

LEGAL PROTECTION OF HOSPITALS AND HEALTH WORKERS IN PROVIDING PRISONER HEALTH SERVICES AT BAYANGKARA HOSPITAL

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Abstract. *Legal protection of hospitals and health workers in carrying out medical acts in the service of prisoners, among others, the legal foundations that provide legal protection to doctors in the exercise of their profession and dealing with the law due to allegations of malpractice contained in Article 50 of Law No. 29 of 2004 on medical practice and Article 27 paragraph (1) of Law No. 36 of 2009 on health. And receive protection in implementing health care in Article 45 of the Hospital Act, Paragraph (2), and Article 8 of Law No. 36 of 2009 on health. The legal form for patients of prisoners who damage health facilities includes: the types of sanctions applied to prisoners and prisoners who violate the rules and damage health facilities or damage public facilities are as follows: a) there is a warning or reprimand for prisoners who make a light mess. b) put him in a solitary confinement cell of a convict of violation of the heavy category. C) the loss of the granting of remission or parole to the offending prisoner. And face legal sanctions following Article 406 of the Criminal Code and Article 521 of Law 1/2023.*

Keywords: *Legal protection, hospital, service, health worker*

1. INTRODUCTION

Aspects of life faced by the nation and the state include the issue of human rights, which is receiving a sharp spotlight at this time. The concept of prison reform, with a focus on recognizing human rights, has a universal nature, as it has been recognized by countries around the world. The international recognition of this view reached its peak with the acceptance of the Minimum Standards for the Treatment of Prisoners (SMR) by the UN world body in 1957. The UN subsequently followed up by advocating to all countries worldwide to implement these SMRs.¹

¹ Clifford, William. "The Standard Minimum Rules For The Treatment Of Prisoners." *American Journal Of International Law* 66, No. 5 (1972): 232-236.

Health care is the totality of professional activities in the field of health care for human beings, or medical activity for the benefit of others and for the benefit of Health. The basis for granting prisoners the right to obtain healthcare is that imprisonment is limited only to their physical freedom, not to their right to health.²

Given this, the recognition of prisoners' rights is limited to legislation. The problem in this case is how to implement it in the context of reality. The detention institution, as a technical implementation unit responsible for implementing guidance for prisoners, is required to effectively apply these rules in practice based on its primary tasks and functions, given that there are still many obstacles to enforcing the rights of these prisoners. Therefore, efforts need to be made in the form of promotive, preventive, curative, and rehabilitative health services carried out systematically.³

Penitentiary Law Article 14, paragraph 1, letter d states that: "every prisoner has the right to health care and proper food". This article clearly states that every prisoner has the right to healthcare in any form, especially when they need it. In this case, the researcher holds the view that health services, as stipulated in the health law, have been carried out by Bhayangkara Indramayu Hospital, which involves a series of curative efforts for prisoners. The goal to be achieved is to treat prisoners suffering from diseases or health problems at an early level and provide appropriate and immediate.

The role and function of the hospital as a place to perform professional health services (YANKES) will be closely related to 3 (*three*) elements, namely: First, the quality element that guarantees its quality; second, the element of profit or benefit that is reflected in the quality of Service; and finally the law that regulates housing in general and medicine and/or medicine in particular.

The authors argue that these elements will be beneficial for patients, doctors/health workers, and hospitals, due to the complementary relationship of these elements. Health services are in dire need of high-quality and maximum service delivery, with benefits that can be felt by both recipients of health services (patients) and health service providers (doctors/health workers, *and hospitals*).

As happened in the case in September there were patients of police and police prisoners who were treated by the bayangkara Indramayu Hospital, The Prisoner patient wanted to escape from the hospital, where he pulled out the ketater hose so that the blood was pouring, it was done by his own family, at that time there were families who visited the Bayangkara indramayu hospital, from.

As a mistake earlier, culpa, for example, it contains 2 (two) elements or requirements, namely: First, less careful, less vigilant, and less "voorzichtig". Second, less suspect the emergence of actions and consequences (less can "voorzien"). A causal relationship that is more the fault of the doctor's profession, and can be held liable for non-fulfillment of obligations, and can be categorized as unlawful. In the event of irregularities in the provision of health services, patients or recipients of health services can claim their rights, which have been violated by the health service providers, in this case, hospitals and doctors/healthcare workers. There are still other criminal regulations related to the error/negligence of a

² Pitri Wili Ramadani, "Pelayanan Terhadap Narapidana Di Rumah Tahanan (Rutan) Teluk Kuantan Kabupaten Kuantan Singingi" Vol. 4 No. 2 Oktober 2017, hal 1

³ Aulia, Muhammad Farid. "Implementasi Hak Mendapatkan Pelayanan Kesehatan Dan Makanan Yang Layak Bagi Narapidana Di Lembaga Pemasyarakatan."

doctor/health worker such as Article 351, 356 of the Criminal Code regarding persecution, where the persecution is analogous to deliberately damaging health and Article 359, 360 and 378 of the Criminal Code regarding fraud, as well as Article 512 of the Criminal Code regarding crimes against public order. To find out and analyze the issues raised above, related to “legal protection of hospitals and health workers in providing health services to prisoners at Bayangkara Hospital”

2. METHODS RESEARCH

A. Concept and Theory of legal protection of hospitals and health workers in health services

Legal protection consists of 2 (two) syllables, namely “protection” and “law”. In the Indonesian dictionary, the word “protection” comes from the word “protection,” which means “being behind something”. At the same time, the meaning of " law” is a regulation that is made and agreed upon, both in writing and unwritten, or commonly called regulations or legislation that binds the behavior of each particular community.⁴ Another understanding of the law, according to experts, is:

- a. Plato: The law is all the rules that are arranged
 - b. well-organized, which has the binding nature of the judge and society.
 - c. Drs. C. Utrecht S.H: The law is the set of regulations that contain commands and prohibitions that take care of the order of a society and therefore must be obeyed by the community.
 - d. Prof. Dr. Mochtar Kusumaatmadja: Law is the whole set of rules that regulate social life in society and aims to maintain order and realize the rule of reality in society. d. R. Soeroso: Law is a collection of rules created by the authorities to regulate the order of social life and has the characteristic of governing, prohibiting, and forcing by providing legal sanctions for violators. Law in providing protection can be through specific ways, namely by:
1. Law in providing protection can be through specific ways, namely by:
 - 1) Provide rules, with the aim of:
 - a. Provide rights and obligations.
 - b. Guarantee the rights of the subjects of law.
 - 2) enforce and maintain the rules, through:
 - a. State administrative law aimed at preventing
The violation of consumer rights is often due to a lack of agreement and supervision.
 - b. criminal law that aims to address violations of consumer rights by imposing criminal sanctions and penalties

3. Duties and authority of hospitals in health services

Hospitals, as part of the healthcare system, provide services to the community in various forms, including health services such as medical services, support services, rehabilitation, and care services. The service is provided through both outpatient and inpatient units. The development of hospitals initially only provide services that are certified healing (*curative*) to patients through hospitalization. The advancement of science, particularly in medical technology, has led to increased income and public education. Health services in hospitals

⁴ SS Daryanto, Kamus Bahasa Indonesia Lengkap, Apollo, Surabaya 1997, hlm. 271

today are not only curative but also restorative (*rehabilitative*). Both services are integrated through the efforts of Health Promotion (*promotive*) and Prevention (*preventive*).⁵

The type of service in hospitals is regulated by Law No. 44 of 2009 concerning hospitals. In Article 19, it states that the type of service can distinguish hospitals into two kinds of services, namely:

- a. General Hospital
- b. Specialized hospitals (eye, lung, leprosy, rehabilitation, heart, cancer, and so on)

Public hospitals, as referred to in Paragraph (1) of Law No. 44 of 2009, provide health services in all fields and types of diseases. Specialized hospitals, providing primary care in one area or one particular kind of disease based on disciplines, age groups, organs, types of diseases, or other specificities.

According To Susatyo Herlambang⁶Hospitals, based on the type of Service are divided into four types, namely:

- a. Type A hospital

A Type A hospital is a hospital that can provide a wide range of specialist and subspecialty medical services. A Type A hospital is designated as the top referral hospital or Central Hospital.

- b. Type B Hospital (Educational and non-educational)

Type B hospitals are those that can provide broad specialist and limited subspecialty medical services. Type B hospitals are established in each provincial capital (provincial hospital), which houses referral services from district hospitals. Teaching hospitals that do not belong to Type A are also classified as Type B hospitals.

- c. Type C Hospital

A Type C hospital is a hospital that is able to provide limited specialist medical services, namely internal medicine services, surgical services, children's health services, and obstetrics and gynecology services. Type C hospitals will be established in each Regency Capital (regency hospital), which accommodates referral services from Puskesmas.

- d. Type D Hospital

A Class D hospital is a facility that offers basic medical services and capabilities, and is transitional, as it will eventually be upgraded to a Type C hospital. The ability of Type D hospitals is limited to providing general medicine and dentistry services. Type D hospitals also accommodate referral services coming from health centers.

2. Legal protection of hospitals and health workers

Health law, according to the Articles of Association of Indonesian Health Law, is “all legal provisions relating directly to the maintenance/health services and their application”. This concerns the rights and obligations of both individuals and all levels of society, as recipients of health services, as well as those of health service providers, in all aspects, including organizations, facilities, guidelines for medical service standards, Health Sciences, and other legal sources. In this case, the medical law is part of the health law, which concerns medical services (*medical care/service*).

⁵ Susatyo Herlambang, *Manajemen Pelayanan Kesehatan Rumah Sakit*. Gosyen Publishing, Yogyakarta 2016, hlm.33

⁶ Susatyo Herlambang, *Opcit*, hlm 38

Knowledge of health law is essential, as it provides insight into legal provisions related to health services. Understanding and deepening knowledge of health law will give health workers confidence in carrying out their qualified health professions, ensuring they always operate within a safe framework, adhering to ethics and legal provisions.

Health law encompasses various components that are interrelated, including medical/dental law, nursing law, Clinical Pharmacy Law, hospital Law, Public Health Law, Environmental Health Law, and others.

3. Health services for police detainees as patients in hospitals

Based on the regulation of the head of the State Police of the Republic of Indonesia number 4 of 2015, detention is the status of a person who is placed in a certain place to undergo a judicial process, so it is necessary to treat prisoners by upholding human rights following the provisions of laws and regulations. Accused or suspected lawbreakers detained with consideration that perhaps they would escape, damage or eliminate evidence or repeat the crime, to endanger society. Those who have the right to detain are the police, prosecutors, and courts. In Law No. 58 of 1999 on the terms and procedures for the implementation of the duties and responsibilities of the custody Authority in Chapter I of Article.

4. Legal basis for police detention in a hospital

Criminal law enforcement is different from other areas of law enforcement. One of the distinguishing characteristics of criminal law enforcement is that certain legal institutions carry it out through procedures and functionally interrelated work mechanisms that have been determined limitatively based on legislation. The law enforcement agencies involved are the police. Prosecutor, court, and Correctional. All four bodies are administratively independent. The police are under the headquarters of the Indonesian National Police. The prosecutor's office reports to the Attorney General's Office, while the Supreme Court heads the court. The penitentiary is part of the organizational structure of the Department of Law and Human Rights.

5. Constitutional grounds against police custody in hospitals

"The Constitution of the Republic of Indonesia year 1945 (UUD NRI 1945)" Article 1 Paragraph (1) specifies expressly that the state of Indonesia is a state of law. In line with these provisions, one of the most essential principles of the rule of law is the guarantee of equality before the Law for everyone. Therefore, everyone has the right to recognition, assurance, protection, and certainty of fair law and equal treatment before the law.⁷

6. Health Services To Prisoners At Bhayangkara Indramayu Hospital

The implementation of the fulfillment of prisoners ' rights to health services in custody includes:

a). Preventive Services

Preventive health services to prisoners is a process to prevent and protect prisoners from the occurrence of diseases and health problems in order to achieve a degree of perfect health, both physical, mental, and social. Preventive health services to prisoners carried out in the custody of the Indramayu Regional Police in the form of;

- a. Vaccination to prevent certain diseases
- b. Isolation of people with infectious diseases, such as tuberculosis

⁷ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945

- c. Regular medical check-ups,
- d. Maintain the cleanliness of the environment and the cleanliness of the residential rooms of prisoners.

b). Curative Health Care Efforts

Curative health service efforts on prisoners aims to treat and treat inmates who suffer from disease or health problems, through activities, recognize and know the type of disease at an early level and provide appropriate treatment and immediate (early diagnosis and prompt treatment) curative health services in custody Indramayu police station include :

- a. Basic medical services for prisoners who are sick and still able to seek treatment
- b. Temporary inpatient health services for prisoners suffering from illness that according the doctor's analysis need special observation and can still be treated at Bhayangkara Hospital Indramayu police.

8. Written and unwritten sanctions on prisoners who violate hospital rules of Conduct (Bhayangkara Indramayu)

In the implementation of functions as correctional officers, the rights of prisoners as referred to in Article 14 paragraph (1) "Law No. 12 of 1995" on Correctional should be the main concern. Law enforcement is indispensable in the handling of violations of prisoner disciplinary regulations. The purpose of disciplinary punishment as a form of administrative sanction is to correct and educate prisoners who commit disciplinary offenses. Therefore, every detention officer who has the authority to punish must first carefully examine prisoners who commit disciplinary violations. Prisoners must also obey the rules that must be maintained during their stay in a Correctional Institution, as stipulated in Regulation of the Minister of Law and Human Rights of the Republic of Indonesia, Article 4, Number 6 of 2013, concerning the rules of Correctional Institutions and state detention houses.

There is a possibility that during the inspection of prisoners suspected of committing a disciplinary violation, it may be discovered that the prisoner in question has committed multiple disciplinary offenses. In such a case, the prisoner can only be sentenced to one type of disciplinary punishment. The disciplinary punishment to be imposed must be commensurate with the disciplinary offense committed and acceptable to the sense of justice, particularly for a prisoner who has been sentenced to a more severe disciplinary punishment than the one imposed on them. The level and type of disciplinary punishment consists of (a) mild disciplinary punishment Level, (b) moderate disciplinary punishment level, and (c) severe disciplinary punishment level.

Administrative sanctions for prisoners who violate the order in accordance with Ministerial Regulation No. 6 of 2013 can be classified as follows:

1. Minor Infractions
2. Moderate Violations
3. Gross Violations

The degree and type of disciplinary punishment consists of :

1. The degree of disciplinary punishment is mild, by the type of punishment :
 - a. giving verbal warnings
 - b. Give a written warning
2. The degree of disciplinary punishment is moderate, by the type of punishment :
 - a. stay in isolation for a maximum of 6 (six) days

- b. delay or cancel certain rights (implementation of visits) within a specific period based on the TPP session
- 3. The degree of severe disciplinary punishment, by the type of punishment :
 - a. put in isolation for 6 (six) days and
 - b. non-entitlement to remission, family visitor leave, conditional leave, assimilation, Pre-Release leave, and parole

9. Legal protection of law-dealing doctors

Article 50 " law No. 29 of 2004 " reads: Doctors and dentists in medical practice have the right to obtain legal protection as long as they carry out their duties in accordance with professional standards and professional procedure standards. Article 27 paragraph (1) "Law No. 36 of 2009 " reads: health workers are entitled to benefits and legal protection in carrying out duties in accordance with the profession.

1. According to Galih Endradita, legal protection against doctors today can be seen in (Rewur, 2021), the "1945 law" 4th Amendment.
 - a. Article 28D paragraph (1): Everyone has the right to recognition, guarantee, and certainty of fair law and equal treatment before the law.
 - b. Article 28i paragraph (2): Everyone is free from discriminatory treatment on any basis and is entitled to protection against discriminatory treatment.
 - c. Article 28i paragraph (4): The protection, promotion, enforcement, and fulfillment of human rights is the responsibility of the state, especially the government.
1. "Law No. 44 of 2009 about the hospital.
 - a. Article 3 letters
 - b. The organization of the hospital aims to protect human resources at home. It hurts.
 - c. Article 30 letter f: the hospital has the right to obtain legal protection in implementing health services.
2. Presidential Decree No. 93 of 2015 on teaching hospitals. Article 2 letter b: regulation on Teaching Hospitals aims to provide protection and legal certainty for service providers, students, and lecturers.

3. RESEARCH RESULTS AND DISCUSSION

1. Legal protection of hospitals and health workers in conducting medical acts in the service of prisoners

Based on the results of field observations on December 19, 2022, it was found that several suspects were undergoing detention. In the investigation period, the suspect may have a condition where he is sick, so he needs treatment outside the state detention center. Therefore, in order not to violate the human rights of the suspect, the investigator needs to carry out the detention.⁸

Where a suspect who is undergoing detention in a state detention center falls ill, there is an obligation on the part of the detaining party to provide treatment. This means that when examining suspects, investigators must consider the humanitarian aspect of the suspect as a subject in the examination, ensuring that the right to treatment is provided to suspects who are categorized as seriously ill, particularly since treatment facilities in state prisons are often inadequate.

⁸ Hasil Observasi pada tanggal 19 Desember 2022, Pkl. 10.00 Wib

Suryono Sutarto argues that the conditions for detention can be qualified into objective and subjective conditions.⁹ Objective terms emphasize the basis of detention in terms of specific criminal offenses, while subjective terms refer to the reasons for detaining suspects or defendants. Here, based on the results of interviews with the police around :

“Suspects who are detained and have health problems, then in the interests of Investigation and examination, to smooth the examination of suspects, treatment efforts are needed. Therefore, our suspect was treated at Bayangkara Indramayu Hospital. Where a sick suspect in custody should not be treated arbitrarily, in the sense that no examination should be carried out, so as not to violate the suspect's human rights.”¹⁰

And he also added :

“In the case of the health condition of the suspect who is seriously ill/chronic, then the concerned can apply to the investigator to carry out the detention of the suspect. Then the investigating officer can carry out discretionary actions or police policy actions as an investigator, which is a solution provided by law to carry out treatment in hospitals outside the prison to provide efficiency and effectiveness in carrying out police duties in the public interest, including suspects who are sick in custody.”

Based on the " Law No. 23 of 1992 on health, healthy is defined as a prosperous existence of body, soul and social that allows everyone to live a socially and economically productive life. Understanding health should be seen as a unified whole consisting of physical, mental, and social elements and in mental health is an integral part of Health.

The unlawful nature is always part of the elements of a criminal act, however, this does not always have to be proven by the public prosecutor, depending on whether the formulation of the criminal act mentions the unlawful nature expressly or not. If in the formulation of the offense is not stated, the public prosecutor does not need to prove it. The event of medical negligence arising from the breach of the duty of medical action is not measured by the opinion of the person on the road but is measured by the judgment of the professional group. This is confirmed by Catherine Tay swee Kian.¹¹

“To determine whether a person has breached his duty of care to another, the courts will consider whether he has acted with the level of care expected of reasonable person. The standard of care for professionals who hold themselves out as having particular skills is not that of reasonable man in the street, but the reasonable professional in that field.”

The hospital in this case is also included in the subject of law, that is, it is a legal entity, so the hospital has rights and obligations. In addition to the rights and obligations of the hospital also has responsibility for the implementation of health services that occur in the hospital. The responsibility of the hospital occurs because when there is a therapeutic transaction between the doctor and the patient, there is also a therapeutic transaction between the patient and the hospital,¹² in practice the legal relationship that occurs between patients and hospitals can be divided into 2 (two) kinds, namely:

1. Care agreement, in this case there is an agreement made between the hospital and the patient that the hospital provides care room facilities and nurses who perform care.

⁹ Suryono Sutarto, 1987, *Sari Hukum Acara Pidana*, Semarang: Yayasan Cendekia Purmadarma DH, hlm. 40-41.

¹⁰ Hasil Wawancara dengan Polsek pada tanggal 20 Desember 2022, Pkl. 10.00 Wib

¹¹ Catherine Tay Swee Kian, *Know Your Employment Obligation*, (Singapore: Marshall Cavendish Business, 2002), hlm. 17.

¹² Y.A. Triana Ohoiwutun, SH, MH, op cit, hal. 81.

2. Medical service agreement, in this case there is an agreement between the hospital and the patient that medical personnel will make maximum efforts to cure the patient through medical measures.

Associated with the responsibility for health services provided by the hospital as a matter of law, this often creates legal problems in the event of claims for damages.

2. Legal form for prisoner patients who damage health facilities

Hospitals that provide health services must have a license, and every health worker and medical worker who provides health services in a hospital must have a SIP, a practice license. The hospital, in carrying out its functions, has obligations that it must fulfill. Article 29 Paragraph (1) "Law 44 of 2009 on hospitals, Article 29 Paragraph (1) Law Number 11 of 2020 on job creation, Article 27 paragraph (1) Government Regulation Number 47 of 2021 on the implementation of the housing sector, there are at least 20 hospital obligations.

In the implementation of the penitentiary system, prisoners have the rights provided for in Article 14 of the prison law, which should be the primary consideration. To prevent actions outside the rules of order in the detention center or prison, effective law enforcement is needed. The goal is to improve this prisoner's behavior in the future so that he does not commit violations that result in punishment or are dangerous to others. The existence of this application for prisoners is one way to support those in correctional institutions and detention facilities who are under the authority of these institutions.

Violations of discipline have always existed, and almost all prison institutions and prisons throughout Indonesia are no exception. It is not uncommon when discussing breaches of order that occur in detention centers and prisons, as happened in Police Detention Houses, that violations of order occur almost every day, ranging from minor infractions such as not wearing a prisoner's uniform to buying and selling transactions.

The type of disciplinary punishment provided can be:

- a. Maximum 6 (six) days' silence for prisoners
- b. Delay or nullify certain rights for a specified period following applicable regulations.

For prisoners who make a mess in Rumas Sakit Bayangkara Indramayu, as described in Chapter I and Chapter IV, point A, those who have admitted their mistakes are nurtured by officers following the guidance program set at the police detention center. The coaching program that has been implemented so far at the Indramayu Antanya Police Detention Center includes religious education, facilities, and infrastructure. This program is dedicated to prisoners. Currently, the sanctions or penalties given to prisoners who commit acts beyond the limits stipulated in the regulations and prevent the disruption of the security of the Detention Center, among others:

- a. To give a warning or reprimand to inmates and prisoners who violate the violated act.
- b. Thrown into solitary confinement.
- c. Does not grant remission or parole to prisoners who have committed an offense more than once.

E. CONCLUSION

Legal protection of hospitals and health workers in carrying out medical acts in the service of prisoners, among others, the legal foundations that provide legal protection to doctors in the exercise of their profession and dealing with the law due to allegations of malpractice are contained in Article 50 of Law No. 29 of 2004 on medical practice and Article 27 paragraph

(1) "Law No. 36 of 2009 on health". In addition, Bayangkara Indramayu Hospital has the right to sue the party that caused the loss. Bayangkara Indramayu Hospital is protected by Article 29 of Permenkes No.69/2014, and obtain protection in implementing health in Article 45" Hospital law paragraph (2)", Article 8 " Law No.36 of 2009 on health".

The legal form for patients of prisoners who damage health facilities includes: the types of sanctions applied to prisoners and prisoners who violate the rules and damage health facilities or damage public facilities are as follows: a) there is a warning or reprimand for prisoners who make a light mess. b) put him in a solitary confinement cell of a convict of violation of the heavy category. C) the loss of the granting of remission or parole to the offending prisoner. And get legal sanctions following Article 406 of the Criminal Code and Article 521 of law 1/2023.

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