

Legal Protection of Health Workers: Legal Implications in Health Service Practices

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Abstract

This study aims to analyze legal protection for health workers in health service practices in Indonesia and the legal implications arising from the legal relationship between health workers, patients, and health institutions. In carrying out their duties, health workers not only face medical challenges but also potential legal risks, especially if there is a dispute involving alleged negligence or malpractice. This condition raises concerns among health workers regarding the criminalization of actions carried out in good faith, so a legal system is needed that provides legal certainty and justice for all parties. A normative legal approach is used in this study with the support of empirical data through case studies and interviews with health workers, patients, and law enforcement. The results of the study show that existing regulations, such as Law Number 36 of 2009 concerning Health and Law Number 29 of 2004 concerning Medical Practice, have not been fully able to protect health workers from the potential for excessive lawsuits. In addition, the public's lack of understanding of medical procedures and the lack of effective mediation mechanisms often exacerbate conflicts between health workers and patients. This study recommends the need for strengthening more specific regulations related to legal protection for health workers, alignment between professional standards and legal regulations, and the implementation of dispute resolution mechanisms based on mediation and restorative justice. Thus, it is hoped that health workers can carry out their duties without worry, while improving the quality of health services that are fairer and more responsive to the needs of the community.

Keywords: Legal protection, health workers, legal implications, health service practices, mediation, restorative justice.

INTRODUCTION

Health workers have a vital role in providing quality health services to the community. Their duties not only cover medical aspects, but also involve legal responsibilities and professional ethics. In carrying out their practices, health workers are often faced with complex situations, including potential lawsuits arising from alleged violations in medical services. This situation creates the need for clear and adequate legal protection to maintain a balance between patient rights and protection for health workers.ⁱ

Legal protection for health workers is an important issue, especially in cases involving alleged medical negligence or malpractice. In the Indonesian context, existing regulations, such as Law Number 36 of 2009 concerning Health and Law Number 29 of 2004 concerning Medical Practice, have provided a legal framework for health workers. However, the implementation of these regulations often encounters obstacles, especially related to the uneven understanding among health workers and the community regarding the rights and obligations of each party.ⁱⁱ

One of the main challenges in the legal protection of health workers is the potential criminalization of medical actions carried out in good faith. In some cases, health workers feel that the existing legal system does not provide justice, especially if their actions are in accordance with professional standards, but are still considered a crime by patients or their

families. This creates a sense of legal uncertainty that can impact the quality of health services as a whole.ⁱⁱⁱ

In addition, the lack of an effective mediation mechanism between health workers and patients is one of the main causes of the increasing legal disputes in the health sector. The long and protracted litigation process often puts psychological and professional pressure on health workers. Therefore, a dispute resolution approach that is more oriented towards restorative justice and mediation is needed, so that it can reduce the burden of legal conflict for both parties.^{iv}

This study aims to analyze the legal implications of legal protection for health workers in health service practices in Indonesia. The focus of the study includes a study of applicable regulations, the application of law in the field, and efforts to create a balance between patient rights and legal protection for health workers. The approach used is normative legal with empirical data support, such as interviews with health workers, patients, and law enforcers.^v

With the results of this study, it is expected to contribute to the development of legal policies in the health sector that are more adaptive and responsive to the needs of health workers and the community. Effective legal protection not only provides a sense of security for health workers in carrying out their duties, but also contributes to improving the quality of health services as a whole.^{vi}

METHOD

This study uses a sociological legal approach method. Which is an approach to legal reality in society. The steps are interviews and empirical analysis, so that the design and steps of this research technique will follow the pattern of social science research, this starts from the formulation of the problem which begins with the determination of respondents and sources, and collecting data, making an analysis design and ending with a conclusion.

RESULTS AND DISCUSSION

4.1. Theoretical Study of Legal Protection of Health Workers in Providing Health Services

Legal protection is protection for individuals or governments and private parties with the aim of guaranteeing, managing and realizing welfare in accordance with existing human rights, as referred to in Law Number 39 of 1999 concerning human rights. The theory of legal protection is an important theory to study because the focus of this theory is on legal protection for health workers and patients.^{vii}

As for the opinions quoted from experts regarding legal protection, namely, according to Philipus M. Hadjon, legal protection is the protection of dignity and honor, as well as recognition of human rights owned by legal subjects based on legal provisions from arbitrariness. Hadjon classifies two forms of legal protection for the people based on their means, namely preventive and repressive protection.^{viii} There are two types of legal protection facilities, namely: Preventive legal protection, namely protection provided by the government with the aim of preventing violations before they occur, and also Repressive legal protection, namely final protection in the form of sanctions such as fines, imprisonment and additional penalties given if a dispute has occurred or a violation has been committed.

Legal protection is the protection of dignity, honor and recognition of human rights owned by legal subjects based on legal provisions from arbitrariness. Various protection efforts for the community in general, include:

"First, individual protection from interference from other people or groups in social life because of various factors that do so. Second, individual protection of suspects or defendants in a criminal case against the possibility of arbitrary actions by certain officers. Third, protection of society against the possibility of actions or inactions from members of society."^{ix}

Legal protection is something that protects legal subjects through applicable laws and regulations and enforces its implementation with sanctions. Legal protection is a protection

given to legal subjects in accordance with preventive and repressive legal regulations. Basically, legal protection does not differentiate between men and women. Indonesia as a state of law based on Pancasila must provide legal protection to its citizens because of that legal protection will give birth to recognition and protection of human rights in their form as individual beings and social beings in a unitary state that upholds the spirit of family in order to achieve common welfare. This preventive legal protection encourages the government to be careful in making decisions related to the principle of *freies ermesen*, and the people can file objections or be asked for their opinions regarding the planned decision. In this preventive legal protection, legal subjects are given the opportunity to file objections or opinions before a government decision gets a definitive form. The goal is to prevent disputes. Second, repressive legal protection functions to resolve disputes if they occur. The handling of legal protection by the General Court and Administrative Court in Indonesia is included in this category of legal protection. The principle of legal protection against government actions is based on and derived from the concept of recognition and protection of human rights because according to history from the west.

The second principle underlying legal protection against government actions is the principle of the rule of law. Associated with the recognition and protection of human rights, the recognition and protection of human rights have a primary place and can be associated with the objectives of the rule of law. With this legal protection, it is expected to provide a sense of justice for both health workers and patients and their families.^x

Legal protection must see the stages, namely legal protection is born from a legal provision and all legal regulations provided by the community which is basically an agreement of the community to regulate behavioral relations between members of the community and between individuals and the government which is considered to represent the interests of the community. Legal protection is providing protection for Human Rights (HAM) that are harmed by others and this protection is given to the community so that they can enjoy all the rights granted by law.^{xi}

In addition, the theory of legal responsibility is a theory that analyzes the responsibility of legal subjects or perpetrators who have committed unlawful acts or criminal acts to bear costs or losses or carry out criminal penalties for their mistakes or negligence. According to Hans Kelsen in his theory of legal responsibility, he states that: "a person is legally responsible for a certain act or that he bears legal responsibility, the subject means he is responsible for a sanction in the case of a conflicting act".^{xii}

Hans Kelsen further states that failure to exercise the care required by law is called negligence; and negligence is usually regarded as another kind of fault (*culpa*), though less severe than the fault fulfilled by anticipating and intending, with or without malice, the harmful consequences."^{xiii} Hans Kelsen further divided responsibility into:

Individual responsibility means that an individual is responsible for the violations he/she commits;

- 1) Collective liability means that an individual is responsible for an offense committed by others;
- 2) Liability based on fault means that an individual is responsible for the violation he/she committed intentionally and with the intention of causing harm.
- 3) Absolute liability means that an individual is responsible for the violations he/she committed because they were unintentional and unexpected. Responsibility etymologically is an obligation to everything or the function of accepting the burden as a result of one's own actions or those of another party.^{xiv}

The principle of legal responsibility can be divided into two types, namely:

- a. Liability based on fault

In Indonesia, the principle of liability based on fault is found in Article 1365 of the Civil Code (KUHPer) which adopts the provisions of Article 1382 of the Code Napoleon 1804 in France and Article 1401 of the Burgerlijk Wetboek in the Netherlands. Article 1365 of the KUHPer, known as the article on unlawful acts, stipulates the elements that must be met in a lawsuit of liability based on fault, namely: first, the existence of an unlawful act by the defendant; second, the act can be blamed on him; and third, the existence of a loss suffered by the plaintiff as a result of the error. A very important thing in the principle of liability based on fault is the issue of the burden of proof. As a general provision, the principle of liability based on fault stipulates that the plaintiff is obliged to prove that the defendant has committed an unlawful act, has committed an error, and the result of his error has resulted in a loss to the plaintiff.^{xv}

b. Strict liability or absolute liability.

This principle is a principle that views the existence of responsibility without the need to prove the existence of a mistake. In other words, 'mistake' is something that is irrelevant to question whether it actually exists or not. Thus, the concept of no responsibility without error begins to shift. The use of the terms strict liability or absolute liability in the literature often appears interchangeably. Therefore, theoretically and practically it is difficult to make a clear distinction between the two terms. However, several experts have shown the fundamental differences between the two terms. Bin Cheng, for example, argues that in strict liability the act that causes the loss must be carried out by the person who is responsible.

This means that in strict liability there is a causal relationship between the party who is truly responsible and the loss. While in absolute liability the causal relationship between the party who is responsible and the loss is not required.^{xvi}

Health is one of the basic human needs besides food and clothing, without a healthy life, human life becomes meaningless, because when sick, humans cannot possibly carry out daily activities well. In addition, people who are sick (patients) who cannot cure their own illnesses, have no other choice but to ask for help from health workers who can cure their illnesses and these health workers will do what is known as health efforts by providing health services.^{xvii}

According to Levey and Loomba, health services are efforts carried out individually or collectively in an organization to maintain and improve health, prevent and cure diseases and restore individual health, family health, group health or public health.^{xviii}

In line with what was stated by Levey and Loomba, Muntaha also stated that what is meant by health services is every effort, whether carried out individually or together in an organization, to improve and maintain health, prevent disease, treat disease and restore health aimed at individuals, groups/communities.^{xix}

As regulated in Article 1 Paragraph 3 of Law Number 17 of 2023 concerning Health, Health Services are all forms of activities and/or a series of service activities provided directly to individuals or the community to maintain and improve the health of the community in the form of promotive, preventive, curative, rehabilitative, and/or palliative services.

Then in Article 4 Paragraph (1) letters c and d of Law Number 17 of 2023 concerning Health, it is explained that "everyone has the right to receive safe, quality and affordable health services in order to achieve the highest level of health and receive health care in accordance with health service standards.

Types of health services based on Law Number 17 of 2023 concerning Health in Article 18 paragraph 1 include:

- a. Promotive health services are activities and/or a series of health service activities that prioritize health promotion activities.
- b. Preventive health services are activities to prevent a health problem/disease.

- c. Curative health services are activities and/or a series of treatment activities aimed at curing disease, reducing suffering due to disease, controlling disease, or controlling disability so that the quality of the patient can be maintained as optimally as possible.
- d. Rehabilitative health services are activities and/or a series of activities to return former sufferers to society so that they can function again as members of society who are useful to themselves and society as much as possible according to their abilities.
- e. Traditional health services are treatments and/or care using methods and medicines that refer to empirically passed down experiences and skills that can be accounted for and applied in accordance with the norms that apply in society.

Based on Law Number 23 of 2014 concerning Regional Government, specifically Article 12, Article 18 and Article 298 regulates 6 (six) mandatory basic service matters that should be implemented by the regional government and are a priority in regional development planning and budgeting programs. The health aspect is one of the 6 (six) prioritized matters. Furthermore, in the Regulation of the Minister of Health Number 4 of 2019 concerning Technical Standards for Fulfilling the Quality of Basic Services in the SPM in the health sector, there are 2 (two) types of services and quality of SPM health at the provincial level and 12 (twelve) types of services and quality of SPM health at the district/city level. At the district/city level, there are 12 (twelve) types of Minimum Service Standards (SPM). Health SPM is a provision regarding the Type and Quality of Basic Services which are Mandatory Government Affairs that every Citizen has the right to obtain at least including:^{xx}

1. Maternal Health Services,
2. Maternal Health Services,
3. Newborn Health Services,
4. Toddler Health Services,
5. Health Services at Elementary School Age,
6. Health Services at Productive Age,
7. Health Services for the Elderly,
8. Health Services for Hypertension Sufferers,
9. Health Services for Diabetes Mellitus Patients,
10. Health Services for People with Severe Mental Disorders,
11. Health Services for People Suspected of Having Tuberculosis, and
12. Health Services for People at Risk of HIV Infection.

In implementing health services, of course there are rules and legal systems that regulate health services. In addition, during the course of health services, it certainly runs based on connectivity or the relationship between the recipient of health services (patients) and the Hospital. Which relationship between the recipient and the provider of health services (hospital) referred to in this context is referred to as a partnership relationship. The relationship between the 2 (two) aspects in question can occur as a mutualistic symbiosis obtained both from the recipient of health services or patients to the provider of health services (hospitals) and vice versa.^{xxi}

The implementation of a health service cannot be separated from the existence of patient rights as recipients of health services that must be fulfilled by health service providers. What is meant by rights relating to patient rights is contained in Law Number 44 of 2009 concerning Hospitals, namely Article 32, which is explained as follows:

- a. Have the right to obtain information regarding the rules and regulations applicable in the hospital.
- b. The right to obtain information about the rights and obligations of patients
- c. The right to receive fair, honest, humane services without discrimination.
- d. Have the right to obtain quality health services in accordance with professional standards and operational procedures.

- e. Have the right to obtain effective and efficient services so that patients can avoid physical and material losses.
- f. Have the right to file a complaint regarding the quality of service received
- g. Have the right to choose a doctor and class of treatment according to their wishes and the regulations in force at the hospital.
- h. Have the right to ask for consultation about the illness they are suffering from from another doctor who has a SIP (practice permit) either inside or outside the hospital.
- i. Have the right to receive confidentiality and privacy regarding the disease suffered and medical data
- j. The right to receive information which includes the diagnosis and procedures for medical action, alternative actions
- k. medical, the purpose of medical procedures, complications and risks that may occur as well as the prognosis for the procedures performed and estimated treatment costs.
- l. Have the right to give approval or rejection for actions taken by health workers for the disease suffered by the patient.
- m. Have the right to be accompanied by family in critical conditions
- n. Have the right to practice worship according to their religion and beliefs as long as it does not disturb other patients.
- o. Has the right to receive security and safety for himself while receiving treatment in hospital.
- p. Has the right to submit a proposal, suggestion for improvement of the hospital's treatment of him/her.
- q. Have the right to refuse spiritual guidance services that are not in accordance with the religion and beliefs that they adhere to.
- r. Have the right to sue or demand a hospital if the hospital is suspected of providing services that do not comply with existing standards, either criminally or civilly.
- s. Have the right to complain about hospital services that do not comply with health service standards through print and electronic media in accordance with statutory regulations.

4.2. Forms of Legal Protection for Health Workers in the Implementation of Health Services

Legal protection for general practitioners in providing health services is very important to protect their interests when providing medical care to patients. Law No. 17 of 2023, Article 286 states that (1) Under certain circumstances, Medical Personnel and Health Personnel may provide services outside their authority. (2) Certain circumstances as referred to in paragraph (1) include at least:

- a. absence of Medical Personnel and/or Health Personnel in an area where Medical Personnel or Health Personnel are on duty;
 - b. government program needs;
 - c. emergency medical care;
 - d. and/or KLB, Epidemic, and/or disaster emergency.
- (3) Medical Personnel and Health Personnel as referred to in paragraph (1) include:
- a. doctors/dentists who provide medical and/or pharmaceutical services within certain limits;
 - b. nurses or midwives who provide medical and/or pharmaceutical services within certain limits; or
 - c. vocational pharmacy personnel who provide pharmaceutical services which are within the authority of pharmacists to a certain extent.

The following are several forms of legal protection that are usually given to doctors at Community Health Centers, as follows:

a. Malpractice Insurance (Medical Negligence Insurance)

In Indonesia, the issue of doctors' liability in both civil and criminal cases has begun to be widely discussed among practitioners and legal theorists. This issue is actually not a new one. Around the 1930s in our country, there were already court decisions on the issue of "medical practice", such as the 1938 Medan RaadvanJustiti decision. Recent developments have been increasingly rapid, especially in the field of civil cases with all their legal aspects. Therefore, it is only right that medical law receives more attention. Medical negligence insurance is a form of insurance protection that provides guarantees to general practitioners against lawsuits that may arise due to errors in medical services. This insurance can help protect doctors from financial risks arising from malpractice claims. Sometimes in the provision of medical services, it is not without ending up in things that are detrimental to patients. Even Indonesia as a developing country certainly has many problems in the field of medical services, such as differences in community backgrounds in terms of social, cultural, customs, and systems being the reasons why this can happen. The emergence of various cases that can involve patients and doctors that have reached the legal realm has caused problems because it is very difficult to distinguish malpractice from negligence, accidents, or failures committed by doctors or other health workers. In general, patients assume that doctors have committed malpractice and feel disadvantaged, while on the other hand, doctors do not feel that they have done so. This condition is then exacerbated by the lack of public access to professional standards and medical service standards.

b. Professional Standards

Practicing general practitioners are required to comply with established professional standards. Following medical professional standards is a form of legal protection, because it can support doctors in proving that they have acted in accordance with applicable norms.

c. Consent Forms (Consent Forms)

General practitioners are required to obtain informed consent from patients before performing medical procedures that are invasive or have certain risks. This consent form can be evidence that the doctor has provided sufficient information to the patient before performing the medical procedure. This form is called Informed Consent, which consists of two words "informed" which means information and "consent" which means agreement. So the definition of Informed Consent is the consent given after receiving information. Thus, informed consent can be interpreted as a statement from the patient or his/her attorney containing a form of consent to the medical action plan recommended by the doctor after receiving sufficient information to be able to give consent or refusal. Consent to the action to be taken by the doctor must be done without any element of coercion. For patients, informed consent is a manifestation of the patient's right to obtain complete information regarding medical conditions, actions to be taken, risks, alternative therapies, and side effects of the action.

d. Confidentiality Agreements (Confidentiality Agreement)

Confidentiality of patient medical information is of utmost importance in practice. medical. Doctor general required For maintain the confidentiality of patient information in accordance with applicable health privacy laws. The existence of a confidentiality agreement between the doctor and the patient can also be a form of legal protection for the doctor.

e. Medical Board Oversight

General practitioners are usually regulated by a Medical Council or a health authority. The Medical Council is responsible for overseeing the medical practice of doctors and enforcing ethical standards and discipline of the medical profession. It also provides legal protection for doctors who act in accordance with the provisions set out.

f. Legal Counsel (Legal Assistance)

General practitioners who are faced with legal issues in their medical practice can seek help from legal experts or legal consultants who specialize in the field of medicine. Legal assistance can help doctors understand their legal rights and obligations and provide protection in complex situations.

g. GoodSamaritanLaws (Law)

Some jurisdictions have GoodSamaritan laws that provide legal protection for primary care physicians who provide emergency care to someone outside their scope of practice without any reward. These laws are intended to encourage individuals to provide care in emergency situations without fear of prosecution.

With proper legal protection, general practitioners can carry out their duties with more confidence and security, and can focus on providing the best healthcare for patients without worrying about the legal risks that may arise.

CONCLUSION

The Indonesian Ulema Council (MUI) of North Sumatra plays a very important role in ensuring the protection of Muslim consumers through halal fatwas. This responsibility includes not only religious moral aspects, but also legal responsibilities regulated by national regulations, such as Law No. 33 of 2014 concerning Halal Product Assurance and Law No. 8 of 1999 concerning Consumer Protection. However, the MUI of North Sumatra still faces various challenges, especially in terms of supervision of products that have been halal certified and education to the public. To strengthen the guarantee of halal products, it is necessary to increase the capacity of supervision, cooperation with related parties, and wider socialization to producers and consumers.

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