
IMPLEMENTATION OF INFORMED CONSENT MEDICAL ACTIONS AS LEGAL PROTECTION FOR HEALTH OFFICERS AT INTERNA MEDIKA KARAWANG CLINIC

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KEYWORDS

Informed Consent, Legal Protection, Health Officer

ABSTRACT

This study aims to examine the implementation of Informed Consent which is carried out when carrying out medical medical actions, examine and discuss the occurrence of criminal acts, examine and discuss the implementation of criminal sanctions by health workers in the practice of health services at the Interna Medika Clinic Karawang. This study uses a normative legal approach, which is to see and pay attention to the rules or literature in accordance with the object of research. The problems that arise are as follows: (1). The existence of Informed Consent is very important when carrying out medical medical actions (2). The occurrence of criminal acts that may be committed by health workers in the practice of health services (3). The application of criminal sanctions for anyone in this case health workers who commit criminal acts at the time the medical action is carried out.

INTRODUCTION

In the era of information technology, the need for all citizens for health measures, in this case medical action, has become a topic of discussion in the wider community. Informed Consent is the patient's consent that has been agreed upon by the patient in an effort to take medical action carried out by the doctor for the patient after obtaining clear and detailed information from the doctor implementing the medical action in an effort to help the patient, including providing information about all risks that could occur Consent according to Komalawati (Ratman 2013).

The above definition explains that a doctor cannot force a medical action on a patient, even though the medical action is in accordance with his knowledge or for the benefit of the patient. Respect for whatever the patient's choice is a must for doctors, and that which distinguishes a general criminal offense violator from a doctor (example: maltreatment) is informed consent. In this case, it is good for a doctor not to be separated in providing information and communicating with patients regarding the action plan to be carried out by the doctor, he should adhere to the Regulation of the Minister of Health Number 290 of 2008 concerning Approval of Medical Actions which contains and states how informed consent is carried out in accordance with procedure and correct.

In general, the problems that arise in the world of health are in the joints of human life, whether it is life in the past, current life or in the future, judging from the origin of its development, there has been a change in value orientation and thinking related to efforts to solve existing health problems. The process of technological and socio-cultural development goes hand in hand with changes in the orientation of values and people's thinking, the policies taken in the development of the health sector which were originally in the form of efforts to heal patients, have gradually developed towards a unified health

development effort for the whole community with comprehensive community participation, integrated and sustainable which includes:

1. Improvement Efforts (Promotive)
2. Preventive Efforts (Preventive)
3. Healing Efforts (Curative)
4. Recovery Efforts (Rehabilitative) (Nasution 2013)

The expected end result in the field of improvement, prevention, healing and recovery is that every member of the community can achieve a maximum degree of health both physically, mentally, socially and is expected to have a long life expectancy (Ningsi, Aswita, en Wulandari 2021).

The health efforts mentioned above are influenced by factors including; socio-cultural environmental factors, economic factors, physical and biological environmental factors both dynamic and complex. Given the wide coverage, the government, through the national health system, seeks to provide comprehensive, integrated, equitable, and acceptable health and is affordable by all levels of society. It is held with an emphasis on health services as widely as possible for the community, in an effort to achieve optimal health status.

A scholar named H.L. Bloom expressed his opinion that there are 4 factors that can affect the degree of public health including: 1) lifestyle; 2) the environment includes social, economic, political, cultural); 3) health services; and 4) genetic factors (heredity), the four factors above are interconnected, interact and affect the health status of a person or group.

The development of the national health system in terms of juridical aspects, should be reviewed and equipped with laws and regulations in the health sector, with more appropriate legal products that can create the following things:

1. Support the creation of existing health service facilities, programs and activities or those that will be developed in the future.
2. Pay attention to regional interests and harmonize with laws and regulations in other sectors related to health efforts.
3. Aims to encourage the development of health efforts that are expected in the future and are adapted to the needs of the wider community in general.
4. Regulate the authority of each level of health efforts.
5. Regulate the authority and responsibility for financing health efforts between the central government and local governments.
6. Regulate authorities and responsibilities and can provide legal protection for recipients and providers of health services.
7. Regulate the quality of health services provided by the government or the private sector.
8. Replacing legal products that are not in accordance with the situation and conditions.
9. Contains commensurate legal sanctions so that every violator can be dealt with accordingly.

One of the patient's rights is to obtain information as clearly and completely as possible from the doctor who treats the disease, namely the right to information which is part of the right of self-determination, which is one of the basic rights of individuals who have the right to self-determination, owned by a patient.

In this case, a doctor must be able to respect whatever choices are made by the

patient, because that is the real difference between a doctor and a violation of general criminal acts (eg molestation) is informed consent. So that a doctor should always communicate well and effectively with patients about complaints and plans of action to be taken and related to this, doctors should be guided by the Minister of Health Regulation No. 290 of 2008 concerning Approval of Medical Actions which contains how to do informed consent correctly.

In implementing health programs which are the rights of all communities, it is necessary to strengthen regulations to support the implementation of development efforts as well as efforts to empower health through accelerated implementation, increased cross-sectoral collaboration and improved management in stages at the center and in the regions. Planning for national health workforce needs is adjusted to the needs based on health problems, the need for development of health development programs, as well as the availability of these health workers. Procurement of health workers in accordance with the planning needs is carried out through education and training, both by the government, local governments and the community, including the private sector. Empowerment of health workers includes the distribution of health workers in an equitable and fair manner, utilization of health workers and development of health workers, including career development.

Health education is a process of changing healthy living behavior on the basis of self-awareness both within individuals, groups or communities in an effort to maintain and improve health.

Legal protection and legal certainty for health workers in carrying out their duties to serve the community directly or indirectly requires a legal basis that becomes boundaries that are in line with the development of science and technology in the health sector as well as socio-economic and cultural. Health workers are people who are directly involved in the health sector, have skills and have received education in the health sector for which certain types of authority are required to take health actions ([Indonesia en Nomor 32AD](#)).

Penalties in criminal law are intended to maintain security and proper social life ([Leden 2005](#)). The law works by regulating the actions of a person or the relationship between one person and another in society. To regulate this matter, the law should be able to explain its work in various functions, including the following: (1) The creation of norms and values, both specifically in terms of their designation and those that determine the relationship between people and people; (2) Settlement of disputes that occur; (3) Guaranteed continuity of community life, in the event of changes in the joints of life ([Satjipto 2009](#)).

The application of sanctions in a criminal law is not merely a technical matter of legislation, but is an inseparable part of the substance or material of the legislation itself. That is, in terms of matters relating to penalization, criminalization and discrimination, it must be understood comprehensively, both all aspects of the substance or material issues of legislation at the stage of legislation policy ([Mulyadi en Surbakti 2010](#)). The existence of action sanctions is urgent because the goal is to re-educate the perpetrators to be able to adapt to their environment. The sanctions for this action emphasize more on human values in the reform and re-education of criminals. This re-education is very important because only in this way can perpetrators realize that what they are doing is contrary to human values. The imposition of sanctions in criminal law is the effect or fruit of a violation of the law that has been committed and has been determined by law, from the

process of detention, then prosecution, until the sentence is handed down by the judge.

The priority part of any law is the determination of the legal system that underlies it. Related to policies and types of sanctions in criminal law, it is inseparable from the initial setting of goals to be achieved in the sentencing process.

Criminal sanctions are acts of corporal punishment for those who violate them, both confinement and imprisonment. Corporal punishment can stand alone or with a fine. Types of crime, namely: crimes and violations (Whimbo 2010).

RESEARCH METHODS

The method used in this scientific journal is normative juridical, namely legal research conducted by examining library materials or secondary legal materials as the basis for research by conducting a search of regulations and literature relating to the issues under study. 3 Existing legal materials are then analyzed qualitatively to determine draw conclusions to answer the problems studied

RESULTS AND DISCUSSION

a. Informed Consent Theory

One of the patient's rights is to obtain information as clearly and completely as possible from the doctor who treats his illness, namely the right to information which is part of the right to self-determination.

In the implementation of informed consent, a health worker should always communicate with the patient about what will be done, including providing information about expeksamping that may occur at the time of medical action.

Medical Action Approval:

Approval and Explanation

1. Approval

Approval for medical action is the approval given by the patient or the patient's family who has a kinship relationship for the medical action to be taken by the health worker to the patient.

A doctor or other health worker is obliged to provide an explanation of matters relating to health problems experienced by the patient correctly and honestly. On the explanation given by the health worker and the patient agrees, the action can be continued, but if the patient refuses to express it with reasons or without reason even though it can have an adverse impact on his illness, then a doctor must be able to accept and respect the decisions of the patient and his family. This is commonly known as informed refusal. This is the basis for the existence of a patient as a human being who has absolute decisions that cannot be forced. This term in modern ethics is called Respect to Autonomy.

The essence of informed refusal is that the refusal of the patient and the patient's family when a medical action is to be taken has previously received an explanation from the health officer in this case by a doctor or dentist regarding something related to the medical action and the patient and the patient's family already know and understand everything that may arise as a result of the refusal of such medical treatment (Guwandi 2006).

The patient's consent to the explanation of the doctor or other health workers can be given by the patient either orally or in written form, depending on the type of action

taken. Here a doctor must classify it against the actions to be performed on the patient, whether it must be written or just verbally enough, so that from this it can be separated any written medical actions or verbal consent.

Broadly speaking, the form of permission (approval) can be distinguished:

➤ Written consent

Approval obtained by health workers to carry out medical actions to patients in written form on a special form that has been provided which has previously received explanation or information from health workers in the field.

Written consent is given to; (1) Medical actions that will be of high risk and, (2) Actions that are difficult to predict the outcome. This does not also make doctors or other health workers free from their legal responsibilities if complications occur or the patient experiences disability or even death. Everything must be investigated according to the indications of the patient's illness, has been carried out by a doctor or other health worker who is competent and has the authority according to his knowledge, in accordance with standard operating procedures (SOP).

The approval obtained by doctors and other health workers does not eliminate legal liability, whether criminal or civil, if there is an error or mistake that harms the patient.

➤ Verbal consent

In the Minister of Health Regulation Number 290 of 2008 concerning Approval of Medical Actions, it is stated that patients do not need to express written consent if the actions given by doctors or other health workers are not actions that contain high risks or whose results cannot be predicted.

So a doctor or other health worker if you want to take medical action, after the officer explains or explains in a language that is easy to understand and understand, the patient or the patient's family can do:

- Confirming with words
- Nodding head
- Wink
- Move hands
- Keep eye contact only (provided the patient is awake)

Then it can be interpreted that the patient or the patient's family expresses their consent. Examples for unnecessary actions with written consent are: blood collection, infusion, installation of oxygen, ultrasound examination.

➤ Without approval

There are times when a patient is in an unconscious state (without an introduction) and urgent action is needed to deal with an emergency that occurs, to whom do doctors or other officers ask for approval? Is the patient left alone until he is conscious or until a family member is there to ask for approval?

Of course, in the rules that have been enacted, of course there are rules that regulate an exception, meaning that it can be violated with certain conditions. So there are several conditions in which patients cannot be asked to make informed consent, either orally or in writing, namely:

- In an emergency

In an emergency condition when the condition experienced by the patient will get worse if no immediate action is taken, it is usually called (Live Saving) in terms

of preventing the occurrence of disability in the patient. Doctors and other health workers cannot be prosecuted if bad things happen to the patient and the action given fails, if the procedure has been carried out properly and in accordance with the competence of the health worker who helps him.

The basis of the above why it should be done is:

- Article 304 of the Criminal Code: Whoever intentionally causes or leaves someone in a state of misery, while according to the law applicable to him, he is obliged to provide life, care or maintenance to another person, a maximum imprisonment of two years and eight months shall be imposed or a maximum compensation of as much as possible. four thousand five hundred rupiah.
- It is contained in Article 51 letter (d) of Law Number 29 of 2004 concerning medical practice: Performing emergency assistance on a humanitarian basis, unless it is certain that someone else is on duty and capable of doing it, with a maximum imprisonment of one year and/or a maximum fine of fifty million rupiah.
 - Pediatric patients and other legally disabled persons; Consent cannot be asked of them because legally they are not yet entitled to take legal action. Then approval is requested from the next of kin, guardian or guardian.
 - Patient is unconscious
For an unconscious patient, it is not possible to ask for consent from the patient, but consent is requested from the patient or the person who delivered it. If there is no competent family, then a doctor must carry out his obligation to help the patient if it is obvious that the person concerned needs help for his survival.
 - Extension of a medical surgical procedure
What is meant by the extension of medical action is if a surgical procedure for which there is informed consent, it turns out that at the time of the operation excessive action is required due to a condition (which is not included in the explanation of the informed consent) which if not performed will have serious consequences for the patient who at that time did not it is possible to give informed consent to his family due to limited time. The purpose of this action is to save life or prevent disability (live saving), for example, a surgeon at the time of surgery to open the abdominal wall, it turns out that at that time the patient's appendix/appendix wall is inflamed and almost burst (which is not the purpose of medical action). first), then the doctor is obliged to carry out expansion measures by cutting the appendix (appendectomy) in addition to the purpose of the first operation.

2. Explanation

In informed consent there are two very important elements that play a role in whether or not a medical action can be carried out, namely the consent from the patient for the explanation (informed) he received given by the doctor or other health workers.

A good explanation technique is very important that must be mastered by a doctor or other health worker so that what will be conveyed is in accordance with the patient's condition and can be known and understood

b. Law Enforcement Theory

A process of enforcing laws or norms in a real way and becoming a guide for the life of the state and nation is the meaning of law enforcement. The law should be the commander in chief for anyone, be it individual citizens or groups.

When a normative rule is carried out by anyone and places oneself in the applicable legal norms or regulations that carry out the normative rules or does something based on the norms of the applicable legal rules, it means that he is carrying out or enforcing the rule of law. In the sense of the subject, law enforcement is defined as the action of law enforcement officials in guaranteeing and ensuring that a rule of law can run as it should. To ensure the enforcement of the law, if necessary, law enforcement officers are allowed to carry out coercive actions against perpetrators of crime (Abidin 2012).

Law enforcement in a broad sense, includes the values of justice contained therein implied in the formal rules and values of justice that live in the community (Rahardjo en Terbit 2005). Meanwhile, if law enforcement only concerns the enforcement of formal and written rules, that is the narrow meaning.

According to Satjipto Rahardjo; Law enforcement is an effort to realize ideas, concepts and desires realized in real life. Included in these legal desires are the thoughts of the drafting body and the legislators themselves.

Health Officers May Commit Crimes in Health Care Practices

Crimes committed by health workers can occur when the practice of health services does the following things as stated in Law Number 36 of 2014 in Articles 83 to 86 concerning Health Workers and the types of acts committed as follows:

- a. Health practice is carried out by someone who is not a licensed health worker;
- b. Recipients of health services suffer serious injuries or even death due to negligence by health workers;
- c. Carrying out Practices without STR / Registration Certificate for Health Workers;
- d. Foreign nationals as health workers do not have a temporary STR and also do not have a SIP / Practice License but intentionally provide health services;
- e. Health workers do not have a practice license;

Enforcement of Criminal Sanctions for Health Workers

Sanctions play an important role in law enforcement against the observance of a statutory regulation. In general, sanctions are legal in the form of suffering due to violations of legal rules. In law, there are civil, criminal and administrative sanctions. Civil sanctions are sanctions due to unlawful acts committed by someone who cause harm to another person, therefore, the person who caused the loss is required to pay compensation for the loss.

Criminal sanctions are related to violations of the provisions of criminal law (public interest/order) and administrative sanctions related to violations of legal provisions and administrative sanctions related to violations of administrative law provisions stipulated by state administrative officials in carrying out public service affairs (Husni 2004).

The law regulates specific criminal offenses outside the general criminal law. The indicator of the criminal law is called a special crime or is not regulated in a separate criminal law (Syamsuddin 2022).

As a special piece of legislation, the legal basis as well as its enforcement, can

deviate from the general provisions of Book 1 of the Criminal Code, even to the provisions of procedural law (formal law), the legislation on special crimes can also deviate from Law Number 8 Year 1981 concerning the Criminal Procedure Code, the specificity of the legislation on special criminal acts from the aspect, norm, clearly regulates matters that have not been regulated in the Criminal Code.

The legislation on special crimes is the legislation that regulates matters of a special nature outside the Criminal Code. So the starting point for the specificity of a special statutory regulation can be seen from the actions that are regulated on the subject of criminal, criminal and criminal acts.

Several legal scholars argue about the purpose of criminal law, namely:

- a. To frighten people not to commit crimes, either by scaring the people (generale preventie), or by scaring certain people who have committed crimes, so that they will not commit crimes again (special preventie);
- b. To educate or improve people who like to commit crimes so that they become people of good character, so that they are beneficial to society;
- c. To prevent the commission of criminal acts for the protection of the state, society and population, namely:
 - To guide the convicts to convert and become virtuous and useful members of society;
 - To remove stains caused by criminal acts.

Regarding the purpose of this sentencing, J. E. Sahetapy is of the opinion that; Punishment aims for liberation and the meaning of liberation requires that the perpetrator must not only be freed from evil and wrong thoughts, but must also be released from social reality, in which the perpetrator is shackled (Mardani 2008).

Law Number 36 of 2014 concerning Health Workers,

Article 83:

Everyone who is not a health worker practices as if he were a licensed health worker as referred to in Article 64 shall be sentenced to a maximum imprisonment of 5 (five) years.

Article 84:

1. Every health worker who commits gross negligence resulting in serious injury to the recipient of health services shall be punished with imprisonment for a maximum of 3 (three) years;
2. If the gross negligence as referred to in paragraph (1) results in the death of any health worker, he shall be sentenced to a maximum imprisonment of 5 (five) years.

Article 85 :

1. Every health worker who intentionally practices without having STR as referred to in Article 44 paragraph (1) shall be sentenced to a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah).
2. Every foreign health worker who intentionally provides health services without having a temporary STR as referred to in Article 55 paragraph (1) shall be subject to a fine of Rp. 100,000,000.00 (one hundred million rupiah).

Article 86 :

1. Every health worker who practices without having a permit as referred to in

Article 46 paragraph (1) shall be sentenced to a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah).

2. Every foreign health worker who intentionally provides health services without having SIP as referred to in Article 55 paragraph (1) shall be subject to a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah).

In health practice, we often encounter medical and dental malpractice, while for other health workers (nurses, midwives, community health workers, nutritionists and pharmacists) we almost never encounter them. This is because the losses caused by the malpractice of these health workers, the community measures it only from the aspect of injury, disability and death. Such losses are only caused by the malpractice of a doctor or dentist, while the malpractice of other health workers generally only results in material losses.

Malpractice that is often carried out by health workers (doctors and dentists) is generally known to occur due to the following things:

- a) Doctors or dentists lack knowledge of medical practices that are generally accepted in the medical or dental profession;
- b) Providing medical or dental services under professional standards;
- c) Performing medical actions that are contrary to the law.

If a health worker (doctor or dentist) does the things mentioned above, then the person concerned violates the health law or malpractice and can be subject to legal sanctions. For this reason, the community or the patient can demand compensation for the negligence. For this reason, the claimant or the community who wish to claim compensation must be able to prove the existence of the following four elements: (Muhammad 1997)

- a) There is an obligation for health workers to sufferers or patients, but it is not carried out;
- b) The health worker has violated the commonly used health (medical) service standards;
- c) The plaintiff or sufferer and or his family suffer a loss for which compensation can be requested;
- d) It is clear (factual) that the loss was caused by an act below the standards or provisions of the health/medical profession.

In order for a job to be called a profession, some of the conditions that must be met are as follows:

1. There is specialization of work.
2. Based on expertise and skills.
3. Is fixed and continuous.
4. Prioritizing services over rewards/income.
5. Have a high sense of responsibility
6. Grouped in a professional organization.

In recent years, we have often heard and discussed about the practice of health workers, whether doctors or midwives, who perform abortions. We often hear about patients who become disabled and even die after being treated by doctors or other health workers. Then the polemic that arose was that other health workers, carried out an abortion, causing the patient to be disabled for life and even to death.

Therefore, the community, especially those affected by the case or whose family was affected by the case, filed a lawsuit. This kind of phenomenon is good if done

proportionally, because this phenomenon shows the increasing public awareness of health law. In addition, this phenomenon also shows the existence of public awareness, especially patients about their rights or patient rights.

In developed countries the phenomenon of malpractice and awareness of patient rights has indeed occurred decades ago. In developing countries, especially Indonesia, only about two decades ago. As the saying goes, it's better late than never. This means that even though it is too late, it is better for us to make the public aware of this malpractice problem and also about the rights of patients to health workers, especially medical personnel.

Malpractice, comes from the word "mala" which means wrong or inappropriate, while practice is the process of handling cases (patients) from a professional in accordance with work procedures that have been determined by his professional group, so that what is wrong or deviates from standard provisions or procedures. (Correct). In the health sector, malpractice is a deviation in the handling of cases or health problems (including diseases) by health workers, causing adverse effects for sufferers or patients. Negligence here is a common attitude that applies in his profession. In the practice of medicine or dentistry, negligence is also defined as performing a medical action below the service standard or the standard of the medical profession.

Sanctions, or *sanctie*, are legal consequences for violators of the provisions of the law. There are administrative sanctions, there are civil sanctions and there are criminal sanctions. Criminal sanctions, *strafsanctie*, legal consequences for violations of criminal provisions in the form of crimes and/or actions.

Sanctions are a means of coercion, forcing to enforce the law is forcing to heed legal norms. The enforcement of criminal law requires legal sanctions, namely sanctions consisting of special suffering imposed on the guilty. Suffering from losing his life (death penalty), suffering from losing his freedom (imprisonment and confinement), suffering from losing part of his wealth (penalty of fines and confiscation) and suffering from losing his honor (announcing the judge's decision). Enforcement of civil law requires sanctions also consisting of suffering before a court and suffering from losing part of their wealth in order to recover or compensate for losses due to violations they have committed. Sanctions as a law enforcement tool can also consist of the cancellation of an act that is a violation of the law. Both null and void (*van rechtswege*) or void after this has been declared by the judge. Violations of the procedural law often have sanctions for cancellation, for example; cancel the allegation letter that does not mention the element of place and/or time

CONCLUSION

The types of punishment can be seen from the provisions of Article 10 of the Criminal Code. Article 10 of the Criminal Code stipulates the existence of a basic sentence and additional penalties. The main penalties are:

1. The death penalty;
2. Imprisonment;
3. Confinement;
4. Fines.

Additional penalties are:

1. Revocation of certain rights;

2. Confiscation/confiscation of certain goods, and
3. Announcement of judge's decision

The difference between the main punishment and the additional punishment, is that the main punishment apart from other punishments means that it can be imposed on the convicted person independently. The additional punishment is only an addition to the main punishment, so it cannot be imposed without the main punishment (not independent).

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