Legal Protection for Doctors Against Medical Actions in Emergency Situation for Reasons of Informed Consent

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ABSTRACT. In an emergency, doctors must act quickly, precisely and with quality to help patiens in order to save their lives from death or disability. The study aims to analyze informed consent in an emergency and legal protection for doctors who perform medical procedures in emergencies and who do not provide medical information after the medial action has been carried out based the Agreement and Health Law. From the results of this study, it was found that the patient must sign the informed consent given before the medical action is carried out. However, after the medical action is carried out, the doctor is required to provide information regarding the action taken on the patient based on Article 4 PERMENKES Number 290/MENKES/PER/III/2008 concerning Approval of Medical Treatment and Article 17 KODEKI. In addition, doctors get legal protection related to medical action in emergencies based on Law Number 29 of 2004 concerning Medical Practice as long as the doctor carried out his dutied in accordance with applicable professional standard operating procedures. In this case, if the doctor performs a medical action in an emergency that is not accordance with applicable professional standard operating procedures, such as not providing information on actions taken after the patient is conscious or a patiens family arrives, the doctor is personaly responsible, but if the doctor works at hone if the hospital is based on the theory of central responsibility or centralized responsibility by the hospital, then the hospital is responsible.

Keywords: Please Legal Protection, Doctor, Medical Treatment, Informed Consent

1 Introduction

Doctors are health service providers and quality health services to the community. Doctors have to act quickly, precisely, and with quality to help patients in emergencies in order to save their lives from death or disability. This study aims to analyze informed consent in an emergency and legal protection for doctors who perform medical procedures in emergencies and who do not provide medical information after performing the medical procedure based on the Agreement, Civil and Health Laws.

Generally, the doctor-patient relationship is inspanning verbintenis, namely an agreement to make maximum effort and hard work (met zorg en inspanning). As it is

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in the form of efforts, the results are uncertain. Other medical agreements include resultaatsverbintenis, namely an agreement between a doctor and a patient based on the working results. Besides inspanningverbintenis and resultatverbintenis, there is an agreement which is a form of both. (1) One day, there is an incident in the hospital that cannot be avoided and requires immediate assistance, such as an emergency. In an emergency, the doctor directly treats the patient without having to make an appointment first. Referring to the Civil Law, what the doctor did was Zaakwarneming, namely someone's voluntary actions without coercion for the benefits and interests of the people being cared of, not for the doctor's interes.

1.1 **Background**

The doctor-patient relationship regarding rights and obligations is stated in informed consent. Health Law includes 2 (two) basic human rights, namely social rights and individual rights. (3) The entitlement to healthcare services is a notable social right, wherein every individual possesses the prerogative to obtain access to attain a sufficient level of living conditions conducive to their health and overall welfare. The preeminent individual entitlement is the right to self-determination. The right of self-determination is enshrined in Article 1 of the International Covenant on Civil and Political Rights (ICCPR), which asserts that all individuals possess this entitlement. Furthermore, Article 7 of the ICCPR explicitly prohibits the infliction of torture or any kind of cruel, barbaric, or degrading treatment or punishment upon any individual. Specifically, individuals should not be exposed to medical or scientific experiments without their voluntary consent. Then, the contents of the article become the basis and urgency of creating informed consent as a fulfillment of legal certainty and legal protection.

The right to self-determination becomes the basis for the formation of other individual rights which are used as the foundation of the relationship between doctors and patients contained in informed consent, namely the right to self-determination and the right to information. Informed consent includes two individual rights stated earlier. Informed consent is based on the patient's right to information which means that an adult and reasonable patient has the right to know medical information whether requested or not, and health workers, namely doctors have to convey the information. In this case, doctors have to inform the diagnosis, (4) the therapy to be carried out with the procedure, the doctor's experience in carrying out the procedure, the possible risks both physically and behaviorally, and the benefits or prognosis. (5)

Information on therapeutic transactions is mandatory as it can be used as a basis for approval or refusal of medical procedures and as a protection for the patient's right to self-determination. Besides, informed consent covers the right of self-determination, namely after knowing information related to procedures, diagnoses, prognosis, and other information related to the therapy to be carried out, the patient can determine whether to approve or refuse the procedure without coercion.

If the patient has approved it, then the therapy or medical action can be carried out in accordance with the explanations, information, and procedures that have been

agreed upon. On the other hand, if the patient refuses, even though the therapy must be carried out for the sake of the patient's recovery, the doctor must respect the patient's choice. This refusal of medical action by the patient is called informed refusal. Informed consent for medical procedures can be verbal or written. Informed consent has 2 (two) forms, namely express consent and implied or tacit consent. (6)

The express consent is divided into 2 (two), namely verbal consent in which Article 3 paragraph (2) of the Regulation of the Minister of Health of the Republic of Indonesia Number 290/MENKES/PER/III/2008 on Informed Consent states that the medicine that does not contain high risks can be given with oral consent. Then, written consent is written and signed on a special form containing a statement that the patient agrees to have a high-risk medical action after receiving certain explanations and information regarding the medical action from the doctor or health worker.

Besides, the implied or tacit consent is also divided into 2 (two). The first is consent in ordinary or normal circumstances in which the health worker or doctor does not explain all the stages in detail but only explains the purpose such as for medical action that is almost always done like installing an infusion. Then, the second is consent in an emergency in which sometimes the patient is unconscious and if action is not taken immediately, it will have bad impacts. In this case, the action is to prevent permanent disability or commonly called live saving.

Among the various types of informed consent previously discussed, it can be argued that informed consent has emerged as a significant issue within the doctor-patient relationship when engaging in therapeutic transactions. Informed consent serves multiple purposes within the medical field. Firstly, it serves as evidentiary support for the establishment of a legal relationship between doctors and patients. Additionally, it provides initial instructions pertaining to the contents of the medical action agreement, which patients have approved. Furthermore, informed consent can be utilized as a means of assessing the presence or absence of legal violations, disciplinary infractions, or ethical transgressions within the realm of medical practice. Besides, informed consent can be used as a foundation for doctors' medical actions according to professional standards and can provide protection for both parties from possible medical risk disputes. Based on the civil aspect perspective, the provisions regarding agreement and civil liability in therapeutic transactions have a close relationship with the implementation of informed consent.

The establishment of informed consent necessitates adherence to Article 1320 of the Civil Code, which outlines four essential conditions for a legally binding agreement. These conditions include the mutual agreement between the involved parties, the legal capacity of the parties to enter into an agreement, the presence of a specific subject matter that is agreed upon, and the existence of a lawful reason for the agreement [6]. They apply in informed consent for the therapeutic transaction and can be canceled or deemed not to have an agreement. Civil law has 2 (two) forms of agreements, namely resultaatverbitenis (an agreement based on working results) and inspanningsverbitenis (an agreement based on maximum efforts).

Contracts or therapeutic transactions are included in an inspanningsverbitenis in which the medical action efforts do not demand results but the actions must be in

accordance with standard operating procedures and patient needs. The medical action can also be in the form of efforts to treat or prevent disease and maintain or restore health which do not demand results but the effort must comply with health service standards. Even though the inspanningsverbitenis has underlined that the agreement is based on efforts and the doctor or health workers carrying out maximum efforts to perform medical actions, the patient can still ask for legal responsibility if there is a loss that arises as the doctor or health worker does not carry out the medical action according to approved medical procedures, does not provide comprehensive information, and negligence or malpractice. In filing a lawsuit related to medical disputes, patients can also submit informed consent as the evidence in the trial where the informed consent can prove the existence of a relationship that contains the rights and obligations of both patients and doctors in carrying out approved therapeutic transactions.

a. Informed Consent Arrangement in Legislation.

In accordance with Law Number 29 of 2004 on Medical Practice, specifically Article 45 Paragraph (3), the aforementioned provision stipulates that the explanation mentioned in Paragraph (2) must encompass the following aspects: a) diagnosis and procedures for medical intervention; b) the objective of the medical intervention conducted; c) alternative courses of action and associated risks; d) potential risks and complications; and e) prognosis of the undertaken actions.

Meanwhile, Article 52 of the legislation states that patients are entitled to certain rights when receiving medical services. These rights include: a) receiving a comprehensive explanation of the medical procedure as outlined in Article 45, paragraph (3); b) seeking the opinion of another medical professional; c) receiving services that align with their medical needs; d) refusing medical procedures; and e) accessing the contents of their medical records.

Furthermore, the argument is reinforced by the Minister of Health Decree No. 290/MENKES/PER/III/2008 about Informed Consent, namely in Article 7, Paragraph 1, Article 7, Paragraph 3, Article 8, Paragraph 3, and Paragraph 4. According to Article 12 of the Indonesian Code of Medical Ethics (KODEKI), doctors are required to consider all dimensions of health services (including promotive, preventive, curative, rehabilitative, and palliative aspects) as well as the physical and psychosocial-cultural well-being of their patients. Additionally, doctors are expected to fulfill the role of an authentic educator and servant to society while performing their professional duties.

Referring to Article 1320 of the Civil Code, informed consent is a special agreement between doctors and patients containing information on the rights and obligations between doctors or health workers and patients in carrying out therapeutic transactions. This agreement prioritizes the role of doctors to make maximum efforts in carrying out medical actions.

b. Problems in the Implementation of Informed Consent.

In practice, information on medical risks before medical action is not fully carried out or not sufficiently explained for various reasons so that the patient or the family does

not understand about medical action. Indeed, information on medical risks before medical action is carried out is important for both the patient and the family in order to know and prepare for unwanted things that possibly occur. This is one of the procedures that must be carried out by a doctor for the patient or the family.

One example case is the alleged malpractice case of Dr. Dewa Ayu Sasiary Prawani, dr. Hendry Simanjuntak, and dr. Hendy Siagian. On April 10, 2010, a medical procedure in the form of a Cito C-Section was carried out on a patient named Siska Makatey in the operating room at General Hospital of Prof. Dr. R. D. Kandouw Malalayang Manado City. The operation was performed by Dr. Dewa Ayu Sasiary Prawani the person in charge, dr. Hendry Simanjuntak, and dr. Hendy Siagian without informed consent for emergency patients.

It is interesting to analyze the gap in medical practice in which doctors have an ethical and juridical obligation to provide honest, accurate, and complete information about medical risks to patients before taking medical action. This aims to help patients in making the right decisions and take responsibility for the medical actions that will be carried out. However, in practice, informed consent in an emergency must be done as soon as possible.

c. Formulation of the Problem

Based on the description above, the problems in this study are:

1. What is informed consent in an emergency?
2. What is the legal protection for doctors who perform medical procedures in emergencies and do not provide information on medical procedures after performing the medical procedures referring to Agreement, Civil and Health Laws?

2 Methods

This study focuses on conducting normative legal research to analyze the laws and regulations that pertain to a certain legal matter. Normative research, also known as doctrinal research, primarily focuses on the examination of legal and regulatory texts, as well as library items. Library research involves the examination and analysis of secondary data sources. This study employed a combination of primary and secondary legal materials. Primary legal documents refer to legally binding resources, including laws and regulations that are directly applicable to a particular jurisdiction or legal system. Secondary legal materials encompass several sources that elucidate primary legal texts, including books, research findings, and scientific publications. The data were subjected to analysis using the deductive logic technique, which involves the systematic application of deductive reasoning to legal documents. This approach entails starting with a broad premise and subsequently deriving a more specific conclusion based on it.

3 Discussion

This section discusses the problems in this study, namely informed consent in an emergency and legal protection for doctors who perform medical procedures in an emergency who do not provide information on medical action after performing the medical procedure referring to Agreement, Civil and Health Laws.

3.1 Informed Consent in Emergencies

The case regarding informed consent in Indonesia in 1986 was between Muhidin vs Dr. Gusti Muhamad Husaeni at the Sukabumi District Court. In this case, Muhidin felt disadvantaged because Dr. Gusti performed a medical procedure in the form of an operation to remove his right eyeball. Muhidin signed a letter which he later found out was an informed consent. Besides not knowing the letter that he signed, Muhidin did not receive sufficient information about the medical procedure that would be performed. The operation caused the loss of his right eyeball. If he had known it, he would not have agreed to it.

Based on the Muhidin case, there is a need for regulation and the mandatory implementation of informed consent in medical practice in Indonesia. The Executive Board of the Indonesian Medical Association (PB IDI) immediately responded and issued fatwa No. 319/PB/A.$/88 concerning informed consent which contains guidelines for doctors to carry out informed consent in medical practice, although there were no legal provisions governing informed consent at that time.

After the issuance of the fatwa regarding informed consent, in 1989 the Minister of Health made regulations regarding informed consent, namely the Minister of Health Regulation Number 585/Men.Kes/Per/IX/1989 concerning Informed Consent. This regulation has been updated in 2008 and replaced with the Minister of Health Regulation Number 290/Menkes/Per/III/2008 concerning Informed Consent. Besides, informed consent is regulated by higher regulations, namely in the Medical Practice Act.

According to the legislation, it is mandated that before to administering any medical or dental procedure, healthcare professionals such as doctors and dentists must obtain informed permission from the patient. The patient has the ability to provide informed consent subsequent to receiving a comprehensive explanation. In accordance with Article 56, paragraph (1) of the Health Act, the concept of informed consent is addressed. This provision establishes that individuals possess the entitlement to either accept or decline certain or all forms of assistance that are to be provided to them, subsequent to their reception and comprehension of comprehensive information pertaining to the proposed action.

The regulation of informed consent and medical actions in hospitals is outlined in Article 37 of the Hospital Act. This article stipulates that every medical procedure conducted inside a hospital setting must seek the approval of the patient or their family. Furthermore, the consent for such medical activities must adhere to the relevant legislation in place. In the event of a medical emergency, the possibility of obtaining

informed consent may be precluded. In a broad sense, crises can be characterized as events that come suddenly and unexpectedly, presenting unforeseen circumstances or conditions. These may involve confusing contingencies or complications, necessitating immediate action due to pressing urgency or exigency.

In accordance with Article 1.2 of Law Number 44 of 2009 pertaining to Hospitals, it is defined that a "emergency" refers to a medical situation wherein a patient's clinical condition necessitates prompt medical intervention in order to preserve life and mitigate the risk of additional impairment. According to Article 11 of Minister of Health Regulation No. 585/1989, in situations when a patient is asleep or lacks consciousness and is unaccompanied by their immediate family, and there exists a medical emergency necessitating urgent medical intervention, the requirement for informed consent from any individual is waived. This means that to save the life of a patient who is unconscious and there is no more time to wait and contact his family members, the doctor is authorized to immediately and directly carry out the medical procedure needed. There is no need to delay the procedure just to wait for the consent. Even if the doctor does not immediately perform the medical procedure needed, the doctor can be sued based on negligence or, if it results in the death of the patient.

3.2 Legal protection for doctors who carry out medical procedures in emergencies that do not provide information on medical procedures after performing the medical procedures based on Agreement, Civil and Health Laws

The word default comes from the Dutch "wanprestatie" which means not fulfilling the predetermined obligations, both those arising from agreements and laws. If the agreement is violated, the party that violates it is called default. Default is the debtor's negligence in fulfilling his obligations in accordance with the agreement that has been agreed upon. Default can be divided into four types (9): a. Not doing what one is promised to do; for example, someone who promises to do the work within 2 days but it is not finished; b. Carrying out what was promised, but not as promised; for example someone making a sale and purchase agreement for fruits and the promised is mangos but the fruit provided is mangosteen; c. Doing what he promised but was too late; someone who promised to make a payment on the 10th of this month, but only made it on the 10th of the following month; and d. Doing something according which is not allowed to do according to the agreement.

To find out whether there is a default or not can be done by agreeing not to do something. If someone commits an act which is not allowed in the agreement, then that person has committed a breach of contract.

In the case of a Cito C-Section on Siska Makatey in the operating room at General Hospital of Prof. Dr. R. D. Kandouw Malalayang Manado City, the operation was performed by Dr. Dewa Ayu Sasiary Prawani as the person in charge, dr. Hendry Simanjuntak, and dr. Hendy Siagian without informed consent for emergency patients. There is no agreement. No default occurs due to the negligence of a debtor or creditor, so this default has no relation to this case.

Unlawful Acts on Medical Actions by Doctors

Based on the description of the case above, the determination of whether there is an unlawful act or not is based on the existing theory, namely:

a. Unlawful Accs on Medical Actions by Doctors

The commencement of an illegal action is initiated by the perpetrator's conduct. In this particular instance, the term "act" refers to the action of engaging in a certain activity (in an active capacity) or refraining from engaging in that activity (in a passive capacity). For instance, it encompasses instances where an individual fails to fulfill a legal obligation despite being legally bound to do so, as dictated by the relevant legislation (such as obligations originating from a contractual agreement). Hence, in the context of an illegal action, the concepts of "consent" and "legitimate justification" as stipulated in the agreement are absent. The element of action or daad in an unlawful act has two meanings. The first is daad or deed in the active sense, namely "doing something". The second is in the passive sense, namely "not doing something" or "not doing what should be done."(10)

In this case, dr. Dewa Sari Ayu Sasiary P., dr. Hendry Simanjuntak, and dr. Hendy Siagian jointly performed a Cito C-Section on Siska Makatey. Dr. Sari Ayu Sasiary P was the operator who cuts and sews to make it easier for the operator to carry out the operation, dr. Hendry Simanjuntak was the assistant operator 1 (one) and Dr. Hendry Siagian was the assistant operator 2 (two). They did do an active unlawful act, namely carrying out an operation on the victim, so that the element of this unlawful act was fulfilled.

The Existence of Unlawful Acts

Actions committed must be against the law. Referring to Article 1365 of the Civil Code, the element against the law is broad because it is formulated and includes violation of the subjective rights of other people, violates the legal obligations of the perpetrator or is contrary to decency, or contrary to propriety in social relations.(11) Thus, the element against the law is not only interpreted as violating written laws or acts (onwetmatige) such as violating the rights of other people and contrary to the legal obligations of the perpetrator but also violating unwritten laws such as the rules of decency, propriety, thoroughness and prudence not based on agreement.

In this case, it is known and explained that before the operation, the doctors never informed the victim's family (Siska Makatey) about the worst risk including death. Yulin Mahengkeng, the victim's mother, also stated that before the operation, there was no explanation from the doctor about the risks of the operation. Despite the urgent nature of the patient's condition, it is imperative to provide necessary information following appropriate intervention, as mandated by Article 4, paragraph (3) of the Minister of Health Regulation No. 209 of 2008, which pertains to the concept of informed consent. The author posits that engaging in an unlawful act is in direct opposition to the legal responsibilities of the individual perpetrating the violation.

The Fault of The Prepetrator

. By determining the terms of fault in Article 1365 of the Civil Code, the legislator states that the perpetrator of an unlawful act is responsible for the losses he incurs only, if the actions and losses can be accounted for him. Fault is used to state that someone is declared responsible for the adverse consequences due to wrongdoing. (12) The term fault has two meanings, namely fault in the broad sense and fault in a narrow sense. In broad sense, it includes intentionality and negligence (negligence, culpa), while in a narrow sense, it only consists of intentionality.

In this case, the author argues that the fault made is in a narrow sense, namely intentional because it is clear that the doctor does not provide information to the patient's family regarding the medical procedures performed after the operation. Doctors and other health workers are required to provide any information needed to the patient at any time. As long as the patient is treated, the health worker is obliged to provide information. Any information, specifically for new actions requires informed consent, meaning that the information provided is continuous.

Doctors who fail to provide information regarding medical procedures are deemed negligent. This is in accordance with Article 4, Paragraph (3) of Minister of Health Regulation No. 209 of 2008, which pertains to informed consent. According to this regulation, in emergency situations, doctors are obligated to promptly provide an explanation to the patient or their family once the patient regains consciousness.

Victims' Losses

In order to initiate legal proceedings under Article 1365 of the Civil Code, it is necessary for the presence of the victim's loss (schade) to be established. In contrast to losses resulting from default, which just acknowledge tangible losses, and losses arising from unlawful activities that encompass both tangible and intangible losses, the field of jurisprudence also acknowledges the notion of intangible losses, which are likewise quantified in monetary terms.

In this case, the death of the victim is taken into account in which the victim is still at a productive age, namely being able to work and generate income for her family. To present, the author does not know the age of the victim when she died but the victim had a child aged 5 (five) years, so if it is assumed that the victim died at the age of 25 and the victim can live up to the age of 60 (sixty) years and has a monthly income of 4 (three) four) million per month, so the calculation is 60-25 = 35 years x 12 Months = 420 months, 420 x 4 million = Rp. 1,680,000,000,- (material)

The immaterial of Rp. 5 billion mentioned above is the value that the victim might get if she was still alive.

The Causal Relationship Between Actions and Losses

In civil law, this element is to examine whether there is a causal relationship between an unlawful act and the losses so that the perpetrator can be held accountable. The causal relationship can be seen from two theories, namely the conditio sine qua non theory by Von Buri and the adequat theory by Von Kries. The conditio sine qua non

theory sees that every condition is a cause for the emergence of an effect, where the loss of one of the conditions does not cause an effect.

In this case, the common referral is the adequat veroorzaking theory by Von Kries. This suggests that the criterion for determining causes in the legal sense is if the event according to normal human experience can be expected (naar redelijkheid) to cause certain consequences or actions that must be considered as the cause of the consequences that arise are actions that are balanced with the consequences.(13)

In the case, medical action in the form of a cito C-Section was performed on the victim on Monday 10 April 2010 at 22.00 WITA. After the operation, the victim's condition worsened and then died. The author argues that there is a causal relationship between the operation which causes death based on the theory of adequate veroorzaking, namely actions that must be considered as a cause of the consequences that arise are actions that are balanced with the consequences. Therefore, the element of causality of this unlawful act is fulfilled.

Doctors' Responsibilities

In carrying out their duties, doctors are bound by medical ethics. Besides being a member of the medical profession, doctors are also members of society who are bound by existing laws. Therefore, in carrying out their duties, doctors have to comply with medical ethics and applicable legal rules. Doctors have a code of ethics that must be obeyed. The code of ethics includes rules regarding decency, behavior, and attitudes between professions. In 2012, the Indonesian Medical Association issued the Indonesian Code of medical ethics (Kodeki) which is valid throughout Indonesia. The Kodeki stipulates that professional responsibility is a belief resulting from an understanding of biometric/medical science and technology, clinical experience, epidemiologic calculations, and understanding of humanity as a doctor.

Generally, the agreement between the doctor and the patient is a maximum effort agreement (inspanningsverbentenis), but some agreements promise something (resultanverbintennis) to patients such as plastic surgery, cosmetic surgery, and others. Thus, if doctors cannot provide what was promised, they can be sued for default by the patient. A patient can sue a doctor for unlawful acts based on Article 1365 of the Civil Code for causing harm to the patient. Under the pretext of lack of thoroughness and caution as well as violations, doctors are very vulnerable to being sued for unlawful acts.

Liability of Legal Entities As Employers

Employers are responsible for losses incurred due to unlawful acts committed by their employees. Besides, the person who gives the assignment without any work relationship is responsible for unlawful acts committed by the person assigned, as long as the person is under his leadership or instructions. The unlawful act must occur during working hours and there must be a connection between the act and the task assigned. In terms of liability for legal entities, it is questionable whether a legal entity has a position as an employer who must be responsible for personal mistakes or not. Hoge

Raad follows the theory of organs in legal entities as permanent jurisprudence, in which the theory recognizes people besides their members who have the ability to act and have their own will. The will of this organ is then recognized as the will of a legal entity. The jurisprudence is that a legal entity can be held accountable based on Article 1365 of the Civil Code, namely, if its organ commits an unlawful act.

As an employer (werkveger), a legal entity can only be held accountable based on Article 1367 of the Civil Code if the employee can be held accountable for the unlawful act he committed by proving the elements. It can be seen that the primary is employee accountability based on Article 1365 of the Civil Code, while the employer's responsibility is secondary and complementary in nature based on Article 1367.

Concerning the liability of legal entities as employers, the corporate liability doctrine can be used to produce central responsibility or centralized responsibility doctrine by the hospital. Patients can only sue the hospital. To sue, patients do not have to know the legal relationship and responsibilities of different health professional professions. In general, the responsibilities of doctors in Indonesia apply inspanningsverbentenis. Due to a lack of thoroughness and caution and under the pretext of violations, doctors are very vulnerable to being sued for unlawful acts. In agreements that promise something (resultanverbintennis) to patients such as plastic surgery, cosmetic surgery, and others, if the doctor cannot provide according to what was agreed, then the doctor will be sued for default by the patient. Doctors are employees who work in the hospital.

Based on the corporate liability theory, legal entities are responsible for actions taken by their employees that cause losses. A patient who comes to the hospital is only related to the hospital from registration, treatment to payment and payment. The patient does not think about the relationship between doctors and nurses in the hospital.

Doctors' Legal Protection

Patients have to sign the informed consent given before the medical action is carried out. But this is not mandatory in an emergency when the patient is unconscious or has no close family. However, after carrying out the medical action, the doctor is required to provide information regarding the action taken on the patient based on Article 4 of the Minister of Health Regulation No. 290/MENKES/PER/III/2008 concerning Informed Consent and Article 17 KODEKI. Besides, doctors get legal protection related to medical action in emergencies based on Law Number 29 of 2004 concerning Medical Practice as long as the doctor carries out his duties in accordance with applicable professional standard operating procedures.

Referring to the Minister of Health Regulation No. 585/1989 Article 11, "a patient who is unconscious and is not accompanied by his closest family and is medically in an emergency which requires immediate medical action, informed consent is not required from anyone." This means that in order to save the life of a patient who is unconscious and there is no more time to wait and contact his family members, the doctor is authorized to immediately and directly carry out the medical procedure needed. There is no need to delay the procedure just to wait for the consent. Even if the doctor

does not immediately perform the medical procedure needed, the doctor can be sued based on negligence or, if it results in the death of the patient. Informed consent does not have to be from the patient, it can be from the family.

Therefore, the doctor directly treats the patient without having to make an appointment first in emergencies. In Civil Law, what the doctor did was Zaakwarneming, voluntary actions for the benefit of others without coercion and orders for the interests of the people they take care of, not for the doctor's interest.

It is in line with the law and the Kodeki that medical action in an emergency is the duty of a doctor. Based on Article 51point d of the Medical Practice Act and Article 17 of the Kodeki, doctors are required to provide emergency assistance, but this is not necessary if there is another person who is capable of doing the job and can do it.

Based on the case discussed, there is one problem that has not been regulated in the regulation. If the patient is still in a standard condition and does not give his consent surgery is necessary to be carried out immediately to save his life because, without the surgery, the patient will die from bleeding. Then, what should the doctor do in this situation? Performing surgery without the consent of the patient (who is conscious and still able to make his choice) is prohibited by law. If surgery is not carried out immediately, the patient will surely die and the doctor can also be blamed later. This is a dilemma because it has not been regulated in legislation.

Although medical action in an emergency does not require informed consent, it still has limitations. The actions taken are only aimed at life-saving and limb-saving. Medical actions performed outside of these elements must be under the consent of the patient.

In the medical profession, legislation and internal regulations such as the medical code of ethics are important to provide legal certainty and legal protection for doctors, for example in dealing with actual conditions such as medical malpractice claimed by the patients. However, it is not easy to formulate specific regulations governing health law considering the complexity of the material to be regulated. It is also caused by the technical aspect of the implementation of regulations in the field of medical law so it must be carried out with caution considering that the field involves two different disciplines.

4 Closure

Based on the explanation above, it can be concluded that informed consent is mandatory and important for doctors in carrying out medical procedures. However, in an emergency, the first thing to do is medical action to avoid loss of life and disability. Even in an emergency, the doctor is obliged to provide information to the patient if he is conscious or to his family about the medical actions that will be done.

The patient has to sign the informed consent given before the doctor performs the medical action. This is not mandatory if the patient is unconscious or the patient has no close family. However, after performing the medical action, the doctor is required to provide information regarding the action done based on Article 4 of the Minister of Health Regulation No. 290/MENKES/PER/III/2008 concerning Informed Consent

and Article 17 KODEKI. Doctors get legal protection related to medical action in emergencies based on Law Number 29 of 2004 concerning Medical Practice as long as the doctor carries out his duties in accordance with applicable professional standard operating procedures. In this case, if the doctor performs a medical action in an emergency that is not in accordance with applicable professional standard operating procedures, for example, not providing information on actions taken after the patient is conscious or a patient's family arrives, the doctor is personally responsible. On the other hand, if the doctor works at the hospital, based on the central responsibility or centralized responsibility theory, then it's the hospital's responsibility.

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