

LEGAL PROTECTION OF PATIENTS SUBJECTED TO MEDICAL REFUSAL IN HEALTH AND HUMAN RIGHTS

Irfan Sadida¹, Amanda Dhea Hapsari², Dayuk Dana Sofyana³, Galuh Permatasari⁴, Happy Amanda Aulina⁵, Miswandira Vania Putri⁶, Ulfa Iksanti⁷, Widya Sekar Pratiwi⁸, Winda Rahayu Ratna Sari⁹, Nasihatul Aminah¹⁰, Nalurita Enggar Renosih¹¹, Aris Prio Agus Santoso¹²

Nursery, Universitas 'Aisyiyah University Surakarta, Surakarta, Indonesia¹²³⁴⁵⁶⁷⁸⁹¹⁰¹¹

Faculty of Law and Business, Universitas Duta Bangsa Surakarta, Indonesia¹²

Irsadida.08@gmail.com¹, arisprio_santoso@udb.ac.id¹²

Abstrak

Human rights are rights bestowed by God Almighty to every individual on earth. Everyone is obliged to protect and respect the rights of everyone. Human rights are legal and normative concepts which state that humans have inherent rights because they are human beings. Human rights apply anytime, anywhere, and to anyone so that they are universal. Human rights include the right to a healthy life and work, the right to get health services, and special attention, everyone has the right to a healthy life. sufficient for the health and well-being of himself and his family. As a result of violations of human rights (HAM) in the field of health services, it can cause losses to people who really need the fulfillment of adequate health services, so that law enforcement efforts are needed against perpetrators of violations in health services for the community. This is intended to provide guarantee protection for the community related to violations of the right to health. In the health sector, acts of human rights violations can involve heads of health service facilities or health workers who carry out practices or work in health care facilities that are contrary to the health law. The research aims to determine the consequences of violations of human rights in health services, so that the fulfillment of the right to health is not achieved and law enforcement against violations in health services is viewed from the aspect of human rights and the specific objective is to find out the laws and regulations governing the right to obtain health services and enforcement of violations in health services.

Keyword : legal protection, patient, human rights

Introduction

Human rights are rights bestowed by God Almighty to every individual on earth. Human rights are legal and normative concepts that state that humans have inherent rights. Health rights include the right to obtain for society. Everyone has the right to an adequate standard of living for the health of his own welfare and that of his family. The protection and enforcement of human rights, especially the right to obtain health services, requires effective law enforcement efforts, to prevent the occurrence of forms of acts, whether carried out by leaders of health care facilities or health workers who carry out practices or work that violate laws and regulations related to the obligation to provide adequate health services.

International human rights law establishes two health-related rules: first, the protection of public health that lawfully restricts human rights; and second, individual health rights and government obligations to provide them. Human rights restrictions are embedded in public health heritage, while the review of these rules using human rights criteria is still a new development. In determining the obligations of States relating to the fundamental human right to health, priority is given to rules for public health, as illustrated in Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). This article has subsequently been strengthened in various international instruments for civil and political rights. The implementation of public health rules often contradicts the rights and freedoms of individuals, as well as a large number of matters relating to the protection of private life, integrity and liberty that conflict and/or with laws under public authority aimed at protecting public health. Laws taken to prevent the spread of epidemic diseases often restrict freedom of movement and loss of freedom. The right to health does not mean the right for everyone to be healthy, or that the government must provide expensive health care facilities beyond the government's ability, but rather demands that the government and public officials be able to make policies and work plans that lead to the availability and affordability of health care facilities for all in the shortest possible time. Between human rights and health there is a relationship that affects each other and often the result of human rights violations is interference with health and vice versa, violations of the right to health are also an explanation of Law of the Republic of Indonesia Number 36 of 2009 concerning Health, explaining that health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation as referred to in Pancasila and the Preamble to the Constitution of the Republic of Indonesia Year 1945.

Therefore, every activity and effort to improve the highest degree of public health is carried out based on the principles of non-discriminatory, participatory, protection, and sustainability which are very important for the formation of Indonesian human resources, increasing the resilience and competitiveness of the nation, and national development. Substantial in legal philosophy is human rights, because one of the purposes of law is to protect human rights. Law is a tool or means not an end whose purpose is justice, protection of human rights, order, order or legal certainty. Human rights are basic human rights as the image of God Almighty that he is born with. Human rights are not granted but exist by themselves, therefore by and through the laws of the state are obliged to protect them.

Method

This type of research is normative legal research conducted through a comprehensive study of primary legal material, secondary legal material and tertiary legal material. Primary, secondary, tertiary, and other legal materials relevant to the problem formulation are analyzed

in a juridical descriptive manner, to compile discussions and conclusions. The type of data used in writing this law is data

1. Primary, namely the universal declaration of human rights 1948 recognized by the Indonesian state decree of the People's Consultative Assembly of the Republic of Indonesia number XVII / MPR / 1998 concerning human rights, other laws and regulations related to human rights and health
2. Secondary, namely literature, legal scientific works, journals, research reports, library sources including information through print and electronic media.

Results And Discussion

Legal protection for patients who are denied medical services by Health is the most valuable asset, because on this side each individual will try to be in a healthy state and as much as possible avoid the causative factors that can cause disease. The guarantee of human rights protection of the right to obtain health services is regulated in international human rights instruments and national regulations, namely:

a. International Human Rights Instruments The Universal Declaration of Human Rights was ratified and proclaimed by General Assembly Resolution 217 A (111) of 10 December 1948. Article 25: "Everyone has the right to a standard of living which guarantees good health and conditions for himself and his family, including food, clothing, housing and health care and necessary social enterprises and is entitled to security at times of unemployment, sickness, disability, widowhood, attaining old age or other deprivation of income due to circumstances beyond his control. paragraph (2): Mothers and children deserve special care and assistance. All children, both born in and out of wedlock, should receive protection. The universal declaration is a human right. The universal declaration is the basis for protection by promoting human rights throughout the world, including Indonesia. For the most part, this universal declaration is customary international law that binds all states. The refusal of patients in relation to the contents of article 32 of the Constitution Number 36 of 2009 concerning health, explains that in an emergency, health care facilities, both government and swasta, are obliged to provide health services for patient rescue and disability prevention first. In an emergency, health care facilities, both government and private, are prohibited from rejecting patients and/or requesting advances. The implications for patient refusal based on the contents of article 32 can be stated as follows, among others.

The hospital as one of the health service facilities, becomes a supporter for efforts to improve public health. The implementation of health services in hospitals has complex characteristics and organizations and has special characteristics and functions. Medical services provided have very diverse types, and involve various professional groups. Therefore, the legal relationship that occurs in health services involves patients with various parties in the hospital. Relationships can occur, among others, (a) patient relationships with hospitals, (b) patient relationships with doctors or medical personnel, (c) patients with pharmacies, and others. According to Law Number 44 of 2009 concerning Hospitals, Article 1 paragraph (1), it is determined that a Hospital is a health service institution that provides plenary individual health services that provide inpatient, outpatient, and emergency services. (Palindo, 2018)

In providing medical services, hospitals have the right and obligation to provide health services or medical services in accordance with the Law. The rights and obligations of hospitals are regulated in Law No. 44 of 2009 concerning Hospitals Chapter VIII, in Article 29 paragraph (1) point b of Law No. 44 of 2009 concerning Hospitals regulates the

obligations of hospitals in conducting health services to patients, namely providing safe, quality, anti-discrimination, and effective health services by prioritizing the interests of patients in accordance with hospital service standards. (Wahyudi, 2011) Meanwhile, Article 30 letter b of Law No. 44 of 2009 concerning Hospitals regulates the rights of hospitals after providing health services to patients, such as receiving service rewards and determining remuneration, incentives, and rewards in accordance with the provisions of laws and regulations."

Hospital rights are everything related to the interests of hospitals in carrying out health services or medical services protected by applicable law, in accordance with Article 30 paragraph (1) letter f of Law Number 44 of 2009 concerning Hospitals, stipulating that, obtain legal protection in carrying out health services. While the obligations of the hospital are everything related to the burden or responsibility of the hospital to carry out the fulfillment of the needs to which the patient is entitled.

Thus, medical services or health services are not the right of the hospital but the obligation of the hospital to perform health services. (Wahyudi, 2011) The 1945 Constitution has regulated human rights in receiving health services as stated in Article 28H paragraph (1), namely: Everyone has the right to live a prosperous life physically and mentally, to reside, and to get a good and healthy living environment and the right to get health services. In addition to hospitals that are obliged to provide health services, doctors as medical personnel within the hospital are also obliged to provide health services to patients as regulated in Article 51 paragraph (1) letter a of Law Number 29 of 2004 concerning Medical Practitioners, namely providing medical services in accordance with professional standards and standard operational procedures and patient medical needs" The obligations that must be carried out are aimed at people who have the cost of treatment, but on everyone including those who are not financially able. (Nursida, 2019)

In this case, the Government guarantees financing for underprivileged people in accordance with Article 6 paragraph (1) point b of Law of the Republic of Indonesia Number 44 of 2009 concerning Hospitals, stipulating that it guarantees the financing of health services in hospitals for the poor, or indigent people in accordance with the provisions of laws and regulations. The obligation of hospitals to provide health services for indigent people in Article 29 paragraph (1) letter e and f of Law of the Republic of Indonesia Number 44 of 2009 concerning Hospitals stipulates that: (e). Provide facilities and services for the poor or poor; (f). Carry out social functions, among others, by providing facilities for indigent / poor patients, emergency services without down payment, free ambulances, services for victims of disasters and extraordinary events, or social services for humanitarian missions. The above article is a further elaboration of Article 28H paragraph (1) of the 1945 NRI Constitution which legally requires not only the government, but all parties committed to managing hospitals, meaning that the Article is the obligation of all hospitals, both Government Hospitals and Private Hospitals. Violation of Article 29 paragraph (1) letter e and f will have legal consequences for the hospital both criminal, civil and administrative.

Refusal of Obligation of Medical Services by the Hospital by Judging from the aspect of criminal acts, the hospital's rejection of someone who needs medical services, this is an action that makes a bad image of medical services to the community. Health services are a right for citizens in the life of the nation and state, without having to look at the financial capabilities of a patient. As meant by Law Number 36 of 2009 concerning Health Article 5 paragraph (2), which states that, everyone has the right to obtain safe, quality and affordable

health services. (Asyiafa, 2019) Hospitals that refuse to provide medical services are violating the law, besides that medical services are criminal acts.

The refusal of patients by the hospital is not blatant, with various reasons for the hospital to reject patients who are less financially able. The medical refusal clearly violates Article 32 paragraph (2) of Law Number 36 of 2009 concerning Health prohibition on refusing patients in emergencies, health service facilities, both government and private are prohibited from rejecting patients and / or asking for advances. This article states that it is prohibited to refuse patients and / or ask for advances, if the hospital refuses medical services, it includes committing criminal acts. In responding to the denial of medical services to capable patients, this shows that the government in supervising and fostering the technical implementation unit of health services is less than optimal so that there is still a refusal of medical care carried out by hospitals for various reasons, as mandated by Law Number 36 of 2009 concerning Health Article 14 paragraph 1, the Government is responsible for planning, Regulate, organize, foster and supervise the implementation of health efforts that are equitable and affordable to the community. (Idayanti, 2020)

The act of refusal is carried out by the hospital, then the full criminal responsibility is the head of the health facility if by order of position, because in the hospital there must be a leader (director) or medical personnel (doctor), this is clarified in Article 190 paragraph (1) of Law Number 36 of 2009 concerning Health. If the person who refuses medical services to patients is only an ordinary employee who does not include health workers (doctors) in the hospital, then the criminal liability is the head of the health facility or medical personnel, because all orders made by the employee or subordinate are all the will of the head of the health facility or medical personnel if this is in the name of the position stipulated in the Law. If the order is in a personal name, the employee's staff can also be criminalized, the Law regulates punishment by the leadership of health facilities and medical personnel charged with Article 190 paragraph (1) of Law Number 36 of 2009 concerning Health, namely: "Leaders of health care facilities and/or health workers who practice or work in health care facilities who deliberately do not provide first aid to patients in an emergency as referred to in Article 32 paragraph (2) or Article 85 paragraph (2) shall be punished with a maximum imprisonment of 2 (two) years and a maximum fine of Rp200,000,000, 00 (two hundred million rupiah)". If it causes death in the denial of medical services by the hospital, it can be charged with Article 190 paragraph (2) of Law Number 36 of 2009 concerning Health which states that as an act referred to in paragraph (1) resulting in disability or death, the leader of the health service facility and / or health workers is punished with a maximum imprisonment of 10 (ten) years and a maximum fine of Rp. 1,000,000,000, 00 (one billion rupiah).

Leaders of health care facilities can also be charged with Article 304 of the Criminal Code against health services carried out by hospitals. And can also be charged with Article 531 of the Criminal Code, because of criminal offenses. But the articles in the Criminal Code do not benefit the victim because the punishment is not proportional to the loss borne by the victim as the aggrieved party. What is in accordance with the above problem is to use Article 190 paragraphs (1) and (2) of Law Number 36 of 2009 concerning Health, because the Health Law is more burdensome punishment for perpetrators who have committed criminal acts. The implications for the act of denial of health services to patients can be criminally prosecuted in accordance with Articles 304 and 531 of the Criminal Code. In the case of refusal of hospital medical care, the hospital leader who is responsible for the violation of the law, refers to Article 190 paragraph (1) of Law Number 36 of 2009 concerning Health.

The role of the Health Office in legal protection against denial of patient health services, through the Hospital Ethics Committee is a body formed with members from various health care disciplines in the hospital. Ethical sanctions touch more on moral aspects,

while legal sanctions are coercive. Moral sanction is in the form of a warning letter. If the ethics committee finds elements of a criminal act, it will be brought to the realm of law and it will be taken to the enforcement department for processing. If there is a violation of the Hospital Code of Ethics, in this case the Hospital Ethics Committee plays a role in making decisions in granting sanctions.

Regulation of Legal Protection of Patient Rights in Current Health Legislation in Indonesia
General Patient Rights on Law Number 29 of 2004 concerning the practice of medicine

The rights of patients in this law are regulated in Article 52 which says that: Patients, in receiving services in medical practice, have the right: to get a complete explanation of medical actions, to ask for the opinion of doctors or other dentists, to get services according to medical needs, to refuse medical action and to obtain the contents of medical records. Further arrangements regarding the regulation of patient rights are contained in the Regulation of the Minister of Health as will be explained in the next letter. In this law the patient's right to medical secrets is not regulated, as we know the right to medical secrets is one of the rights arising from the right to privacy, namely human rights. Information obtained by health workers about patients, be it personal, social, or medical information related to their health should be guaranteed with medical secrets.

Law Number 36 of 2009 concerning Health Rights of patients in Law. This is regulated in Articles 56 to 58. The patient's rights protected in this law are the right to accept or reject part or all of the medical procedure after receiving and understanding complete information about the act, the right to medical secrets as stipulated in Article 57 which says that: "everyone has the right to the confidentiality of his personal health condition that has been disclosed to the health care provider and the right to claim damages for errors or omissions in the service health he receives. The regulation regarding patient rights in this law only explains the point, regarding the implementing arrangements contained in the Regulation of the Minister of Health.

The right to medical information, the right to consent to medical actions, the right to refuse medical treatment or treatment Regulation of the Minister of Health (Permekes) Number 290 of 2008. Since the enactment of the Regulation of the Minister of Health (Permenkes) No. 290 of 2008, before carrying out a medical action, the patient has the right to obtain information on the medical action that will be carried out to him, in this Minister of Health also provides protection for the patient's right to refuse medical treatment because before a medical action is carried out, the doctor must obtain approval from the patient or person who has the right to give permission for the action to be carried out performed on patients.

a. Obligation to provide Information

-Explanation of the diagnosis and state of health of the patient may include clinical findings from the results of medical examination to that point, diagnosis of disease or in the event that it cannot be established, then at least a working diagnosis and differential diagnosis, indications or clinical conditions of patients that require medical action, This is regulated in Article 8 paragraph 1.

-Explanation of medical actions carried out includes the purpose of medical action which can be preventive, diagnostic, therapeutic, or rehabilitative purposes, This is regulated in Article 8 paragraph 2 -Explanation of the risks and complications of medical action is all risks and complications that can occur following medical action carried out except for risks and complications that have become common knowledge, This is regulated in Article 8 paragraph 3

Explanation of prognosis includes prognosis of life and death (*ad vitam*), prognosis of function (*ad functinam*), prognosis of recovery (*ad sanationam*). This is regulated in Article 8 paragraph 4

b. Written permission requirements

There are several medical actions that require written informed consent, this is regulated in Article 3 paragraph 1 which says that: "Every medical action that contains a high risk must obtain written consent signed by the person entitled to give consent". Article 1 paragraph 5 states that medical actions that contain high risk are medical actions that based on a certain level of probability can result in death or disability.

c. Without Written permission

Minister of Health Regulation No. 290 of 2008 in Article 4 says that: "In an emergency, to save the patient's life and / or prevent disability no approval of medical action is required" When compared to the previous arrangement in Permenkes No. 585 of 1989 the matter regarding the exception or non-need for approval of medical action is regulated in Article 11 which says that: " In the event that the patient is unconscious / fainted and not accompanied by the next of kin and medically in an emergency and/or emergency that requires immediate medical action for its benefit, no consent from anyone is required".

d. Denial of Medical Action

Regarding the refusal of medical action, it is regulated in Article 16 which says that::

1. Refusal of medical action can be done by the patient and / or his closest family after receiving an explanation of the medical action to be carried out.
 2. Refusal of medical action as referred to in paragraph (1) must be made in writing.
 3. The result of refusal of medical action as referred to in paragraph (2) shall be the responsibility of the patient.
 4. Refusal of medical action as referred to in paragraph (1) does not break the relationship between doctor and patient.
1. Medical Secret Rights

Regulation of the Minister of Health (Permenkes) Number 36 of 2012 Regulation of the Minister of Health (Permenkes) Number 36 of 2012 is an implementing regulation of Article 48 paragraph 1 of the Law.

a. Scope of Medical Secrets

Regulated in Article 1 number 1, which is then regulated in Article 3 paragraph 1 regarding its scope, which states that: Medical secrets include data and information regarding:

- a) Identity of the patient;
- b) The patient's health includes the results of the history, physical examination, supporting examination, diagnosis, treatment and/or medical action; and
- c) other matters relating to the patient.

b. Obligation to Keep Medical Secrets

In this Minister of Health, it is regulated which parties have the obligation to keep medical secrets, this is regulated in Article 4 paragraphs 1 and 2 which states that: All parties involved in medical services and / or using data and

information about patients must keep medical secrets, parties as referred to in paragraph (1)

c. The Opening of Medical Secrets

This is stipulated in Article 5 which states that: "Medical secrets may be disclosed only for the benefit of the patient's health, fulfilling the request of law enforcement officials in the context of law enforcement, the patient's own request or based on the provisions of laws and regulations. The disclosure of medical secrets for the benefit of patient health as referred to in Article 5 includes the interests of health maintenance, treatment, healing, and patient care for disclosure of secrets regarding this matter, it requires approval from the patient and administrative purposes, payment of insurance or health financing guarantees, regarding this it requires written approval or electronic information systems that are said to have been given at the time of patient registration in Health care facilities, if the patient is not able to give consent, approval can be given by the next of kin or the owner.

Conclusion

Health is the most valuable asset, because on this side each individual will try to be in a healthy state and as much as possible avoid the causative factors that can cause disease. All children, both born in and out of wedlock, should receive protection. For the most part, this universal declaration is customary international law that binds all states. The refusal of patients in relation to the contents of article 32 of the Constitution Number 36 of 2009 concerning health, explains that in an emergency, health care facilities, both government and private, are obliged to provide health services for patient rescue and disability prevention first.

The hospital as one of the health service facilities, is a supporter for efforts to improve public health. The implementation of health services in hospitals has complex characteristics and organizations and has special characteristics and functions. Medical services provided have very diverse types, and involve various professional groups. Therefore, the legal relationship that occurs in health services involves patients with various parties in the hospital.

According to Law Number 44 of 2009 concerning Hospitals, Article 1 paragraph, it is determined that a Hospital is a health service institution that provides plenary individual health services that provide inpatient, outpatient, and emergency services. In providing medical services, hospitals have the right and obligation to provide health services or medical services in accordance with the Law. The rights and obligations of hospitals are regulated in Law No. 44 of 2009 concerning Hospitals Chapter VIII, in Article 29 paragraph letter b of Law No. 44 of 2009 concerning Hospitals regulates the obligations of hospitals in conducting health services to patients, namely providing safe, quality, anti-discrimination, and effective health services by prioritizing the interests of patients in accordance with hospital service standards. Regarding the refusal of medical action is regulated in Article 16. Medical action can be carried out by the patient and / or his closest family after receiving an explanation of the medical action to be carried out.

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