

Legal Protection for Patients and Health Personnel from an Islamic Legal Perspective

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ABSTRACT

Health workers are a profession that plays a big role in the health sector. Without us realizing, there are many problems that health workers face when they have to deal with patients. This research reviews "Legal Protection for Patients and Health Workers in the Perspective of Islamic Law". This research aims to find out about the protection of Islamic law in carrying out the task of providing services to patients as medical personnel. The research method uses normative juridical research, which explains a problem and provides a comprehensive, broad assessment from the perspective of Islamic law. This research carries out secondary document studies, through related legislation, books and journals. The data was analyzed qualitatively. The research results show that legal protection for patients must have established rights in order to achieve service standards for medical personnel. Likewise, with legal protection, health workers must have the rights and obligations to serve patients.

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INTRODUCTION

Nowadays, it is important for every individual to prioritize their health because health has developed into a basic need for humanity. Individuals who are in poor health will not be able to exercise their rights. The importance of health cannot be overstated, as it is often said that maintaining health is cost-effective, however the costs may increase significantly if one falls ill. Article 28 paragraph (1) of the 1945 Constitution of the Republic of Indonesia regulates that "Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and the right to receive health services. Philosophically, health services for the community in Indonesia are mandated in article 34 paragraph (3) of the 1945 Constitution, namely "The state is responsible for providing adequate health service facilities and public service facilities." The provision of health services is an embodiment of just and civilized human principles which are related to the values of upholding the honor and dignity Of Indonesian people.

Patients have the same position as doctors, doctors are citizens as citizens, doctors cannot violate the law, doctors cannot violate the right to health services, the right to health services is what underlies the relationship between patients and doctors. The right to health services creates a legal obligation to serve doctors, this obligation is not absolute. This means that doctors are not obliged to provide help to people who refuse help, this right is known as the right to autonomy over oneself. The patient's right is to receive compensation if the service received is not as it should be. The public as consumers can convey their complaints to the hospital as an effort to improve the hospital's internal services or to institutions that pay attention to

health consumers. The legal basis for claims by patients or consumers/recipients of health services against doctors/health workers and hospitals is contained in Article 1365 of the Civil Code. So legal protection is needed for patients (recipients of health services), whose right to receive health care is always denied. Law number 23 of 1992 concerning Health provides legal protection, both to patients as recipients (consumers) of health services and providers (producers) of health services.

Health workers are a profession that plays a big role in the health sector. Because their job is to always serve the patient community well, they must work in accordance with legal provisions. Health Workers according to Indonesian government regulation no. 32 of 1996 is "Every person who dedicates themselves to the health sector and has knowledge and skills through education in the health sector which for certain types requires authority to carry out health efforts". Health workers are required to be competent in every field of health to achieve maximum health services

METHOD

This research is normative juridical research, namely research that reveals a problem, situation or event by providing a comprehensive, broad and in-depth assessment from the perspective of Islamic law, namely by examining legal principles, legal rules and systematics. law. In collecting data, document study was used, namely by studying secondary materials, in the form of legislation, other regulations, court decisions regarding health cases as well as books, papers and journals related to what was studied. The data obtained is then analyzed qualitatively, namely a data analysis method that is not based on numbers or statistics, so that the data obtained in library research is combined with data obtained in field research and then presented in logical sentences to obtain a description of legal protection for patients and health workers, especially regarding legal protection for patients and health workers.

RESULTS

Legal Protection of Medical Personnel in the Perspective of Islamic Law.

When medical personnel provide medical services or medical management to patients, at that time a relationship occurs between the medical personnel and the patient. The relationship between medical personnel and patients is not only a fiduciary relationship, a relationship based on trust, but is also a legal relationship. Legal relationships can originate from statutory regulations (*ius delictum*) and can also originate from an agreement or agreement. As a rule of law country, Indonesia has a tendency to adhere to civil law which makes written rules the main source of law. In the context of criminal law, the principle of legality applies where every act can be categorized as a crime or violation if the act has been stated in a codification or statutory regulation. As a written law, the principle of legality is interpreted as criminal provisions that must be written and cannot be punished based on customary law, the formulation must be clear and there are no vague provisions, must be interpreted strictly/teleologically and must not be an analogy.

The doctor's right to obtain legal protection certainly cannot be separated from the doctor's obligations. Before talking about rights, it is necessary to first understand what the obligations of doctors are based on the legal provisions in force in Indonesia. Article 51 of the Medical Practice Law states that:

- a. provide medical services in accordance with professional standards and standard operational procedures as well as patient medical needs.
- b. refer patients to other doctors or dentists who have better expertise or abilities, if they are unable to carry out an examination or treatment.
- c. keeps everything he knows about the patient confidential, even after the patient dies.
- d. carry out emergency assistance on humanitarian grounds, unless he is sure that there are other people on duty and capable of doing it.
- e. increase knowledge and follow developments in medical science."

Regarding the obligations of doctors, it is stated in Article 45 paragraph (1) of the Medical Practice Law which states, "Every medical or dental action that will be carried out by a doctor or dentist on a patient must obtain approval" which is stipulated in Article 45 paragraph (2). namely, "Consent as intended in paragraph (1) is given after the patient has received a complete explanation" and in Article 45 paragraph (3) it is stated that "The explanation as intended in paragraph (2) at least includes:

- a. Diagnosis and procedures for medical procedures.
- b. The purpose of the medical action performed.
- c. Alternative courses of action and their risks.
- d. Possible risks and complications.
- e. Prognosis for the actions taken."

Approval of medical operations is regulated in the Technical Regulations outlined in the Regulation of the Minister of Health of the Republic of Indonesia Number 290/MENKES/PER/III/2008. Doctors, according to Article 46 paragraph (1) of the Medical Practice Law, are obliged to maintain medical records while practicing medicine. These requirements are further regulated in the Regulation of the Minister of Health of the Republic of Indonesia Number 269/MENKES/PER/III/2008 concerning Medical Records. Therefore, in addition to the specific duties outlined in article 51 of the Medical Practice Act, there is a need to carry out these things, namely:

- a. Have a practice license.
- b. Follow medical service standards.
- c. Obtain approval for every medical procedure.
- d. Create medical records.
- e. Keeping medical secrets.
- f. Organizing quality control and cost control.

Apart from the Medical Practice law, the obligation of doctors to provide emergency assistance is stated in Article 17 of the Indonesian Medical Code of Ethics. This article emphasizes that every doctor is obliged to provide emergency assistance as a humanitarian duty, even if other people are willing and able to do so. The article defines emergency aid as rapid medical intervention necessary to avoid death, incapacitation, or severe distress to a person, as determined by medical science. A doctor has an obligation to provide immediate assistance in emergency situations based on compassion, as long as circumstances permit. Regardless of official working hours, a doctor is obliged to provide immediate assistance to those who suddenly become ill, have an accident or experience a disaster.

The doctor's belief that there will be other people who are willing and more skilled in providing emergency assistance must be carried out carefully, in accordance with the priorities of his profession, especially by maintaining a strong sense of tolerance and a willingness to make professional sacrifices for the sake of safety. doctor's benefits. Urgent help. A doctor's failure to provide immediate assistance is a disciplinary violation. According to Article 3 paragraph (2) letter o Indonesian Medical Council Regulation Number 4 of 2011 concerning Medical Profession Discipline, not providing emergency assistance on humanitarian grounds, even if it does not endanger oneself, is considered not providing emergency assistance on humanitarian grounds. is a disciplinary violation. unless he is sure someone else is responsible. The concept of obligations includes the ability to fulfill them, as demonstrated by the notion that providing assistance to others in need is a fundamental responsibility for all individuals, especially for those who work as doctors. However, this obligation may be waived if it poses a threat to a person's well-being or if there are alternative individuals available to provide assistance. Some people may have the ability to access certain health care facilities because of their own abilities, or because of special regulations.

However, during emergency relief operations, which are a significant departure from the usual circumstances, it is important to assess whether doctors are still burdened by legal obligations and under what circumstances they can ignore those obligations. For example, as stated in the explanation of Article 45 paragraph (1) of the Medical Practice Law, it is stated that in an emergency situation which aims to save the patient's life, a permit is not required. However, if the patient is conscious or has regained consciousness, consent is required. When a possibility arises, an explanation is immediately provided and a consensus is reached. In the field of criminal law, the term "cancellation of a criminal act" refers to the forgiveness of an offense (known as "schulduitsluitingsgronden"). This shows that even though the act is still unlawful, the responsibility of the perpetrator is lost due to certain circumstances. Justification can result in the erasure of a criminal act, that is, if the perpetrator is not punished because the act is no longer considered unlawful. Justification reasons can be manifested in the form of coercive authority, defense of the necessity to carry out legislative mandates, and implementation of official directives. As said previously, the relationship between a doctor and his patient is a professional relationship. Therefore, doctors are not obliged to provide or provide the results expected by patients and their families, considering that the results of medical interventions cannot be guaranteed.

In emergency situations, the physician's ability to influence the outcome is limited by factors beyond his or her control. Unless there is a prior agreement stating that the doctor will provide certain results based on the patient's wishes, the doctor can be held liable based on the resulting *verbintenis* agreement. if the expected results do not materialize. Default refers to failure to meet performance commitments. Basically, default can take three forms: complete failure to fulfill agreed obligations, delivering something that does not meet specified specifications, or delay in delivering what was originally promised. Failure to fulfill the results promised in the yield agreement will be considered a default. Usually, this happens when the results do not match expectations, are not in line with initial commitments or agreements. However, in the field of medical care, although the results of these procedures can be anticipated in advance, it is impossible to verify the results with certainty. If such a situation occurs, it is important to know whether the failure was caused by error,

negligence, or an inability to achieve the goal. This can be determined by assessing whether the medical activities carried out comply with universally accepted norms in the field of medicine. Medical care or lack thereof. Whether the medical technique meets the established criteria, additional investigation is needed to see if there are other factors that contributed to the failure.

Non-compliance arises due to unexpected compulsion as stated in article 1245 of the Civil Code, which does not give a person the right to obtain compensation for costs, compensation and interest. If, as a result of compelling circumstances or events, a person encounters obstacles that prevent him from fulfilling necessary obligations or engages in prohibited actions. Article 58 paragraph (2) of the Health Law explicitly states that health workers who carry out life-saving interventions or prevent disability in emergency situations are exempt from demands for remuneration. Patients who suffer injuries during emergency surgery should know whether there was any error or carelessness in medical care. If negligence is proven, it must be determined whether there is a direct causal relationship between the harm suffered by the patient and the wrongful act. Apart from that, it must be assessed whether the actions taken by the doctor constitute an unlawful act. Any obligation must be based on two key elements: a person's legal right to sue another person, and that person's legal obligation to bear the blame.

Legal Protection of the Medical Profession in Islamic Criminal Law.

A. Violation of Medical Ethics Discipline

Considering that ethics and discipline are standards of professional behavior that must be adhered to by individuals, this resolution is implemented internally within medical professional organizations and related disciplinary committees, without the involvement of law enforcement officials. Medical malpractice that does not comply with established norms is considered a violation of professional ethics and a violation of professional discipline. Disciplinary violations include negligence or errors in carrying out activities that have the potential to cause major harm to patients, lack of commitment to patients who seek help, or inability to carry out their professional duties. Therefore, it is more profitable for the medical field to resolve conflicts related to health services through professional organizations rather than through conventional courts, as this is believed to have a better impact on health services.

At the peak of Islamic civilization, before the reign of Caliph al-Muqtadir from the Abbasid dynasty, there was a governing body known as the Hisbah department. This department, derived from the Arabic word "hisab" meaning to consider, examine, or judge, is responsible for overseeing the conduct of physicians and the practice of medicine as a whole. Its primary focus is ensuring compliance with "community morality" standards. Testing of scales or measuring instruments, product quality testing, and professional fraud detection are some of the areas covered. Monitoring duties were carried out by the Hisbah Department in the main Arab cities, with testing carried out in Baghdad, Cairo and Damascus. Arab historian Jurji Zaidan states that under Arab government structures, there was a role of chief physician, perhaps within the Hisbah Department. This position has authority over medical education and practice, while the evaluation process is entrusted to an assessment institution called Muhtasib. so that doctors can assess their professionalism.

The Hisbah Department has a diverse jurisdiction, including tasks such as educational standardization, test administration, and supervision of medical practice. The creation of this hisbah department is proof that an early understanding of the principles governing the practice of medicine in Islam will foster an environment suitable for resolving problems only through professional organizations, thereby ensuring that doctors' behavior has a more beneficial impact on society. (self-organization assessment). Current protocols for law enforcement or investigation of doctors accused of professional misconduct are still not perfect, such as:

1. Revocation of practice permits (for doctors)
2. Obligation to attend education or training at a medical educational institution (madrasah).
3. Handed over to the legal system through a court (judge), if it is deemed to have violated applicable law.

Nevertheless, there is justification for eliminating criminal wrongdoing, despite the fact that abuse is inherently prohibited. However, there are also others who are granted permission based on factors such as: legal defense, education, medicine, sports, loss of collateral, and use of state power. Medical reasons are one of the justifications for eliminating criminal wrongdoing in accordance with Islamic law. There are no legal claims against doctors because health services are considered an exercise of rights, not a fulfillment of responsibilities. Therefore, the issue arises as to whether a doctor can be held responsible for any harm caused to his patient. According to the words of Allah SWT in the Koran, "And when I am sick, He is the one who heals me" (QS. Assyu'ara. 26: 80).

Academics agree that doctors are not responsible for the adverse effects experienced by sick individuals or patients. However, researchers have different views regarding the underlying causes. Imam Abu Hanifah put forward two justifications: 1. Identifying community needs; 2. Obtain consent from the patient or legal guardian. This second reason may be used to justify the patient's permission to seek treatment. To meet society's

demands, it is important for doctors to be given the freedom to carry out their duties without always having to worry about facing legal action. According to Imam Syafi'i, a doctor's independence depends on the patient's or guardian's permission. Meanwhile, Imam Malik emphasized that freedom was obtained through the steadfastness of the sick, their guardians and their governing bodies. A doctor is exempt from this charge if he meets the following criteria:

1. He must really be a doctor.
2. The action is intended to treat with good intentions.
3. The action was carried out according to the rules of treatment.
4. Approved by the patient or guardian.

If a doctor commits malpractice that results in the death of a patient, it can be considered a murder case. Murder is an act that is prohibited under sharia, unless it is deemed permissible under sharia law. Doctors who do not comply with mandatory directions and violate established professional protocols do not comply with the *syara'* as outlined in the Al-Qur'an and Hadith relating to legal matters. These laws and regulations were promulgated and entrusted to Muslims, with the imposition of *ta'zir* as a predetermined punishment. The authorities have the freedom to determine the method of punishment, which can be done through the stipulation of a statutory regulation, or by submitting a case to court based on a legal process, or through *ijtihad*.

Abdul Aziz Amir divides the *ta'zir* finger in detail into several parts, namely:

1. Jarimah *ta'zir* related to murder;
2. Jarimah *ta'zir* related to wounds;
3. Jarimah *ta'zir* which is related to crimes against honor and damage to morals;
4. Jarimah *ta'zir* related to wealth;
5. Jarimah *ta'zir* which is related to individual benefit;
6. Jarimah *ta'zir* related to public security

From the explanation above, in relation to the occurrence of malpractice due to violations of operational procedures or professional standards, there are several consequences that can be a reason for the doctor's responsibility. Malpractice due to medical violations can be categorized as *ta'zir* which is related to:

1. Jarimah *ta'zir* related to murder.

There are violations, especially violations of operational procedures or professional standards made by doctors and as a result of the doctor's actions the patient ends up being disabled or dies, so that the doctor's actions can be categorized as murder. Murder is punishable by death. If the death penalty (*qishas*) is forgiven, the punishment is replaced with *diyat*. However, *diyat* punishment can be forgiven, so Ulil Amri or the ruler has the right to give *ta'zir* punishment if this is deemed more beneficial.

2. Jarimah *ta'zir* related to wounds.

Apart from being considered murder, the absence of consent can also be considered injury. According to Imam Malik, punishment can be considered as causing injury, because *qishas* is an *adami* (human) right, while *ta'zir* is a reward for the community's rights. Apart from that, *ta'zir* can be applied to injured fingers if the *qishas* are forgiven or cannot be carried out due to a reason justified by the *syara'*.

3. Jarimah related to individual benefit

Jarimah is related to a group that includes lying (not providing a correct explanation), violating other people's personal rights (such as not providing information before carrying out medical procedures).

4. Jarimah *ta'zir* related to public benefit

Jarimah contained in this group is related to violations of operational procedures, namely acts or acts of negligence in carrying out duties or obligations. A doctor is required to be careful and is required to carry out his obligation to always apply the concept of informed consent in every medical procedure. This negligence can affect the performance and responsibilities of public health officials. Adults are responsible for fulfilling their duties and refraining from prohibited actions. This individual is called someone who has *Ahliyat al-Ada'*. *Ahliyat al-Ada'* is based on reason, which shows that only people with reason are obliged to fulfill their responsibilities. Therefore, those who are minors, mentally ill, intellectually disabled, lack will, or are under duress are not legally responsible for their actions. Thus, according to Islamic principles, a person who lacks knowledge and the ability to make rational decisions is exempt from criminal responsibility. Likewise, those who have not reached adulthood cannot be said to have perfect understanding and decision-making abilities. No matter how big a doctor's obligations are, they must be diligent in carrying out their duties, because in the end they are the ones who are responsible. The existence of accountability for each person indicates the text's obligation to effectively fulfill its obligations for the progress of humanity. According to Allah SWT, it is advisable not to pursue information that is foreign to you. Undoubtedly, your auditory perception, visual perception, and emotional center will all be monitored and responsible. The verse you mentioned comes from

Surah al-Isra' (Sura 17) verse 36. According to the ijma' fuqaha, a doctor's release from responsibility for mistakes he has made must meet the following criteria::

1. The actor is the field;
2. The action should be shown to be for treatment with good intentions;
3. Done in accordance with the principles of medical science;
4. With the consent of the patient or his family, and/or the government

Then, if all this is done by someone who does not have medical knowledge or has no experience in the field, then he is responsible for his mistakes, because he is considered to have made a mistake. In the history of the Prophet's Hadith: Meaning: "From 'Amr bin Syuaib, from his father and grandfather, he said, Rasulullah SAW said: "Whoever seeks treatment without being based on his knowledge, then he must be responsible." (H.R. Ibnu Majjah) The legal problem is the obligation to bear responsibility (risk) for a doctor who is stupid for his actions. If the doctor practices medicine without real experience, then he has damaged the soul with his stupidity or committed irresponsible actions. answer based on what he doesn't know. Thus, he has committed dangerous acts with his medication. So he must be responsible for his actions. Ja'far Khadim explained, if a doctor who is an expert and has received permission and is carrying out his duties, makes a mistake, thereby changing a healthy organ and damaging it, then the doctor is obliged to take responsibility for his mistake. If the damage exceeds a part of the organ, then compensation will be borne by 'Aqilah (family or heirs). However, if there is none, then baitulmal or no baitulmal gives rise to two opinions: (1). the doctor is obliged to pay with his own assets or (2). With the death of diyat.

Legal Protection of Patients in the Perspective of Islamic Law

Everyone has the right to Health. This is mandated in article 4 of the Health Law, which in the explanation of the article states that the right to health referred to in this article is the right to obtain health services from health service facilities in order to achieve the highest possible level of health. . In health law there is a saying *agroti salus lex suprema* which means patient safety is the highest law. In emergency situations, patients have the right to receive quality medical services in accordance with service standards and professional standards. Article 5 paragraph (2) of the Health Law states that "Everyone has the right to obtain safe, quality and affordable health services". Patient rights are contained in article 52 of the Medical Practice Law which contains: "Patients, in receiving services at a medical practice, have the right to: obtain a complete explanation of medical procedures as intended in Article 45 paragraph (3). ask for another doctor's opinion. .get services according to medical needs. refuse medical treatment. obtain the contents of the medical record." These rights are also emphasized in article 32 of the Hospital Law which states: "Every patient has the right:

- a. obtain information regarding the rules and regulations that apply in the Hospital.
- b. Obtain information about patient rights and obligations.
- c. obtain services that are humane, fair, honest and without discrimination.
- d. obtain quality health services in accordance with professional standards and standard operational procedures.
- e. obtain effective and efficient services so that patients avoid physical and material losses.
- f. submit a complaint regarding the quality of service obtained.
- g. choose a doctor and treatment class according to his wishes and the regulations applicable at the Hospital.
- h. ask for consultation about the illness they are suffering from from another doctor who has a Practice License (SIP) both inside and outside the hospital.
- i. obtain privacy and confidentiality of the disease suffered, including medical data.

Based on patient rights, if a patient does not receive emergency services according to their medical needs that are of good quality according to professional standards and standard operational procedures and are effective and efficient so that the patient is protected from physical and material threats. the loss, the patient has the right to sue the doctor or hospital criminally. . If a patient experiences something that is suspected to be a doctor's error or negligence in carrying out medical procedures during emergency treatment, it is necessary to first investigate whether there are any illegal elements in the action. A doctor can be considered to have committed a professional error if he does not meet professional standards in the same circumstances and by taking a path that is proportional to the goal to be achieved. So, before categorizing an act as a criminal act, it is necessary to first examine whether the act is contrary to the law, whether the consequences of the act can be imagined, whether the actual consequences can be avoided, and whether the act can be blamed. perpetrator because the perpetrator should be able to imagine and avoid the consequences of his actions.

Then it can be proven that the act fulfills criminal elements so the patient can hold the doctor criminally responsible. Injury or death due to negligence is regulated in Chapter 21 of the Criminal Code, including:

Article 359 "Whoever, through his fault (negligence) causes another person to die, is threatened with imprisonment for a maximum of five years or imprisonment for a maximum of one year." Article 360 (1) "Any person who, through his fault (negligence) causes another person to receive serious injuries, is threatened with imprisonment for a maximum of five years or imprisonment for a maximum of one year." (2) "Any person who, through his fault (negligence), causes injury to another person in such a way that it results in illness or impediment in carrying out his job or job duties for a certain period of time, is threatened with imprisonment for a maximum of nine months or imprisonment for a maximum of six months or criminal the maximum fine is four thousand five hundred rupiah." Article 361 "If the crime described in this chapter is committed within 19 Hamzah, Principles of Criminal Law. carrying out an office or search, then the penalty is increased by one third and the guilty person can be deprived of the right to carry out a search where the crime was committed and the judge can order that the decision be announced."

However, according to the principle of *ultimum remedium*, criminal law should be used as a last resort in law enforcement. Before taking legal action, mediation needs to be carried out as an effort that is put forward in accordance with what is mandated in article 29 of the Health Law, namely "In the event that a health worker is suspected of committing negligence in carrying out his profession, then mediation must be carried out". negligence must be resolved first through mediation." A doctor, in carrying out his obligations towards his patients, cannot always be free from mistakes and mistakes that can cause harm to his patients. Article 1365 of the Civil Code states that every act that is against the law and causes harm to another person requires the person who caused the loss through his fault to compensate for the loss. The same thing is also stated in Article 58 paragraph (1) of the Health Law which states that everyone has the right to claim compensation against a person, health worker and/or health service provider who causes losses due to errors or negligence in the health sector. the service they receive. In general, an unlawful act can be interpreted as treatment in an emergency situation and this act fulfills criminal elements, so that the patient can ask for criminal responsibility from the doctor, but according to the principle of *ultimum remedium*, criminal law should be used as a last resort. resort in terms of law enforcement. From a civil law perspective, article 58 paragraph (2) of the Health Law states that claims for compensation do not apply to health workers who carry out life-saving measures or prevent someone's disability in an emergency. Patients whose interests are harmed by a doctor's actions in carrying out medical practice can submit a written complaint to the Chairman of the Indonesian Medical Discipline Honorary Council and do not lose the right to sue for civil damages in court.

CONCLUSION

The relationship between patients and medical personnel is very close. Patients are an outcome for health services, which means that patient satisfaction is really needed by medical personnel to improve quality and the best quality. The patient's desire for medical personnel services must be able to match expectations. The legal relationship between patients and medical personnel is clear in the statutory regulations in an agreement.

Legal protection for patients and medical personnel in Islam has existed since ancient times. Medical personnel are experts in carrying out their responsibilities and will definitely provide the best treatment for their patients. If there is negligence in carrying out treatment and it causes the patient to get worse or die, the doctor will pay compensation to the patient's family. In carrying out their duties, a health worker must carry out examinations in accordance with operational standards and monitor the progress of the patient.

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