International Journal of Advanced Science and Technology
Vol. 29, No. 4, (2020), pp. 1767-1773

ROLE OF CONSERN INFORMATION IN COMPLETION MEDICAL CRIMINAL ACTS IN THE POLICE OF THE REPUBLIC OF INDONESIA

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Abstract

This research is entitled the role of the informant in solving medical crime in the Indonesian National Police. The purpose of this study is to analyze and determine the role of informed consent in the resolution of medical criminal cases in the Indonesian National Police and analyze the ideal medical treatment standards in the Indonesian National Police. This type of research used in preparing this study is a combination of research on normative legal research and empirical legal research. This research is descriptive. The type of data used is primary data and secondary data. Primary collection techniques are through field research, while secondary data is obtained through library research. Primary and secondary data were analyzed qualitatively. The results showed that the settlement of medical criminal cases in the Indonesian National Police without taking into account informed consent, even though its role was very strategic, namely protecting and increasing patient autonomy, protecting patients and preventing manipulative and coercive actions, increasing the introspective attitude of the medical team, even operational handling standards there is no medical crime in the Indonesian National Police, only using a general operational operational guideline as an alternative in the police investigation process.

Keywords—*Informed Consent, Police, Patients and Doctors.*

I. INTRODUCTION

The position of patients in patient health services can be found in Articles 4 and 5 of Law Number 36 of 2009 concerning Health. These provisions determine three main things that become the rights of patients where the three things are interrelated namely medical consent (informed consent), the right to a medical record (medical record) and medical secrecy. The principle of informed consent serves to protect the autonomy and integrity of individuals who are entitled to make their own free choice for the treatment to be carried out by doctors / medical personnel. However, in the practice of implementing informed consent problems arise, for example, First, mothers who are treated in the ICU (Intensive Care Unit) in one private hospital because they experience "coma" and shortness of breath, so they need a breathing aid called a ventilator. Where doctors explain the usefulness of these tools and the risks if not using the tool. But the doctor did not provide an explanation of how long and how much will be borne by the patient's family related to the use of the ventilator. Notification (information) of medical treatment followed by informed consent. [1]

Secondly, the Hospital in Semarang forced patients to sign medical documents without a complete explanation from the doctor. Third, the Ratna Suminar case complained about a hospital in the city of Cimahi, West Java because her son, named Sepia Rizkiani, was 18 months of blindness after receiving an IV infusion, even though Ratna refused the infusion when his child was being treated. Fourth, the case of the family of the deceased Robinson Sitorus, a resident of Pematang Siantar, North Sumatra, who complained of a doctor for misdiagnosis of diabetes despite being reminded that patients are not accustomed to taking it. Informed consent in practice is often not done because the doctor considers all medical actions taken on the patient will not pose a risk, and if it poses a risk the doctor is sure to handle it. The unlawful nature of the medical action taken by a doctor is located in the absence of informed consent, although for emergency medical action it can be done without informed consent (justification reasons). Such an agreement cannot be used as a justification for the

ISSN: 2005-4238 IJAST

medical treatment that is distorted, the informed consent of the patient or family is merely to release the legal risk for the emergence of undesired consequences in the case of correct and non-distorted medical treatment. [2]

According to MKDKI 80% of the 135 cases complained of were caused by poor communication between doctors and patients, while the reasons for the inadequate interview between doctors and patients were due to: from the doctors due to the busy and routine work of the doctor took a lot of time, so doctors were less have the time to provide all the information, the number of patients the doctor faces every day causes the doctor to experience boredom or boredom in providing excessive information, the state of the sick patient both physically and psychologically creates difficulties for the doctor too, because if the patient gets too much information the patient will become fear or even shock that can worsen the healing process, even fear, while giving too little information can cause misinterpretation. Detik Health, 80 percent of doctors were complained to MKDKI because of miscommunication. According to Endang Winarsih, the concept of the right to health refers to the meaning of the right to obtain health services from health facilities in order to realize the highest degree of health. This is in line with the Universal Declaration of Human Rights as well as the International Covenant on economic, social and cultural rights which is a recognition as well as universal protection of human rights. Health rights include freedom and entitlement, namely freedom to control his health and body and freedom from political interference such as torture, health services and experiments without consent. Therefore, in the right to health means getting a health protection system that provides equal access to services to obtain the highest health standards. It is the responsibility of the government / state to provide various health facilities according to the needs of the community including the protection of the rights to health individually. [3]

Meilinda Eka Yuniza stated that three main things are the rights of patients where the three things are interrelated namely medical consent (informed consent), the right to a medical record (medical record) and medical secrecy. This is absolutely necessary because in addition to respecting human dignity that is free and has an autonomous right to itself. The position of patients in patient health services can be found in the provisions of Law Number 36 of 2009, namely: Article 4 "Everyone has the right to health". Likewise in Article 5, paragraph (1) Everyone has the same right in gaining access to resources in the health sector; (2) Everyone has the right to obtain safe, quality and affordable health services; (3) Every person has the right to independently and be responsible for determining for themselves the health services needed for him. The implementation of the doctor's obligation is the patient's right, and vice versa the patient's obligation is the doctor's right. For doctors, achievement in doing something is a legal obligation to do the best and as much as possible medical treatment for the patient's health interests. From the point of view of the source, the doctor's obligations and rights are based on agreements (agreements / transactions), and are based on laws and regulations. [4]

Winarsih further mapped the intentions of informed consent as a statement of a patient receiving or rejecting treatment after receiving information from a doctor before giving approval for his medical actions. This relates to respecting the right of individual autonomy and the right to self determination as the basis of human rights. In addition, Fadli Prasetyo reminded the importance of informed consent as a way to avoid or prevent fraud or coercion, or in other words, approval of medical action is a limitation of the authorization of doctors to the patient's interests. Although approval of medical action / informed consent is more often associated with legal understanding, Andi Indahwaty Sidin reminded that basically medical approval / informed consent agreement has more ethical basis, which is the doctor's obligation to respect the independence / autonomy of patients. Keep in mind that informed consent is not just a consent form obtained from the patient, but is a communication process. The consent form is only a confirmation or documentation of what has been agreed (informed consent is a process, not on event), so reaching an agreement between the doctor and patient is the basis of the entire process of informed consent. [5]

ISSN: 2005-4238 IJAST

II. Research Method

This type of research used in compiling this research is normative legal research. Normative legal research places more emphasis on library research by collecting data from libraries and other places. This research focuses on the principles of law, legal systematics, law synchronization, legal history in the settlement of medical crime cases in the Indonesian National Police. The research data used are secondary data. Secondary data collection tools in the form of books relating to the theory and concept of research objects, related articles, scientific writing literature and so on through library research Data analysis used in this study is a qualitative analysis which is then presented in a descriptive form. Qualitative analysis is done through categorization based on the problems studied and data collected. [6]

III. Discussion

The definition of informed consent can be found in Article 1 letter a and letter b of the Minister of Health Regulation (Permenkes) Number 290 of 2008 concerning Approval of Medical Measures, that is, approval of medical actions is approval given by patients or immediate family after obtaining a complete explanation regarding medical or dentistry actions that will be performed on patients, while medical treatment is a medical action in the form of preventive, diagnostic, curative and rehabilitative measures taken by doctors or dentists on patients. The recognition and protection of these rights is strengthened by the formulation of the obligations of doctors in carrying out their medical practices. Conscious consent given by the subject or supervisor to participate in research or investigations or for medical actions, after obtaining information about uses, methods, procedures, benefits, and risks. The implementation of an agreement on a doctor's medical action with a patient in addition to the rights and obligations between parties in a therapeutic transaction results in a Medical Action Agreement (PTM), better known as an Informed Consent. Informed Consent means the consent given by the patient to the doctor after being given an explanation. Consent which literally means consent or permission, is the consent or permission of the patient or family that has the right to the doctor to perform medical treatment to the patient, such as physical examination and other examinations to confirm the diagnosis, give medicine, give an injection, help give birth, perform anesthesia, surgery, follow up if there is difficulty. [6]

Informed Consent is based on the principles of ethics and morals and patient autonomy, where this principle contains important things, namely: (1) everyone has the right to decide freely what he chooses based on adequate understanding, (2) this decision must be made in circumstances that allow making choices without any interference / coercion from other parties. The doctrine of informed consent states that in the Common Law tradition, especially English law is known to the right of individuals to be free from the danger or attack that touches it. Intentional danger or attacks from other people who touch them without rights are called batteries, which are crimes or unlawful acts that use violence or coercion against others that violate the individual rights of others. To prevent unauthorized interventions on the physical integrity of individuals must be firmly protected because every adult human and healthy mind has the right to determine what can be done to his body. The substance of informed consent is to provide information about the method and type of treatment performed on patients, including the chances of recovery and the risks that will be experienced by the patient. In carrying out medical treatment, the Informed Consent in addition has the function of respecting the dignity of patients as human beings to determine their own destiny, and in principle aims to: (a) protect users of medical treatment services legally from all medical actions carried out without his knowledge, or medical actions arbitrary, malpractice actions that are contrary to the patient's human rights and the standards of the medical profession as well as the misuse of sophisticated equipment that requires high costs or is unnecessary and has no medical reasons; (b) provide legal protection against the implementation of medical measures against the demands of patients who are not reasonable, as well as the consequences of unexpected and negative medical actions, for example against risks of treatment that are impossible to avoid even though the doctor has acted cautiously and thoroughly and in accordance with medical professional standards.[8]

In Indonesia the provisions regarding informed consent are regulated in Act Number 36 of 2009 concerning Health, Act Number 29 of 2009 concerning Medical Practices, Act Number 36 of 2014 concerning Health Personnel, Hospital Code of Conduct (KODERSI), Permenkes Number 585 / Men.Kes / PER / IX / 1989 amended / updated with Permenkes Number 290 / Men.Kes / PER / III / 2008 concerning Approval of Medical Measures, Regulation of the Minister of Health of the Republic of Indonesia Number 1419 / Men.Kes / Per / X / 2005 concerning the Implementation of Medical Practices and PB IDI Decree No. 319 / PB / A4 / 88. In essence, informed consent contains 2 (two) essential elements, namely: (1) information provided by the doctor and (2) consent given by the patient. Consent given by the patient was for the following inputs: (1) a complete explanation of the procedure to be used in certain medical procedures; (2) a description of the side effects and unintended consequences that may arise; (3) a description of the benefits that can be anticipated for the patient; (4) an explanation of the estimated duration of the procedure / therapy / action taking place; (5) decryption of the patient's right to withdraw consent without prejudice regarding his relationship with the doctor and his institution; (6) pronogsis about the patient's medical condition if he refuses the medical action.

As for what is meant by the approval of medical treatment is the approval given by the patient / family on the basis of an explanation of the medical actions to be taken against the patient. The application of the informed consent doctrine that can cause medical disputes is a way to do a statement of will and its contents in the form of an informed concent that is not in accordance with applicable regulations, because this relates to applicable law, specifically the engagement law. This is due to the way the statement of the will according to the law then informed consent from the patient can be done, among others: (1) in perfect and written language; (2) in verbally perfect language; (3) with imperfect language as long as it is acceptable to the opposing party; (4) with sign language as long as it can be accepted by the opposing party; and (5) quietly or in silence but as long as it is understood or accepted by the opposing party. The forms of informed consent can be categorized as follows: (1) with a statement (expression) that can be verbally (oral), and can be written (wriiten); (2) is considered to be given, implied (implied or tacit consent), that is in normal circumstances, and in emergencies. Informed consent in practice is often not done because the doctor considers all medical actions taken on the patient will not pose a risk, and if it poses a risk the doctor is sure to handle it. The unlawful nature of the act of medical action performed by a doctor is located in the absence of informed consent, although for emergency medical action it can be done without informed consent (justification reasons). [9]

Such an agreement cannot be used as a justification for the medical treatment that is distorted, the informed consent of the patient or family is merely to release the legal risk for the emergence of undesired consequences in the case of correct and non-distorted medical treatment. This means that if something unexpected happens the doctor is not automatically free from medical malpractice demands even though there has been medical approval / informed consent from the patient. So even if the patient has given approval for medical treatment, but if the risk that arises is the amount is not balanced with the results obtained, the doctor must still be responsible. The law provides a way to maintain the conflicting legal interests, meaning that it cannot defend both (the principle of subsidiariteit), thus what must be chosen is to maintain a greater legal interest (such as the danger of death) rather than maintaining a smaller legal interest (the interests of doctors get protection from prosecution) because without informed consent. However, all these justification reasons may only apply and can be used or maintained in a medical action if the doctor is authorized / competent and meets administrative requirements in the medical action he does. [10]

In daily practice it seems that it is not yet in the real sense where the informed consent form signed by the patient is only considered as a legalistic administrative necessity. Whereas the issue of medical approval can be one of the things that can make the health community stumble in carrying out a profession that ultimately leads to medical malpractice. Even though the informed consent has a dual function, namely for doctors to make a sense of security in carrying out their duties, as well as can be used as self-defense against the possibility of demands from patients / their families if undesirable

consequences arise, let alone medical actions that have high risk. Whereas for patients, informed consent is an appreciation of their rights by doctors and can be used as an excuse to sue doctors in the event of an error or deviation from medical practice from the intention of granting that health care approval. As for those who are entitled to give informed consent, it is basically the patient himself, but if he is in control, then informed consent can be given by one of the closest relatives, husband / wife, father / mother, biological children or siblings. In an emergency situation, to save the life of a patient, consent is not needed, but after the patient is conscious or in conditions that allow it to be immediately given an explanation, then an agreement is made (Explanation of Article 45 paragraph (1) of Law Number 29 Year 2004). [11]

There are a number of circumstances where this informed consent may not be needed / ruled out, namely the patient / patient in an emergency / emergency / emergency situation, so this informed consent can be ruled out or assumed. The doctor can take rescue action from a greater danger because any delay in medical action can be fatal for sufferers / patients. For example: a person who has an accident and is taken to the emergency department (ER), in an unconscious and emergency situation and no one has the right to be asked for approval. In these circumstances the doctor can conduct medical intervention without waiting for informed consent, even so it must be in accordance with operational standards and medical service standards / fixed procedures that exist in each hospital emergency room / emergency room. In the context of informed consent there is still the doctrine of Volenti Non Fit Inura or Assumption of Risk, where this doctrine uses the assumption that there is already known to be a risk by the person concerned but the patient is still willing to bear this risk. This doctrine is applied to Medical Law for surgery which is likely to cause serious consequences, for example a kidney transplant from a living donor so that both the living donor and the recipient patient must be given full information, and must there are 2 (two) approval letters signed by both the donor and the donor recipient. [12]

This doctrine can also be used by doctors / hospitals when the patient or family requests a "forced return" even though information has been given / given an explanation of the dangers, risks and possibilities that could occur. Because the agreement signed by the patient or his family is absolutely necessary in such cases so that if there is a risk to the patient, the doctor / hospital cannot be blamed. The hospital is not legally responsible if the patient and / or his family refuse or stop treatment which can result in the death of the patient after a comprehensive explanation. in such a case Hospitals cannot be prosecuted in carrying out their duties in the context of saving human lives (Article 45 paragraph (1) and (2) of Law Number 44 Year 2009 concerning Hospitals). When viewed from the material aspect, proper informed consent is considered as an agreement, but if it is seen from its substance, actually informed consent is an obligation of the doctor / medical officer to provide correct information to the patient. Substantially informed consent applies and it is the duty of the doctor / medical officer to explain the medical actions to be taken along with the benefits / benefits and risks to the patient even though the patient / family has not given his consent. Consent given by the patient / family can be null and void if the obligation to provide information is ignored by the doctor / medical officer. Therefore an informed consent is considered legally valid if it fulfills openness in providing information (not covered up), competence of the patient (capable / capable and mature according to law) in giving consent and the existence of volunteerism (no coercion and awareness) on the part of the patient / his family. In Indonesia the issue of informed consent is no longer solely an ethical issue but can already be classified in the realm of law, so violations of the absence of informed consent in health / medical services are not only ethical, disciplinary violations but also constitute legal violations that can be sued in civil or processed criminally. [13]

IV. Conclusion

Based on the results of the discussion above, it can be concluded that the role of informed consent in the resolution of medical criminal cases in the Indonesian National Police is to protect and increase patient autonomy, protect patients and prevent manipulative and coercive actions, improve the

introspective attitude of the medical team. Protection of patient rights, namely protecting and increasing individual autonomy, ie in good relations between doctors and patients will prevent ignorance that actually inhibits patient and / or family autonomy to decide, which ignorance can come from lack of information or lack of understanding of the information. On the other hand the function of informed consent is to protect patients and subjects of research participants conducted by doctors / medical personnel against the diagnosis of a patient's illness; and provide protection in preventing harm to patients, especially unconscious patients, children, mental retardation and so on. Informed consent must be obtained from patients, especially medical cases that are severe and high risk, where if a certain medical procedure is performed (extraordinary means), that is, all actions that result in suffering or high costs in certain environmental situations and will not be guaranteed to produce results that are positive.

References

1. Patria Bayu Murdi, Supanto, Widodo Tresno Novianto, "The Role of Indonesian Honorary Council of Medical Discipline in Upholding Indonesian Medical Code of Ethics", *Proceeding Advances in Social Science, Education and Humanities Research*, Atlantis Press, Volume 358 (2019)
2. Patria Bayu Murdi, Supanto, Widodo Tresno Novianto, "Calculation Method Of State Financial Losses In The Procurement Of Medical Devices In Indonesia", *International Journal of Advanced Science and Technology,* Vol. 28, No. 15, (2019).
3. Prima Maharani Putri, Patria Bayu Murdi, "Pelayanan Kesehatan Di Era Jaminan Kesehatan Nasional Sebagai Program Badan Penyelenggara Jaminan Sosial Kesehatan", *Jurnal Wacana Hukum,* Volume 25, Nomor 1 (2019)
4. Jaelani A.K, Handayani I.G.A.K.R, Karjoko L, "Executability of the Constitutional Court Decision Regarding Grace Period In The Formulation Of Legislation", *International Journal of Advanced Science and Technology* Vol. 28, No. 15, (2019). Page. 816-823
5. Jaelani A.K, Handayani I.G.A.K.R, Karjoko L, "Development of Tourism Based on Geographic Indication Towards To Welfare State", *International Journal of Advanced Science and Technology* Vol. 29, No. 3s, (2020). Page. 1227-1234.
6. Harimurti F, Jaelani A.K. "Implications of Halal Tourism Sector to Optimize Regional Own Source Revenue of Tax And Tourism Charges in East Lombok Regency", *International Journal of Advanced Science and Technology* Vol. 28, No. 15, (2019). Page. 830-838
7. Indrastuti L, Jaelani A.K., Nurhidayatullah, Iswantoro, "Decentralization of Health in the Era Of Extensive Autonomy in North Konawe District", *International Journal of Advanced Science and Technology* Vol. 28, No. 15, (2019). Page. 845-853
8. Gumbira, S.W, Jaelani, A.K., Tejomurti, K, Saefudi, Y., "Quo Vadis of Reputation Delict After Constitutional Court Decision Number 76/PUU-XV/2017", *International Journal of Advanced Science and Technology* Vol. 28, No. 20, (2019). Page. 519-525
9. Nurhidayatuloh, Febrian, Apriandi, M., Annalisa, Y., Sulistyaningrum, H.P., Handayani, I., Zuhro, F., Jaelani, A.K., Tedjomurti, K., "Transboundary Haze-Free for Southeast Asian Countries by 2020: A Delusional Vision?", *International Journal of Psychosocial Rehabilitation*, Volume 24, Issue 2, February 2020, Pages 1923-1929.
10. Surachman A, Handayani I.G.A.K.R, Taruno Y. "Effect of Globalization on Establihment of Water Resource Law: A Practice in Indonesia", *International Journal of Economic Research,* Volume 14, Number 13 Tahun 2017.
11. Lego Karjokoa, Djoko Wahyu Winarno, Zaidah Nur Rosidah, I Gusti Ayu Ketut Rachmi Handayani, "Spatial Planning Dysfunction in East Kalimantan to Support Green Economy", *International Journal of Innovation, Creativity and Change*, Volume 11, Issue 8, (2020).
12. Sudarwanto, A.S., Handayani, I.G.A.K.R, "The implementation of land provision for development for the public interest in Merauke land Papua Province", *International Journal of Advanced Science and Technology*, Volume 28, Issue 20, 31 December 2019, Page. 269-275.

13. Suwari Akhmaddhian, Hartiwiningsih & I Gusti Ayu Ketut Rachmi Handayani, "The Government Policy of Water Resources Conservation to Embodying Sustainable Development Goals: Study in Kuningan, Indonesia", *International Journal of Civil Engineering and Technology*, Volume 8, Issue 12 (2017).

ISSN: 2005-4238 IJAST