

Legal Protection Of Surgical Doctors That Does The Operation In Palembang Charitas Group Hospital

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ABSTRACT

The formulation of the problem in this study is 1) What is the legal protection for surgeons in carrying out operations that result in patients dying at Charitas Group Hospital Palembang? and 2) What are the factors that influence the legal protection of surgeons in carrying out operations that result in the patient's death at Charitas Group Hospital Palembang?. The research method used is normative and empirical juridical research. Sources of data used in this study consist of primary data and secondary data. Based on the results of the study, it shows that 1) Legal protection for surgeons who carry out operations at the Charitas Group Hospital in Palembang is carried out in a preventive and repressive manner because until now doctors in the city of Palembang have received fairly good legal protection, even though doctors on duty also often receive complaints from the patient or the patient's family because civilly it can be resolved through mediation where legal protection for the surgeon who performs surgery will be accepted if the obligations inherent in a medical profession are fulfilled in Law no. . 36 of 2009 concerning Health. Law No. 29 of 2004 concerning Medical Practice, Government Regulation No. 32 of 1996 concerning Health Workers, and Law no. 36 of 2014 concerning Health Workers and Hospitals are also responsible for malpractice lawsuits according to article 46 of the Hospital Act.; and 2) s family because civilly it can be resolved through mediation where legal protection for the surgeon who performs surgery will be accepted if the obligations inherent in a medical profession are fulfilled in Law no. 36 of 2009 concerning Health. Law No. 29 of 2004 concerning Medical Practice, Government Regulation No. 32 of 1996 concerning Health Workers, and Law no. 36 of 2014 concerning Health Workers and Hospitals are also responsible for malpractice lawsuits according to article 46 of the Hospital Act.; and 2) s family because civilly it can be resolved through mediation where legal protection for the surgeon who performs surgery will be accepted if the obligations inherent in a medical profession are fulfilled in Law no. 36 of 2009 concerning Health. Law No. 29 of 2004 concerning Medical Practice, Government Regulation No. 32 of 1996 concerning Health Workers, and Law no. 36 of 2014 concerning Health Workers and Hospitals are also responsible for malpractice lawsuits according to article 46 of the Hospital Act.; and 2) Factors that affect legal protection for surgeons in carrying out operations include SOP violations, clinical pathway incompatibility, informed consent and medical ethics in serving patients

Keywords: Legal Protection, Surgeon, Operation Implementation.

INTRODUCTION

Health services are all efforts made alone or together in an organization to maintain and improve health (Amir, 2017). Doctors have recently been highlighting the performance of health workers, especially doctors, both of which are delivered directly to the Indonesian Doctors Association (IDI) as the parent of the Doctors Association, as well as those broadcast through print and electronic media (Soewono, 2016).

Doctors as one of the main components in providing health services to the community, especially in activities where doctors play a very important role because they are directly related to the delivery of health services and the quality of services provided. The basis for doctors to be able to provide health services in the form of treatment for other people is the knowledge, techniques and skills they have acquired through education and training (Nasution, 2015).

If a doctor performs one of several medical procedures that can be performed on a patient and the medical procedure fails, then the doctor cannot be blamed. Doctors and other health workers are ordinary people who are full of limitations, and in carrying out their duties which are full of risks, they cannot avoid the power of nature and God's will, because the possibility of disabled patients dying even though they have been treated by doctors. can occur even though doctors have carried out their duties in accordance with professional standards and operating procedures (SOP) for the medical profession and/or good medical service standards. Such situations should be referred to as medical risks, and those risks are sometimes interpreted by those outside the medical profession as medical malpractice. One of them is surgery or surgery (Machmud, 2018).

Surgery or surgery is one of the follow-up procedures in handling emergency cases at the hospital. Surgery is a method of treatment that uses invasive procedures by making incisions to open and expose parts of the body before surgery (treatment) and ends with closure through the process of suturing the surgical wound (Budikasi et al., 2015). Good physical and mental preparation for patients who will undergo surgery is very important to note, because the success of surgery begins with the success of the preparations made before surgery. Failure in the action phase can occur due to preparation (Amiruddin et al., 2015).

Thus, doctors as health workers with their medical knowledge have their own characteristics which can be seen from the reasoning justified by law, namely the ability to perform medical operations on the human body in an effort to maintain and advance humanity (Damayanti & Zakaria, 2013). However, sometimes complaints or even loss of life due to medical negligence are very important matters that need to be investigated and investigated. This is because negligence has a very detrimental impact on patients and can also result in a loss of public trust in doctors. However, an adverse event in a medical procedure is not necessarily the result of medical negligence.

Referring to the cases above, one of the cases that can also occur at the Charitas Group Palembang Hospital is one of the private hospitals in Palembang. According to the decision of the Minister of Health of the Republic of Indonesia no. 983/MENKES/SK/XI/1992, Hospital is one of the public organizations engaged in the field of health services whose mission is to carry out efficient and effective health efforts by prioritizing or prioritizing health, healing and recovery efforts that are carried out in a coordinated and integrated manner. by the hospital in efforts to improve and prevent disease as well as improvement efforts.

For example, there were several cases at the Charitas Group Palembang Hospital where doctors were considered negligent in carrying out their duties, namely in 2019 there were 7 patients who died, there was one patient who complained because one of the doctors was considered late in treating the ER, causing the patient's finger to be amputated. In 2020, 6 patients died and there was one patient who complained and ended up having to undergo two toe amputation operations. In 2021, 5 patients died and one patient died from sepsis.

Basically, the mistakes or negligence of a doctor in carrying out the medical profession above are important matters to discuss, because the consequences of these errors or omissions are very detrimental. Because this will lead to a lack of public trust in the medical profession and also harm patients. In order to understand whether errors and omissions have occurred or not, it is first necessary to prioritize errors and omissions in professional practice over professional obligations. At the same time, it is also necessary to pay attention to the legal aspects that form the basis of the legal relationship between doctors and patients arising from medical transactions (Susila, 2016). Therefore, it is time for law enforcement to resolve cases related to negligence or malpractice in the healthcare industry. The problem we are facing right now is because in Indonesia there are no laws and regulations regarding professional ethics and medical professional standards such as Permenkes No. 4 of 2004 which regulates information on medical services.

The doctor's actions are considered a crime if it can be proven that the doctor had bad intentions. However, an evil deed without malicious intent is not necessarily considered a crime. Because work, work done, responsibility is individual. The series of criminal threats that can be imposed on this profession are increasing day by day, in the form of laws, namely the Criminal Code, Law no. 29 of 2004 concerning the medical profession. The law contains several articles that contain provisions regarding criminal acts that could threaten the practice of medicine. A doctor can get legal protection as long as he carries out his duties in accordance with professional standards and standard operating procedures (SOP) and because there are two reasons for rejecting medical malpractice, namely, justification and reasons put forward, in general criminal law.

Based on the statutory regulations Article 45 of the Law of the Republic of Indonesia Number 29 of 2004, the explanation given by the doctor to the patient at least includes the diagnosis and method of treatment; the purpose of the medical procedure performed; actions and other risks; risks and complications that may occur; and prospects for action taken. Risks that need to be communicated include side effects that may occur during the use of drugs or examinations and surgeries. Based on Article 39 of the Law of the Republic of Indonesia Number 29 of 2004 concerning Medicine, it is stated that medical work is carried out based on an agreement between a doctor or dentist and a patient in an effort to maintain health, prevent disease, and improve health, treat disease and restore health. What is meant by medical practice is a series of activities or actions carried out by a doctor or dentist in carrying out health actions. The existence of an agreement between the doctor and the patient shows the patient's willingness to participate in the health care process carried out by the doctor. The agreement between the doctor or dentist and the patient is called a treatment contract, while the patient's agreement is called informed consent.

Currently, some people are not happy with health services, especially doctors. The decline in public trust in doctors, the increasing demands of society today are often identified

with the failure of the doctors' efforts to heal. However, if the action taken is successful it is considered excessive, even if the doctor with the knowledge and techniques he has is only curative, and failure to apply medical knowledge is not always synonymous with failure in surgery. However, the desire to help others is not as smooth as the goals of today's health professions. Criminal threats haunt these noble ideals, so some of them choose not to continue their service as doctors (Isfandyarie, 2017). The right to receive compensation for services A doctor can obtain legal protection as long as he carries out his duties in accordance with professional standards and Standard Operating Procedures (SOP), and due to the existence of two bases for negating a doctor's mistake, namely the justifications and excuses set out in the Criminal Code.

Based on the background above, the author tries to conduct research with the title "Legal Protection of Surgeons who perform operations at the Charitas Group Hospital Palembang." As for the author's research, What shapelegal protection for surgeons who perform operations at the Charitas Group Palembang Hospital?; What are the influencing factorslegal protection for surgeons who perform operations at the Charitas Group Palembang Hospital?

RESEARCH METHOD

Research in writingthesisit usesempirical normative juridical.The main data in this study are primary data and secondary data. Data collection techniques withLibrary research (Library Research). And field research (Field Research).

DISCUSSION AND ANALYSIS

Legal Protection for Surgeons who carry out operations at the Charitas Group Palembang Hospital

Doctors as health workers with medical knowledge have their own characteristics which can be seen from the reasoning justified by law, namely the permissibility of performing medical operations on the human body in order to maintain and improve humanity. it is important to research and research.

Table 1
Cases of Patients Undertaken Operations and Experiencing Problems at Charitas Group Hospital Palembang

No	Year	Patient Died	Complained Cases	Ket
1	2019	7	1	1 case was complained because the handler was considered wrong in the emergency room by one of the doctors, the patient was told to go home causing the patient's finger to become infected and had to be amputated.
2	2020	5	1	1 case that was complained because the patient

				considered the treatment incomplete so that he had to operate 2x on a rotting toe due to DM, the solution was free of charge for the second operation
3	2021	5	1	1 patient who died after surgery because of a leaky stomach, it was considered that the operation was not successful, causing the patient to die. Negotiations at the hospital and the doctor and hospital paid some family money

Source: Documentation of Charitas Group Palembang Hospital, 2022

Based on table 1 above, it can be seen that in 2019 there was one patient who complained because he assessed that the service of a doctor in the emergency room was too late, regardless of the clinical and cause of the wound and the risks that would occur. caused the patient's finger to turn black due to infection and a few days later had to be removed, the solution was through internal mediation at the hospital, in the mediation it was explained to the patient that the treatment was carried out according to the procedure, while the complications that arise were the end result of a disease process due to an infection process those who are late treated there are no SOP violations or clinical pathways used in family care understand and can accept but the hospital still gives the family some money,

In 2020, there was one patient who complained and needed re-operation for a toe amputation, the patient and his family thought why one of his toes turned black after being amputated after a few days so he had to re-operate and pay more money, the family thought that doctors and hospitals did not be careful about this, patients and their families do not understand the disease process of diabetes which can cause extensive blood vessel damage, this was explained in mediation. Before the operation was carried out, Dr. R had given an explanation regarding the complications and dangers that would arise, which had been explained to the patient and his wife, however, a third party, namely the patient's child, was still having problems. with him Once explained in mediation the patient can accept it,

In 2021, one patient died after surgery, the patient's family complained and did not understand the risks and complications that would occur in the last case, communication and understanding went to the family, explained dr. S scientific in mediating the issue. case of the patient against the patient's family that the success of an operation is not only supported by the final operation but also by the underlying causes and risk factors that have been exposed to the patient before the operation is carried out will give a little prognosis according to science. the appropriate why had been explained and signed by the family, the patient's relatives agreed but said the doctor's explanation had not been fully understood, but the hospital still gave a sum of money as a sign of sympathy for the patient's family.

According to the Decree of the Minister of Health of the Republic of Indonesia No.983/Men.Kes/SK/XI/1992, a hospital is one of the public organizations engaged in the field

of health services which has the task of carrying out efficient and effective health efforts by prioritizing or prioritizing health efforts. medical and recovery activities that are carried out continuously and integrated by the hospital in efforts to improve and prevent disease as well as improvement efforts.

Legal protection for surgeons who perform operations at the Charitas Group Palembang Hospital is carried out in a preventive and repressive manner because so far doctors in Palembang have received fairly good legal protection, even so, doctors on duty also often receive complaints from patients. or the patient's family, but no one is in green, as most of these issues can be resolved through mediation. The surgeon who performs the procedure will be accepted if the obligations inherent in the medical profession are fulfilled. The state proves this with paragraph 1. Article 27 of Law no. 36 of 2009 on health, Article 50(a) Law no. 29 of 2004 concerning health work, paragraph 1. Article 24 regulation no. 32 of 1996 concerning health workers and point a of article 57. Law no. 36 of 2014 concerning health workers, in addition to the positive law above, article 46. Law no. 44 2009 concerning hospitals and emergency medicine theory applies.

On Basically, there are 2 types of holding doctors responsible for mistakes that result in harm to the patient: mistakes based on default and acts against the law. Doctors' mistakes in carrying out their profession due to default related to obligations arising from therapeutic transactions according to the nature of the contract required by decency, custom and law. Whereas in the case of errors based on acts against the law. Doctors' mistakes in carrying out their profession are basically related to obligations arising from their profession. This legal act does not only mean that the act violates the regulations or written law that is currently in effect, but also an act that violates the norms of decency, thoroughness, prudence in carrying out a surgical operation so as to cause harm to the patient.

In civil cases, lawsuits or civil lawsuits can be filed against doctors or surgeons in this study, also can be filed against legal entities or clinics or hospitals where doctors or dentists work. Likewise, if doctors or dentists work as a team, then all of these doctors can also be sued or sued jointly depending on the extent of their responsibility. This includes taking responsibility for the actions of healthcare professionals under their direction (Machmud, 2019).

Legal protection for the medical profession suspected of committing medical malpractice uses Article 48, Article 50, Article 51. Paragraph 1 of the General Criminal Law (KUHP). Regarding legal protection for the medical profession, namely Article 50 of Law Number 29 of 2004 concerning the Medical Profession, Article 50(a) of Law Number 29 of 2004 concerning the Medical Profession, "Doctors or dentists who practice medicine have the right to be protected by law. in carrying out their duties in accordance with professional standards and standard procedures. Paragraph 1 of Article 53 of Law number 23 of 1992 concerning health and Article 24 (1) of Regulation Number 32 of 1996 concerning Health Workers. In the medical discipline violation handling system, MKDKI stipulates three types of violations, namely moral violations, disciplinary violations, and criminal violations. Ethical violations are referred to the Medical Ethics Council (MKEK), disciplinary violations are referred to the Indonesian Medical Council (KKI), and criminal violations are referred to patients to be brought to the police or district court. If the case is transferred to the police, then

the doctor in the investigation stage who is suspected of committing negligence and medical action still has his rights according to law (Hanafiyah, 2018).

Thus the legal protection for surgeons operating at the Charitas Group Palembang Hospital is preventive and repressive because so far doctors in Palembang have received fairly good legal protection, although doctors on duty also often receive complaints from patients or the patient's family because civilly this can be resolved through mediation, where legal protection for surgeons who perform operations is obtained by fulfilling the obligations attached to the medical profession in law no. 36 of 2009 concerning health. UU no. 29 of 2004 concerning medical personnel, regulation no. actually also responsible as the responsibility of hospitals in Indonesia regulated in Article 46 of the Hospital Law which states that hospitals are legally responsible for all losses caused by negligence committed by medical staff at the hospital. There are two meanings in this arrangement. First of all, the hospital is only responsible for negligent errors and not willful errors. This is because intentional misconduct is an act that is classified as a crime because of mens rea (the perpetrator's inner attitude when committing a crime) and actus reus (an act that violates criminal law). Second, the negligence committed by health workers, employees when or to perform tasks assigned by the hospital. Central responsibility for the hospital is also emphasized in article 32q of law number 44 of 2009 concerning hospitals which states that every patient has the right to complain and/or sue the hospital if there is suspicion that the hospital provides services, which are not in accordance with the standards, both civil and criminal.

Factors Influencing Legal Protection for Surgeons who perform operations at Charitas Group Hospital Palembang

A surgeon who commits an act is often suspected of having committed medical malpractice or an unlawful act in the medical profession, so that he can be prosecuted under administrative law, civil law or criminal law, whether a doctor has been charged with medical malpractice or not, then if this has been widely published through the media, then the career that has been pioneered so far is destroyed. Medical malpractice can certainly occur, either intentionally or due to negligence, but as a doctor you cannot escape the possibility of making mistakes and mistakes because that is human nature.

From the facts presented at the scene, it appears that there are several factors that cause a doctor to receive legal protection for his work. Factors that affect legal protection for surgeons who perform operations namely;

First, doctors work in accordance with professional ethics in serving patients, every doctor must be sincere and sincere in using all his knowledge and skills for the benefit of patients, every doctor must provide opportunities for patients to always be in touch with their families. and consultants, every doctor is obliged to provide emergency assistance as a humanitarian duty.

So according to the author, the relationship between doctor and patient is a social relationship based on the existence of a contract or often referred to as a therapeutic transaction, namely a contract where the doctor tries as much as possible according to his knowledge to heal the patient or the disease, which in everyday language is referred to as a verbal inspanning agreement, where in this case an agreement about the results or discourse produced is not required, but maximum effort is made by the practitioner.

Second, it is a clinical procedure according to the mandate of RI law no. 44 of 2009 concerning Hospitals and Permenkes No. 1438 of 2010 where doctors work in one hospital with service standards that have been prepared by a medical committee consisting of professional organizations, academics, in compiling a service flow that has been adapted to facilities and human resources. provided in the hospital during the diagnosis, treatment and explanation to the patient about the success of the treatment.

Thus, according to the author, it is the duty of doctors to provide medical services in accordance with professional standards, medical service standards and standard procedures at the hospital where they work, because it is regulated in law no. 29 of 2004 concerning medical work, which can be found in paragraph 1. Article 44, namely every doctor or dentist who practices medicine is required to comply with medical or dental care standards.

As in Article 51 (a,b,c,d,e), that is, every doctor provides medical services in accordance with professional standards and practice standards as well as the patient's medical needs and refers patients to other doctors. or a dentist of better skill, if unable to carry out the examination or treatment, must be able to keep everything he knows about the patient confidential, even after the patient has died, and provide assistance on a humanitarian basis unless he is sure someone else is on the move and can do so and increase knowledge and closely monitor the development of medical science. Thus, if the doctor's actions are in accordance with applicable service standards and operational standards, then the doctor should be given legal protection against patient or family objections.

Third, informed consent in the implementation of surgery, informed consent consists of two words, namely informed and consent (Jhon M Echols), namely having received an explanation or information that has been notified, while consent means approval. Patients or patients' families who do not receive treatment failure. So according to the author's opinion, a doctor does have an obligation to provide an explanation to the patient and/or family about the diagnosis and procedures for medical treatment to be given to the patient, so that the patient can consider whether he still wants to continue the procedure or refuse it, which is also regulated in the provisions of Article 52. of the Medical Law that the patient has the right to receive a complete explanation of the medical procedure as referred to in Article 45. (1), that is, any medical action that the doctor will perform on the patient must obtain approval. The doctor cannot be blamed on that basis because his actions are based on the consent of the patient and his family.

Fourth, SOP for surgery, in this case it is in accordance with the SOP in force at Charitas Group Hospital that preparation of patients for surgery must meet the criteria according to multidisciplinary knowledge, preparation for surgery patients is also distinguished between acute and elective or planned, all of which are measured and detailed. in such a way in the medical record, such as from the patient's condition before surgery, comorbidities and previous medical history, preparation for fasting, supporting examinations, which are carried out in an interdisciplinary manner. Law Number 36 of 2014 concerning Health Workers and Regulation of the Minister of Health of the Republic of Indonesia Number 11 of 2017 concerning Patient Safety

Thus, the factors that affect legal protection for surgeons who perform procedures at the Charitas Group Hospital Palembang include service ethics, SOPs, appropriate clinical procedures, and informed consent.

Legal certainty is a standard when a regulation is made and issued with certainty because it regulates clearly and logically. Clear in the sense of not causing doubt (multi-interpretation) and logical. It is clear in the sense that there will be a system of norms with other norms so that they do not contradict or cause conflict between norms. Legal certainty refers to the enactment of clear, permanent, consistent and consistent laws and subjective circumstances cannot influence their implementation. Certainty and justice are not just moral requirements, but actually characterize law. Uncertain and unjust laws are not just bad laws (Kansil et al., 2017).

CLOSURE

Conclusion

Legal protection for surgeons who carry out operations at the Charitas Group Palembang Hospital is carried out in a preventive and repressive manner because until now doctors in Palembang have received fairly good legal protection, even though the doctors on duty also often receive complaints from patients. or the patient's family because civilly it can be resolved through mediation and negotiation where legal protection for surgeons who perform operations will be received if the obligations inherent in a medical profession are fulfilled in Law no. 36 of 2009 concerning Health. Law No. 29 of 2004 concerning Medical Practice, Government Regulation No.32 of 1996 concerning Health Workers, Permenkes no 11 of 2017 concerning patient safety, and Law no. 36 of 2014 concerning Health Workers and article 46 of the Hospital Act. The factors that affect the legal protection of surgeons who carry out operations at the Charitas Group Palembang Hospital include:informed consent, appropriate SOP, Clinical Pathway that applies in the hospital according to science and ethics in providing services to patients

Suggestions

For the government, it is necessary to have a legal umbrella with clear laws and regulations to protect doctors, especially surgeons, in carrying out operations if a patient dies due to medical risks, not solely based on the fact that the whole incident occurred. negligence and medical malpractice due to negligence. For doctors, knowledge and skills alone are not enough, because maybe a doctor who already has a lot of knowledge and skills as a doctor in the future should be able to understand more about legal responsibility because it will be very useful in anticipating potential patient claims due to the doctor's medical efforts. For the community, it is necessary to provide regular and comprehensive understanding to the community through organizations or government agencies serving the medical profession so that they do not provide certainty of success but provide maximum effort in providing services according to science. and applicable regulations

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