legal systems (Soekanto & Mamuji, 2007). Normative research in this study is research that describes in detail, systematically, comprehensively and in-depth the underlying thinking about the position of informed consent in the handling of emergency patients in hospitals under Indonesian and American law. This research is descriptive in nature because it describes the applicable laws and regulations and relates them to legal theories in their practical application related to the problems to be studied. The data obtained will be analyzed using qualitative analysis.

RESULT AND DISCUSSION

Health development is aimed at increasing awareness, willingness, and the ability to live a healthy life for everyone in order to achieve an optimal level of health as one of the elements of general welfare as stated in the Preamble of the 1945 Constitution of the Republic of Indonesia. Health, as a human right, must be realized in the form of providing various health efforts to all members of society through the implementation of quality and accessible health development (Sinaga, 2021).

In practice, a doctor is someone who provides individual assistance between doctors and patients, in the form of medical services. Thus, when a person visits a doctor to receive medical services, a therapeutic transaction occurs between the patient and the doctor (Zahra & Marpaung, 2022).

Therapeutic transactions, which are agreements between doctors and patients to provide medical services, mean that a doctor cannot impose their will on the patient, even if it aligns with their medical knowledge or serves the patient's own interests. Doctors must respect the choices of the patient, because what differentiates doctors from common criminal offenses is informed consent (Ratman, 2013).

Informed consent is related to the doctor's obligation to provide information to the patient and to perform medical actions according to medical profession standards. An informed consent is valid only if it meets at least three elements:

1. Adequate information is provided by the doctor;
2. The patient's competence in giving consent;
3. Voluntariness (without coercion or pressure) in giving consent (Wahyudi, 2022).

In Indonesian health law, there are two types of medical consent (informed consent), namely:

1. Implied Consent (deemed given)

   Implied consent is generally given under normal conditions, meaning the doctor receives consent for the medical action through signals given or actions taken by the patient. This also applies in emergency cases, where the doctor needs to take immediate action while the patient is unable to provide consent and their family is not present. In such cases, the doctor may perform the best medical action according to their judgment.

   This is in accordance with the principle of "father knows best," meaning the doctor has a parental-like role towards the patient (Koeswadji, 1998). The patient fully trusts the doctor to perform medical actions. This relationship is active-passive and hierarchical, where the doctor and patient are not equal, and the patient must accept the doctor's decisions and actions without contributing to the medical services provided. Therefore, there is no communication or interaction regarding the medical actions to be taken (Prasetyo, 2014).

2. Expressed Consent (explicitly stated)

   Medical consent (informed consent) in the form of expressed consent can be given verbally or in writing. For invasive and high-risk medical procedures, it is recommended that physicians obtain written consent, commonly known in hospitals as an operation permit.

   In emergency situations, informed consent remains a critical aspect, even though its priority is considered the lowest. The primary priority is saving the patient's life. While informed consent is important, it should not hinder or delay the provision of emergency care. This aligns with Article 4 of the Indonesian Ministry of Health Regulation No. 290/MENKES/PER/III/2008 on Medical Action Consent, which states that informed consent is not required in emergency situations.

   This establishes an unequal relationship between doctors and patients in informed consent cases. According to Article 275(2) of the Health Act, doctors performing medical actions to save lives or prevent disability during emergencies or disasters are exempt from liability for damages. Therefore, medical actions in emergencies are conducted based on the principles of humanity within the practice of medicine.

   In the United States, the legal system regarding informed consent originated in 1947 with the Nuremberg Code, applied to human experiments and now extended to medical care. This doctrine requires healthcare professionals to share specific information with patients before seeking their consent for treatment (Hanafiah & Amir, 2018).

   The Patients' Bill of Rights (American Hospital Association, 1972) essentially states that “patients have the right to accept or refuse treatment and to receive information from their physician before consenting to medical actions.” This correlates with the right to self-determination as a fundamental human right, granting patients knowledge about their condition and the medical actions proposed (Oktarina, 2010).

   The legal issue of informed consent in the U.S. has been shaped by legal developments in other countries. For instance, in the case of Mary E. Schoendorff vs. The Society of the New York Hospital (April 14, 1914), the Court of Appeals of New York ruled in favor of Mary E. Schoendorff, stating:

   “*In the case at hand, the wrong complained of is merely negligence. It is trespass. Ever human being of adult years and sound mind has a riht to determine what shall be done with his own body, and a surgeon who performs an operation without his patient`s consent commits an assault, for which he is liable in damages* (Solihan,

2022).

Other landmark cases followed, such as Allan vs. New Mount Sinai Hospital (1980), where it was decided that:

> *"Without consent, either written or oral, no surgery may be performed. This is not mere formality, but an important individual right to control one's own body, even in medical treatment. Emergencies are exceptions, but the situation must be life-threatening, not merely convenient" (Hanafiah & Amir, 2018).*

The term "informed consent" was first used in the case of Salgo v. Leland Stanford Jr. University Board of Trustees (1957). Salgo, suffering from spinal trauma, sued Dr. Leland Stanford Jr. for performing a translumbar aortography procedure without adequate information. The court stated that a physician's failure to provide necessary information violated their duty to the patient (Kian, 2021).

Between 1932 and 1972, unethical experiments, such as the Tuskegee Syphilis Study, involved 400 impoverished Black men who were unknowingly subjected to research without treatment. These events prompted the development of ethical guidelines in The Belmont Report, which introduced three principles:

1. Respect for persons, acknowledging human dignity and autonomy.
2. Beneficence, maximizing benefits and minimizing risks.
3. Justice, ensuring fairness in the distribution of research benefits and burdens (Hanafiah & Amir, 2018).

Numerous cases have revealed unethical medical practices, including experiments involving radiation, vaccines, and drugs like Thalidomide, often conducted without proper informed consent. In the Lounsbury v. Capel (1992) case, the court addressed informed consent violations where the patient's spouse signed under duress.

Informed consent documentation is mandated in Anglo-American legal systems and serves as key evidence in legal disputes. In tort law, medical malpractice requires proof of four elements:

1. Duty – the obligation to act.
2. Dereliction of duty – deviation from the obligation.
3. Damage – harm caused.
4. Direct relationship – causation between the action and harm.

Cases like Ybarra v. Supreme Court of California (1944), where a patient's condition worsened due to negligence during surgery, emphasized the Res Ipsa Loquitur doctrine, presuming negligence based on the circumstances (Hanafiah & Amir, 2018).

In conclusion, informed consent is a cornerstone of medical ethics, ensuring patient autonomy and safeguarding against malpractice. Proper documentation and adherence to legal and ethical standards are essential for upholding patient rights.

CONCLUSIONS

The position of informed consent in emergency patient care in hospitals differs between the legal systems of Indonesia and the United States. In Indonesia's healthcare legal system, informed consent in emergency situations is considered granted. Thus, doctors performing medical procedures to save lives or prevent disability in emergency situations and/or disasters are exempted from liability claims. Conversely, in the U.S. healthcare legal system, informed consent in emergency patient care remains critically important. Failure to obtain informed consent is regarded as deliberate assault on the patient, making the doctor and hospital legally liable if the patient perceives any harm.

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