

The Medical Legal Protection in the Context of Doctor-Patient Relationship in An Emergency Condition

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Abstract:- This article aims to find out the doctor's responsibilities and the protection of the doctor professional law in the relationship of doctors to patients in emergency conditions. The method used in this study is normative research. The data in this study were obtained from legal materials, which included primary legal material and secondary legal material. Based on the results of the study it can be concluded that the doctor is responsible for providing health services in the form of the best medical action to patients in the relationship between doctors and patients in emergency conditions without waiting for patient approval as long as it is in accordance with professional standards and standard operating procedures. Professional medical legal protection can be done by hospitals or the Indonesian Medical Disciplinary Board.

Key words : doctor, legal protection, emergency condition

I. BACKGROUND

The effort to improve the quality of human life related to health issues is a broad and comprehensive attempt. It includes the improvement of public health both physically and non-physically. In the national health system, it is mentioned that health concerns all aspect of human life which covers a very broad and complex scope.¹

Health is one of the aspects that affect human life the most. Health is a human right, serves as an indicator of welfare which must be realized as it goes along with Indonesian ideals intended in Pancasila and the 1945 National Constitution of the Republic of Indonesia.²

The national constitution (The 1945 National Constitution) has clearly regulated the right to health for all Indonesian. It is stated in the article 28H paragraph 1, which reads, everyone has the right to live in physical and spiritual prosperity, to live, and to get a good and healthy environment and the right to obtain health services.

Besides, the government is also responsible for the availability of fair and equitable health resources in the health sector to serve all people, so that they have access to maximum health services.³ The intended health resources are any kind of funding, labor, medical supplies, pharmaceutical preparation, and medical devices as well as health service facilities and technology used to carry out health services

done by government, regional government, and/or community.⁴

Doctors, as one of the main components in providing health services, have a significant role since they are directly related to the provision of health services and the quality of the provided services. Science, technology, and competencies obtained through education and training are the underlying basis for the doctor to conduct medical action. A doctor also needs to continuously improve his skill and knowledge in accordance with the progress in the field of science and technology.

The demand for a professional medical service is increasing. The interaction between doctor and patient creates a legal relationship between them. As law awareness in society is growing, now many people start to understand that there is a legal status in the interaction between doctor and patient.

The doctor-patient relationship was initially a religious and parentalistic relationship. But, over the time it shifted into *consumer relationship* and *partnership*. In the past, the medical world seemed to have never been touched by law, but today, the public's need for legal certainty in medical services has led to many medical dispute cases in the form of medical malpractice charges recently.

The emergence of allegations of medical malpractice is due to a lack of legal knowledge in the implementation of the legal relationship between doctor and patient. Doctors who are unable to provide healing during health care often make patients feel they don't get what they need. This has triggered many accusations of malpractice.

The decrease of public trust in doctors and lawsuits proposed by society are often identified with the failure of doctors in a healing effort. Doctors, with their knowledge and technology, only try to cure and the failure in the implementation of the medical science is not always synonymous to the failure in medical action. Thus, the understanding of the engagement between doctors as health care providers and patients as recipients of health services is needed.

In the provision of medical services, the emergence of a legal relationship between doctors and patients is called as medical services contract or medical engagement which is a legal relationship between a party and another party that regulates the rights and obligations of the parties dealing with the health services.⁵ The term medical engagement made by doctors to obtain healing for patients is called a therapeutic contract. A therapeutic contract is a form of contract that is reviewed based on a maximum effort to cure patients (*inspanningverbintennis*). A therapeutic contract cannot be categorized as a result-based agreement (*resultaatverbintennis*). Therapeutic contract prioritizes the efforts of doctors to cure patients, not the results of healing.

Every medical action carried out by the doctor should obtain approval from the patient.⁶ But, there is no need for such approval in an emergency situation. In an emergency, health service facilities, both government and private institutions, are required to provide health services to save patients' lives and prevent disability.⁷ This explains that the patients who need emergency care can directly be handled by the doctor.

Medical action approval, in health sector known as *informed consent*, is a priority. But, in the emergency condition, the priority is not that important since the crucial one is to save lives and avoid further disability of patient. Even though it has been regulated in such a way, there are still medical disputes between doctors and patients with various types of cases, including the refusal of approval of medical action to the patient's unsatisfaction of the received treatment.

Based on the description above, the problems investigated in this study are formulated in the following questions:

1. How is the doctor's responsibility towards the patient in the context of doctor – patient relationship in an emergency condition?
2. How is the professional medical - legal protection in the context of doctor – patient relationship in an emergency condition?

This is doctrinal research or also called as a normative study.⁸ Data were obtained from legal material, which included primary legal material and secondary legal material. Primary legal material is Act Number 29 Year 2004 concerning Medical Practice, Act Number 36 Year 2009 concerning Health, Act Number 44 Year 2009 concerning Hospital and the Code of Medical Ethics Indonesia (KODEKI). Secondary legal materials include scientific articles related to doctor's responsibility and professional medical legal protection in the relationship of doctor-patient in emergency conditions.

II. DISCUSSION

A. *Doctor's Responsibility to Patients in the Context of Doctors - Patients Relationship in Emergency Conditions*

In professional medical-legal responsibility, doctors are responsible to carry out the duty. This is because the doctors' responsibility covers the complex area, as a result, the doctors are also required to know and understand the applicable law in undertaking their profession, including the understanding of the rights and obligations. Doctors' awareness of legal obligations towards themselves and others in carrying out their profession must be understood by doctors as the rights and obligation holders.

Doctors' professional law covers legal obligations arisen from their profession and responsibility arisen from therapeutic agreement which is conducted in the relationship between doctors and patients. Law of therapeutic agreement results in the rights and obligations of doctors and patients.

Doctors in carrying out their profession have several rights:⁹

- a. Obtaining legal protection as long as doctors carry out the profession in accordance with the professional standard and standard operating procedure.
- b. Giving medical service in accordance with the professional standard and standard operating procedure.
- c. Getting the detail and clear information from the patient and his/her family.
- d. Earning the rewards.

While in carrying out their profession doctors have several obligations:¹⁰

- a. Giving medical service in accordance with the professional standard and standard operating procedure as well as patients' medical needs.
- b. Referring the patients to other doctors such as a specialist, if primary doctors are not able to do check up and give medication.
- c. Concealing every single information of the patients and even after the patients passed away.
- d. Giving emergency relief on the basis of humanity, except the doctors believe that there is another one on duty and able to do it; and
- e. Enrich the knowledge and keep up the medical science.

According to Fred Ameln, cited by Chrisdiono M. Achadiat, the obligations of doctors in medical profession are divided into three categories, they are:¹¹

- 1) Obligation in accordance with social function of health care. This categorize refers to wide public interest, not only patients' interests.
- 2) Obligation in accordance with patients' rights.
- 3) Obligation in accordance with Standard of Medical Profession (*SPM*) and everything arised from *SPM*.

While, according to Code of Medical Ethics Indonesia (essentially an instruction or guideline for the

doctors in carrying out their responsibilities as the professionals), the doctors' obligations are divided into four categories: 12

- 1) General Obligation
- 2) Doctors' Obligation to the Patients
- 3) Doctors' Obligation to the Colleagues
- 4) Doctors Obligation to Themselves

Doctor's obligation in an emergency condition is included in the doctors' obligations to the patients. Every doctor is responsible to perform emergency care as a form of humanitarian duty unless he is sure someone else is willing and able to give it. 13 It is also clearly stated that every doctor who carries out emergency relief, this ethical obligation overcomes other ethical considerations. In running this ethical obligation, the doctor must be protected and defended by colleagues, best partners and/or professional organizations, the government and/or the community. A doctor is responsible to always make the professional decision independently and maintain professional behaviour in the highest value. 14

Emergency relief referred to in Article 17 of the Code of Medical Ethics Indonesia is a medical aid that must be done immediately to prevent death, disability or severe suffering for someone. This is intended to treat sudden illness, alleviate the symptoms, pain or suffering, and make the patient/family less panic because the doctor must show the empathy or concern for humanity.

While the obligation for urgent help is aimed at saving the lives and preventing disability. The doctor's ability to give emergency relief is such contextual emergencies which depend on situation, conditions (team, tools, infrastructure facilities) and the local culture. In connection with emergency care performed by doctors, they cannot be blocked/blamed on emergency conditions with administrative considerations.

It is previously explained that every medical action that will be done by a doctor on the patient must get approval. 15 Whereas in an emergency condition, to save the patient's life is not necessarily an approval. However, after the patient is awake or in a possible condition, the doctor needs to give an explanation immediately and made an agreement. 16

Doctor in giving medical actions in emergency conditions is a form of an attempt to save lives. The doctor is responsible to always remember his obligation to protect the lives of human beings. 17 A doctor must exert all his abilities to alleviate suffering and maintain the life but not to end it. This shows that doctors have the responsibility to provide health services in emergency conditions to save the patients' lives as well as prevent disability without waiting for approval from the patient. Doctor's medication is carried out as long as it is in accordance with professional standards and applicable standard operating procedures.

B. *The Protection of Doctor Professional Law in the Context of Doctor – Patient Relationship in Emergency Conditions*

Law protection for the medical profession is necessary in which while carrying out their profession, the doctors will be saved and not be haunted by the punishment, and they will also be saved since there is a legal certainty. Doctors in doing their responsibility in medical practice have several rights: 18

- a. Obtaining legal protection as long as doctors carry out the profession in accordance with professional standard and standard operating procedure.
- b. Giving medical service in accordance with professional standard and standard operating procedure.
- c. Getting the detail and clear information from the patient and his/her family.
- d. Earning the rewards.

Based on the article above that doctors have the right to legal protection in carrying out their duties in accordance with professional standards and standard operating procedures. Besides, there is also an institution authorized to determine whether there are errors made by doctors in applying medical sciences and establish the sanctions, namely the Indonesian Medical Disciplinary Board. 19 Thus, professional justice is the determinant whether there are errors made by doctors, but general court is not. 20

Regarding the medical treatment given by the doctor in an emergency condition, the doctor must be protected and defended by colleagues, best partners and/or professional organizations, the government and/or the community. It must be reviewed that in an emergency condition, health service facilities both government and private institution are liable to formerly provide health services for rescue patient's life and prevention of disability. 21 In this case, the hospital must also provide legal protection for doctors because the doctors in hospitals have provided medical services according to professional standards and standard operating procedures. This is a form of manifestation of the hospital's responsibility to protect and provide legal assistance to all hospital officers in carrying out their duties. 22

Based on the *Good Samaritan Law* doctrine guaranteeing doctors' medical action in carrying out their duties and functions in an emergency without exceeding the limits outlined in the doctrine involves; (a) the helper's volunteerism, and (b) the helper's good faith. The basis of this theory is to provide equality of the rights and to establish a moral basis universally so that in providing help or assistance to someone is not based on the material aspects. 23

Constitutional laws in Indonesia through Act No. 29 of 2004 concerning Medical Practice, Act No. 36 of 2009 concerning Health and Act No. 44 of 2009 concerning Hospital and the Code of Medical Ethics Indonesia have provided a legal protection forum for doctors in providing medical actions in relation to doctors and patients in an emergency condition. These provisions provide the widest possible space for doctors to carry out their duties and

functions without worrying about legal sanctions, both civil and criminal law, as long as in accordance with professional standards and applicable standard operating procedures.

III. CONCLUSION

Regarding the applicable constitutional laws in Indonesia, the conclusion of research problems in this study can be seen as follows:

1. The doctors are responsible to provide health services in an emergency condition to save the patient's life and also prevent the disability without waiting for the patients' agreement. Medical action done by doctors is applied in accordance with the professional standard and applicable standard operating procedure.
2. The legal protection of doctor in the relationship of doctor – patient in an emergency condition is also regulated in the constitutional law of Indonesia. The hospitals are also liable to protect the doctors in giving the health services for patients in emergency conditions. Indonesian Medical Disciplinary Board authorizes to determine whether there is an error made by the doctor in applying medical science and establish the sanctions.

According to those conclusions, the writer suggests that law enforcement related to legal protection for doctors in the context of doctors – patients relationship in emergency conditions are more optimized. By this, doctors can provide the best services in carrying out their duties and functions as health care providers.

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