

Urgency of Informed Consent (Doctor's Consent) as Part of the Therapeutic Agreement at Bhayangkara Hospital, Semarang City

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Abstract. *Therapeutic agreement is an agreement between a doctor and a patient that gives rise to the obligations and rights of each party, related to the relationship of medical actions and there is a legal relationship. Doctors cannot be prosecuted namely medical service errors have truly occurred medical malpractice and the doctor has indeed worked in accordance with the procedure. Bhayangkara Hospital, Semarang City prioritizes Informed Consent to fulfill legal obligations and uphold the professionalism of doctors This study uses a qualitative descriptive approach (empirical juridical). The primary data used are the 1945 Constitution of the Republic of Indonesia, books related to the research theme, the Criminal Code, Law Number 17 of 2023 concerning Health, and the results of interviews with informants. Secondary data uses several journals and scientific works and tertiary data sources use materials from the internet. The results of this study are that in the case of patients F and N, the doctor's actions were considered legitimate due to emergency conditions (Article 80 paragraph (3) and Article 293 paragraph (9) of Law No. 17 of 2023). Informed Consent has a high urgency, including preventing malpractice and strengthening therapeutic relationships. The legal consequences from the Criminal Law aspect, Article 48 of the Criminal Code applies that doctors in medical actions based on emergency conditions), the doctor cannot be punished. From Health Law, in principle saving the life of a patient in an emergency does not require informed consent (Article 80 paragraph (3) and Article 293 paragraph (9) of Law No. 17 of 2023). A review of Islamic Criminal Law states that medical actions in this case are in accordance with the principles of Islamic Law, because they are taken to save lives and protect the patient's physical health.*

Keywords: *actions; procedure; professionalism.*

1. Introduction

Health is important and this is the situation, which is different in health services will carry out the relationship between doctor and patient, based on the principle of "father knows best".¹The doctor-patient relationship has changed, in that the patient's position is not considered equal to the doctor, and in its development, medical actions must receive the patient's consent.²A therapeutic agreement is an agreement that occurs between a doctor and a patient, resulting in obligations and rights for each party regarding the medical action relationship and legal relationship.³

Agreements/consents that arise between patients and doctors are made by two methods, namely oral and written, and written consent is called Informed Consent.⁴Informed consent is a form of approval given to someone to carry out certain actions.⁵The term informed consent is a specific medical action to a patient, but the essence is good and correct by the doctor, there are still medical requests to patients without the correct mechanism. The doctor states the consent of the patient or his family through a nurse, midwife, or anesthetist on duty in the operating room, usually a medical action consent file is presented to be signed. The patient has signed the consent file as evidence, but the consent of the medical action without sufficient explanation from the doctor can be considered a procedural defect, does not have binding legal force and has the potential to cause medical disputes. This opinion is in line with the 1945 Constitution Article 28H paragraph (1), which emphasizes that everyone has the right to physical and spiritual well-being, a place to live, a good living environment, and health services as the basic rights of every citizen.⁶

Informed Consent is very important in ensuring legal protection for individuals, as it allows them to understand the risks and benefits of medical treatment, thus safeguarding their right to a healthy and safe life. The essence of consent for medical treatment lies in the process of obtaining consent from the patient or family to the doctor, while the consent file serves as confirmation of the medical procedure permit. Although the Medical Practice Law does not detail the process, Article 45 of the Medical Law indicates that there are procedures for obtaining consent for medical treatment. Consent for medical treatment (Informed Consent) is a legal order, so that the file signed by the patient functions not only

¹ Hermien Hadiati Koeswadji, *Medical Law (Study of Legal Relations in Which Doctors Are One of the Parties)*, Bandung, Citra Aditya Bakti, 1998, p. 36

² Veronica Komalawati, *Law and Ethics of Medical Practice*, Jakarta, Sinar Harapan, 1989, p. 77

³ Veronica Komalawati, *The Role of Informed Consent in Therapeutic Transactions*, Bandung Citra Aditya Bakti, 2012, p. 86

⁴ Sinulingga.dan Innaka, *Legal Review of the Implementation of Informed Consent and the Responsibility of Doctors to Patients in Therapeutic Agreements at Bunda Thamrin Hospital*, Medan, *Civil Law Journal* Volume 1 Number 1, 2012, p. 93

⁵Jusuf Hanafiah and Amri Amir, *Medical Ethics & Health Law*, Jakarta, EGC, 2007, p. 73

⁶ Irfan Iqbal Muthahhari, *Collection of Laws on Medical Practice, Hospitals, Health, Psychotropics, Narcotics*, Jakarta, Prestasi Pustaka, 2011, p. 151

as administrative completeness but also as valid evidence in facing legal claims, according to Article 184 paragraph (1) of the Criminal Procedure Code.

According to Bahder Johan Nasution, the relationship between a doctor and a patient is a therapeutic transaction that gives birth to rights and obligations for both parties, with the specificity of its object, namely the patient's healing efforts or therapy. This transaction aims to find the best therapy performed by the doctor for the patient.⁷ Medical actions without patient consent, such as injecting or cutting, are considered criminal acts of abuse. According to Tirta amidjaja, abuse is an act that intentionally causes pain or injury to another person, unless the act is intended for bodily safety.⁸

Criminal malpractice occurs when a reprehensible act fulfills the elements of a criminal offense, is done intentionally, carelessly, or negligently. The mistakes of health workers in criminal matters are regulated in several articles of the Criminal Code, such as Article 263, 267, 294 paragraph (2), and others. Medical crimes are different from ordinary crimes; in medical crimes, the cause is considered, not the effect. If there is no error or negligence even though the consequences are fatal, the doctor cannot be blamed.⁹

The malpractice case was experienced by Ningrum Santi, a patient at Hermina Pandanaran Hospital, who was in a coma after a cesarean section due to heart failure during anesthesia. Her baby was born blue and died a day later, while Ningrum was in a coma for two months and experienced memory and motor decline after regaining consciousness. Mediation between the family and the hospital was carried out seven times without success, so her husband reported the case to the Central Java Regional Police in June 2020. The case is currently being handled by the Central Java Regional Police's Directorate of Special Criminal Investigation, and a lawsuit for Unlawful Acts (PMH) is being prepared at the Semarang District Court.¹⁰ Tlogorejo Hospital in Semarang was reported for alleged malpractice related to the death of Samuel Reven in 2020. Initially, Samuel had to wait a long time to get a room and was asked to fill out a form that the family suspected. After being treated in an isolation room due to a reactive COVID-19 result, Samuel was declared negative based on two swab and chest lung tests, then died. The treatment costs were then zeroed by the hospital, which sparked suspicions from the family and a police report for alleged malpractice. The hospital stated that it had provided the best care according to professional standards.¹¹

⁷ Bahder Johan Nasution, *Health Law: Doctors' Responsibilities*, Jakarta, Rhineka Cipta, 2005, p. 11

⁸ Tirtaamidjaja, *Principles of Criminal Law*, Jakarta, Fasco, 1995, p. 174

⁹ Endang Kusuma Astuti, *Therapeutic Transactions in Medical Service Efforts at Hospitals*, Bandung, PT Citra Aditya Bakti, 2009, p. 282.

¹⁰ Muchammad Abdul Hakam, *Reconstruction of Medical Malpractice Policy Formulation in the Indonesian Legal System Based on Justice Values*, Doctoral Program (S3) Dissertation in Law, Faculty of Law, Sultan Agung Islamic University (Unissula) Semarang, 2022, pp. 11-12

¹¹ *Ibid.*, p. 13

According to the author, written informed consent when a patient is first treated is only valid for initial actions. Further medical actions, especially those that are invasive and high-risk, require separate informed consent. In an emergency, consent is not required to save lives or prevent disability, but the doctor must immediately provide an explanation to the patient or family after the action is taken. The facts show that doctors are vulnerable to legal proceedings without considering the real problem. The question that needs to be asked is whether medical errors are truly malpractice or whether the doctor has worked according to procedure, but the results do not cure the patient. Informed consent at Bhayangkara Hospital, Semarang City faces a similar situation to the two previous hospitals. If medical actions are carried out without a valid legal basis, it can be considered a violation and can be punished. Therefore, consent to medical actions is needed from the patient as a form of medical legal responsibility.

Based on the background description, the researcher is interested in conducting a study entitled "Urgency of Informed Consent (Doctor's Action Consent) as Part of the Therapeutic Agreement at Bhayangkara Hospital, Semarang City", by formulating the problem as follows:

- a. How urgent is Informed Consent (Doctor's Action Consent) as part of the Therapeutic Agreement at Bhayangkara Hospital, Semarang City?
- b. What are the legal consequences of Informed Consent (Doctor's Action Consent) as part of the Therapeutic Agreement at Bhayangkara Hospital, Semarang City, reviewed from the aspects of Criminal Law and Health Law as well as Islamic Criminal Law?

2. Research methods

Legal research is the process of finding legal rules, principles, and doctrines to answer legal issues. This research uses an empirical approach that includes identification and effectiveness of law.¹²This research connects legal provisions with the reality in society to find facts and data. After the data is collected, problem identification is carried out until it reaches its resolution.¹³This empirical study examines the urgency of Informed Consent (Doctor's Consent) as part of the Therapeutic Agreement at Bhayangkara Hospital, Semarang City.

This study uses a qualitative descriptive method (empirical juridical) to describe the facts or symptoms that appear. According to Nawawi and Martini, qualitative descriptive research describes objects based on facts as they are.¹⁴Qualitative descriptive aims to describe and depict natural and man-made phenomena with a focus on characteristics, quality, and relationships between activities.¹⁵The

¹² Ronny Hanitijo Soemitro, *Methodology of Legal Research and Jurimentry*, Jakarta, Ghalia Indonesia, 1998, p. 24.

¹³Bambang Waluyo, *Legal Research in Practice*, Jakarta, Sinar Grafika, 2002, p. 15.

¹⁴ Hadari Nawawi and Murti Martini, *Applied Research*, Yogyakarta, Gajahmada University Press, 1996, p. 73.

¹⁵Sukmadinata, *Educational Research Methods*, Bandung, Remaja Rosadakarya, 2011, p. 73.

researcher used a qualitative descriptive approach to obtain information related to the Urgency of Informed Consent (Doctor's Action Agreement) as part of the Therapeutic Agreement at Bhayangkara Hospital, Semarang City.

This study focuses on how the urgency of Informed Consent (Doctor's Action Agreement) as part of the Therapeutic Agreement at Bhayangkara Hospital, Semarang City. The location of this study is at Bhayangkara Hospital, Semarang City.

Data collection in this study includes:

- a. Primary Data. Obtained directly from the field, such as sources or informants. The author obtained data related to the urgency of Informed Consent at Bhayangkara Hospital in Semarang City. Primary data sources include the 1945 Constitution, related books, the Criminal Code, Law No. 17 of 2023 concerning Health, and interviews.
- b. Secondary Data. Obtained from literature studies such as legal expert books, journals, articles, and related research. Secondary data uses journals and related scientific works, while tertiary data comes from websites or the internet.

The data collection method in this study uses:

- a. Population and Research Sample. Population is a generalization area consisting of objects or subjects with certain qualities. Samples are obtained using the Purposive Sampling technique, where samples are selected based on certain assessments because they are considered to represent the population. Sample selection must be logical and reflect the characteristics of the population, such as knowledge, experience, work, or position.¹⁶Based on this opinion, the sample in this study were health workers or doctors at the Bhayangkara Hospital in Semarang City, as well as parties related to the urgency of Informed Consent at the Bhayangkara Hospital in Semarang City.
- b. Interview. Interview is a primary data source conducted directly with subjects or informants in the field, aimed at obtaining information regarding the urgency of Informed Consent as part of the Therapeutic Agreement at Bhayangkara Hospital, Semarang City.
- c. Documentation. Documentation is a data collection technique by tracing and examining relevant documents or literature. Data is obtained from scientific books, journals, or regulations related to research.

The data processing methods in this study include re-checking to ensure the completeness and clarity of the data, as well as classification to organize the data in a certain pattern to facilitate discussion related to the research.¹⁷The next step is verification, which is to re-check the accuracy of the data that has been collected

¹⁶ Bahder Johan Nasution, *Legal Science Research Methods*, Bandung, CV. Mandar Maju, 2008, p. 160.

¹⁷ Nana Sujana and Ahwal Kusuma, *Research Proposals in Higher Education*, Bandung, Sinar Baru Algesindo, 2000, p. 84.

systematically. The next stage is analysis, which is to study and sort the data into manageable units to find important information.¹⁸This research aims to solve problems and describe the object of research. The final step is drawing conclusions to answer questions in the problem formulation.

3. Results and Discussion

3.1. Case Chronology

The first case of a patient with the initials F, a 37-year-old pregnant woman with her second pregnancy, came to Bhayangkara Hospital Semarang in mid-2024 at 23.30 WIB with complaints of premature rupture of membranes at 37 weeks of pregnancy. The amniotic fluid continued flowing, causing lower abdominal pain, and initial examination showed a 2 cm opening. After infusion and continued evaluation, the opening reached 4-5 cm but the portion was still thick. Several hours later, when the opening was 5 cm, the patient felt severe pain, and the doctor was concerned about the risk of bleeding. For the safety of the mother and baby, the doctor decided to perform an emergency cesarean section, without requiring informed consent.

The first case of a patient with the initials N, a pregnant woman with a gestational age of 38 weeks, came to Bhayangkara Hospital Semarang in mid-2023 at 19.00 WIB with a diagnosis of obstructed labor and ruptured membranes. This is her fourth pregnancy, with two children and one previous miscarriage. When examined, the dilation was complete, but the baby's head was still high and the amniotic fluid looked cloudy. The doctor gave instructions to wait 30 minutes, but because there was no progress, it was decided to perform a cesarean section with the family's consent. During the operation, the baby's head remained high, so the cesarean section was continued for the safety of the mother and baby in an emergency.

3.2. Urgency of Informed Consent (Doctor's Consent) as part of the Therapeutic Agreement at Bhayangkara Hospital, Semarang City.

Informed Consent plays an important role in the legal relationship between doctors and patients. Errors or negligence in this procedure can lead to legal liability. Medical actions, which involve the patient's body and soul, are at risk of causing disability or loss of life. Therefore, making informed consent is mandatory in certain medical procedures, such as surgical operations. The advancement of access to science has reduced the knowledge gap between doctors and patients, along with the increasing intelligence of society. Informed Consent is a

¹⁸ Lexy J. Moleong, *Qualitative Research Methodology*, Bandung, PT. Remaja Rosdakarya, 2018, p. 248.

manifestation of the principle of therapeutic agreement, which binds the rights and obligations between doctors and patients.¹⁹

In the context of a therapeutic agreement, the agreement between the parties in the agreement is that there is a matching of wishes between the doctor and the patient in making the agreement.²⁰ Difficulties often arise in aligning the will of the doctor and the patient when making an agreement. The doctor, in an asymmetrical or paternalistic relationship, is oriented towards the service process according to medical standards, not on perfect results, especially in conditions involving life and death that enter the religious realm. In contrast, the patient is more focused on the results of medical actions that meet his expectations, not on the process.

Informed Consent must be based on the principle of partnership, not a paternalistic relationship, so that all information must be conveyed in simple language so that it is easy for patients to understand. This principle of partnership reflects the principle of good faith in therapeutic agreements, where the agreement must be carried out according to the agreement without harming the doctor, patient, or third party.²¹

Bhayangkara Hospital, Semarang City, is required to implement Informed Consent in every medical procedure to avoid legal problems, especially since it often deals with emergency patients. In emergency situations, medical procedures without Informed Consent can be carried out if the aim is to save lives, with the note that the hospital must prove that the condition justifies an exception to the patient's consent according to legal and ethical aspects. Although there are exceptions to Informed Consent in emergency situations, medical personnel are still bound by strict legal rules. The following are the responsibilities that must be fulfilled, namely documentation of emergency procedures, post-emergency medical evaluations, and actions within the corridor of medical standards. The implementation of Informed Consent at Bhayangkara Hospital, Semarang City, in emergency situations is legally valid if supported by evidence of an emergency condition. Doctors and hospitals are required to document emergency actions and provide an explanation after the situation is resolved. Without a legitimate emergency, failure to obtain Informed Consent can have legal consequences.

The first case analysis related to the urgency of Informed Consent with a patient with the initials F is a medical action without Informed Consent legally valid in an emergency condition. Obstacles that doctors often encounter in this situation include: 1) time constraints due to sudden life-threatening conditions, such as

¹⁹ Muhammad Syahri Ramadhan and Yunial Laili Mutiari, Implementation of the Legal Principles of Therapeutic Agreements and Informed Consent, *Istinbath Law Journal*, Volume 18 Number 1, 2020, p. 37

²⁰ Sri Siswati, *Health Ethics and Law in the Perspective of Health Law*, Depok, RajaGrafindo Persada, 2017, p. 67

²¹ Kartini Muljadi and Gunawan Widjaja, *The Bond Born from an Agreement*, Jakarta, PT. Raja Grafindo Persada, 2003, p. 72

airway obstruction; 2) absence of responsible family, for example in homeless patients with severe head trauma; 3) responsible family is present, but not in place or difficult to contact; and 4) responsible family is present, but unable to provide consent because they are in an unstable emotional condition.²²In an emergency situation, doctors can immediately perform medical actions without hesitation, because they are protected by Law Number 17 of 2023 concerning Health. Article 80 paragraph (3) permits medical actions without consent in an emergency, and Article 293 paragraph (9) states that consent is not required if the patient is in a life-threatening condition and does not have a guardian who can be asked for consent.

The second case analysis related to the urgency of Informed Consent with a patient with the initials N is a request for Informed Consent before a cesarean section according to medical standards, because the patient's condition allows for approval from the family. Medical actions are based on the principle of patient autonomy, the right to understand the risks and benefits of the procedure, and meet legal requirements. Informed Consent strengthens the relationship between the doctor and the patient's family, and shows the doctor's respect for the patient's rights in making health decisions.

It is concluded that Informed Consent has a very high urgency in health services in hospitals. Some of the reasons are preventing malpractice, improving the quality of service, strengthening therapeutic relationships, and respecting Human Rights.

3.3. The legal consequences of Informed Consent (Doctor's Action Consent) as part of the Therapeutic Agreement at Bhayangkara Hospital, Semarang City, reviewed from the aspects of Criminal Law and Health Law as well as Islamic Criminal Law.

3.3.1. Reviewed from the aspect of Criminal Law

Patients have the right to accept or refuse medical treatment, and doctors are required to ask for written consent, especially for high-risk procedures such as surgery.²³Doctors are required to work professionally in emergency situations, and if their obligations are not fulfilled, it can result in criminal penalties if the act is against the law and can be accounted for as an error. Errors are not always in the form of malicious intent, but can be in the form of negligence, such as misdiagnosis or treatment, which can be categorized as negligence. Negligence, according to Black's Law Dictionary, is the failure to provide care according to the standard expected in similar situations. Even in an emergency, doctors are still required to act carefully and according to standards. Doctors are considered negligent if they are proven not to be careful and ignore the potential consequences that may occur. The relationship between a doctor and a patient is

²² Wisnu Baroto and Yovita Arie Mangesti, Presumed Consent for High-Risk Medical Actions in Emergency Situations: Perspective of Law Number 17 of 2023, *Journal of Health Law and Ethics*, Volume 3 Number 2, 2023, p. 71

²³ Soekidjo Notoatmodjo, *Health Ethics and Law*, Jakarta, Rineka Cipta, 2018, p. 34

not only fiduciary, based on trust, but also a legal relationship that can be derived from laws and regulations or agreements.²⁴

In criminal law, an act is categorized as a crime if it fulfills the elements of being against the law, and to prosecute someone, the crime must be proven according to the provisions of procedural law and fulfill all existing elements.²⁵In criminal law, the elimination of criminal penalties can occur due to excusive reasons, where the act remains unlawful but cannot be accounted for, or due to justification reasons, where the act loses its unlawful nature. Justification reasons include coercive power, forced defense, carrying out statutory orders, and carrying out official orders.²⁶When a patient is suspected of being a victim of a doctor's error or negligence in emergency care, it is necessary to examine whether the act is against the law. A doctor is considered to have committed a professional error if he does not meet the professional standards according to the situation. Before categorizing an act as a crime, it must be examined whether the act is against the law, whether the consequences can be imagined and avoided, and whether the act can be blamed on the doctor.²⁷

If the doctor's actions are proven to meet the elements of a crime, the patient can sue for criminal responsibility. Article 359 of the Criminal Code regulates a prison sentence of up to five years or one year's imprisonment for causing death due to negligence. Article 360 paragraph (1) regulates the same punishment for serious injury, and paragraph (2) regulates a sentence of up to nine months or a fine if it causes injury that prevents work. Article 361 of the Criminal Code states that the penalty can be increased by one third if the crime is committed in carrying out the position, and the right to carry out the position can be revoked.

Book I Chapter III of the Criminal Code regulates reasons that reduce, aggravate, or eliminate criminal penalties. Reasons for eliminating criminal penalties are divided into three types, namely Justifying reasons (regulated in Article 49 paragraph (1), Article 50, and Article 51 paragraph (1) of the Criminal Code), Forgiving reasons (regulated in Article 44, Article 49 paragraph (2), and Article 51 paragraph (2) of the Criminal Code), and Reasons for eliminating prosecution, where the government decides not to prosecute on the basis of social benefits.²⁸

The Criminal Code regulates the reasons for the elimination of criminal penalties, namely: Inability to be responsible (Article 44), Coercive power (Article 48), Forced defense (Article 49), Implementing the provisions of the Law (Article 50), and Carrying out official orders (Article 51).²⁹In criminal law, Informed Consent serves

²⁴ Muhammad Afiful Jauhani et.al., Legal Protection for Medical Personnel and Patients in Emergency Procedures, *Jurnal Rechtsens*, Vol. 11, No. 2, 2022, p. 264

²⁵Muntaha, *Criminal Law on Malpractice*, Jakarta, Sinar Grafika, 2017, p. 23

²⁶Adami Chazawi, *Criminal Law Lessons*, Jakarta, Persada, 2002, p. 44

²⁷Andi Hamzah, *Principles of Criminal Law*, Jakarta, Rineka Cipta, 2010, p. 21

²⁸K. Wancik Saleh, *Criminal Acts of Corruption and Bribery*, Jakarta, Ghalia Indonesia, 2007, p. 32

²⁹ Diah Gustiniati and Rizki H Budi, *Principles and Criminal Law Sentencing in Indonesia*, Bandar Lampung, Justice Publisher, 2014, p. 55

to protect against alleged criminal violations, such as assault or bodily harm, because without consent, medical actions can be considered invalid and can be punished.

Viewed from the aspect of Criminal Law, the case of patient with the initials F that medical action without consent in an emergency is not considered a criminal act because the doctor is protected by legal defense based on *overmacht* (emergency) according to Article 48 of the Criminal Code. This emergency allows someone to commit an unlawful act because they are forced to, such as in medical cases to save the life or health of the patient, which does not violate the criminal element. In the case of patient with the initials N, medical action carried out with the consent of the family eliminates the criminal element, because consent has been given. Informed Consent functions as a defense tool for doctors from potential criminal charges, avoiding accusations of abuse or assault on the patient's body.

3.3.2. Reviewed from the aspect of Health Law

Any medical procedure with the potential for significant harm must have written consent from an authorized party, usually the patient or his or her family, although sometimes the owner of this right is not always clear.³⁰ Article 293 paragraph (5) of Law Number 17 of 2023 concerning Health states that written informed consent must be obtained before carrying out high-risk medical procedures. In normal situations, doctors have enough time to obtain consent and prepare for the procedure. However, in high-risk emergency cases, the time available is often limited. Delaying action simply because there is no consent can worsen the patient's condition, increase the risk of complications, and even threaten the patient's safety. The doctor's hesitation in taking action can cause the family to blame him for being slow. Conversely, if the doctor acts quickly and the result actually accelerates the patient's death, the family may accuse him of negligence. Due to the family's lack of understanding, the doctor faces a dilemma that can lead to a lawsuit for negligence or neglect, forcing him to undergo a long and complex legal process.

Article 440 paragraph (2) of Law Number 17 concerning Health states that doctors who are negligent to the point of causing the death of a patient can be subject to criminal penalties. This negligence occurs if the doctor does not follow the professional standards, operational procedures, and medical protocols that he must comply with. In criminal law, the principle of "*gebod*" requires a person to carry out certain actions; if this obligation is violated, it is considered unlawful and can result in criminal sanctions.³¹ In a dilemma, doctors can refer to Article 293 paragraph (10) of Law Number 17 of 2023 concerning Health, which states that medical actions must be based on the best interests of the patient, in accordance

³⁰ Wirabrata and Darma, Legal Review of Informed Consent in Legal Protection for Patients and Doctors, *Journal of Legal Analysis*, Volume 1 Number 2, 2018, p. 294

³¹ Mudakir Iskandar Syah, *Medical Malpractice Lawsuits*, Jakarta, Bhuana Ilmu Populer, 2019, p. 57

with the medical principle "agroti salus lex suprema" (patient safety is the highest law).³² Doctors must remember their obligations according to Article 275 paragraph (1) of Health Law Number 17 of 2023, which requires medical personnel in health facilities to provide emergency assistance to critical patients. This is in line with Article 13 of the Indonesian Medical Code of Ethics which mandates emergency assistance as a humanitarian duty.

In terms of professionalism, providing assistance is the responsibility of a competent doctor in a critical situation. Doctors must refer to Article 273 paragraph (1) of Law Number 17 of 2023, which guarantees legal protection for medical personnel as long as they practice according to professional standards, operational procedures, ethics, and patient health needs. This standard establishes the minimum quality of medical services, allowing doctors to defend themselves if actions are in accordance with practices recognized by their colleagues. Compliance with this standard also strengthens the basis for doctors to make quick decisions in emergency situations, while ignoring standards can trigger accusations of malpractice, especially if it has an impact on the health or death of the patient.³³ Article 80 paragraph (3) and Article 293 paragraph (9) of Law Number 17 of 2023 concerning Health state that in emergency situations, saving a patient's life does not require informed consent. This is known as presumed consent, where the doctor is still obliged to provide assistance even if the patient is unconscious or unable to give consent.³⁴

Although medical actions can be carried out based on presumed consent, Article 293 paragraph (11) of Law Number 17 of 2023 requires doctors to immediately inform the patient or their representative of the action after the patient is conscious. This is important to respect patient autonomy, ensure transparency, build trust, fulfill the principles of medical ethics, fulfill legal obligations, and prevent potential legal disputes due to misunderstandings. Documentation of medical actions becomes very important when doctors act based on presumed consent. Law Number 17 of 2023 Article 274 letter d and Article 300 paragraph (1) emphasize that doctors must record and keep documents regarding examinations, care, and actions taken. Article 275 paragraph (1) of Law Number 17 of 2023 concerning Health provides awards and legal protection for doctors who provide health services to save the lives of patients in emergencies, by freeing them from claims for compensation.

From the explanation above, it is concluded that in terms of Health Law, Informed Consent is important to ensure medical actions are in accordance with the wishes and understanding of the patient. However, in an emergency, such as in the case

³² YA Mannas, Legal Relationship between Doctors and Patients and the Responsibilities of Doctors in the Provision of Health Services, *Jurnal Cita Hukum*, Volume 6 Number 1, 2018, p. 91

³³ Makmur Jaya Yahya, *Delegation of Authority & Legal Protection of Medical Actions to Health Workers in the Context of State Administrative Law*, Refika Aditama, Bandung, 2020, p. 129

³⁴ Puspitasari et. al., Juridical Review of Presumed Consent as the Right of Patients in Emergency Conditions, *Journal of Health Policy and Management*, Volume 4 Number 2, 2019, p. 96.

of patients with the initials F and N, Informed Consent can be set aside for the sake of life safety. Medical actions that comply with procedures and legal standards will not result in negative legal consequences for doctors or hospitals.

3.3.3. Reviewed from the aspect of Islamic Criminal Law

Criminal sanctions in criminal law refer to punishment for perpetrators of crimes. In the medical context, criminal sanctions other than life include: Criminal Sanctions (punishments under criminal law for non-death violations), Civil Sanctions (compensation or damages to victims), and Administrative Sanctions (administrative sanctions such as revocation of a practice license or fines). Case Analysis First, the patient with the initials F is related to Criminal Sanctions Other Than Life, the doctor's actions did not result in death or serious injury, so criminal sanctions are not relevant. Medical actions in an emergency are generally protected if they are carried out in good faith to save lives. Case Analysis Second, the patient with the initials N that the doctor's actions in continuing the operation without further approval in an emergency did not result in death or serious injury, so criminal sanctions are not applied, as long as they are carried out in good faith and in accordance with medical standards.

Sanctions for crimes against life in criminal law are imposed when the perpetrator's actions cause death or serious impacts on the life, with severe penalties such as imprisonment or the death penalty. In medical cases, sanctions for crimes will be evaluated based on whether the medical action or negligence causes death or serious impacts on the patient that require sanctions for crimes against the life. First Case Analysis, patient with the initials F is related to Sanctions for Crimes Against Life. In this case, the doctor did not cause death, because the operation was carried out to save the lives of the patient and her baby in an emergency. Criminal sanctions do not apply because there was no malicious intent, negligence, or serious impact on the life, and the actions were carried out according to medical principles to protect the safety of the patient and baby. Second Case Analysis, patient with the initials N, in this case the doctor's actions did not result in the death of the patient or her baby. Although carried out without further consent in an emergency, criminal sanctions do not apply because there was no malicious intent or negligence, and the doctor acted according to medical standards to protect the safety of the patient.

Diyatin Islamic criminal law is compensation for death or injury due to violation, as a substitute for the death penalty or physical punishment, and focuses on financial compensation for the victim's family. In the medical context, *diyati* can be applied if the medical action causes death or serious injury, with financial compensation as a substitute for the loss. Analysis of the First and Second Cases, patients with the initials F and N are related to *diyati*, medical actions are carried out to save lives, without causing death or serious injury. Therefore, *diyati* is not relevant, because it is only applied to death or serious injury. Financial compensation is more related to the right to information or procedures, not *diyati*.

In Islamic law, Hifdz An-Nafs (protection of the soul) focuses on saving life, making it the top priority, while Hifdz Al-Jism (protection of the body) focuses on maintaining physical health and preventing serious injury. These two principles are used to assess medical actions taken for the well-being of the individual. The analysis of the two cases of patients with the initials F and N based on the Principles of Hifdz An-Nafs and Hifdz Al-Jism is that the section action in the case is in accordance with the principle of Hifdz An-Nafs (protection of the soul) to save the life of the patient and her baby, and the principle of Hifdz Al-Jism (protection of the body) to prevent serious injury or complications. Although without prior consent, this action is justified in an emergency and can be explained afterwards.

4. Conclusion

Bhayangkara Hospital of Semarang City prioritizes Informed Consent to fulfill legal obligations, protect patient rights, and maintain the professional responsibility of doctors. In an emergency, exceptions can be accepted with clear evidence. Informed Consent is important to prevent malpractice, improve services, strengthen therapeutic relationships, and respect Human Rights. Criminal Law and Health Law ensure that medical actions are carried out in accordance with the wishes and understanding of the patient. In the case of patients with the initials F and N, Informed Consent can be set aside for the safety of life. Islamic Criminal Law and Islamic Sanctions do not apply directly to this case, because they are taken to save lives and protect the physical health of patients. Bibliography of

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