Legal Certainty for Doctors in the Implementation of Emergency Surgery Without the Patient's Written Consent in the Hospital

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Abstract

Health services are a form of fulfilling basic rights of the community that must be carried out professionally, safely, and responsibly. In the practice of medical services in hospitals, doctors are often faced with emergency conditions that require immediate medical action to save the patient's life or prevent more severe disability. In certain conditions, the patient is not conscious or unable to give consent to medical treatment, while the family or authorized guardian cannot be contacted within the required time. This situation creates a dilemma for doctors between the obligation to provide medical help as soon as possible and the legal obligation to obtain informed consent from patients or their families. Normatively, health law in Indonesia has provided an exception to the obligation to obtain approval for medical measures in an emergency. However, in practice there are still concerns among medical personnel about the possibility of lawsuits, whether civil, criminal, or administrative, after emergency surgery is performed without the patient's written consent. Public ignorance of the legal provisions regarding emergency medical measures and differences in interpretation of applicable regulations are often factors that trigger disputes between doctors, patients, and patients' families. Therefore, an in-depth study is needed on the extent to which existing regulations are able to provide legal protection and certainty for doctors in carrying out their professional duties. This study aims to analyze the legal arrangements regarding the implementation of emergency surgery without the written consent of the patient in the hospital and examine the form of legal certainty given to doctors in carrying out these actions. In addition, this study also seeks to identify various obstacles faced in the implementation of legal provisions related to emergency medical measures and formulate efforts that can be made to strengthen legal protection for doctors. With clear legal certainty, it is hoped that doctors can carry out their professional obligations optimally without fear of unwarranted legal risks, so that patient safety remains the top priority in health services.

Keywords: *Legal Certainty, Emergency Surgery, Informed Consent.*

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Introduction

Health is a human right guaranteed by the constitution.

Health is a human right guaranteed by the Indonesian constitution. This guarantee is reflected in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that everyone has the right to receive health services. The recognition of the right to health shows that health is not only seen as an individual need, but also as a constitutional right that must be fulfilled and protected by the state through the implementation of a quality, safe, and equitable health service system. Thus, every citizen has the right to obtain optimal health services as part of efforts to realize welfare and protection of human rights. The development of modern health services has placed patients as legal subjects who have the right to determine the medical actions to be taken against them. The principle of respect for patient autonomy is realized through an informed consent mechanism after the patient has obtained complete information about the diagnosis, procedure of action, benefits, risks, and available treatment alternatives. Informed consent not only serves as a means of protecting the patient's right to determine his or her own fate, but also as an instrument of legal protection for doctors in carrying out medical actions in accordance with professional standards and applicable operational procedure standards. Therefore, the implementation of informed consent has a very important position in building a balanced legal relationship between doctors and patients.

However, in an emergency, doctors often face conditions that require immediate medical action to save the patient's life or prevent more severe disability. In certain situations, the patient is unconscious or unable to give consent, while the family or guardian who has the right to give consent cannot be contacted. In such conditions, doctors are faced with a dilemma between the legal obligation to obtain approval of medical measures and the professional obligation to provide help as quickly as possible. Therefore, various provisions of health law provide exceptions to the obligation to obtain informed consent in an emergency for the sake of saving the patient's life. These arrangements are an important basis in providing legal certainty and legal protection for doctors who act on medical indications and humanitarian principles.

Conflict between Medical Obligations and Legal Liability in Emergency Actions

It is not uncommon for health care practices in hospitals to find conditions where patients are unconscious or experience severe loss of consciousness, so they are unable to give written approval of medical measures. On the other hand, the patient's family or the person authorized to give consent often cannot be contacted in a timely manner. This condition causes informed *consent* procedures to not be carried out as they should, even though medical measures must be taken immediately to save the patient's life or prevent the worsening of more serious clinical conditions. The situation creates a dilemma between the doctor's professional obligation to save the patient's life and the risk of lawsuits that may arise as a result of medical actions performed without written consent. From a health law perspective, doctors are required to act quickly based on medical indications, but at the same time must also remain within the legal corridor that governs the therapeutic relationship between doctor and patient. This strain often puts medical personnel in a vulnerable position to lawsuits, even if the actions taken are solely aimed at the best interests of the patient.

To provide legal certainty, Law Number 17 of 2023 concerning Health regulates the obligation of medical personnel to provide assistance in emergencies without delaying the necessary actions. In addition, the law also provides legal protection for medical personnel who carry out actions in accordance with professional standards and operational procedure standards. Thus, doctors who act in emergency conditions without written consent continue to obtain legal protection as long as the action is carried out professionally, based on proper medical indications, and aims to save the patient's life.

The debate over legal certainty for doctors and patients

There is still debate in the practice of health law regarding the limits and legal certainty of emergency surgical procedures performed without the patient's written consent. On the one hand, the principle *of informed consent* emphasizes that every medical action must be preceded by the patient's consent as a form of respect for the patient's right to autonomy. But on the other hand, in an emergency, doctors are required to take immediate medical measures to save the patient's life, even if written consent cannot be obtained. The tension between legal principles, medical ethics, and factual conditions in the field is what creates an unclear boundary of the doctor's legal responsibility, especially when risks or complications occur after the action is taken.

Therefore, research on legal certainty for doctors in emergency surgical procedures is very important to be carried out. This study is needed to provide clarity on the legal norms that govern medical actions in emergency conditions, including the limitations on doctors' responsibilities and the legal protection provided by Law Number 17 of 2023 concerning Health. The law in principle recognizes the obligation of emergency assistance and provides protection for medical personnel who act in accordance with professional standards and standard operating procedures. With a comprehensive study, it is hoped that a balanced legal certainty can be created between the protection of patients' rights and legal protection for doctors in carrying out their professional duties.

Legal certainty in the doctor-patient relationship is a fundamental aspect of health law that must be able to balance the protection of patients' rights while providing legal guarantees for doctors in carrying out their profession. He emphasized that legal certainty is not only interpreted as the existence of written rules, but must also be reflected in the implementation that is clear, consistent, and does not give rise to multiple interpretations, especially in emergency medical measures. In this context, doctors need to obtain legal protection when acting based on medical indications, professional standards, and applicable procedures, while patients are still guaranteed their rights to information, security, and justice. Legal certainty in medical practice must be built through regulatory harmonization, strengthening professional ethics, and a transparent health service system so that there is no conflict of interest between patient safety and professional responsibilities of doctors.

Problem Formulation

1. What are the legal arrangements regarding the implementation of emergency surgery without the written consent of the patient in the hospital?
2. What is the form of legal certainty and legal protection for doctors who perform emergency surgery without the patient's written consent?
3. What are the obstacles and solutions in realizing legal certainty for doctors in emergency surgical procedures?

Research Objectives

This study aims to analyze the legal arrangements related to emergency surgical procedures performed without the patient's written consent, especially in the context of hospital health services that require prompt action to save lives. In addition, this study also aims to examine legal certainty and forms of legal protection for doctors in carrying out these medical actions, so that doctors have a clear legal basis in emergency conditions. Furthermore, this study identifies various obstacles that arise in the practice of performing emergency surgery without written consent, both from the aspects of regulation, medical ethics, and administration, and formulates solutions that can be applied to strengthen the effectiveness of the implementation of the rules and provide balanced protection between the interests of patients and medical personnel.

Research Benefits

This research is expected to provide benefits both theoretically and practically. Theoretically, this research contributes to the development of health law and hospital law,

especially related to the regulation of medical measures in emergency situations without the written consent of the patient, so that it can enrich the academic literature and become a reference for future research. Meanwhile, practically, this research is expected to be a guideline for doctors, hospitals, the government, and the public in understanding the legal aspects of the implementation of emergency surgery, so as to increase legal certainty, clarify the limits of the authority of medical personnel, and provide balanced legal protection between the interests of patients and health workers in emergency situations.

Literature Review

Gustav Radbruch's Theory of Legal Certainty

Gustav Radbruch's Theory of Legal Certainty is one of the most influential legal theories in modern legal philosophy. Radbruch states that law basically has three main basic values, namely legal certainty (Rechtssicherheit), justice (Gerechtigkeit), and utility (Zweckmäßigkeit). From the perspective of legal certainty, the law must be able to provide clear, consistent, and predictable rules so that the public and law enforcement officials have definite guidelines in acting. This legal certainty is important to ensure order in social life and prevent arbitrariness in the application of the law. Furthermore, the aspect of justice in Radbruch's theory emphasizes that law is not only oriented towards formal certainty, but must also reflect the values of justice for each individual. Justice in this case is related to balanced, proportionate, and non-discriminatory treatment of legal subjects. Radbruch asserts that if a rule of law is extremely contrary to the sense of justice, then it can lose its moral validity. Therefore, justice is an important element that must always be inherent in every formation and application of law so that the law does not lose its social legitimacy.

In addition, the usefulness of law in Gustav Radbruch's view refers to the purpose of law to provide the greatest benefit to society. The law not only serves as a tool of social control, but also as a means to achieve welfare and public order. In practice, there is a tension between legal certainty, justice, and utility, so the three must be placed in a balanced manner. Radbruch emphasized that in certain circumstances, especially when there is a sharp conflict, justice can take precedence over legal certainty in order to achieve more humane legal goals.

Legal Protection Theory

The Theory of Legal Protection, according to Philipus M. Hadjon, emphasizes that legal protection is an effort to protect human dignity and human dignity as well as the recognition of human rights owned by legal subjects based on the provisions of laws and regulations. In his view, legal protection is not only conceptual, but must also be realized through tangible legal instruments to prevent arbitrary actions from those in power. Hadjon also divided legal protection into two forms, namely preventive legal protection that aims to prevent disputes before government decisions are made, and repressive legal protection that functions to resolve disputes that have occurred through judicial mechanisms.

Meanwhile, Satjipto Rahardjo views legal protection as a form of protection of human rights that are harmed by other parties, so that every individual can enjoy the rights granted by the law fairly. According to Rahardjo, the law must function as a means to protect humans, not just rigid rules, but must be responsive to the needs of society. Therefore, legal protection in Satjipto Rahardjo's perspective does not only focus on written rules, but also on how the law can provide a sense of security, justice, and a balance of interests in social life.

Legal Liability Theory

The theory of legal responsibility is a fundamental concept in law that explains the obligation of a person or legal subject to bear the consequences of his actions that cause harm to other parties. In civil law, legal responsibility is known as the responsibility to provide compensation due to default or unlawful acts, so that the aggrieved party gets their rights restored. This civil liability focuses on the relationship between individuals or legal entities in

the context of material and immaterial losses arising from the violation of legal obligations or agreements.

Meanwhile, in criminal law, legal responsibility is related to a person's liability for an act that meets the elements of a criminal act and is regulated in the provisions of criminal law, where the perpetrator can be subject to criminal sanctions such as imprisonment, fines, or other actions. In contrast, administrative responsibility arises within the scope of the relationship between an individual or legal entity and the government, where violations of state administrative provisions may be subject to administrative sanctions such as reprimands, revocation of permits, or administrative fines. These three forms of responsibility show that the law has different mechanisms in enforcing compliance, both through the recovery of losses, criminalization, and enforcement of administrative rules for the creation of legal order in society.

The Concept of Informed Consent

Informed consent is consent given by patients after obtaining complete, clear, and understandable information about medical actions to be carried out by health workers. This concept emphasizes effective communication between doctors and patients as the basis of a therapeutic relationship, so that patients can make conscious and voluntary decisions about the medical measures they will receive. In practice, informed consent is not only seen as an administrative formality, but also as a form of respect for the patient's right to autonomy in determining the fate of his own body. In health law, informed consent is a manifestation of respect for the patient's right to autonomy in determining the fate of his own body and health. This provision is not only administrative, but also has an important legal and ethical dimension as the basis for the legitimacy of any medical procedure

The legal basis for informed consent in Indonesia has a strong foundation in various regulations. The 1945 Constitution, especially Article 28H paragraph (1), guarantees the right of everyone to obtain health services and personal protection. Furthermore, Law Number 17 of 2023 concerning Health emphasizes that every medical procedure must be carried out based on approval after adequate explanation from medical personnel, except in certain emergencies. In addition, the Regulation of the Minister of Health on the Approval of Medical Measures also regulates the technical procedure for granting approval of medical measures, while the Indonesian Medical Code of Ethics (KODEKI) emphasizes the obligation of doctors to provide honest, complete, and non-misleading information to patients.

The elements of informed consent consist of several important components that must be met in order for consent to be considered legally and ethically valid. These elements include information, namely the delivery of explanations about diagnosis, procedures, risks, and alternative actions; understanding, which is the patient's ability to understand the information provided; voluntariness, which is a decision taken without coercion; and consent, which is a verbal or written statement of consent from the patient or his family. These four elements are the basis for ensuring that medical decisions truly reflect the patient's free and conscious will.

Forms of informed consent can be divided into several types, namely oral, written, implied consent, and presumed consent. Verbal consent is typically given in simple, low-risk medical procedures, while written consent is used for high-risk medical procedures such as surgery. Implied consent occurs when consent is considered to exist based on the patient's actions, for example when the patient voluntarily turns himself in for examination. Meanwhile, presumed consent is used in emergency situations when the patient is unable to give consent, but medical action must be taken immediately to save a life.

Medical Emergency Concept

The concept of medical emergency refers to the clinical condition of a patient who is in a life-threatening state, at risk of disability, or in need of immediate life-saving medical attention. An emergency is generally understood as a medical situation that requires quick and

appropriate treatment without delay, as delays can worsen the patient's condition and even lead to death. In health regulations in Indonesia, emergencies include conditions such as airway disorders, respiratory disorders, circulation disorders, decreased consciousness, and other conditions that require immediate intervention. The characteristics of emergencies are characterized by their unpredictable nature, rapidly developing, and requiring immediate clinical decisions. In addition, this condition is often accompanied by limited information, time, and medical resources available in the field. Therefore, emergency services in the Emergency Installation (IGD) implement a triage system to determine the priority of patient handling based on the level of emergency, not based on the order of arrival. In practice, the principle of *time saving is life saving* is the main basis in every medical procedure in an emergency situation, because every second greatly determines patient safety.

One form of action in a medical emergency is emergency surgery, which is a surgical procedure performed immediately to address a life-threatening condition or prevent permanent disability, such as heavy bleeding, severe trauma, or organ perforation. In these conditions, doctors are required to act quickly based on medical indications without waiting for lengthy administrative procedures, including in certain situations where written informed consent is not possible. The main principle in medical emergencies is saving *lives*, which prioritizes saving the patient's life as the highest priority in clinical decision-making, although in ideal conditions still pays attention to ethical and legal aspects of medicine.

Physicians and Professional Responsibilities

Doctors as professionals in the health sector have professional responsibilities inherent in every medical action they perform. This responsibility arises because there is a legal relationship between the doctor and the patient in the therapeutic agreement that gives rise to rights and obligations for both parties. In carrying out their profession, doctors are not only based on medical expertise, but must also adhere to professional ethics and applicable legal provisions, so that every medical action can be accounted for morally, ethically, and legally.

The rights of doctors in carrying out their profession include the right to obtain legal protection as long as they carry out their duties in accordance with professional standards and operational procedures, the right to obtain correct information from patients, and the right to receive remuneration for the medical services provided. On the other hand, the obligations of doctors include the obligation to provide medical services according to professional standards, respect the rights of patients, provide complete and honest medical information, maintain patient confidentiality, and make correct and complete medical records. This obligation is the main basis for maintaining the quality of health services and public trust in the medical profession.

Doctor professional standards are guidelines used in medical practice based on the knowledge, skills, and competencies that a doctor must possess in providing health services. This standard includes competency standards, medical service standards, and standard operating procedures (SOPs) that are technical references in every medical procedure. SOPs function as systematic work guidelines to ensure that medical services are carried out safely, effectively, and in accordance with the provisions of the law and medical ethics. With professional standards and SOPs, every doctor's actions can be measured and evaluated to ensure patient safety and legal protection for medical personnel.

Hospitals as Health Service Institutions

A hospital is a health service institution that provides comprehensive individual health services, including outpatient services, inpatient services, and emergency services. As a public service organization in the health sector, hospitals have responsibilities not only in the aspect of curing diseases, but also in efforts to prevent, recover, and improve the degree of public health. In carrying out its functions, hospitals are obliged to provide safe, quality, effective, non-discriminatory services, and prioritize patient safety. Hospital liability also includes legal

liability for losses arising from the negligence of health workers working in it as stipulated in health laws and regulations in Indonesia.

In addition to having general responsibilities in health services, hospitals are also obliged to provide emergency services for twenty-four hours. This obligation is a form of protection for the patient's right to receive prompt and appropriate medical attention in life-threatening conditions and organ function. In an emergency, hospitals are prohibited from refusing patients or asking for advance payments as a condition for providing medical assistance. This provision is based on the principle of humanity and the principle of *salus aegroti suprema lex*, namely the safety of patients is the highest law that must be prioritized. Therefore, every hospital is obliged to provide facilities, health workers, and service systems that are able to ensure optimal handling of emergencies.

In order to ensure the quality of service and patient safety, hospitals must also implement medical risk management. Medical risk management is a systematic process to identify, analyze, control, and evaluate various risks that can cause injury, disability, or death to patients during health services. The implementation of risk management is carried out through the preparation of standard operating procedures (SOPs), reporting of patient safety incidents, medical audits, improving the competence of health workers, and monitoring compliance with service standards. With good risk management, hospitals can minimize the occurrence of medical *errors*, improve the quality of health services, and provide legal protection for health workers and patients.

Research Methodology

This research is a *normative legal research* that examines legal norms related to the implementation of emergency surgery without the written consent of the patient in the hospital. The approaches used include the statute *approach*, the *conceptual approach*, and *the case approach*. The legal materials used consist of primary legal materials in the form of the 1945 Constitution of the Republic of Indonesia, Law Number 17 of 2023 concerning Health, regulations related to *informed consent*, and the Indonesian Medical Code of Ethics; secondary legal materials in the form of books, scientific journals, and the results of previous research; and tertiary legal materials in the form of dictionaries and legal encyclopedias. The collection of legal materials is carried out through *library research*, while data analysis is carried out qualitatively with a deductive method to obtain conclusions that are in accordance with the research problem.

Results

Legal Arrangement of Emergency Surgery Without the Patient's Written Consent

The regulation of emergency surgical procedures without the written consent of the patient in Indonesian health law obtained the main legal basis through Law Number 17 of 2023 concerning Health. In principle, any medical procedure should be preceded by the patient's consent after obtaining a complete explanation of the diagnosis, procedures, benefits, risks, and alternative medical procedures. However, the law also recognizes the existence of emergency conditions that put the safety of patients' lives as a top priority. In the event that the patient is unconscious, unable to give consent, or there is no family member who can be asked for consent in the necessary time, medical personnel and health workers are obliged to provide immediate assistance according to professional standards and service standards. This arrangement shows that the right to the safety and life of the patient is a more important consideration than the formality of written consent in an emergency situation. In addition, the Health Law also provides legal protection to doctors who carry out actions in accordance with professional standards, professional service standards, and applicable operational procedure standards.

More technical provisions regarding the approval of medical procedures are regulated in the Regulation of the Minister of Health Number 290/MENKES/PER/III/2008 concerning the Approval of Medical Measures, which until now is still the main reference regarding *informed consent*. Article 4 paragraph (1) of the Permenkes emphasizes that in an emergency to save the patient's life and/or prevent disability, approval of medical measures is not required first. This

provision provides a clear legal basis for doctors to immediately perform emergency surgery without waiting for the written consent of the patient or his or her family if delaying the procedure may increase the risk of death or permanent disability. However, after the patient's condition allows, the doctor is still obliged to provide an explanation of the actions that have been taken as a form of professional accountability and respect for the patient's right to obtain medical information.

In addition to laws and regulations, the obligation of doctors in providing emergency aid is also regulated in the Indonesian Medical Code of Ethics (KODEKI) of 2024 stipulated by Indonesian medical professional organizations. KODEKI emphasizes that a doctor must always prioritize the health and safety of patients as the main goal of medical practice. In emergency situations, doctors have a moral and professional obligation to provide the necessary help even if the patient's consent cannot yet be obtained. KODEKI also requires doctors to act based on professional competence, the principle of prudence, and the *best interest of the patient*. Therefore, emergency surgical procedures without the patient's written consent are not seen as an ethical violation as long as they are carried out based on clear medical indications, according to professional standards, and are solely aimed at saving lives or preventing the patient's disability.

In the perspective of modern health law, emergency medical measures without the patient's written consent are known through the concept of presumed consent or consent that is presumed to have been given. This concept departs from the assumption that everyone who is in an unconscious state or is unable to express his or her will agree to the medical measures necessary to save his or her life if he is able to make a rational decision. This doctrine is closely related to the *doctrine of necessity* which justifies non-consensual medical action in urgent circumstances to prevent greater harm. Although the term *presumed consent* is not explicitly mentioned in Law Number 17 of 2023 concerning Health, various legal studies show that the substance of the doctrine is reflected in the doctor's obligation to help emergency patients and the legal protection provided to doctors who act in the best interests of the patient. Thus, the concept of *presumed consent* can be a theoretical and ethical basis for the implementation of emergency surgery without the patient's written consent as long as the action is actually carried out in a real emergency and can be medically and legally accountable.

Legal Certainty for Doctors in the Implementation of Emergency Surgery

Legal certainty for doctors in the implementation of emergency surgery is based on the provisions of laws and regulations that regulate the obligation of medical personnel to provide immediate help in emergency conditions. In the Indonesian health legal system, emergency surgical procedures performed without the patient's written consent gain legal legitimacy if they are performed to save the patient's life or prevent more severe disability. Law Number 17 of 2023 concerning Health provides a legal basis that medical personnel have the right to obtain legal protection as long as they carry out their duties in accordance with professional standards, professional service standards, and standard operational procedures. Thus, the actions of doctors in an emergency cannot immediately be considered as unlawful acts if all actions are carried out based on clear medical indications and aimed at the best interests of the patient.

In addition to having a legal basis, doctors are also burdened with legal and ethical obligations to help patients who are in emergency conditions. This obligation is reflected in health regulations, the Indonesian Medical Code of Ethics (KODEKI) of 2024, as well as the humanitarian principles that are the basis of the medical profession. In practice, legal certainty for doctors is closely related to compliance with professional standards and standard operating procedures (SOPs). If emergency surgery is carried out in accordance with competence, medical indications, clinical guidelines, and applicable hospital procedures, then doctors are entitled to legal protection from accusations of negligence or malpractice. On the other hand, if a doctor is proven to deviate from professional standards or perform actions that are not in accordance with the principles of medical prudence, then he can still be held accountable

ethically, disciplined, civil, or criminal according to the level of his error. Therefore, the application of professional standards and SOPs is an important instrument in providing legal certainty while determining the limits of doctors' liability in emergency actions.

In the perspective of Gustav Radbruch's Theory of Legal Certainty, law must be able to realize three basic values, namely justice (*gerechtigkeit*), legal certainty (*rechtssicherheit*), and utility (*zweckmäßigkeit*). Legal certainty in the implementation of emergency surgery is reflected in the existence of clear rules regarding the authority of doctors, emergency procedures, and legal protection mechanisms for medical personnel. Nevertheless, Radbruch asserts that legal certainty is inseparable from justice and utility. In the context of emergency surgery, doctors' actions taken to save the patient's life are a form of utility and justice that must be supported by legal certainty through clear regulations. Therefore, the existence of the Health Law, KODEKI, professional standards, and SOPs is a legal instrument that provides guarantees that doctors can act quickly in emergency conditions without fear of criminalization as long as their actions are carried out professionally, proportionately, and accountably.

Obstacles in the Implementation of Emergency Surgery Without Written Consent

The implementation of emergency surgery without the patient's written consent often faces the main obstacle in the form of the absence of the patient's family. In emergency conditions, patients are often unconscious or unable to give consent, while families as parties who usually give *informed consent* are not always at the location or difficult to contact. This situation poses a dilemma for doctors, since on the one hand actions must be taken immediately to save lives, but on the other hand the administrative procedure of approval cannot be fulfilled. In practice, this condition encourages doctors to act based on the principles of *presumed consent* and *the doctrine of necessity*, which prioritize patient safety as the basis for justifying emergency medical measures.

The next obstacle is the risk of malpractice lawsuits that can arise after medical action has been performed. Although health law provides exceptions in emergencies, doctors can still face lawsuits if the patient's family considers the actions taken to be not up to standard or cause complications. Research shows that medical actions without *informed consent*, outside of emergency conditions, can qualify as violations of the law that have the potential to give rise to criminal and civil liability. This risk puts some doctors in a defensive *position*, even though the action is actually done to save the patient's life. In addition, the public's lack of understanding of the concept of medical emergencies also worsens the situation, as people often judge doctors' actions emotionally without understanding the medical and legal context behind them.

Other obstacles are incomplete medical documentation and differences in regulatory interpretations. In an emergency, the main focus of medical personnel is to save patients so that medical records are sometimes not carried out optimally. In fact, complete documentation is important evidence to legally protect doctors in the event of a medical dispute in the future. In addition, differences in interpretations of legal provisions such as the Health Law and *informed consent* regulations often cause legal uncertainty. This shows that although emergency surgery is normatively justified, in practice there is still a legal gray area that can cause conflicts between medical personnel, patients, and patients' families. Therefore, it is necessary to harmonize regulations and increase the understanding of health law for medical personnel and the public to minimize these obstacles.

Efforts to Realize Legal Certainty for Doctors

Efforts to realize legal certainty for doctors in the implementation of emergency surgery require fundamental steps in the form of harmonization of regulations between the Health Law, derivative regulations such as the Minister of Health Regulation on *informed consent*, and the provisions of ethics of the medical profession. The inconsistency of norms often gives rise to multiple interpretations in practice, especially regarding the limits of the doctor's authority in

an emergency without the patient's written consent. The harmonization of regulations aims to ensure that each regulation provides a consistent direction, namely prioritizing patient safety while providing legal protection for medical personnel. With the alignment of the rules, the potential for criminalization of doctors can be minimized because there is certainty about when emergency measures can be legally justified.

Furthermore, legal certainty can be strengthened through the preparation of special SOPs for emergencies in each health service facility. This SOP serves as an operational guideline that describes in detail the procedures for emergency medical measures, including the decision-making mechanism when the patient is unable to provide consent. Research shows that the lack of clarity of SOPs is often one of the factors causing the non-optimal implementation of *informed consent* in emergency situations. Therefore, SOPs that are clear, standardized, and socialized to all health workers are an important instrument to protect doctors from legal risks while ensuring that medical actions remain in accordance with professional standards and service standards.

In addition, strengthening medical records is a crucial aspect in providing legal certainty. Medical records serve as the main evidence in assessing whether a doctor's actions are in accordance with professional standards or not. In the context of emergency surgery, complete and accurate recording of the patient's condition, reasons for action, and procedures performed is an important basis in the event of a medical dispute in the future. In addition, strengthening hospital risk management is also needed to identify, prevent, and handle potential medical errors systematically. Good risk management will help hospitals reduce potential legal disputes and improve overall patient safety.

Another effort is legal education for doctors and patients, which is an important foundation in creating a balanced therapeutic relationship. Doctors need to understand the legal aspects of medical practice in order to act according to the legal corridor, while patients need to be given an understanding of emergency conditions that allow medical actions to be carried out without written consent. The lack of public understanding of this concept is often a source of conflict between medical personnel and patients' families. From the perspective of legal certainty theory, all of these efforts aim to create clear, enforceable rules, and provide balanced protection between patients' rights and doctors' obligations, so that the principles of justice, utility, and legal certainty can run simultaneously in emergency medicine practice.

Conclusion

Health law in Indonesia in principle provides a clear space for the implementation of emergency surgical procedures without the written consent of the patient in an emergency situation. This provision applies when the medical situation threatens the patient's life or has the potential to cause serious disability, while consent cannot be obtained due to the patient's unconscious condition or the absence of a family member who can give consent. In this context, the law prioritizes the principle of saving lives as a top priority over administrative formalities, so that emergency medical measures can be carried out based on urgent medical needs and can be accounted for. Furthermore, doctors as medical personnel obtain legal protection as long as emergency surgical procedures are carried out in accordance with professional standards, service standards, and applicable operational procedure standards. This legal protection indicates that the state provides guarantees that doctors cannot be immediately convicted or sued when they have acted professionally, proportionately, and based on clear medical indications. Thus, the legal responsibility of doctors in emergency conditions is not only seen from the results of the action, but also from the medical decision-making process in accordance with the scientific rules and ethics of the medical profession.

However, legal certainty in the implementation of emergency surgery still requires further strengthening, especially through the improvement of stricter regulations and harmonization between related laws and regulations. In addition, complete and systematic medical documentation is an important aspect in providing legal protection for doctors as well as

evidence in the event of a medical dispute in the future. Therefore, strengthening regulations, clear SOPs, and comprehensive medical records are key elements in creating legal certainty that is balanced between patient protection and the protection of medical personnel.

Suggestions

The government is expected to clarify and strengthen regulations related to emergency surgical procedures without the written consent of the patient through harmonization between the Health Law, implementing regulations, and the provisions of ethics of the medical profession. This regulatory clarity is important to reduce the potential for multiinterpretation in practice, so that doctors have a more definite legal basis in taking action in emergency conditions. In addition, hospitals as health service facilities also need to prepare more detailed and specific Standard Operating Procedures (SOP) regarding the handling of emergency cases, including decision-making mechanisms, communication flows, and limits on the authority of medical personnel so that the implementation of medical measures can run more structured and measurable.

On the other hand, doctors as implementers of medical measures need to increase discipline in conducting complete, accurate, and timely medical documentation, especially in emergency situations. This documentation not only serves as a medical record, but also as a legal protection tool in the event of a dispute in the future. In addition, there is a need to increase public education about the exemption of *informed consent* in emergencies, so that the public understands that medical actions without written consent are not a violation, but part of life-saving efforts as regulated in health law and medical ethics. Thus, synergy between the government, health facilities, medical personnel, and the community can realize better legal certainty in the practice of emergency medicine.

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