

Juridical Review Regarding the Provision of Health Services (Law No. 36 of 2009 concerning Health)

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Abstract. The medical profession is one of the professions that get the public's attention. Many people pay attention to the medical profession, both the highlights that are conveyed directly to the Indonesian Doctors Association as the main organization of doctors, as well as those that are broadcast through print and electronic media. The Indonesian Doctors Association considers these highlights as a good critique of the medical profession so that doctors can improve their medical professional services to the community. This research is included in qualitative research and is descriptive in nature. This study is an empirical study of laws and policies in Law No. 36 of 2009 concerning Health. The doctor's responsibility lies in the field of professional ethics and the field of law. If a doctor performs a medical action that is detrimental, then he must take responsibility and cannot place all the blame on the hospital, even though Law Number 44 of 2009 concerning Hospitals states otherwise. The relationship between doctors, patients, and hospitals is triangular. Most of these engagements are based on agreements that can be categorized as two-sided agreements so that each party has rights and obligations. In medical disputes, which generally occur because the patient feels that he has suffered a loss in the medical agreement, the patient can sue the doctor, the hospital, or both.

Keywords: Juridical Review, Health Services Provision, Law

1 Introduction

Along with the development of human civilization, increasingly complex new diseases are emerging, and the presence of doctors and medical services is needed for people who are currently experiencing pain. In the past, people came to the hospital or the doctor just for treatment, now, it's much more so considering the services provided. The medical profession is one of the professions that get the public's attention. Many people pay attention to the medical profession, both the highlights that are conveyed directly to the Indonesian Doctors Association as the main organization of doctors, as well as those that are broadcast through print and electronic media. The Indonesian Doctors' Association considers these highlights as a good critique of the medical profession so that doctors can improve their medical profession's services to the public. The Indonesian Doctors Association realizes that the criticisms that arise are the "tip of an iceberg", meaning that there are still many criticisms that do not surface due to the reluctance of patients or their families to consider what they are experiencing as something normal. For the Indonesian Doctors Association, the amount of public scrutiny of the medical profession illustrates that the public is not satisfied with the health services provided by doctors.

Public criticism of the public profession is a sign that currently, the community is complaining about the medical services provided by the hospital institution doctor. In general, the dissatisfaction of patients and their families with doctors' services is due to the expectations that doctors cannot fulfil.

Quoted Endang Kusuma's statement, stated:

"Initially, the medical profession was supposed as a profession that was highly regarded because of its ability to know things that were not visible from the outside. Even a doctor is considered a clergyman who can heal patients with prayers."[1]

Today doctors are seen more as scientists whose knowledge is needed to cure various diseases. The position and role of doctors are still respected, but they are no longer accompanied by cult elements. Doctors are required to have scientific prowess without forgetting their artistic and artistic aspects.

The hospital is one of the health agencies that provide medical services to the general public, it should be able to provide optimal services in the medical field for the community.

The medical clinic as one of the wellbeing administration foundations is important for the wellbeing assets that are expected to help the execution of wellbeing endeavors. The conveyance of wellbeing administrations in emergency clinics has extremely complex qualities and association. Different sorts of wellbeing laborers with their particular logical gadgets associate with one another. Science and innovation are growing quickly which should be trailed by wellbeing laborers in the structure of offering quality types of assistance. Generally, the emergency clinic capabilities as a spot to fix infection and reestablish wellbeing, and this capability implies that it is the public authority's liability to work on friendly government assistance.

Endeavors to work on the most extensive level of wellbeing were at first as endeavors to fix sicknesses, then, at that point, steadily created towards coordinated wellbeing endeavors for the entire local area by including the more extensive local area which incorporates complete promotive, preventive, corrective, and rehabilitative endeavors. incorporated and constant. Each advancement exertion should be founded on wellbeing bits of knowledge as in public improvement should focus on general wellbeing and is the obligation, all things considered, both the public authority and the local area.

Likewise, the improvement of wellbeing innovation that remains closely connected with the rise of the peculiarity of globalization has caused many changes whose nature and presence are altogether different from the text contained in Regulation Number 23 of 1992 concerning Wellbeing. The quick advancement of wellbeing innovation and data innovation in this worldwide period has not been as expected obliged by Regulation Number 23 of 1992 concerning Wellbeing. In view of this, Regulation Number 23 of 1992 concerning Wellbeing is never again by improvements, requests, and legitimate requirements in the public eye so it should be revoked and supplanted with another Regulation concerning Wellbeing. Subsequently, the public authority laid out another Wellbeing Regulation, to be specific Regulation Number 36 of 2009 concerning Wellbeing. Article 4 of the Law on Wellbeing states that "everybody has the privilege to wellbeing".[2]

The right to health referred to in article 4 of Law No. 36 of 2009 concerning Health states

"The right to obtain health services from health care facilities to realize the highest degree of health. It means that to have a healthy life, anyone has the right to access proper health services, which include obtaining

safe, quality, and affordable health services. Obtaining health services is a human right. The government realizes that healthy people are an asset and the main goal in achieving a just and prosperous society. Therefore, the government is obliged to (1) Organize health efforts that are evenly distributed and affordable by the community. (2) Funding public goods and health services, such as immunization and eradication of infectious diseases. (3) The obligation to pay for health services for the poor and the elderly.”[3]

Getting wellbeing administrations is the fundamental right of each and every person and one of the components of government assistance that should be acknowledged under the goals of the Indonesian country as ordered in Article 28 H passage (1) of the 1945 Constitution of the Republic of Indonesia [4] it has been stressed that each individual reserve the option to acquire wellbeing administrations then, at that point, in Article 34 section (3) it is expressed that the State is answerable for the arrangement of legitimate wellbeing administration offices and public assistance offices. Subsequently, every action and work to work on the most significant level of general wellbeing is done in view of the standards of non-separation, support, security, and maintainability in the structure of shaping Indonesia's HR, expanding the country's strength and seriousness, as well as public turn of events. The public authority understands that solid individuals are a resource and the primary objective in accomplishing a fair and prosperous society. The execution of wellbeing endeavors is completed in an amicable and adjusted way by the public authority and the local area, including the confidential area. For the execution of wellbeing endeavors to be viable and proficient, the public authority needs to manage, encourage, and regulate the two its endeavors and its assets.

2 Method

This examination is remembered for subjective exploration and is unmistakable in nature. This study is an observational investigation of regulations and arrangements in Regulation No. 36 of 2009 concerning Wellbeing. The exploration was led at one of the Jakarta city medical clinic foundations. The information utilized in this study are:

- a. Primary data
Data obtained by researchers from related parties through interviews and observations
- b. Secondary Data
Secondary data is in the form of data obtained through library research, laws regarding health, encyclopedias, and journals

the exploration was done in DKI Jakarta from September to November 2021 with the technique for gathering essential information through top to bottom meetings and Round Table Conversations of partners in Wellbeing organizations/medical clinics, and emergency clinic administrators while optional information as regulations and guidelines, research results and different materials applicable to the reason for the review.

3 Result and Discussion

Concerning Hospital

The definition of a hospital is regulated by the articles of association of the Indonesian Hospital Association (PERSI) Chapter I Article 1:

"The clinic is an office in the chain of the public wellbeing framework that completes the undertaking of giving wellbeing administrations to the entire local area. Clinic is an office that is essential for the wellbeing administration framework that does ongoing, short term, and restoration alongside the entirety of its backings." [5]

In article 58 of Law Number 23 of 1992 concerning health, it is states:

"That certain health facilities must be in the form of a legal entity. A legal entity (rechtspersoon) is a group of people or an organization that is given the nature of a legal subject explicitly. This means that hospitals cannot be managed by individuals/individuals (natuurlijk persoon), but must be managed by a legal entity (rechtspersoon) which can be in the form of an association, foundation, or limited liability company" [6]

Jusuf Hanafiah and Amri Amir stated the rights of the hospital as follows:

"(1) Making regulations that apply in hospitals (Hospital by Laws). (2) Requires that patients comply with all hospital regulations. (3) Requires that the patient must comply with all instructions given by the doctor to him. (4) Have medical staff who will work in the hospital. (5) Sue parties who have defaulted (including patients, third parties, and others)"

While the obligations of the hospital are as follows:

"(1) Treat patients as well as possible; (2) Maintaining the quality of care; (3) Provide medical assistance in the Emergency Unit; (4) Provide necessary public facilities and equipment; (5) Provide necessary medical facilities and equipment according to the level of the hospital and its urgency; (6) Maintain that all facilities and equipment are always ready for use; (7) Referring special patients or special medical personnel as needed; (8) Providing accident prevention funds (fire extinguishers, facilities, and equipment for patient rescue in emergencies)"

The existence of a doctor-patient relationship raises patient rights that must be respected by doctors. These human rights can be limited or violated if they do not conflict with the applicable laws and regulations, for example, approval for medical procedures, consent to become a donor in transplants (for the benefit of others), or willingness to participate in biometric research. Sometimes the order of the human rights law is violated, such as being obliged to participate in immunization activities, because of an epidemic.

In the Indonesian Code of Medical Ethics (KODEKI), there are articles regarding doctors' obligations to patients which are also patient rights that need attention. Basically, the patient's rights are as follows:

"(1) The right to life, the right to one's own body, and the right to die naturally. (2) Obtain humane medical services by medical professional

standards. (3) Obtain an explanation of the diagnosis and therapy from the treating doctor. (4) Refusing planned diagnostic and therapeutic procedures, may even withdraw from the therapeutic contract. (5) Obtain an explanation of the medical research that will be followed. (6) Refusing or accepting participation in medical research. (7) Refer to a specialist if necessary, and return to the referring doctor after completion of consultation or treatment for treatment or follow-up. (8) Confidentiality and medical records for personal matters. (9) Obtain an explanation of hospital regulations. (10) Connect with family, advisers or clergy, and others needed during treatment at the hospital. (11) Obtain an explanation regarding the details of hospitalization costs, drugs, laboratory examinations, X-ray examinations, Ultrasonography (USG), CT-scan, Magnetic Resonance Imaging (MRI), and so on, (if done) costs for operating rooms, delivery rooms, fees for services doctors and others."[7]

The patient's obligations are regulated in the Medical Practice Act No. 29 of 2004. In article 53 of the Medical Practice Act. Patients receiving services in medical practice are obliged to:

"(1) Provide complete and honest information about their health problems; (2) Follow the doctor's advice and instructions; (3) Comply with the provisions that apply in health service facilities; and (4) Providing compensation for services received."[8]

Based on the Circular Letter of the Director General of Yanmed 1997 the obligations of doctors towards patients are as follows:

"(1) Doctors must comply with hospital regulations by the legal relationship between the doctor and the hospital. (2) Doctors are obliged to provide medical services under professional standards and respect patient rights. (3) The doctor is obliged to refer the patient to another doctor/hospital who has more expertise/ability if he is unable to carry out an examination or treatment. (4) Doctors are obliged to provide opportunities for patients so that they can always be in touch with their families and practice worship according to their beliefs. (5) Doctors are obliged to keep secret everything they know about a patient, even after the patient dies. (6) The doctor is obliged to provide emergency assistance as a humanitarian task unless he is sure that someone else is willing and able to provide it. (7) The doctor is obliged to provide adequate information about the need for the medical action in question and the risks that may arise. (8) Doctors are required to make good medical records on an ongoing basis relating to the patient's condition. (9) Physicians are obliged to continually add to their knowledge and keep abreast of developments in medical/dentistry science. (10) The doctor is obliged to fulfill the things that have been agreed/agreement he has made. (11) Physicians are required to cooperate with other professionals and parties who are related to each other in providing services to patients. (12) The doctor is obliged to enter into a written agreement with the hospital."[9]

Legal Relations between Doctors and Patients in Actions of Medical Services at Hospitals

The legitimate connection between the specialist and the patient that is completed depends on the patient's feeling of confidence in the specialist, which is known as a restorative exchange.[10] The connection among specialists and patients starts with an example of vertical paternalistic connections, for example, among fathers and youngsters what leaves from the rule of "Father knows best" which makes a paternalistic relationship.

This relationship brought forth a level authoritative lawful viewpoint that is "inspanningsverbintenis" which is a legitimate connection between 2 (two) legitimate subjects (patients and specialists) who are of equivalent status bringing forth freedoms and commitments for the gatherings concerned. This legitimate relationship guarantees nothing (recuperating or passing), on the grounds that the object of the lawful relationship is as a specialist's endeavors in light of science, the experience of the specialists in regards to the illness cautiously, carefully, and completely or expertly to fix the patient.

The connection among specialist and patient starts with an understanding where the patient does a clinical assessment and the specialist concurs. Juridically, what is implied by the capacity to concur is the capacity of an individual to tie himself, since it isn't precluded by regulation. This depends on Articles 1329 and 1330 of the Common Code.

As per Article 1329 of the Common Code, each individual can concur, in the event that not announced bumbling by regulation. Then individuals, Article 1330 of the Common Code, it is expressed that individuals who are proclaimed uncouth are not yet experienced, the people who are put under guardianship, ladies still up in the air by regulation, and overall each of the an individual with whom the law has denied settling on specific arrangements.

In helpful exchanges, the beneficiaries of clinical benefits comprise of grown-ups who are fit for acting, grown-ups who are not fit for acting, who require endorsement of their pardoning, and kids who are minors who require endorsement from their folks or gatekeepers.

This thing that can connect with the object of the remedial arrangement/exchange is recuperating endeavors. Thus, the outcomes got from accomplishing these endeavors can't or may not be ensured by a specialist. What's more, the execution of mending endeavors doesn't just rely upon the specialist's genuineness and skill in completing his expert obligations yet numerous different elements that assume a part, for instance, the patient's protection from specific medications, the seriousness of the illness and the job of the patient in doing the physician's instructions for the patient's advantage.

Article 1337 of the Common Code it is expressed that a reason is denied, assuming it is disallowed by regulation or on the other hand assuming it is against great fairness or public request. Hence, what is implied by legitimate causes will be causes that are not disallowed by regulation, tolerability, or public request.

Forms of Doctor's Responsibility for Patients in Actions of Medical Services at Hospitals

In general, a medical action is preceded by informed consent, except for actions that are common and are usually performed routinely, are publicly known, and are expected by the patient. In Indonesia, informed assent in wellbeing administrations has gotten juridical support through the Guideline of the Pastor of Soundness of the Republic of Indonesia Number 585/Menkes/Per/IX/1989, which was subsequently refreshed by Guideline of the Priest of Strength of the Republic of Indonesia Number 290/Menkes/Per/III/2008 concerning Assent Clinical Activity. In this Ministerial Regulation approval for medical action is defined as "approval given by the patient or next of kin after receiving a complete explanation regarding the medical or dental action to be performed on the patient". The closest family is the husband

or wife, biological father or mother, biological children, siblings, or caregivers. Medical action is defined as "a medical action in the form of preventive, diagnostic, therapeutic or rehabilitative performed by a doctor or dentist on a patient". The implementation of the provision of information to obtain approval is not as simple as imagined, but at least the matter has been legally regulated so that both parties have the power to take legal action.

6 conditions should be met so that patients understand medical procedures before giving informed consent without any misunderstandings in the future, namely:

1. Informed Consent should be requested by the party that will take the action.
2. Patients must be able to give informed consent.
3. Patients are free from coercion or excessive influence when giving consent.
4. Consent must be given for a specific procedure or treatment.
5. The patient must be well informed.
6. Patients get the opportunity to ask questions and get answers.

Medical disputes can occur if the doctor feels that he has given a complete explanation to the patient and/or family, but then the patient and/or family state that he has not received an explanation or an incomplete explanation. To prevent the situation, doctors are required to be liable in ensuring that patients and/or families understand.

Constraints in the application of Informed Consent that arise in daily practice, aside from a knowledge gap, can also occur due to several other causes such as language barriers, unclear limits regarding the amount of information that can be provided, and problems with family or third-party interference.

On the other hand, even though legally it is necessary to have approval for medical action to carry out treatment it often happens that treatment even without medical approval, does not cause harm to the patient, the patient just ignores it. However, if the doctor makes a mistake or negligence that causes harm to the patient, then the patient or family can try to resolve the problem through legal channels.

To complement hospital service standards, it is necessary to have medical professional standards, or what is often referred to as medical service standards. Hospital service standards and medical professional standards must be used as a reference in efforts to improve and develop hospitals to achieve conditions that meet the standards set. A specialist who veers off from the guidelines of the clinical calling is said to have committed carelessness or mistake and, for this situation, it turns into a component of misbehavior, in particular in the event that the carelessness or blunder is purposeful or dolus and causes serious or lethal ramifications for the patient. A specialist who disregards or veers off from the principles of the clinical calling is said to have carried out an expert mistake or clinical misbehavior, however this isn't really a negligence that can prompt criminal misbehavior. For the conviction of misbehavior, it is important to demonstrate the presence of a component of gross carelessness or culpa lata with deadly or serious results.

Legal responsibilities that arise related to the implementation of the medical profession, can still be distinguished between:

- a. responsibility for proficient arrangements contained in the Announcement of the Clergyman of Wellbeing of the Republic of Indonesia Number 434/Men. Kes/SK/X/1983 concerning the Indonesian Code of Clinical Morals and clinical morals guidelines specified by the expert association.
- b. legal obligation regarding legitimate arrangements contained in the Crook Code, Criminal Technique Code, Common Code, Regulation Number 29 of 2004 concerning Clinical

Practice, Regulation Number 36 of 2009 concerning Wellbeing and other lawful guidelines (common risk, criminal obligation, and authoritative obligation).

The manner in which a specialist treats his patient is in the vicinity "probability" and "vulnerability" in light of the fact that the human body is complicated and can't be completely perceived. The varieties in every patient have not been thought: old enough, illness level, nature of the sickness, difficulties, and different things that might influence the aftereffects of the treatment given by the specialist.

In general, the law is more concerned with the consequences of an action taken, than the losses that arise because of it. Different things are found in the medical field (medicine) which has to deal with a situation without certainty. In the implementation of medical actions in the medical literature, there is something called "medical error". Even doctors are human beings who are not spared from mistakes (errors). An "error" made by a doctor can result in an unwanted negative event (adverse event) which in Indonesian is translated as an Unexpected Event (KTD). The emergence of an "adverse event" does not always have to or can be blamed on the doctor. Several inherent factors in the patient's body cannot be controlled by a doctor, such as allergies, weakened immune system, embolism, disease level, nature of the disease, and so on. As a result of these inherent factors, negative things can arise that could not have been calculated beforehand.

The legal instruments governing the implementation of medical practice are still in the development stage and are deemed inadequate. Regulations for the medical profession have so far been dominated by formal legal instruments and government regulations, although several legal instruments governing the medical profession have been established, namely, the Indonesian Medical Discipline Honorary Council (MKDKI) which regulates professional violations committed by doctors and the Indonesian Medical Ethics Honorary Council. (MKEK), which regulates ethical violations by doctors.

Currently, there is only one MKDKI in Jakarta, although according to Article 57 of Law Number 29 of 2004 it is stipulated that an MKDKI can be formed in every province. This fact is an obstacle in efforts to try cases of suspected medical malpractice in a professional manner, especially in areas far from the capital city. In the end, more cases of patient-doctor disputes were brought to criminal and civil courts, even though this was not appropriate. Cases of alleged doctor negligence or errors, medical disputes or better known as alleged doctor malpractices are *lex specialis* cases so they will be difficult to be tried in a general court. General Court judges, in deciding cases, require expert testimony from doctors. Judges often experience difficulties in making decisions and cases will drag on, with multiple expert witness statements that can conflict with one another. This fact can raise suspicions among advocates that it is impossible for a doctor who is being asked to testify as an expert witness to blame another doctor. Many cases of medical disputes end up in mediation out of court, generally after the hospital or doctor provides several "compensations", regardless of the fact whether there was malpractice or only medical risk.

One more perspective on the specialist patient relationship should be visible in Regulation Number 8 of 1999 concerning Shopper Security. Regulation Number 36 of 2009 concerning Wellbeing doesn't utilize the expression "purchaser" for clients, clients of products, or potentially usage of wellbeing administrations. The law utilizes different terms, including the expressions "everybody" and "local area". Similarly with Regulation Number 44 of 2009 concerning Clinics and Regulation Number 29 of 2004 concerning Clinical Practice. Albeit not expressed, all clients of specialist administrations can be named customers.

Article 46 of Regulation Number 44 of 2009 was made in light of Article 1367 of the Common Code. Specialists who practice in emergency clinics are thought of "individuals who

are under the oversight of the administration and proprietor of the clinic". This supposition that is valid for specialists who function as clinic workers, despite the fact that specialists are not customary representatives since specialists have proficient independence that is outside the control of emergency clinics. Not all specialists who practice in clinics have the situation with medical clinic workers. The wrongdoing of rehearsing medication as characterized in Regulation Number 29 of 2004 concerning Clinical Practice comes from infringement of managerial regulation. Regulatory regulation infringement that become criminal demonstrations in clinical practice can possibly become criminal misbehavior as well as common negligence. Each criminal misbehavior likewise contains components of common negligence. Be that as it may, common misbehavior doesn't generally become criminal negligence.

4 Conclusion

In a hospital, the medical profession is a profession that has relatively great independence and responsibility, especially the medical specialist profession. The specialist's liability lies in the field of expert morals and the field of regulation. If a doctor performs a medical action that is detrimental, then he must take responsibility and cannot place all the blame on the hospital, even though Law Number 44 of 2009 concerning Hospitals states otherwise. The relationship between doctors, patients, and hospitals is triangular. Most of these engagements are based on agreements that can be categorized as two-sided agreements so that each party has rights and obligations. In cases of medical disputes, which generally occur because the patient feels that he has suffered a loss in the medical agreement, the patient can sue the doctor, the hospital, or both.

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