



LEGAL PROTECTION FOR MEDICAL PRACTITIONER DUE TO DISHONEST PATIENT STATEMENTS

Denny Tri Wulandari¹, Sabir Alwy², A. Arsunan Arsin³

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Abstract

Providing dishonest information by patients will have an impact on medical personnel in the form of misdiagnosis which results in malpractice and disease transmission if the patient has an infectious disease. This study aims to analyze the legal consequences for medical personnel and forms of legal protection from dishonest patient statements. Normative research uses a conceptual and statutory approach using primary, secondary and tertiary legal material data as well as the results of interviews as supporting data with data analysis. prescriptive and qualitative. Conceptually, the relationship between medical staff and patients still uses the Civil Code as a template even though there is already a law on medical practice. The legal consequence of this problem is that the medical staff is not responsible for the losses received by the patient due to the patient's own negligence (contributory negligence) thereby eliminating sanctions in the form of compensation, cancellation of agreements, defaults, acts against the law, termination of the agreement due to lapse of time, namely 25 years. Legal protection for medical personnel is the formulation of the right of medical personnel to obtain honest information from patients and the patient's obligation to provide honest information to medical personnel is legal certainty, guarantees of protection for medical personnel against work risks in the form of legal assistance, guarantees of occupational safety and health (K3), JKK and JKM.

Keywords: *Legal Protection, Dishonest Statements, Medical Practitioner*

¹Master of Law Student, Faculty of Law, Hasanuddin University, Indonesia

²Department of the Faculty of Law, Hasanuddin University, Indonesia

³Department of Epidemiology, Faculty of Public Health, Hasanuddin University, Indonesia

Corresponding

Email:

dennyidham@gmail.com

1. Introduction

Health service activities between medical personnel and patients begin with screening, namely by examining patients to identify patient needs. Examining patients basically uses IAR steps: gathering information (I), analyzing information (A) and making plans (R). The medical interview aims to gather as much information from the patient as possible about the state of the disease as this is part of the process for making a diagnosis and planning treatment (Lipkin Jr et al., 1984).

Obtaining information depends on the patient's readiness and willingness to cooperate based on his trust in the doctor. The rights and

obligations of medical personnel and patients at this stage are clearly written and regulated in law where the right of medical personnel is "to obtain complete and honest information from patients or their families" (article 50 letter c Law No. 29 of 2004) while the patient's obligations is "to provide complete and honest information about their health problems" (article 53 letter a Law No. 29 of 2004). However, at the interview stage there were still many patients who provided incomplete and honest information about the medical history they had and were experiencing.

In general, a patient comes to medical personnel with one or a number of complaints

which are problems that a medical staff must solve and the medical staff's task is to translate these complaints into the form of a disease or diagnosis so that the problem can be solved or resolved. Therefore, medical personnel need complete and honest information from the patient or from his family (Gómez-Zúñiga et al., 2019).

A study from Johns Hopkins University analyzed more than 55,000 malpractice claims on which patterns of misdiagnosis were based. This study emphasizes that errors do not only occur with doctors, but patients also have a responsibility to provide clearer and more honest information in conveying the symptoms they are experiencing. Three doctors in Surabaya were infected with the HIV/AIDS virus as a result of contracting it from their patients. According to the Director of the Institute of Tropical Diseases, Airlangga University, Surabaya. Prof. Nasronudin MD PhD, one of the reasons doctors are exposed to the HIV/AIDS virus is that HIV/AIDS patients don't want to give a cover letter to a referral doctor for fear of not being treated.

In the thesis entitled "Legal Protection of Medical Personnel in Carrying Out Professional Duties" by Agnes Anastasia Sosang, the legal protection of medical personnel can be fulfilled if (1) the statutory regulations in their implementation have a more concrete elaboration as implementing regulations; evaluation, coaching, and supervision functions of KKI, MKDI, Yanmed Depkes, Hospital Management, Member Defense and Development Legal Field (BHP2A) from professional organizations (2) Fulfill obligations in carrying out their professional duties. The phenomena mentioned above have resulted in medical personnel dealing with legal problems. On the other hand, medical personnel who are exposed to infectious patient diseases more often accept the patient's mistakes as an "occupational risk".

The relationship between medical personnel and patients as legal subjects has experienced a shift towards a more democratic, namely horizontal contractual or participation relationship. Everything is communicated between the two parties, resulting in mutually beneficial decisions between the two parties,

both the doctor as the provider of health services and the patient himself as the recipient of health services (Roter & Hall, 2006). According to laws and regulations, the legal protection of medical personnel when they encounter legal problems constitutes legal certainty as long as they carry out their duties in accordance with professional standards and standard operating procedures.

Based on the above background, this study aims to analyze the legal consequences and forms of legal protection for medical personnel from patients who provide dishonest statements.

2. Methods

This study uses normative research methods. To solve the problem, the author uses a conceptual approach and a statutory approach. Gather primary legal material sources in the form of Pancasila and the 1945 Constitution, statutory regulations and jurisprudence; secondary legal materials in the form of books, journals, articles; tertiary legal materials in the form of legal dictionaries and encyclopedias; and direct interviews with medical personnel as supporting data. All of these materials were analyzed with qualitative prescriptive.

3. Results and Discussion

Legal Consequences of Medical Personnel From Patients Who Provide Dishonest Information

The legal relationship between medical personnel and patients occurs because there are 2 conditions for the fulfillment of a relationship, namely there is a legal basis governing the relationship of each subject and there are legal events that can cause legal consequences, namely an agreement.

According to Agus Yudha Hernoko at the 5th National Congress of the Indonesian Health Law Society (KONAS V MHKI) the nature of the legal relationship for health services is a civil relationship. The Civil Code is one of the templates used in the legal relationship of health services between medical personnel and doctors.

According to civil law in article 1233 of the Civil Code, that an agreement is born for two reasons, namely because of an agreement or because of a law.

Engagement because of an agreement

When a patient visits a medical worker, the patient has "agreed" to bind himself to the medical staff. This legal basis is contained in article 1313 of the Civil Code, namely:

"An agreement is an act by which one person or more binds himself to one or more people"

An agreement is a contract or agreement that has been agreed upon and approved by both parties according to KBBI.

Legislation that regulates health services between the two parties, namely Law no. 29 of 2004 concerning medical practice also mentions in article 39 which reads:

"Medical practice is organized based on an agreement between a doctor or dentist and a patient in an effort to maintain health, prevent disease, improve health, treat disease and restore health."

Agreements between medical personnel are called therapeutic agreements. This is to clarify that the agreement that occurs between medical personnel and patients is not only in the field of treatment, but more broadly covers the diagnostic, preventive, rehabilitative and promotive fields (Zaeni, 2017).

This therapeutic agreement is declared valid if it fulfills 4 conditions in accordance with Article 1320 of the Civil Code, namely: the agreement of those who bind themselves, the ability to make an agreement, a certain subject matter and a cause that is not prohibited. Terms no.1 and 2 are subjective requirements while condition no. 3 and 4 are objective requirements.

Their agreement is binding. An act that fulfills these requirements in the relationship between medical personnel and patients is when the patient visits medical personnel, and the medical staff accepts them by stating their willingness either orally (oral statement) or implied statement by showing attitudes or actions that conclude willingness; such as receiving registration, providing serial numbers, providing and recording patient medical records.

There are 5 (five) ways in which the conformity of the statement of will occurs, namely by: a. Perfect and written language; b. Perfect language orally; c. Imperfect language

as long as it is accepted by the opposing party; d. Causal sign language is acceptable to the other party; e. Silence or silence, but as long as it is understood or accepted by the other party.

The agreement between the medical staff and the patient when carrying out the consultation is an agreement that is born in the abstract and when the medical staff performs therapy, the patient's agreement turns into an agreement with a concrete agreement (Sabir Alwy, 2017). This concrete agreement is in the form of medical consent or informed consent.

According to Hermien Hadiati Koeswadji, the principle of the relationship between medical personnel and patients in therapeutic cooperation rests on two kinds of human rights, namely: the right to self-determination and the right to information guaranteed in documents. as well as international conventions.

In contract law, the principle of *pacta sunt servanda* applies, meaning that the agreement is binding on the parties and after the agreement is signed or after the agreement enters into force, the parties are no longer free and bound to what they have specified in the agreement. This attachment is quite strong, and according to the law for the parties concerned. This has been stated in article 1338 of the Civil Code. The principle of *pacta sunt servanda* is also known as the principle of legal certainty as a result of an agreement.

The ability to make an engagement. According to the Civil Code in article 1330, a person deemed to have the ability to make an agreement is an adult, a person who is not under guardianship, and an unmarried woman. A person is declared an adult in Article 330 of the Civil Code if that person is 21 years old and has been married before. If you have ever been married and the marriage was dissolved before you even reached the age of 21, that person is still considered an adult.

According to the Regulation of the Minister of Health Number 290/MENKES/III/2008 concerning Approval of Medical Treatment, a patient is said to be competent if he is an adult, has/had been married, is not impaired in his physical consciousness, is able to communicate normally, is not mentally retarded, and does not experience mental

illness. If the patient does not meet the requirements, then there must be an escort as a patient companion. If the concrete agreement is in the form of action consent, the patient's companion who is considered capable is the closest family, namely: husband or wife, biological father or mother, biological children, siblings or caregivers.

On the medical staff's side, competence must be proven by recognition from the government and association of expertise which can be in the form of a diploma or certificate. In addition, Article 35 and Article 36 of Law No. 29 of 2004 stipulates that medical staff who already have a registration certificate (STR) and practice permit (SIP) are capable legal subjects.

A certain subject matter. A certain subject matter here is a legal object or thing that is agreed upon, namely an achievement in the form of effort or maximum effort to take action to cure a disease known as *inspanningverbintenis*. In article 1234 of the Civil Code it is stated that the form of achievement is giving something, doing something, and not doing something. The achievements given by medical personnel do not promise results as stated in article 61 of Law no. 36 of 2014.

"In carrying out practice, health workers who provide direct services to recipients of health services must make their best efforts for the benefit of recipients of health services without promising results."

A cause that is not forbidden. A cause that is not prohibited here is that the object being agreed is a thing or things that are permissible or not against the law, such as abortion, changing the face by carrying out cosmetic surgery to avoid police arrest.

Based on the 4 terms of the agreement mentioned above, if the medical staff obtains a patient's statement that is dishonest about their complaint at the beginning of the agreement, the medical staff will not be trapped in unwarranted and premature suspicions during the session to convey information regarding physical examination, diagnosis, medical treatment options and prognosis.

Research by Epstein et al. (2015) concluded that the most common causes of legal

problems in head-neck, mouth, and oropharyngeal/head and neck cancer (HNC) cancer in America were due to failure of medical personnel to diagnose or due to delayed diagnosis as much as 56% came from dental practice and 54% came from medical practice. These legal issues were influenced by the completeness and accuracy of the patient's medical history and medical records that were inadequate, incomplete or had changed. So that medical personnel can make therapeutic errors, mistakes in identifying differential diagnoses, late referral to other medical personnel who are more competent and the worst can result in the patient's death.

Medical personnel who do not carry out their profession civilly can be sued that the person concerned has defaulted (Article 1239 of the Civil Code). And article 1243 of the Civil Code.

Bearing in mind the doctrine of the relationship between medical personnel and patients which has led to a proper contractual relationship as a democratic and equal partner, since the beginning medical personnel have acknowledged the needs and preferences of patients by encouraging patients to express opinions and support their greater involvement; listen, reflect and offer collaboration. If the patient provides dishonest, complete and accurate information in accordance with his abilities and knowledge about his health problems since the beginning of the agreement, then the elements of the agreement are not fulfilled so that according to Indonesian civil law article 1321 of the Civil Code, the agreement is deemed to have no power and is considered invalid because there is an element of fraud and oversight. Oversight can be due to misunderstanding and misrepresentation, causing different interpretations or one party misinterpreting.

Negligence of medical personnel caused by patient error, where the patient is considered to be guilty is called "Contributory Negligence". Medical personnel can be released from responsibility if there is a loss resulting from an incorrect diagnosis. if the patient and his family are proven to have provided dishonest information at the medical examination.

Engagement by Law

Engagement because a legal obligation has been violated is an unlawful act according to article 1365 of the Civil Code. The 4 elements of unlawful acts, namely; there is an act, the act is against the law, there is an error on the part of the perpetrator, there is a loss for the victim and there is a causal relationship between the act and the loss.

There is an action. Medical personnel who receive dishonest information from patients can be subject to illegal acts if they work not in accordance with professional standards and standard operating procedures which are legal obligations mandated to medical personnel contained in article 51 letter a of Law no. 29 of 2004.

This act is against the law. The act of a patient giving dishonest information is an illegal act because it violates the applicable law, namely article 53 letter a of Law No. 29 of 2004, violates the rights of medical personnel guaranteed by law, in article 50 letter c of Law no. 29 of 2004, violating decency has been recognized as an unwritten law in society and contrary to good attitudes in society to pay attention to the interests of others.

There was an error on the part of the offender. Medical personnel can be held responsible for their mistakes in the event that a patient gives dishonest information if a) there is an intentional element that causes harm to the patient; b) element of negligence. due to negligence of medical personnel, the patient must be able to prove the following 4 elements; (1) There is an obligation for medical personnel to patients; (2) Medical personnel have violated the standards of medical services that are commonly used; (3) The patient has suffered a loss for which compensation is requested; (4) The loss was caused by substandard actions.

medical personnel must also prove that the patient also played a role in the occurrence of contributory negligence. The principle of the contributory negligence doctrine in giving compensation is "all or nothing", by prohibiting giving compensation to victims who are considered guilty. The moral message of this doctrine is that a patient (in this case the "victim") must protect himself from acting carelessly and being negligent towards

himself. ; c) there is no justification or excuse (rechtvaardigingsgrond)

Losses due to unlawful acts in addition to material losses, also recognize the concept of immaterial losses which will be valued in money. Immaterial losses in the practice of judicial activism are assessed based on the position and condition of the victim and the wealth of the party committing the unlawful act (Ferejohn & Kramer, 2002). Losses to patients due to mistakes deemed to have been made by medical staff are the responsibility of the hospital if the medical personnel work under them as written in article 1367 of the Civil Code. What is known as the respondeat superior doctrine or also known as the "employer-labour relations theory", where the application of this doctrine has two main objectives, namely; (1) There is a guarantee that compensation is made to patients who suffer losses as a result of the medical actions of medical personnel; (2) Law and justice require prudence from medical personnel.

There is a causal relationship between actions and losses. The requirement for a causal relationship between the act and the loss is one of the essential elements in an unlawful act. Medical personnel are not the only cause of losses because patients participate in contributing to the mistakes made by medical personnel by giving dishonest statements (contributory negligence).

According to Susan O'Neal, there are three forms of contributory negligence, namely; (1) A patient's refusal to follow a physician's instructions; (2) A patient's failure to return for follow up (the patient neglects to return for a scheduled follow-up examination or the patient neglects to carry out routine controls according to the schedule set by the doctor); (3) A patient's failure to convey accurate information to the physician (the patient neglects to convey accurate information to the doctor) (Zaeni, 2017).

Medical personnel can be exempt from claims for damages if they can prove the patient that the mistake he made was the patient's will (Fauzi et al., 2018).

Remove the Alliance

The loss of an engagement relationship between medical personnel and a patient if the

patient provides dishonest information according to Article 1381 of the Civil Code can occur due to the following: a) payment; b) cancellation and cancellation; c) a condition is void; d) overdue.

Payment If an engagement has been paid in full as agreed, then the engagement will automatically be deleted. Medical personnel have made achievements in the form of business in accordance with professional standards and standard operating procedures according to the patient's medical needs.

Cancellations and cancellations Patients who provide dishonest information to medical personnel result in invalid agreements because they contain defects of will where agreement is a mandatory element for the formation of an agreement (subjective requirements) motivated by oversight (dwaling), coercion (dwang) or fraud (bedrog) (article 1321 of the Civil Code) can be canceled as stated in article 1449 of the Civil Code, and agreements can be requested for cancellation in court (article 1328 of the Civil Code).

A condition void. A void condition according to Article 1265 of the Civil Code is a condition which if fulfilled will abolish the agreement and bring everything back to its original state, as if there had never been an agreement. Patient obligations in Article 53 of Law no. 29 of 2004 is to provide complete and honest information about their health problems, comply with the advice and instructions of medical personnel, comply with the provisions that apply in health facilities, and provide compensation for services.

The therapeutic agreement can be erased because the patient violates this obligation, because the agreement of the parties who bind themselves as subjective conditions has been violated. So that medical personnel can stop their relationship with patients. For example termination and terminating a therapeutic agreement. The results of the author's interview with dr. Armalia, Sp.N, a neurologist, works at the Majene District Hospital and has ASN status. according to dr. Armalia, as a neurologist, the patient's information at the time of anamnesis is very subjective, for example a patient with a diagnosis of grade 1 lumbar HNP who comes with complaints of severe pain, about feeling

pain, which according to the patient is very high cannot be said that the patient is lying because the feeling of pain is very subjective .

However, through his physical examination, the doctor stated that the patient's illness was still of a low degree. Through communication and discussion with patients and their families to equate the pain point of view as what the patient is suffering from, the doctor also proposes a diagnosis and provides therapy. After several therapy visits, the patient feels that the pain is still being felt and the doctor has tried according to his abilities but the patient is not satisfied with the doctor's treatment and the doctor advises the patient to go to another doctor with more complete facilities.

Past time. Past time as a reason to be released from obligations. Article 1967 of the Civil Code states that the lapse of an engagement is 30 years. Whereas the agreement between medical personnel and the hospital as the employer of medical personnel and the patient as legal certainty is declared expired if it has passed 25 (twenty five) years since the date of the patient's last visit according to Article 39 paragraph (1) Regulation of the Minister of Health of the Republic of Indonesia Number 24 Year 2022 Regarding Medical Records.

Legal Protection for Medical Personnel From Dishonest Patient Statements

Article 1 paragraph 3 of the 1945 Constitution still states that Indonesia is a state based on law. According to Arief Hidayat, the concept of a legal state of Indonesia has characteristics based on the spirit and soul of the Indonesian nation (volkgeist), namely Pancasila. The characteristics are First, it is a family country that recognizes individual rights (including property rights) or human rights (HAM) and continues to prioritize national interests (common interests) over individual interests. Second, it is a legal and just country. Third, is a religious nation state. A concept of a godly state. Fourth, integrating law as a means of changing society and law as a mirror of society's culture to maintain and reflect the values that live in society (living law) while at the same time positivizing the living law which then encourages and directs society to development and progress in accordance with the principles - Pancasila principles. Fifth,

neutral and universal legal principles as the basis for making and forming national laws must meet the main requirements, namely Pancasila.

Social change is directly proportional to changes in the needs of community members, changes in the values that exist in society, changes in the power sharing system, changes in economic and social structures and changes in social stratification. These changes are a call for the law to intervene in it.

Patients' trust in medical personnel is starting to be influenced by the development of the internet which makes it easier for patients to access information (Holden, 2012). According to Ahluwalia et al's research, the opinion of the medical staff participants as a result of information coming from the internet about health was "For me that was the irritation, that the patient had far more trust in the computer and what they found on the web than in what I was trying to explain." Patients believe more in the information they get on the internet than medical personnel's information and for medical personnel this is a nuisance. It is said to be a distraction because it has an impact on patients to carry out self-diagnosis and is an obstacle to the relationship between medical personnel and patients.

Another fact in the world of health services in Indonesia, is still focused on curative efforts. The triple burden of various disease problems currently being faced by the country are: 1) The existence of New Emerging and Re-Emerging Infectious Diseases such as Covid-19. 2) Communicable Diseases have not been handled properly and 3) Non-Communicable Diseases (PTM) tend to increase every year.

Trust, mutual respect, and communication are the essence of the relationship between medical personnel and patients. The phenomenon that there are still many patients who do not disclose their actual health condition can lead medical personnel to a delayed diagnosis or an incorrect diagnosis and has the potential to contract infectious diseases from the patient if the patient suffers from infectious diseases.

The author takes inventory of several regulations governing the relationship between medical personnel and patients as legal

subjects as rules relating to providing honest information from the patient, as follows:

Law No. 8 of 1999 concerning Consumer Protection

The patient's obligation as a consumer here is stated in article 5 letter b which reads:

"good faith in conducting transactions for the purchase of goods and/or services"

Business actors have the same obligations in transactions as stated in Article 7 letter a:

"good faith in carrying out its business activities"

Each party in business activities has an obligation to act in good faith. Good faith is also known as good faith in English and bona fide in Roman. Good faith in transaction activities has long been the spirit of transactions. Bona fides in Roman law is a standard measure of behavior expected of a rational person, especially in contracting and certain actions, without the intention of deceit or revenge (the standard of conduct expected of a reasonable person, esp. in making contracts and similar actions; acting without fraudulent intent or malice).

Law No. 29 of 2004 concerning Medical Practice

The rights of medical personnel and patient obligations are also embedded in this law, namely in Article 50 letter c and article 53 letter a with the interpretation that an agreement must be based on good faith.

Right thinking according to Theo Hujibers, right in a broad sense is an invitation, a call from a sense of generosity, mercy. While rights in the narrow sense are absolute demands that cannot be contested.

The obligation to provide complete and honest information about their health problems is a form of order from the state that must be implemented by patients and their families (Schulze & Angermeyer, 2003). The word 'obligation' here is something that must be done, it cannot be neglected or abandoned. Thus the patient also has a responsibility as a consequence of his obligations. Responsibility also arises because someone violates obligations or does not fulfill rights.

Liability is a contractual burden. The real obligation is a burden, which is given by law to legal subjects.

In line with Franz Magnis-Suseno's thought that something has become a person's right if someone can demand that something that is his right be given to him and it is the obligation of another person to provide what is demanded by him.

There are rights and obligations written in these articles regarding the right to medical personnel and the patient's obligation to provide complete and honest information about their health problems, such as a pattern of relationship between medical personnel and patients desired by the state.

The pattern of the relationship is; Guidance-Coperation Relations. This relationship pattern describes the patient in a sick state, in a state of indecision and distress, but the patient still has the ability to communicate with the doctor regarding the best course of action for him.

Mutual Participation Relations. This relationship pattern illustrates that the patient has the same position as the doctor. Patients talk more about the background of their illness because the patient has experienced the disease for a long time and medical personnel give more opportunities for the patient to tell about the actual situation he is feeling so that an appropriate action can be given.

This publication provides a strong legal basis for the relationship between medical staff and patients that is oriented towards cooperative guidance. This law tends to view medical personnel as professional service providers because they provide space and opportunities for patients to make complaints to MKDI or file lawsuits with the court if they feel dissatisfied (article 63).

Guarantees for the protection of the human rights of medical personnel as Indonesian citizens and legal subjects in the laws governing medical personnel and patients have not been formulated. Pancasila as the foundation mentioned in article 2 does not produce many regulations in its articles that reflect the abstract concept of Pancasila, namely that law is neutral and universal; based on values that can be accepted by all interests and do not favor certain groups or classes;

prioritizing the principles of mutual cooperation and tolerance; as well as the existence of the same vision-mission, goals and the same orientation accompanied by mutual trust. Likewise the 1945 Constitution of the Republic of Indonesia as a higher basis according to the hierarchy of laws and regulations on:

article 28A;

"Every person has the right to live and has the right to defend his life and existence."

article 28D paragraph 1;

"Everyone has the right to recognition, guarantees, protection, and legal certainty that is just and equal treatment before the law."

and article 28D paragraph 2;

"Everyone has the right to work and receive fair and proper compensation and treatment in a work relationship".

Not a legal basis in the employment relationship in this medical practice. Even though the principle of justice is stated as a principle, in its explanation it is still not balanced, it is more burdensome to the patient, even though as a professional worker, a medical worker must always prioritize the interests of the patient.

Whereas in the 'remember' section it is stated that the legal basis used is article 21 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which reads:

"All citizens have the same position in law and government and are obliged to uphold that law and government without exception."

Justice demands that everyone is treated equally in the same situation and everyone has the right to legal protection and no one is above the law, which is the essence of law.

(a) UURI No.12 of 2011 in article 6 letter g states that the material content of laws and regulations must reflect the principle of justice, in its explanation, what is meant by the principle of justice is that each material content of laws and regulations must reflect proportional justice for every citizen. Proportion according to KBBi is in accordance with the proportion; comparable; balanced. However, in this law the intent of the principle of justice is that the implementation of medical

practice must be able to provide fair and equitable services to everyone at a cost that is affordable to the community and with quality service. Justice here does not formulate elements of medical personnel only patients as subjects, the object of justice for patients is the cost and quality of service.

(b) The explanatory chapter is an authentic official interpretation of the formation of laws and regulations which helps to find out the intent and background of their formation.

(c) 4.3. Law No. 36 of 2014 concerning Health Workers

(d) The right of medical personnel as one of the health workers to obtain complete and correct information from recipients of health services or their families is stated in article 57 letter b.

(e) One of the legal bases is Article 28H paragraph 1 of the 1945 Constitution which states that everyone has the right to live in physical and spiritual prosperity, to have a good and healthy environment, and to receive health services. Incorporating Article 28H paragraph 1 as the legal basis for this law interprets the existence of guarantees for the protection of human rights for medical personnel.

Safety regarding the rights of medical personnel is mentioned in article 57 letter d, namely obtaining protection for occupational safety and health, treatment that is in accordance with human dignity, morals, decency, and religious values.

Medical personnel are workers or laborers. Workers' right to occupational safety and health (K3) has been guaranteed in Law Number 13 of 2003 concerning Manpower (Labor Law) in article 86. K3 as a basic right of workers in this law is the basis for the current arrangement of labor relations, and is an employer's obligation, K3 is an effort to provide safety guarantees and improve the health status of workers through the prevention of occupational accidents and diseases (PAK), control of hazards in the workplace, health promotion, treatment and rehabilitation.

PAK data for medical personnel in Indonesia has not been properly recorded. In Indonesia

(2010) it was reported that as many as 5,000 health workers were infected with Hepatitis B Virus (HBV) and 47 were positive for Human Immunodeficiency Virus (HIV). The latest data as of 20 February 2023 from the official website nakes.laporcovid19.org as many as 797 medical workers have died from Covid-19, 751 people are doctors and 46 people are dentists.

Law No. 44 of 2009 concerning Hospitals

This law is a legal instrument that regulates hospitals as a whole, aims to provide legal certainty and protection for patients, the community, and human resources in hospitals.

Hospital obligations in this law in article 29 letter s, which reads:

"protect and provide legal assistance to all hospital staff in carrying out their duties"

The legal responsibility of hospitals for medical personnel is stated in article 46 which reads:

"The hospital is legally responsible for all losses incurred due to negligence committed by health workers at the hospital."

Observing the words of the articles mentioned above, medical personnel as one of the health workers who work in hospitals have the following rights: (1) get protection and legal assistance in carrying out their duties in the hospital. (2) get help to pay for losses from the hospital as a result of negligence while carrying out their duties at the hospital.

Government Regulation No. 47 of 2021 concerning Implementation of the Hospital Sector

The patient's obligation in article 45 letter d is to provide honest, complete and accurate information according to their abilities and knowledge about their health problems (Tongue et al., 2005). The obligations in this article interpret that the patient must act in good faith in entering into a therapeutic agreement.

The hospital's obligation to medical personnel is stated in article 27 paragraph (1) letter s, namely to protect and provide legal assistance to all hospital staff in carrying out their duties. In article 52 this obligation is carried out in the following manner; (1) provide legal

consultation; (2) facilitate mediation and judicial proceedings; (3) provide legal advocacy; (4) provide assistance in medical dispute resolution.

Allocate a budget for funding legal proceedings and redress.

This Government Regulation is more explicit in explaining the forms/methods of hospitals providing protection and legal assistance to their workers.

Government Regulation of the Republic of Indonesia Number 82 of 2019

The reason for this government regulation in regulating the implementation of the Work Accident Benefit (JKK) and Death Benefit (JKM) programs is because work accidents are basically a risk that is the responsibility of the employer (employer) or professional rescue so that employers have the obligation to prevent accidents from occurring. work at his company. Thus, workers who are unable to work due to work accidents, must be guaranteed so that they will continue to obtain their rights as workers, such as if a work accident occurs as JKK and if the worker dies, which results in loss or reduced income in his family, then JKM is given to experts. worker heir.

JKK is given to workers who experience work accidents or work-related illnesses (PAK) where the disease is caused by work and/or the work environment. The type of PAK is stipulated through a presidential regulation.

Medical personnel, according to the government through this regulation, are workers who are in a low-risk work environment.

Through this regulation, the government wants all employers to provide protection in the form of financial guarantees for workers.

For medical personnel who work in the private sector or have the status of non-national civil servant employees (ASN), JKK and JKM are obtained by becoming participants in the Employment Social Security Administration Agency (BPJS) carried out by employers. As for medical personnel with ASN candidate status, ASN and Government Employees with Employment Agreements (PPPK), JKK and JKM are managed by PT Dana Tabungan and

Civil Servant Insurance (Persero) or PT TASPEN (PERSERO) in accordance with Government Regulation no. 70 of 2015 which has been amended by Government Regulation Number 66 of 2017 concerning amendments to Government Regulation Number 70 of 2015.

Regulation of the President of the Republic of Indonesia No.7 of 2019 concerning Occupational Diseases

The reason for the formation of this presidential regulation is to implement the provisions of article 48 paragraph (3) of Government Regulation Number 44 of 2015 concerning the Implementation of Work Accident and Death Insurance Programs.

This presidential regulation regulates the types of diseases that are diagnosed as diseases caused by work so that workers get JKK and JKM benefits.

According to the World Health Organization (WHO) and the International Labour Organization (ILO) the most common PAK in health workers is (World Health Organization, 2022); (1) Infectious diseases; tuberculosis, hepatitis B and C, HIV, respiratory infections (such as coronavirus, influenza virus) and vector-borne diseases (such as malaria, dengue); (2) Ergonomic diseases / disorders of skeletal muscles due to work; unsafe patient care, heavy lifting, back injuries, chronic back and neck pain, and musculoskeletal disorders; (3) Diseases caused by chemical factors; disinfecting and cleaning agents, latex allergies, drug poisoning, insecticidal agents for vector control; (4) Radiation exposure; Ionic radiation (X-rays and radionuclides) and non-ionizing radiation (laser, ultraviolet). ; (5) Psychosocial disorders; work pressure, lack of control over excessive tasks, climbing hours, shift work; (6) Violence and harassment; physical, sexual and psychological harassment in the workplace; (7) Environmental risks; working environment temperature (extreme temperature pressure, cold or heat) and noise; (8) Injury; Jumping, tripping and falling, traffic injuries (ambulance, motorcycle accidents), electric shock, explosion, fire; (9) Environmental health risks; unsanitary water, sanitary hygiene, waste risk.

Based on the aforementioned regulations, legal protection for medical personnel against the impact of carrying out their duties and obligations is in the form of preventive and repressive protection. The form of preventive protection is that the government or the state has regulated the rights and obligations of medical personnel-patients as a form of legal certainty for both medical personnel and patients, regulates the administration of medical practice so that medical needs and patient safety which are the goals of health services can be achieved.

The repressive protection is the protection of legal aid and compensation from the employer if there is negligence in carrying out their duties, regulating the occupational safety and health of medical personnel by providing guarantees in the form of JKK and JKM so that medical personnel still have the right to live and the right to defend their life and life if the physicians cannot carry out their duties again due to work risks. However, from all laws and regulations regarding hospitals, the obligation of hospitals as employers has not been formulated in writing to run an employment social security program for medical personnel as one of the government's social security programs for workers.

Social security for workers such as medical personnel is a legal protection given to medical personnel to be able to exercise their legal rights and interests as legal subjects. Social security for medical personnel has become very important considering that the problem of disease which is a burden on the government has not been resolved so that medical personnel as one of the health workers can carry out their duties properly.

The form of employment social security according to Government Regulation in Lieu of Law of the Republic of Indonesia No. 2 of 2022 concerning Job Creation in article 83 which amended article 6 paragraph (2) of Law No. 24 of 2011 concerning the Social Security Administrative Body where social security for workers can be in the form of the following; (1) accident insurance; (2) pension plan; (3) pension guarantee; (4) life insurance; (5) job loss insurance.

The results of the author's interview with contracted medical staff show that the

employment agreement (MoU) does not include social security, only legal assistance guarantees during their working period. Interview with dr. Rizky Maulyda, a general practitioner who worked as an emergency room doctor at Majene Regency Hospital for 1 year and had worked at a Hospital in Jenepono Regency for 3 years said; "As a contract doctor, what is stated in the MoU is that the hospital guarantees the doctor's rights in the form of remuneration and providing legal protection while on duty at the hospital."

In line with Soekanto's thoughts on the concept of protection that the implementation of protection for medical personnel from dishonest patient information is influenced by five factors, namely:

Statutory Factors

laws and regulations that provide legal certainty regarding the protection of medical personnel while carrying out their duties in health services have been made by the government as the authority. These laws and regulations are guidelines/measurements that must be complied with by medical personnel/hospitals and patients.

The substance of regulations which are formulated through terms, words or phrases often give rise to different interpretations among legal persons, so that sometimes an explanation is required as an official interpretation. Like some of the laws and regulations above.

Legal certainty in written regulations is easier for someone to find, read and ascertain how the law is than unwritten regulations.

Law Enforcement Factors

Law enforcers as parties involved in law enforcement play a very important role in the realization of legal certainty in laws and regulations. Factors of facilities or facilities that support law enforcement such as the availability of skilled human resources both in terms of communication and knowledge, as well as adequate medical equipment in accordance with the needs of medical personnel to support their medical services. The completeness and accuracy of the patient's

medical history through the recording of medical records must also be adequate and complete.

Community Factors

Acceptance and understanding of patients and their families regarding their rights and obligations while receiving health services from the hospital must be known by patients and their families to prevent giving dishonest information about their health conditions. Society's acceptance of applicable laws is the key to peace.

Cultural Factors

Indonesia consists of various tribes with different languages and customs. Communication during interviews with ethnic backgrounds, different education can affect the understanding of both parties, medical personnel and patients. Coupled with the very fast and open flow of information on the internet and the development of social media applications such as Facebook, Tik Tok, Instagram, Twitter which influence people's thinking patterns about their illness.

4. Conclusion

Legal protection of medical personnel from dishonest patient information has been regulated in laws and regulations as a form of legal certainty. However, there is a phenomenon that the government is still faced with the burden of unresolved health problems, "triple burden" and cultural shifts in the form of patient mindsets that tend to be critical due to technological developments. To compensate for this, the government should make regulations that require employers or hospitals to provide social security for medical personnel as a manifestation of human rights, the right to defend their lives and lives so that medical personnel get certainty, justice and benefits from the regulation.

References

- Achmad Ali, S. H., & Wiwie Heryani, S. H. (2015). *Menjelajahi Kajian Empiris*. Prenada Media.
- Agus Yudha Hernoko, *Karakteristik Hubungan Hukum antara Tenaga Kesehatan dengan Pasien (Prespektif hubungan hukum rumah sakit- dokter-pasien)*, Disampaikan

Pada Kegiatan Kongres Nasional Ke-5 Masyarakat Hukum Kesehatan Indonesia (KONAS V MHKI) dengan Tema; "Penguatan Hukum Kesehatan Dalam Mewujudkan Pelayanan Kesehatan Yang Bermutu Serta Penegakan Hukum Yang Adil dan Bermartabat", pada tanggal 2-4 Desember 2021 di Surabaya.

- Arief Hidayat, *Negara Hukum Berwatak Pancasila*, https://www.mkri.id/public/content/infoumum/artikel/pdf/artikel_15_03_arief_hidayat.pdf.
- Astuti, N. K. (2016). Analisa Yuridis Tentang Perjanjian Dinyatakan Batal Demi Hukum. *to-ra*, 2(1), 279-286.
- Epstein *et al*, 2015, "Head And Neck, Oral, And Oropharyngeal Cancer: A Review Of Medicolegal Cases", *Oral Surgery, Oral Medicine, Oral Pathology, Oral Radiology, and Endodontology*, Vol. 119 No. 2.
- Fauzi, A., Sampurno, S., & Arsunan, A. (2018). Criminal Law Accountability In Giving Certificate Of Disease Issued By Doctor To Patient. *Journal Of Humanities And Social Science*, 2279-0845.
- Ferejohn, J. A., & Kramer, L. D. (2002). Independent judges, dependent judiciary: Institutionalizing judicial restraint. *NYuL REv.*, 77, 962.
- ILO, WHO, *Caring For Those Who Care Guide For The Development And Implementation Of Occupational Health And Safety Programmes For Health Workers*, World Health Organization and International Labour Organization, 2022.
- Gómez-Zúñiga, B., Pulido Moyano, R., Pousada Fernández, M., García Oliva, A., & Armayones Ruiz, M. (2019). The experience of parents of children with rare diseases when communicating with healthcare professionals: towards an integrative theory of trust. *Orphanet journal of rare diseases*, 14, 1-14.

- Holden, R. J. (2012). Social and personal normative influences on healthcare professionals to use information technology: towards a more robust social ergonomics. *Theoretical Issues in Ergonomics Science*, 13(5), 546-569.
- Kementerian Kesehatan RI Dirjen Kesehatan Masyarakat, *Masalah Dan Tantangan Kesehatan Indonesia Saat Ini*, Diunduh Pada: <https://kesmas.kemkes.go.id/konten/133/0/masalah-dan-tantangan-kesehatan-indonesia-saat-ini>
- Lipkin Jr, M., Quill, T. E., & Napodano, R. J. (1984). The medical interview: a core curriculum for residencies in internal medicine. *Annals of internal medicine*, 100(2), 277-284.
- Roter, D., & Hall, J. A. (2006). *Doctors talking with patients/patients talking with doctors: improving communication in medical visits*. Greenwood Publishing Group.
- Sabir Alwy., & Afdhal. (2019). *Perjanjian Terapeutik Sebagai Dasar Bagi Dokter Dalam Melakukan Penanganan Medis*. *Jurnal Akta Yudisia Vol. 4 No. 1*, hal. 7.
- Schulze, B., & Angermeyer, M. C. (2003). Subjective experiences of stigma. A focus group study of schizophrenic patients, their relatives and mental health professionals. *Social science & medicine*, 56(2), 299-312.
- Tongue, J. R., Epps, H. R., & Forese, L. L. (2005). Communication skills for patient-centered care: research-based, easily learned techniques for medical interviews that benefit orthopaedic surgeons and their patients. *JBJS*, 87(3), 652-658.
- World Health Organization. (2022). Caring for those who care: guide for the development and implementation of occupational health and safety programmes for health workers. In *Caring for those who care: guide for the development and implementation of occupational health and safety programmes for health workers*.
- Zaeni A. (2017). *Aspek-aspek Hukum Kesehatan di Indonesia*, PT Raja Grafindo, Depok, 2017, hal. 54.