

LEGAL PROTECTION FOR THE MEDICAL PROFESSION IN TREATING UNCONSCIOUS EMERGENCY PATIENTS WITHOUT INFORMED CONSENT

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ABSTRACT

The legal relationship between doctors and patients is a relationship based on trust. Legal protection for the medical profession in treating emergency patients without medical approval (informed consent) is regulated in Article 1338 of the Civil Code. The agreement remains binding on both parties, even though the conditions in Article 1320 of the Civil Code are not fulfilled, there are laws that specifically regulate informed consent and Article 1354 of the Civil Code, so that the therapeutic agreement or therapeutic transaction still exists and occurs. As a result, doctors are obliged to provide an achievement to the patient, namely making an effort by providing health services as an effort to cure the patient. In carrying out this effort, doctors must do it with all seriousness by using all the abilities and skills they have while being guided by standards.

Keywords: *Legal Relations, Doctor-Patient, Legal Protection, and Informed Consent.*

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INTRODUCTION

Doctors as one of the main components of health service providers to the community have a very important role because they are directly related to the provision of health services and the quality of services provided. The foundation for doctors to carry out medical actions against others is science, technology, and competencies that are possessed and acquired through education and training. Every effort to provide health services does not always satisfy all parties, especially patients, which in turn easily puts the burden on doctors that malpractice has occurred. A doctor in carrying out his profession is also inseparable from various limitations. Doctors when carrying out medical actions, as a result of these actions may arise other consequences that are undesirable risks both by the doctor himself, the patient and his family. Therefore, in medical practice, before medical action is carried out, it is necessary to have Medical Action Consent (hereinafter referred to as Informed consent) first. Informed consent is in principle obtained from the patient himself or his immediate family. By looking at the above background, the formulation of the problem can be drawn, including: first, how is the legal relationship between doctors and unconscious emergency patients, second, legal protection for the medical profession in handling emergency patients without medical consent (informed consent).

METHOD

The research method used in this study is a normative research method by using various types of primary legal materials in the form of laws and regulations and secondary legal materials in the form of literature materials related to the legal relationship between doctors and unconscious emergency patients as a source of research materials. Johnny Ibrahim argues that normative legal research is a form of scientific research aimed at finding the truth based

on legal scientific logic reviewed from the normative part, or which is in the form of legal discovery efforts that are adjusted to a particular case (Ibrahim, 2006).

RESULTS AND DISCUSSION

A. Legal Relationship Between Doctors and Unconscious Emergency Patient

The doctor-patient relationship in terms of health services is a therapeutic agreement. Doctors in health facilities are obliged to try to cure patients through the knowledge and skills of doctors. Including caution, carefulness and thoroughness in the trust given by the patient while the patient is obliged to pay for the service. Even though doctors perform services based on the right to determine their own fate and the right to obtain information for patients, the provisions of article 1354 of the Civil Code stipulate the responsibilities arising from *zaakwaarneming* or voluntary management of the interests of others by not receiving orders and those represented by their interests can do the affairs themselves.

Medical Consent (Informed consent) is consent given by the patient or his or her closest family after receiving a complete explanation of the medical or dental action to be performed on the patient (Permenkes No. 290 of 2008). Informed consent consists of the word informed which means having received information and consent means consent (Decree of the Director General of Medical Services on Guidelines for Approval of Medical Actions). This consent is given freely, rationally, without coercion about the medical action to be taken against him after obtaining sufficient information about the medical action in question. Informed consent aims to protect patients against all medical actions carried out without the patient's knowledge and provide legal protection to doctors against unexpected and negative consequences, for example against risks of treatment that are impossible to avoid even though doctors have tried their best and acted very carefully and thoroughly. The function of informed consent is as a promotion of the right to individual autonomy, the promotion of rational decisions, protection from patients and subjects, prevention of fraud or coercion, making the medical profession introspect on themselves (self-security), community involvement in advancing the principle of autonomy as a social value and conducting supervision in bio-medical investigations (Guwandi, 2003).

According to Sampurna (Achadiat, 2019), the implementation of medical treatment approval is as follows: 1) Disclosure and explanation to the patient or family in understandable language about the enforcement of the diagnosis, the nature and procedures or proposed medical actions, possible risks, benefits, alternatives if any; 2) Ensure that the patient or family understands what has been explained to him or her (the level of intellectual capacity must be taken into account), that the patient or family has accepted the risks, that the patient allows the procedure or medical procedure to be carried out; 3) The process must then be documented as evidence that approval has occurred after explanation.

The relationship between the patient and the doctor occurs when the patient expresses his willingness verbally or implicitly by showing an attitude or action that concludes availability. Then the reason for the relationship between the doctor and the patient is because the patient's condition is very urgent to immediately get help from the doctor, where the patient is unconscious, so that in an urgent state the doctor's action is called *zaakwaarneming* which is a medical action carried out due to compelling or urgent

circumstances (emergency services), (Ameln, 1991) so that the doctor's position becomes higher than the patient himself.

This pattern of legal relations is called a paternalistic relationship pattern or father knows best (Astuti & Sh, 2009) which analogizes that a doctor as a father and the patient is his child where every father must know the condition of his child better than the child himself, as well as a doctor is considered to know the patient's condition better so that he is able to make efforts to heal the patient in accordance with his professional standards. However, by having a higher degree, a doctor must strive for careful and careful medical actions and perform his duties in accordance with the knowledge he has so that in the analogy of father knows best, a doctor can be a good father to his child.

Regulation of the Minister of Health Number 290/MENKES/PER/III of 2008 concerning Approval of Medical Actions states that every medical action to be given to a patient must first obtain approval from the patient, either orally or in writing. However, if the medical procedure is considered to contain high risk, consent must be given in writing. In an emergency, the doctor does not need the patient's consent to provide medical action, because to save the patient's life or at least prevent the patient from experiencing permanent disability, the decision to provide such action must be included in the medical record and immediately notified to the patient immediately after the patient is conscious or to the patient's own family as stated in Article 4 of the Regulation of the Minister of Health Number 290/MENKES/PER/III of 2008 on Medical Action Consent.

The relationship between the doctor and the patient in an urgent or emergency situation is the same as the relationship between the doctor and the patient in general, which is the relationship associated in the Therapeutic Agreement. However, patient recovery is not the object of therapeutic transactions because not all diseases can be cured by a doctor, including if the patient is an emergency patient. Instead, what is the object of the therapeutic agreement is the effort given by the doctor which is given in accordance with the standards of his professional expertise.

The legal relationship between doctors and patients is a relationship based on trust, as mentioned by Al Purwohadiwardoyo the legal relationship between doctors and patients which is carried out with a sense of trust from the patient towards the doctor is called the term therapeutic transaction. The patient believes that the doctor can try to cure himself when he begins to complain about the disease suffered, this is called a therapeutic transaction where the therapeutic transaction will be realized by the consent of the medical action (informed consent) given by the patient to the doctor where previously the patient has been given clear and clear information about his disease and the action that will be given to him, Here are the risks that will be faced.

When a patient is in an emergency, the doctor does not need to ask the patient for consent to take action against him, in terms of saving the patient's life or preventing the patient from becoming disabled if action is not given promptly. If in the end the action given by the doctor is still unable to help the patient, the patient's family cannot sue the doctor because of the action he gave to the patient, on the contrary, if the doctor does not provide help in accordance with his professional standards, he can be charged with Article 304 of the Criminal Code or Article 51 Letter (d) of Law Number 29 of 2004 concerning Medical Practice. However, in addition, doctors are obliged to continue to implement the principles

of informed consent by providing information to patients or their families about the actions that have been taken and the risks that will be faced. Thus, the mutual relationship between doctors and patients is still established.

B. Legal Protection for the Medical Profession in Handling Emergency Patients Without Medical Consent (Informed Consent)

Doctors in treating patients in emergency must act quickly, precisely, and with quality to help the patient in order to save the patient's life from death or disability. Before giving medical treatment to the patient, based on the Health Law, the Medical Practice Law, and the Regulation of the Minister of Health Number 290/Menkes/Per/III/2008 concerning Approval of Medical Actions, a doctor must obtain informed consent from his patients, because without that the doctor can be legally blamed for his medical actions. In general, the approval of medical procedures given by the user of medical procedures (patient) to the implementing party of medical procedures (doctors) to perform medical procedures can be distinguished into two forms, namely: first, with a statement (expressed) which includes verbal consent and written consent. Second, implied consent which covers in ordinary circumstances and in emergency situations.

Implied consent is the consent of medical procedures given by the patient implicitly, without explicit requirements, so this implied consent is an everyday event. For example, a patient comes to a hospital or healthcare facility to measure blood pressure, take a blood sample, examine the body, examine the breath with a stethoscope, measure his or her pressure, draw blood in the laboratory, and so on. That is, implied consent is consent that is considered to be given by the patient, generally given under normal circumstances, meaning that the doctor captures the consent of the medical action from the gesture given/done by the patient. There is also another form of implied consent, namely when the patient is in an emergency while the doctor needs immediate action, while the patient is unable to give consent or unconscious and his family is not at the place and if there is a delay in medical action it will be fatal to the patient's life. In such a situation, the delay of medical treatment is simply waiting for approval and then fatal, this can be used as a basis for blaming the doctor for negligence. So, the doctor can perform the best medical action according to the doctor. In an emergency or the patient is unaware to give medical consent to the doctor to handle his condition, then in such a condition the doctor immediately performs what is called *zaakwaarneming*, which is a legal relationship that arises not because of the prior approval of medical action, but because of compelling circumstances or emergencies, this is regulated in the Civil Code Article 1354.

The Hospital Law in Article 1 explains that an emergency is a patient's clinical condition that requires immediate medical attention to save lives and prevent further disability. Efforts to provide services and care for emergency patients basically include a series of activities that must be developed in such a way as to prevent disability or death that may occur. The objectives of emergency management are: 1) Preventing death and disability in emergency patients, so that they can live and function again in the community; 2) Refer emergency patients through the referral system to obtain more adequate treatment; 3) Disaster victim management.

In the effort of health services that are healing and restoring the health of patients, the government establishes and organizes government hospitals and regulates, guides, assists

and supervises hospitals established and organized by private bodies. Meanwhile, doctors as an integral part of the hospital have the right to obtain legal protection in carrying out their duties in accordance with their profession. This is in line with the provisions of the Health Law Article 27 paragraph (1) which stipulates that health workers are entitled to remuneration and legal protection in carrying out their duties in accordance with their profession. As well as Law Number 36 of 2014 concerning Health Workers Article 75 states that health workers in carrying out their practices are entitled to legal protection in accordance with the provisions of Laws and Regulations. This means that law as a norm has a specific characteristic, namely to protect, regulate, and provide balance in maintaining the public interest. Violation of legal provisions in the sense of harming, neglecting or disturbing the balance of the public interest can cause a reaction from the public (Negara, 2001) (Meliala, 2014) (Pnh Simanjuntak, 2017) (R. Indonesia, 2004) (Artioko, 2022) (Ummah, 2022) (P. R. Indonesia, 2023) (Kesuma, 2024).

CONCLUSION

The legal relationship between a physician and an unconscious emergency patient is the same as the relationship between a physician and a patient in general, which is the relationship associated in the Therapeutic Agreement. The legal relationship between a doctor and a patient is a relationship based on trust. Legal protection for the medical profession in handling unconscious emergency patients without medical consent (informed consent) Article 1354 of the Civil Code, Article 27 paragraph (1) and Article 75 of the Health Law states that health workers in carrying out their practice are entitled to legal protection in accordance with the provisions of Laws and Regulations.

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