

Pengecualian Kewajiban Informed Consent pada Tindakan Medis Darurat = Exceptions to the Obligation of Informed Consent in Emergency Medical Actions

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Abstrak

Informed consent merupakan salah satu unsur terpenting yang harus dipenuhi sebelum dilakukannya tindakan medis. Oleh karena itu, pemahaman mengenai informed consent sangat diperlukan baik pada pihak yang memberikan pelayanan kesehatan (health providers) dan pihak yang menerima pelayanan kesehatan (health receivers). Namun terdapat kondisi yang tidak memungkinkan untuk dilaksanakannya informed consent, yakni dalam keadaan gawat darurat. Skripsi ini fokus pada kondisi-kondisi gawat darurat medis yang diatur dalam undang-undang yang mengecualikan pelaksanaan informed consent serta penerapan pengecualian ini terhadap gugatan perbuatan melawan hukum terhadap dokter yang tidak melaksanakan informed consent karena kondisi pasien yang tidak dapat menunggu untuk dilaksanakannya informed consent. Terkait kondisi gawat darurat, pada peraturan perundang-undangan di Indonesia telah terdapat pengaturan mengenai pelayanan kegawatdaruratan, namun masih terdapat kerancuan terkait indikator mengenai keadaan darurat. Penelitian dilakukan dengan metode yuridis-normatif dengan tipe deskriptif, data bersumber penelitian adalah data sekunder berupa bahan hukum dan data primer yakni melalui wawancara. Berdasarkan penelitian yang dilakukan oleh penulis, Informed Consent dalam tatanan perundang-undangan diatur dalam beberapa peraturan, antara lain Undang-Undang Republik Indonesia Nomor 36 Tahun 2014 Tentang Tenaga Kesehatan dan Peraturan Menteri Kesehatan Republik Indonesia Nomor 290/MENKES/III/PER/III/ 2008 tentang Persetujuan Tindakan Kedokteran. Jika dikaitkan dengan hukum perikatan, informed consent timbul berdasarkan transaksi terapeutik yakni perikatan usaha (inspanningsverbintenis) antara dokter dan pasien. Pengecualian terhadap informed Consent didasari kewajiban dokter untuk mengusahakan upaya secara maksimal dalam demi kesehatan pasien termasuk dalam kondisi gawat darurat. Kondisi gawat darurat ini juga telah diatur dalam PERMENKES 47/2018 dimana suatu kondisi merupakan kondisi gawat darurat apabila memenuhi kriteria gawat darurat.

.....Informed consent is one of the most important elements that must be fulfilled before taking medical action. Therefore, an understanding of informed consent is needed both for those who provide health services (health providers) and those who receive health services (health receivers). However, there are conditions that make it impossible to carry out informed consent, namely in an emergency. This thesis focuses on medical emergency conditions regulated by law which exclude the implementation of informed consent as well as the application of this exception to lawsuits against doctors who do not carry out informed consent because of the patient's condition who cannot wait for informed consent to be carried out. Emergency conditions in Indonesian laws and regulations are regulated through arrangements regarding emergency services, but there is still confusion regarding indicators regarding emergencies. The research was conducted using a juridical-normative method with a descriptive type, the data sourced from the research were secondary data in the form of legal materials and primary data, namely through interviews. Based on research conducted by the author, Informed Consent in statutory arrangements is regulated in several regulations, including the Law of the Republic of Indonesia Number 36 of 2014 concerning Health

Workers and Regulation of the Minister of Health of the Republic of Indonesia Number 290/MENKES/III/PER/III/ 2008 concerning Approval of Medical Actions. Based on the law of obligations, informed consent arises based on therapeutic transactions, namely business engagements (inspanningsverbintenis) between doctors and patients. Exceptions to informed consent are based on the doctor's obligation to make maximum efforts for the sake of patient health, including in emergency situations. This emergency condition has also been regulated in PERMENKES 47/2018 where a condition is an emergency condition if it meets the criteria for an emergency.