

Legalitas dan tanggung jawab hukum dokter dalam operasi penggantian kelamin berdasarkan hukum kesehatan dan kode etik kedokteran: studi kasus penetapan pengadilan nomor 17/Pdt.P/2015/PN.Kbm. = Legality and responsibility of doctors in gender substitution operations based on health law and medical ethics code: case study of courts determination number 17/PDT.P/2015/PN.KBM

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Abstrak

Skripsi ini membahas mengenai legalitas pelaksanaan operasi pergantian kelamin di Indonesia yang ditinjau berdasarkan hukum kesehatan dan Kode Etik Kedokteran, serta kaitannya dengan tanggung jawab hukum tim dokter terhadap pelaksanaan operasi penggantian kelamin tersebut. Pembahasan dilakukan melalui studi kasus pada penetapan pengadilan Nomor 17/Pdt.P/2015/PN.Kbm sebagai acuan untuk mengetahui bahwa penetapan yang dikeluarkan hakim terhadap pergantian kelamin seseorang apakah telah sah atau tidak. Tipe penelitian ini adalah deskriptif dengan bentuk penelitian yuridisnormatif. Hasil penelitian ini menyimpulkan bahwa pelaksanaan operasi pergantian kelamin di Indonesia adalah sah (legal) selama individu menderita Disorder of Sexual Developmet (DSD), maka pelaksanaan operasi pergantian kelamin Apriandika dalam penetapan pengadilan Nomor 17/Pdt.P/2015/PN.Kbm. menjadi berjenis kelamin perempuan adalah sah secara hukum karena Apriandika menderita DSD, kemudian mengenai pertanggungjawaban tim dokter telah terlaksana secara disiplin profesi, dan tidak diperlukannya tanggung jawab hukum karena tidak ada kesalahan/kelalaian/pelanggaran yang terjadi terhadap Apriandika, sehingga penetapan pergantian kelamin Apriandika adalah sah, walaupun Hakim dalam pertimbangan hukumnya perlu untuk mengelaborasi dari sisi Undang-Undang lainnya selain dari Undang-Undang Administrasi Kependudukan. Untuk saran dari hasil penelitian ini diperlukan adanya pengaturan yang jelas mengenai tahapan, kategori pasien, dan pengecualian untuk operasi pergantian kelamin di Indonesia, dan untuk peraturan yang sudah ada diperlukan adanya pembaharuan.

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This thesis discusses the legality of the implementation of sex reassignment operations in Indonesia which are reviewed based on Health Law and the Medical Ethics Code as well as the relation to the legal teams responsibility for carrying out the sex reassignment operations. The discussion is determined through 17/PDT.P/2015/PN.KBM as the number of case study of the court determination in which as a reference, also to know that the classification issued by a judge on a persons sex change is valid or not, with the additional interviews to the surgeons, forensics and psychiatrists, this research therefore, is descriptive research with juridical-normative formed. The result of this study concluded which the implementation of sex change operations in Indonesia is legal as long as individuals suffer from Disorder of Sexual Development (DSD), then the implementation of Apriandikas sex change operation in the determination of court number 17/Pdt.P/2015/PN.Kbm. being female is legal due to the status of Apriandikas who suffers from DSD, in regards of relation to the accountability of the team of doctors which has been carried out in a professional discipline, in addition that there is no need for legal responsibility which there are ultimately no errors/omissions/violations which occur against Apriandika, thus the determination of Apriandikas sex

change is essentially valid even though the judge in his consideration should need to elaborate extensively on the other side of the Law which also regulates sex reassignment operations other than the Population Administration Act. Therefore, for other suggestions from the results of this study, it is necessary to have clear arrangements regarding the stages, categories, exceptions of sex change operations in Indonesia, and for existing regulations there is a need for renewal. As a result, this advice is more directed to the Minister of Health.