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Legal Standing on Health Workers in the Field of Emergencies and Disasters

Anggi Ginanjari¹, Ucup Suryana¹, Happy Yulia Anggraeni¹

¹ Universitas Islam Nusantara, Bandung, Indonesia

* Corresponding author: Anggi Ginanjari (anggiginanjari@uninus.ac.id)

Abstract

Health workers play a critical role in responding to medical emergencies and disasters. The legal responsibilities and obligations of health workers in these situations are often highlighted, both in terms of legal protection for health workers and their responsibility to save lives. This article will examine the legal standing of health workers in emergency and disaster scenarios. It will also examine the legal protection afforded to health workers in carrying out their duties, as well as the legal difficulties and issues they face in Indonesia. This research used normative legal research techniques and it used references from various national and international legal sources, as well as case studies, will be used for comparison. The legal standing of health workers in Indonesia, especially during emergencies and disasters, requires clearer and stricter rules to protect medical personnel on duty. Existing rules and regulations provide a legal framework, but in practice, health workers often face legal obstacles, especially in emergency situations and major disasters.

Keywords:

Disasters Law, Emergencies, Health Workers, Legal Barriers, Law, Legal Standing.

1. Introduction

Health workers are dedicated individuals in the health sector who have acquired knowledge or skills through training in that sector, thereby authorizing them to carry out specific health-related activities. According to Kurniati and Efendi (2012), the definition of health workers includes anyone who has completed formal or non-formal education and has dedicated themselves to various initiatives aimed at preventing, maintaining, and improving public health. Current labor laws categorize healthcare workers into thirteen types: medical personnel, clinical psychologists, nurses, midwives, pharmacists, public health workers, environmental health workers, nutritionists, physical therapists, medical technicians, biomedical technicians, and traditional healthcare workers (Kurniati & Efendi, 2012).

The control of health workers in the health worker law is not comprehensive and is specific to each health worker, as mentioned in article 21 paragraph (3) of the Health Law which states that "Provisions regarding health workers are regulated by law." Health workers, such as doctors, nurses and other medical experts, play an important role in emergency and disaster response. As first responders in crisis management and emergency medical situations, they face not only significant physical and psychological hazards, but also legal issues related to their obligations and responsibilities. Therefore, health workers must have the skills to implement disaster management (Artini et al, 2022).

Health workers in Indonesia face many challenges such as the Covid 19 pandemic. Medical personnel as the frontline in dealing with the covid-19 pandemic outbreak are at great risk of direct exposure to the covid-19 virus (Handini, 2021). Not a few medical personnel are exposed in devoting themselves to serving public health. In the COVID-19 pandemic, medical personnel play a central and crucial role, whose legal position in the field of emergencies and disasters has become very relevant. Legal protection for the work safety of health workers almost goes unnoticed, even though as the frontline of handling the Covid-19 pandemic there is a risk of crime and death (Pesulima and Hetharie, 2020).

In dealing with disasters such as the Covid-19 pandemic, the government ensures protection in the form of preventive and repressive measures. In the form of repressive protection, the government provides compensation to healthcare workers listed in Minister of Health Decision No. HK 01.07/MENKES/278/2020 and Minister of Health Decision No. HK. 01.07/MENKES/215/2020 (Sudiyo and Hanim, 2022). According to Asshilah and Hasan (2023), this repressive legal protection aims to resolve disputes arising from violations. Meanwhile, preventive measures take the form of government-funded vaccination (Iriani et al., 2024).

In Indonesia, various laws regulate health workers, including Law No. 36 of 2014 on Health Workers and Law No. 24 of 2007 on Disaster Management, which form the legal basis for their rights and obligations in emergency and disaster situations. Despite clear legal provisions, there are still gaps in the protection of healthcare workers in the field, particularly regarding their legal status when providing medical care under difficult conditions. Therefore, this study aims to examine the legal status of healthcare workers in emergency and disaster scenarios. The study will also analyze the legal protection provided to healthcare workers in performing their duties, as well as the legal challenges and issues they face in Indonesia.

2. Methods

This research uses normative legal research techniques. This research uses a normative legal approach (Doctrinal Legal Approach). The statutory approach is intended to describe the legal regulation of health workers and the principle of legal certainty. The aim is to determine whether laws and regulations are consistent and

appropriate. Laws and Other Laws Or Between Laws With Constitutional Laws or Between Regulations With Laws. The type of data in this study Secondary data is data collected from library materials. The data collection method used in normative legal research is literature study (Marzuki, 2017).

This study applies a method that focuses on the analysis of legal opinions and legal doctrines, particularly in the fields of health law and civil law. The legal sources used in this study come from three types of sources: primary, secondary, and tertiary. Primary legal sources include various relevant laws and regulations, such as the Civil Code, Law 36/2009 on Health, and Law 36/2014 on Health Workers. Meanwhile, secondary legal sources consist of research results, textbooks, legal journals, and legal experts' views related to the research topic. Tertiary legal sources, such as dictionaries, encyclopedias, and other publications, serve as explanations or recommendations for primary and secondary legal materials.

The data was gathered through document reviews and literature studies. This study will find and review books, documents, and other materials relevant to the topic. This method involved searching for legal materials in libraries, legal documentation centers, and reliable online sources. The data analyzing process also record all laws and regulations related to the topic. This study uses qualitative and descriptive approach.

The of analyzing process starts with organizing all the legal materials. Researchers then analyze these legal sources to understand their relevance and impact on legal status. This study also includes categorization and synthesis to find patterns, correlations, and themes in the legal texts being analyzed. This study uses deductive and inductive reasoning strategies during the examination process. Deductive reasoning is applied to find conclusion based on general principles of civil law and informed consent. Meanwhile, the inductive reasoning is used to find general principles by analyzing individual examples and applicable laws and regulations. The results will be showed in a systematic and logical description (Kurniawan & Chandra, 2024).

3. Results and Discussion

When healthcare workers provide medical or health management services to patients, they establish a relationship with patients. Healthcare workers and patients have a fiduciary relationship that is built on trust as well as a legal relationship. Legal ties can arise from legislation (*ius delictum*) or from an agreement (*ius contractum*).

In performing medical actions in emergency situations, doctors are carrying out the obligation of legal orders aimed at saving patients. Those who have good faith to help someone in an emergency need to be legally protected (Jauhani et al, 2022). Health workers who carry out health practices are entitled to legal protection as long as they follow professional standards and standard operating procedures. Legal protection can be interpreted as an effort by the state and all its apparatus to provide a sense of security, both physical and psychological, to health workers in carrying out their duties to provide health services to the community.

Legal protection is essential to ensure that medical personnel can work without excessive fear of potential lawsuits, as long as they work according to standards. Protection norms for health workers must include protection of work norms, protection of Occupational Health And Safety (OHS) norms, and protection of social security norms for workers. Labor protection for healthcare workers includes wages, working hours, rest periods, and leave (Gegen and Santoso, 2022). For example, during the COVID-19 pandemic, healthcare workers received legal protection regarding the provision of personal protective equipment (PPE), working hours, and legal actions (Soekiswati et al., 2021). Additionally, efforts to protect medical personnel were made through the provision, utilization, and insurance for workplace accidents (Vedina, 2022). In other words, legal protection is a separate description of

the legal function, which has the concept that law provides justice, order, certainty, utility, and peace (Riasari, 2021).

Of course, the criteria that are against the law must be met in the criminal law doctrine because the doctrine determines whether an act can be classified as a criminal offense. According to procedural law, in order for a person accused of committing a criminal offense to be convicted, the criminal offense must be proven, and the criminal offense is only proven if all the components contained in the formulation are fulfilled (Muntaha, 2017).

If a health worker fails to provide emergency assistance, they have violated disciplinary regulations. One form of violation of discipline is not carrying out emergency assistance on humanitarian grounds, even though it does not endanger himself, unless he is sure that there are other people who are on duty and able to do so, which in the explanation states that helping others who need help is a basic obligation for every human being, especially for health workers, and this obligation can be ignored if it endangers himself or there are other people who need help.

Article 82 states that the provision of health services in disasters is prioritized for saving lives, preventing further disability and the interests of patients (Aktariyani, 2020). In accordance with Article 190 of Law Number 36 Year 2009 on Health (hereinafter referred to as the Health Law), health workers can also be fined for not providing emergency assistance. However, because the situation of providing emergency assistance is very different from normal conditions, it is necessary to review whether health workers are still required to fulfill other legal obligations and in what situations health workers can ignore these obligations.

In an emergency to save the patient's life, consent is not required; however, if the patient is conscious or in an enabling condition, an immediate explanation is given and consent is obtained. Every patient has the right to feel protected from a risk when receiving health services (Ernawati et al., 2024). In this context, the government plays the role of a facilitator who is responsible for providing funds and creating a public health service system that is accessible to everyone (Putra et al, 2022)

Law 36/2014 became a more specific legal basis for medical personnel and the health profession. In particular, this regulation regulates the right of medical personnel to obtain legal protection as long as their duties are in accordance with their phytophic standards. This means that in dangerous or disaster conditions that require quick and high-risk action, medical personnel are expected to be legally protected as long as their actions are based on competence, good faith, and in accordance with guidelines (Sari, 2021).

Law No. 36/2009 concerning Health and Law No. 36/2014 concerning Health Workers play an important role in the regulation of the health sector in Indonesia. Although the two complement each other, there are several gaps and disharmony, especially before the emergence of Law 17/2023. Law No. 36/ 2009 has a wide scope and regulates all aspects related to public health. Meanwhile, Law No. 36 of 2014 specifically regulates health workers. Law no. 36/2009 states that every health worker who has a practice must have a permit in accordance with laws and regulations. Meanwhile, Law 36/2014 regulates in more detail about the Registration Certificate (*Surat Tanda Registrasi/STR*) as a requirement to carry out the practice. Law 36/2009 still describes sanctions for violations in the health sector in general and are criminal or administrative in nature. Meanwhile, Law 36/2014 began to introduce the role of the council of each health worker in enforcing professional discipline. The role of local governments is also regulated in more detail in Law No. 26/2014, especially regarding the division of authority. Law no. 17 of 2023 integrates and simplifies various laws in the health sector through an omnibus law approach. This is expected to overcome the gaps and overlaps that existed before.

According to the Good Samaritan doctrine, parties who voluntarily have the goodwill to help someone in an emergency should be protected. The two fundamental elements in the Good Samaritan theory that must be met are the voluntariness of the helper, which is demonstrated by the absence of the helper's expectation or desire for any form of reward, and the good faith of the helper, which can be determined by the actions of the helper. If there is a claim of negligence in an emergency, the conditions and considerations of the scenario at the time of the incident must be considered. So whether or not the actions of health workers are suitable must be compared with the actions of health workers of the same qualifications, in the same situation and conditions (Herikutanto, 2017).

Good legal rules must be formulated with clear, comprehensive, and robust norms so as not to give rise to multiple interpretations. This is in line with the principle of good lawmaking, one of which is clarity of formulation. This means that every legal regulation must meet technical requirements for drafting, systematics, word or term selection, and the use of clear and easily understood legal language, so as not to trigger various interpretations when applied (Handoyo, 2014). Legal order and certainty are one of the principles in formulating the content of legislation. This principle, as stipulated in Article 6(1)(f) of Law No. 12 of 2011 on the Formation of Legal Regulations, implies that the content of legal regulations must be able to create public order through legal certainty (Handoyo, 2014).

Health care legislation and regulations in Indonesia still lack legal certainty due to conflicting, incomplete, fragmented, and inconsistent norms. This is because the principle of legal certainty has not fully become the foundation in formulating norms; legal principles in laws are often formulated in articles so that the position of legal principles and norms is balanced, so that the meaning of these principles does not become the source of the birth of legal regulations or principles in formulating legal norms. Another example is the several judicial reviews of legal norms governing health professions, which shows that the principle of legal certainty in these regulations has not been fulfilled.

Frequent changes in technical regulations (*Peraturan Menteri Kesehatan/Permenkes*) show the inconsistency of these regulations, causing complicated implementation problems. Article 21 of the Health Law also has the potential to create competing norms which, if applied, will result in health worker regulations being regulated by government regulations and health worker regulations being regulated by legislation. To avoid clashes with these values, regulations governing health workers must be regulated by legislation. Considering that the provisions governing health workers are scattered in various laws and regulations and do not meet the legal demands of the community, it is important to establish a new law that regulates health workers holistically. Both of these are to prevent potential conflicts of norms. The elucidation of Article 21 paragraph (3) of the Health Law also means that all health workers other than medical personnel are regulated in one law or each type of health worker is regulated in a separate law. If we look at the use of the word "with" which is a word that means "specifically" in the elucidation of article 21 paragraph (3) of the Health Law, it is more interpreted that this provision mandates that each type of health worker is regulated by a separate law.

Some countries have specialized medical teams in dealing with emergencies and disasters. In the United States, in dealing with disaster events, The National Disaster Medical System (NDMS) was formed as a form of community assistance and planning (Mace et al., 2007). The team consists of physicians, nurses, emergency medical technicians, pharmacists, and support personnel. In terms of legal protection, the United States has the Public Readiness and Emergency Preparedness Act (PREP Act) which provides immunity from claims for damages for negligence (except for willful negligence) to individuals or organizations involved in the

production, distribution, or distribution of medical procedures (Minnesota Department of Health, 2024)

In addition, in Canada, The Disaster Assistance Response Team (DART) is responsible for stabilizing the main effects of disasters, preventing secondary effects of disasters, and providing a buffer time for humanitarian aid organizations to deploy to devastated areas and prepare to deliver long-term relief programs (Arziman, 2015). Meanwhile in Japan, to deal with emergencies, Japanese Disaster Medical Assistance Teams (DMATs) are tasked with collecting medical data, communicating in destroyed areas, providing medical support to hospitals, supporting treatment units, and supervising emergency medical technicians (Fuse and Yokota, 2010). Regarding the legal environment, Japan has a Disaster Countermeasures Basic Act which provides a structured, coordinated, and comprehensive disaster response ecosystem by ensuring medical personnel as part of the disaster response (National Land Agency Japan, 1997). Meanwhile, in Australia, the form of protection of medical personnel is reflected in the Health Practitioner Regulation National Law as a legislative framework that governs the health profession in Australia (Parliament of New South Wales, 2009).

Globally, there are not many regulations governing the protection of medical personnel covering emergencies and disasters. However, some regulations provide protection for medical personnel on standby, especially in the context of armed conflict. Roring et al, (2023) in his research stated that regulations regarding the position of medical personnel in situations of armed conflict can be seen from several international humanitarian laws such as the Geneva IV Convention of 1949 to the UN Security Council Resolution UN Security Council Resolution Number S/RES/2286 (2016) and Number S/RES/2401 (2018). However, it is still difficult to ensure that medical personnel are safe during an emergency (Putri and Rusli, 2024). Based on the analysis above, although there are various laws and regulations that provide legal protection for health workers, there are various problems faced during emergencies and disasters.

One crucial issue is the uncertainty in obtaining medical approval in emergency situations, which often leads to lawsuits against health workers. In addition, the imbalance between the number of health workers and patients in need of assistance in the field is also a serious challenge. Ideally, the government and healthcare workers should work together to balance rights and obligations through preventive and repressive measures. However, in reality, the legal protection provided is still weak because some of the rights of healthcare workers have not been fulfilled. This reflects an imbalance in the implementation of government responsibilities, even though the law has provided adequate authority (Hamrani, 2021). Therefore, more concrete legislative protection is needed to ensure that medical personnel do not face legal consequences for medical actions taken in emergency situations, provided that such actions are performed in good faith to save lives. On the other hand, healthcare workers are also required to understand regulations, comply with standard operating procedures, and undergo medical ethics training (Lakoro et al, 2025).

The World Health Organization (WHO) has procedures to ensure the safety of medical staff during emergencies and disasters. One of its main ideas is the "Do No Harm" principle, which states that medical staff should not face legal penalties if they act to save lives in an emergency. This needs to be implemented in Indonesia so that there is better knowledge of the limitations and rights of field health workers.

4. Conclusion

This study shows several things about the legal status of medical personnel in emergencies and disasters. The legal standing of health workers in Indonesia, especially during emergencies and disasters, requires clearer and stricter rules to protect medical personnel on duty. Existing rules and regulations provide a legal

framework, but in practice, health workers often face legal obstacles, especially in emergency situations and major disasters. Based on the results of the research, it is recommended to conduct intensive legal education, especially about legal aspects in medical practice during disaster emergencies. The government needs to develop clear and specific legal operational guidelines for health workers in emergency and disaster situations. For future research, it can be done a case analysis of the gap in the implementation of the law for medical personnel in disasters holistically or conduct a comparative study of legal regulations in other countries.

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The authors declare that there is no conflict of interest.

Ethical Approval and Originality Statement

Ethical approval was obtained for this study. The manuscript represents original work and has not been previously published, nor is it under consideration by another journal.

Data Disclosure Statement

The data that support the findings of this study are available from the corresponding author upon reasonable request.



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