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THE NATURE AND PROCEDURE FOR PROVIDING INFORMED CONSENT TO EMERGENCY PATIENTS

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ABSTRACT

Health is one of the rights possessed by every Indonesian citizen as regulated in Article 28 H section 1 1945 Constitution. People has the right to receive treatment and care. Health professionals are needed to optimize health services in carrying out medical practices in accordance with professional standards and operational procedure standards. The relationship that arises between the doctor and the patient is called the Therapeutic Contract. In this contract, the approval of the medical action given by the patient appears as a form of approval of the medical action which begins with offers of medical action by the doctor. This is called the Informed Consent. Firstly, the purpose of this study is to find and analyze the merit of the Informed Consent in Therapeutic transactions in Indonesia. Relationships between doctors and patients are originated from a relationship of trust (paternalistic). In its development, it includes stages of the process in providing medical services, which is commonly known as therapeutic transactions. Secondly, this study aims to search and review procedures for providing Informed Consent to emergency patients in terms of the law of obligations. The method used in this study was a normative juridical method by systematically reviewing clear legal norms and rules. In emergency situations, in accordance with the provisions of the Minister of Health Regulation Number 290 / MENKES / PER / III / 2008, an Informed Consent is given shortly after the patient is awake, after the doctor gives medical treatment because the main thing is the patient's safety.

INTRODUCTION

The Constitution Number 36 of 2009 concerning Health (hereinafter referred to as the Health Act) states that health professionals are the main resource in the health sector. Health professionals optimize resources in forms of health services, technology, and treatment to achieve the expected health goals. The Constitution N. 29/2004 on Medical Practice (hereinafter referred to as the Medical Practice Act) explains that health as a human right must be fulfilled

by providing various medical efforts for the whole community through well-qualified and affordable developments.

A doctor is one part of the health workforce who has an obligation to carry out medical practices that have been regulated in the Medical Practice Act in accordance with professional standards and operational procedure standards. In the explanation of the Medical Practice Act, professional standards refers to the minimum ability limit (knowledge, skills, and professional attitude) that must be mastered by an individual to be able to carry out his professional activities for the community. There are also operational procedures for a doctor to do his job.

Operational procedure is a set of instructions or standardized steps for completing a particular routine work process. Standard operational procedures provide the right and best steps based on mutual consensus to carry out various activities and service functions created by health service facilities based on professional standards. A doctor certainly has patients whose rights must be fulfilled in health care.

Patients as recipients of health services in medical practice also have the rights and obligations regulated in the Medical Practice Act. One of the rights owned by patients is to get an explanation of what medical actions will be given by doctors to them, as well as the risks that may occur. This is one of doctors' obligations in providing medical services. After patients provide complete and honest information about their health problems, the doctor will explain what actions need to be taken. This action is important to improve customer satisfaction, especially in the emergency room. Busy situations tend to underestimate the importance of communication (Percunda and Chalidyanto, 2019).

The form of consent from the patient is stated in an agreement commonly known as Informed Consent. An Informed Consent is regulated in Minister of Health Regulation N. 290 / MenKes / Per / III / 2008 concerning Approval of Medical Treatments (hereinafter referred as Permenkes N. 290 Year 2008), which is an implementation of Article 45 of the Medical Practice Act. The article states that every medical and dentistry action that will be performed by a doctor or dentist must be approved.

The word Consent comes from Latin *Consentio* which means permission, approval, or in a broader understanding is to give permission or authority to someone to make an informed consent. Statement of consent or permission by the patient is done consciously, freely, and rationally. After obtaining information from health professionals or doctors about their disease, the patient has the right to approve or reject the medical action to be performed. Patients are also entitled to know what might happen after the medical action is carried out (Risca, 2017).

Such consent is excluded if the patient is in an emergency situation. It is not possible to ask for approval from their family because the patient in an emergency situation must be treated immediately to prevent things that are not

desirable. Emergency is a condition which in the view of the patient, family, or anyone who is responsible to bring the patient to the hospital, requires immediate treatments (Hanafiah and Suhana, 2009).

According to a legal standpoint, this legal relationship starts when the patient pays a visit to the doctor for medical services, then some parties will assume the rights and obligations as the subject of the agreement. This medical action must be free from an element of coercion. If a doctor performs an action without the consent of the patient or their immediate family, that doctor can be assumed as committing acts that violate the law in accordance with article 1365 BW. If one of the parties in the contract breaks an agreement, then that party has defaulted.

The situation of each patient cannot be predicted by medical personnel. When a doctor has to face an emergency situation, he / she must treat the patient immediately and make decisions without asking the family's consent. Doctors must be professionally responsible of any negligence due to lack of caution that affects the patient. Based on the emergency events that often occur in the health sector, the researcher raised a study entitled of The Nature and Procedure for Providing Informed Consent to Emergency Patients.

The statement of the problem in this study is how the nature Informed Consent as health professionals' obligation before undertaking medical action. Secondly how the procedure for giving Informed Consent to emergency patients. The purpose of this study is to find and analyze the merit of the Informed Consent in Therapeutic transactions in Indonesia. Relationships between doctors and patients are originated from a relationship of trust (paternalistic) In its development, it includes stages of the process in providing medical services, which is commonly known as therapeutic transactions (Soewono, 2006). Secondly, this study aims to search and review procedures for providing Informed Consent to emergency patients in terms of the law of obligations.

METHODS

The type of research used is normative by analyzing the laws and regulations, jurisprudence (court decision of the Supreme Court of the Republic of Indonesia), as well as contracts (Hernoko, 2010:38) The type of approach is the statute approach carried out by examining all laws and regulations relating to legal issues that are being addressed (Mahmud, 2015:133).

This approach was used to review the provisions of the legislation in the field of obligations, medicine, medical practice, and health. It was then associated with issues of providing Informed Consent to emergency patients if based on the legal requirements of an agreement. A conceptual approach was carried out by studying the views and doctrines that develop in the science of law (Mahmud, 2015). This approach was carried out by identifying the basic concepts of obligations and putting it in the provisions of the Informed Consent. Primary legal material sources are legal materials that are authoritative, meaning that they have the authority consisting of legislation, official records, or proceedings in making legislation and judges' decisions

(Mahmud, 2015:181). Primary legal materials, namely legislation, are mainly related to law of obligations and medical practice.

Secondary legal material sources include all legal publications that are not official documents. Publications on law include textbooks, legal dictionaries, legal journals, and comments on court decisions (Marzuki, 2015: 181). The secondary legal materials used in this study were literature references and books relating to law of obligations, medical practice, papers, articles, and the internet that discuss the relationship between medical law and Informed Consent.

RESULTS AND DISCUSSION

Nature of Informed Consent in Medical Treatments

Medical law is a part of the health law, which concerns about medical care services (Is, 2015:13). Health law covers the components of law in the field of health that intersect with each other, namely medical / dentistry law, nursing law, clinical pharmacy law, hospital law, public health law, environmental health law (Is, 2015:2). The elements contained in this health law are legal subjects, rights and obligations, legal events, legal relations, legal objects, and the legal community. Legal subjects are medical personnel, one of which is a doctor or dentist as a provider of health services, and patients as recipients of these health services.

Basically, health services aim to carry out prevention and treatment of diseases, which include medical services carried out on the basis of individual relationships between doctors and patients who need treatments (Lestari, 2015). Medical services are facilities that provide clinical services in the field of diagnostics and / or hospitalization. It can be in the form of correct diagnosis in accordance with procedures, providing therapy, performing medical actions, as well as providing reasonable actions that are indeed necessary for patient's treatment. Forms of health services to the community include the provision of health facilities in hospitals with all adequate facilities. Therefore, the existence of hospitals has a significant role as the only health institution that concretely implements the protection of patient rights (Syafruddin and Anand, 2015).

The doctor and patient relationship begins when the patient comes to the doctor to ask for help on their well-being. Thus, there is already a contract or agreement between the doctor and the patient called the therapeutic contract / agreement / transaction. It is the agreement between the doctor and the patient in the form of legal relations that provide their rights and obligations (Nasution, 2005:11).

Doctors are health service providers and patients are health receiver. The results of the transactions of both parties as legal subjects are a form of agreement on health effort as the legal object that must be carried out carefully by the health service provider. The role of hospitals is also needed in this therapeutic transaction. A hospital is a part of health service system that

requires coordinated collaboration and integration of the existing health professionals in accordance with morals and high courtesy (Pahlevi and Santoso, 2015).

As seen from the perspective of civil law, the validity of the contract / agreement is divided into two, as regulated in the systematic Chapter III BW namely, (a) the legal conditions of the contract is regulated in Article 1320 BW, and (b) the legal conditions of the contract is regulated outside Article 1320 BW (Article 1335, Article 1337, Article 1339, and Article 1347) (Hernoko, 2010).

Article 1320 BW is the main instrument to test the validity of contracts made by the parties (Hernoko, 2010). According to the Article 1320 BW, there are four conditions that must be met for the validity of a contract, namely, (a) agreed they who were bound themselves (*de toestemming van degenen die zich verbinden*). (b) The ability to make an engagement (*de bakwaamheid om eene verbintenis aan tegaan*). (c) One particular thing (*een bepaaldonderwerp*). (d) A valid or permissible reason (*eene geoorloofde oorzaak*).

Referring to Article 1 number (1) Permenkes N. 290 of 2008, the approval of medical actions is an approval given by the patient or their immediate family after receiving a full explanation of the medical or dental action that will be performed on the patient. An approval, according to Article 2 of the Permenkes N. 290 of 2008, is that all medical actions that will be carried out on patients must be approved. On the other hand, according to Article 7 of the Minister of Health Regulation N. 290 of 2008, an approval is an explanation of medical action must be given directly to patients and / or immediate family, both requested and unsolicited.

Patients have the right to accept or reject any actions to be taken by doctors or health professionals. The right to accept or reject Informed Consent in the hands of patients becomes a basic right of self-determination for everyone. If the patient agrees with what has been explained, then the action can be continued. However, if the patient refuses even though it will adversely affect his illness, then a doctor must respect the patient's decision. This is referred to as Informed Refusal (Ratman, 2013:40).

Informed Refusal is that a patient decides to refuse particular medical actions after being given information by a doctor regarding something related to the action by affirming that the patient already knows and understands all the consequences that may arise as a result of the refusal (Ratman, 2013:40). Informed Consent is made with the aim of (1) providing protection to patients against all medical actions. The protection is aimed against all actions that are physically and spiritually carried out without patients' consent. It prevents medical procedures that may not unnecessary or done without any basis of medical urgency which at the climax is eventually an abuse of medical profession standards that will harm / endanger the patient.

(2) It also provides protection for health against unexpected or detrimental

consequences for others. Based on the principle of no harm, the determination of the Informed Consent requirements is intended so that health professionals can avoid the slightest risk for the benefit of their patients. The presence or absence of textual Informed Consent does not change the magnitude of the responsibility of health professionals for actions or consequences taken. Instead, it is intended to reduce malpractice in the health profession and educate health professionals to be more careful in providing health services to patients so that patients do not feel the arbitrary actions in the hands of health professionals.

Komalawati also added that Informed Consent is a form to allow self-determination for patients. The patient's right upon information has been fulfilled in the Therapeutic transaction, and it also protects doctors from claiming violations of right to patient integrity. Doctors as professionals in medical field has the abilities that are needed by the public as lay patients who are unable to cope alone. In order to achieve treatment and care goals, accurate information about the history of the disease is needed. The relationship between the doctor and the patient is an essential activity for the patient's recovery and the doctor's success in the treatment process (Isfandyarie *et al*., 2006:171).

Providing Informed Consent to Emergency Patients

Informed consent is an implementation of the Regulation of Health Ministry (Permenkes) N. 290 of 2008 Article 2 that every medical treatment implemented to patients should be under the patient's consent. The consent can be given in 2 (two) ways, which are verbally or in writing. It is crucial to provide information about the doctor's medical treatment to the patient to avoid any misunderstanding between the doctor and the patient. Komalawati also added that Informed Consent is a form to allow self-determination for patients, and the patient's right to information has been fulfilled in the Therapeutic agreement, also to protect doctors from claiming violations of the right to patient integrity73 (Isfandyarie *et al*., 2006:129).

The main principle of Informed Consent is disclosure. A doctor must explore the patient's information as clearly as possible, such as family history or anything related to the patient's existence. Doctors will be more careful in diagnosing patients and being mindful of carrying out specific medical measures in a professional manner while maintaining the principles of medical ethics. In conducting medical treatment on patients as part of the Informed Consent, the doctor must explain several things, namely (Achadiat, 2007:41):

(a) Outline of the illness's ins and outs and the treatment procedures or treatment to be given or applied. The family's role in caring for patients at home is needed (Fadilah *et al*., 2019). (b) A risk that certain suspected complications will arise. (c) Prospects or prognosis of success or failure. (d) Alternative methods of treatment. (e) What will happen if the patient refuses to give consent, and (f) The treatment procedure to be carried out is an experiment or deviates from the habit.

The doctor also needs to convey (even if only briefly) how he works and his experience in carrying out these medical procedures. Information that must be given before a medical action is carried out is (a) Diagnosis that has been established. (b) The nature and extent of the treatment to be conducted. (c) The benefits and urgency of the procedure. (d) Any possible risks and complications that may occur rather than medical action. (e) The consequences if no action is taken and is there other alternative treatment methods, and (f) sometimes, the costs associated with the medical action (Syafruddin and Anand, 2015).

Procedure for Providing Informed Consent to Emergency Patients

The emergency, according to The Regulation of Health Ministry Article 4, paragraph (1) N.290/Men.Kes/Per/III/ 2008 states that "approval for medical action to save a patient's life and or prevent disability is not required." The patient's density in the emergency room can cause a decrease in the quality of communication from the caregiver (Percunda and Chalidyanto, 2019).

The emergency is also regulated in Article 1 number (2) of the Hospital Law, which states that emergency is a clinical condition of the patient who needs immediate medical treatment to save lives and prevent further disability. Services for emergency patients have different characteristics than patients with normal circumstances. Criteria for conditions that can be classified as an emergency are namely, shock, hemorrhage, fracture, and pain (Achadiat, 2007).

The law on first aid for emergency patients is regulated in Article 32 of the Health Act. It states that (1) in an emergency, health service facilities, either State or private, shall be obliged to provide health service for saving patients' lives and first prevention against deformity. (2) In an emergency, health service facilities, either State or private, may not reject patients and/or ask for a down payment.

Also, Article 85 of the Health Act states that (1) in an emergency, health service facilities, both government and private health services, are required to provide the lifesaving disaster for the patient and preventing deformity. Besides the Health Act, Law N. 44 of 2009 about Hospital (next is referred to as Hospital Act) also regulates the emergency patients' rights of services as the hospital responsibility. Article 29, section 1 point (c) of Health Act states that providing emergency services to patients based on their service capabilities. Health services for emergency patients are also an obligation for a doctor or dentist. Article 51 point (d) of the Medical Practice Law states to conduct emergency aid based on humanity, except if he believes there is someone else on duty and able to do it.

The emergency of various types of patients, such as unconscious to no family members are present. This condition requires immediate medical treatment to prevent other undesirable things from happening. If there is no immediate action, then the health professional who is on duty can be sued because of negligence to let others who need help. The consequences that will occur if the patient is not treated immediately will be fatal for the patient's safety. There is

no time to search or contact the patient's family, which makes it impossible to ask for approval from the family. Patient safety is a priority in service health.

Sanctions that can be imposed if the health professional does not immediately help or stall for time intentionally is a criminal sanction based on Article 304 of the Criminal Code about leaving someone who needs help. The emergency is an exception to the approval of medical procedures. Doctors can act to take all necessary steps (including surgery) to save the lives of patients, without the need to wait for anyone's permission. Leenen stated that a person in an unconscious state would approve what is generally agreed upon by patients who are conscious and in the same condition (Achadiat, 2007). Leenen called this as presumed consent for the emergencies based on Article 1354 BW concerning voluntary guardianship, which is:

"*If someone voluntarily without being told to take care of other people's business, either with or without the knowledge of that person, then secretly has committed himself to continue to take care of the matter until the person can take care of themselves*" (Achadiat, 2007).

The emergency Informed Consent is no longer needed, an explanation must still be given to the patient shortly after the patient is conscious and yet required to fulfill the SOP so that it does not contend with the law of an act of health care.

CONCLUSION

Approval of medical procedures or commonly called Informed Consent must be given before the doctor conducts the action and after the doctor explains at least the diagnosis and process for medical treatment. In an emergency, Informed Consent is given shortly after the patient is conscious and has received treatment by a doctor. This situation is an exception to the conditions for approving medical treatment because it requires immediate medical treatment to save lives and prevent further disability. If the patient is not handled immediately, then health professionals may be subject to criminal sanctions, namely Article 304 of the Criminal Code concerning leaving people who need help because they do not directly help patients in an emergency.

REFERENCES

Achadiat, C. M. (2007) 'Dinamika etika & hukum kedokteran dalam tantangan zaman', in. EGC.

Fadilah, N. *et al*. (2019) 'Analysis of influencing factors of burden of caregiver among stroke patients at home', *Journal of Public Health in Africa*.

Hanafiah, N. and Suhana, C. (2009) 'Konsep strategi pembelajaran', *Bandung: Refika Aditama*.

Hernoko, A. Y. (2010) *Hukum perjanjian asas proporsionalitas dalam kontrak komersial*. Kencana.

Is, M. S. (2015) 'Etika Hukum Kesehatan (Teori dan Aplikasinya di Indonesia)', *Kencana Prenada*.

Isfandyarie, A. *et al*. (2006) *Tanggung jawab hukum dan sanksi bagi dokter*. Prestasi Pustaka Publisher.

LESTARI, A. P. (2015) 'EFEKTIVITAS EKSTRAK BUAH BELIMBING WULUH TERHADAP ANGIOGENESIS PENYEMBUHAN LUKA PENCABUTAN GIGI MARMUT'. UNIVERSITAS AIRLANGGA.

Mahmud, M. P. (2015) 'Penelitian Hukum edisi revisi', *Jakarta: Kencana*.

Nasution, M. N. (2005) 'Manajemen mutu terpadu', *Bogor: Ghalia Indonesia*.

Pahlevi, R. and Santoso, S. (2015) 'Tingkat Pengetahuan Dokter Umum Lulusan Fakultas Kedokteran Universitas Diponegoro Tahun 2011-2013 Tentang Rekam Medis', *Jurnal Kedokteran Diponegoro*. Diponegoro University, 4(2), pp. 163–175.

Percunda, A. D. and Chalidyanto, D. (2019) 'The correlation between perceived communication quality and customer satisfaction at Bhayangkara Hospital Emergency Department, Indonesia', *Journal of Public Health in Africa*.

Ratman, D. (2013) *Aspek hukum informed consent dan rekam medis dalam transaksi terapeutik*. Keni Media.

Risca, P. R. P. (2017) 'Pertanggungjawaban Pidana Terhadap Orang Yang Tidak Memiliki Keahlian Dan Kewenangan Praktek Kefarmasian', *Abstract of Undergraduate Research, Faculty of Law, Bung Hatta University*, 8(1).

Soewono, H. (2006) *Perlindungan hak-hak pasien dalam transaksi terapeutik: suatu tinjauan yuridis setelah berlakunya Undang-Undang Nomor 29 Tahun 2004 tentang praktek kedokteran*. Srikandi.

Syafruddin, S. and Anand, G. (2015) 'Urgensi Informed Consent terhadap Perlindungan Hak-hak Pasien', *Hasanuddin Law Review*, 1(2), pp. 164–177.

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