

LEGAL PROTECTION OF PATIENTS THROUGH BLOOD TRANSFUSION BASED ON POSITIVE INDONESIAN LAW

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ABSTRACT

In a rule of law where the welfare of life has improved, there is a realization of the right to health, one of which is blood services. Blood service is a health service effort that uses human blood as a basic material for humanitarian purposes and not for commercial purposes. Blood is prohibited from being traded under any pretext. Blood is a gift from God who is the most gracious of all human beings. It should not be used as an object of sale and purchase for profit, even if it is to make a living. In fact, blood trading often occurs for various reasons in the hospital at the time of the emergency, so that people are often disadvantaged when they need blood. Regulation of the Minister of Health Number: 83 of 2014 concerning Blood Transfusion Units, Hospital Blood Banks, and Blood Transfusion Service Networks, that in the context of continuous blood services and to produce quality blood for transfusion and / or blood components, UTD can collect replacement fees for blood processing must consider the principles of justice and appropriateness. Each person or UTD and BDRS charge fees to people who need blood at a price that does not exceed the predetermined cost limit, namely not more than 50% of the cost of replacing per-bag blood processing from UTD with a maximum price limit of IDR 360,000. Collecting fees to the public as a criminal act of buying and selling can be imposed under Article 195 of Law no. 36 of 2009 related to the rules of criminal acts by fulfilling the existing elements. Thus, there are legal consequences in the form of crimes for anyone or corporations who violate the regulations. This research is a normative juridical study by reviewing and analysing secondary data in the form of secondary legal materials in the form of books, texts, legal dictionaries, legal journals, comments on court decisions and statutory regulations. To further prevent the practice of buying and selling blood, the government is advised to more concretely regulate, develop and supervise and socialize blood services through various regulations as well as education and research in order to ensure the availability of blood for health services.

Keywords: Blood Service, Government Regulation, Legal Aspects

A. INTRODUCTION

As a law state that has improved the welfare of a healthy life in Indonesia, legal norms for health and social structures must be adhered to by every Indonesian citizen. One of the activities in the health sector carried out in order to realize the highest right to health is service blood. Blood service is a health effort that utilizes human blood as a basic ingredient in the context of healing disease and restoring health, blood services are carried out for humanitarian purposes and not for commercial purposes because blood is prohibited from being traded under any pretext. Blood service in a broad sense covers the basic public interest and reaches the needs of millions of people. Therefore, the regulatory policies in this Government Regulation must be implemented based on the principles of humanity, balance, benefits, protection, respect for rights and obligations, justice, gender and non-discrimination and religious norms.

Blood services must provide maximum benefit for humanity. The principle of protection means that blood services must be able to provide protection and legal certainty to providers and recipients of blood services, the principle of respect for rights and obligations means that blood services are carried out with respect for the rights and obligations of patients, blood donors, health workers and health care facilities. The government is responsible for the implementation of blood services that are safe, easily accessible, and in accordance with the needs of the community, and also related to the regulation of blood services.

Development of science and technology in the field of medicine, especially in blood service technology, the management of blood components and their utilization in health services must have a legal basis as a consequence of state principles based on law. Therefore, in order to provide protection to the community, blood services are only carried out by health workers who have the competence and authority, and only implemented in health service facilities that meet the requirements. This is necessary to prevent the emergence of various risks, the occurrence of disease transmission both for recipients of blood services and for health workers as health service providers.

In carrying out blood service activities, blood is needed to be obtained from voluntary healthy blood donors and meets the donor selection criteria by prioritizing the health of the donors. Until 2017, the production of blood and its components was 4.1 million bags from 3.4 million donations. Of the available blood, 90% of which comes from voluntary donations. Blood donation and blood processing are carried out by the Blood Transfusion Unit (UTD), a health service facility that organizes blood donations, blood supply and blood distribution organized by the Government, local governments, and social organizations whose main tasks and functions are in the area of blood services.

The provision of blood services in its financing is guaranteed by the Government. In this case, the government is obliged to ensure the availability of blood in the provision of blood services sourced from the state revenue and expenditure budget (APBN), regional revenue and expenditure budget (APBD) and other assistance. The provision of blood services is non-profit.

Regulation of the Minister of Health Number: 83 of 2014 concerning Blood Transfusion Units, Hospital Blood Banks, and Blood Transfusion Service Networks, that in the context of continuous blood services and to produce quality blood for transfusion and / or blood components, UTD can collect replacement fees for blood processing must consider the principles of justice and appropriateness as well as the capacity of the local community, in accordance with Article 37 of the Health Ministerial Regulation No. 83 of 2014. The cost of replacing blood processing at UTD includes a component of the cost of providing blood transfusion services and a component of operational costs, which determines the maximum cost of IDR 360,000.

But on the contrary, in practice there are still people in UTD and BDRS who are looking for opportunities to profit by trading blood and a lack of information and socialization of laws, government regulations regarding blood services also support the buying and selling process of blood when people need blood. As happened at the Indah Kapuk Hospital, North Jakarta, where the blood bank officer at the hospital traded blood to patients who needed blood and the perpetrator was proven guilty in Decision No.1117.Pid.B.2012.PN.Jkt.Ut, the perpetrator filed a legal remedy until cassation, but the cassation decision (No. 1364.K.PID.SUS.2014) still confirmed the decision at the previous level. This indicates that blood is absolutely forbidden to be bought and sold under any pretext. According to Masri Roestam in "Blood Transfusion Almanac", today, blood transfusion is a common way of treatment, namely supportive therapy that must go hand in hand with other treatments. As evidence of the practice of financing blood transfusions, it can be seen from Elok Maslakhah's research which states that in order to prepare safe and quality blood and blood components for transfusion, a screening process for various diseases that can be transmitted through blood transfusions is required. To support these efforts, adequate replacement blood processing costs (BPPD) are required from patients who are not seeking profit. In addition, the Ministry of Health has stopped reagent assistance (blood bags) and there has been an increase in other supporting materials such as plastic bags, gels, tests, and others. fees charged to recipients at the PMI Surabaya City Blood Donation Unit are Replacement Blood Processing Costs (BPPD) not as the price paid for the purchase of 1 bag of blood. According to Nahdhotul Fadhilah, in his research it concluded that the collection of replacement fees for blood processing can qualify as a criminal act of buying and selling when there is UTD and BDRS charging people who need blood at a price that exceeds the set cost limit, which is no more than 50% of the replacement cost of processing the blood from one bag in UTD with a maximum price limit of Rp. 360,000.00. Collecting fees to the public as a criminal act of buying and selling can be imposed under Article 195 of Law no. 36 of 2009 related to the rules of criminal acts by fulfilling the existing elements.

B. RESEARCH RESULTS: LEGAL PROTECTION PROBLEMS FOR PATIENTS CONDUCTING BLOOD TRANSFUSION BASED ON POSITIVE INDONESIAN LAW

Legal protection problems often occur in Indonesian law country, where people are often disadvantaged when they need blood which occurs in the processing of blood, storage, distribution, uses that does not meet health requirements, blood stock, and Health Personnel or UTD who seek profit, as well as a lack of information and public knowledge about laws and regulations regarding the process of processing and transfusion of blood. Often government socialization is lacking and the emergence of new laws or regulations that are more up-to-date with the life development of the Legislative Bodies also supports the occurrence of unnecessary losses to society. occurs in this state of law which already has positive law. This study uses a normative juridical approach, namely by reviewing or analyzing secondary data in the form of secondary legal materials by understanding law as a set of regulations or positive norms in the statutory regulatory system regarding problems in research, so that this research is understood as library research, namely research on secondary population data and interviews for ten years (2011-2021) in Indonesia based on positive law in Indonesia (So it does not use foreign data). The data analysis was conducted qualitatively by collecting primary, secondary and tertiary legal materials related to the research. Data analysis using deductive and inductive methods. Data analysis was carried out systematically, qualitatively, comprehensively and completely.

Anti-discrimination health services are realized by not differentiating services to patients in providing health services, whether according to race, religion, ethnicity, gender, economic capacity, people with special needs (disabilities), socio-political background and between groups. Development of science and technology in the field of medicine, especially in blood service technology, the management of blood components and their use in health services must have a legal basis as a consequence of state principles based on law.

Therefore, in order to provide protection to the community, blood services are only carried out by health workers who have the competence and authority, and only carried out at health service facilities that meet the requirements. This is necessary to prevent the emergence of various risks, the occurrence of disease transmission both for recipients of blood services and for health workers as health service providers.

There are several regulations and laws for legal protection in blood transfusion patients:

1. Government Regulation of the Republic of Indonesia Number 7 of 2011

concerning Blood Services, (State Gazette of 2011 Number 18, Supplement to State Gazette Number 5197), Article 1 number 1. In Government Regulation Number 7 of 2011 there are two service units established namely the Transfusion Unit. Blood Bank (UTD) and Hospital Blood Bank (BDRS). The Blood Transfusion Unit organizes blood donation, blood supply and blood distribution, while the Hospital Blood Bank is a service unit located within the hospital itself which is responsible for the availability of blood for transfusion that maintains high quality.

2. Regulation of the Minister of Health No. 83 of 2014

concerning Blood Transfusion Units, Hospital Blood Banks, and Blood Transfusion Service Networks, regulates the determination of costs by considering the ability of the local community, which determines the maximum cost of IDR 360,000 according to SEMK No. HK / MENKES / 31 / I / 2014.

3. Regulation of the Minister of Health Number 83 of 2014

concerning Blood Transfusion Units, Hospital Blood Banks, and Blood Transfusion Service Networks article 10 paragraph (4) The person responsible for the occurrence of contaminated blood by diseases at UTD is the person in charge of quality where the requirements for his ability are experts medical laboratory technology.

4. Regulation of the Minister of Health Number 4 of 2018

concerning Hospital Obligations and Patient Obligations is: that actions taken by hospitals as health service providers with complex characteristics and organizations have a legal impact on patients who receive health services, officers who work in hospitals, and the surrounding community.

5. Regulation of the Minister of Health Number 11 of 2017

concerning Patient Safety (State Gazette of the Republic of Indonesia of 2017 Number 308).

6. Law Number 36 of 2009

concerning Health in article 87 has explained that the implementation of blood donations and blood processing is carried out by the Blood Transfusion Unit which is then referred to as blood transfusion services by maintaining the safety and health of patients to the health workers themselves from disease through blood transfusions.

7. Law Number 36 of 2009

concerning Health in article 29 explains that in the event that a health worker is suspected of negligence in carrying out his profession, the negligence must be resolved first through mediation.

8. Law Number 36 of 2014

concerning Health Workers, article 84 paragraph 1, explains that every health worker who commits serious negligence which results in serious injury to the health care recipient will be sentenced to imprisonment of 3 (three) years.

9. Law Number 36 of 2009

concerning Health in article 87 has explained that the implementation of blood donations and blood processing is carried out by the Blood Transfusion Unit which is then called blood transfusion services by maintaining the safety and health of patients to health workers themselves from disease through blood transfusions.

10. Article 359 KUHP and article 361 KUHP

Blood that is contaminated and causes harm to the patient qualifies as negligence where there is a lack of caution and unpredictability by the health worker in carrying out blood checks. The loss suffered by a patient who can be qualified as a criminal act is serious injury to the point of death so that the act will be in accordance with causing death or injury due to negligence in Article 359 of the Criminal Code, especially for health workers who have a position or authority and it becomes their livelihood so that it is in accordance with causing death or injury due to negligence of Article 361 of the Criminal Code.

11. Regulation of the Supreme Court of the Republic of Indonesia Number 13 of 2016

Procedure for Handling Criminal Cases by Corporations is a criminal act committed by a person based on a work relationship, or based on other relationships, either individually or collectively acting for and on behalf of Corporations inside or outside the Corporation Environment and Judges can impose crimes against the Corporation or Management, or the Corporation and Management.

Quality blood services are blood services with a closed distribution system with the standard cold chain method, namely services that are carried out entirely by health workers and UTD by paying attention to the temperature of blood storage when distributed. In this closed distribution system, blood from voluntary and substitute donors who have gone through a selection process, are tapped into a blood bag, and are screened for IMLTD (Infection through Blood Transfusion) and blood processing according to standard operational procedures by UTD. Blood that has been declared to meet the safe criteria, is stored in the Blood Bank Refrigerator, and in a certain period and amount it is distributed by cold chain to BDRS and stored in the BDRS Blood Bank Refrigerator as stock in the hospital to meet patient needs.

In this closed distribution system, the patient's family is no longer involved as the operator of the distribution. Closed distribution system with cold chain, carried out in the following steps:

1. The Blood Transfusion Unit (UTD) performs the recruitment of Voluntary Blood Donors (DDS) either directly or through the mobile unit. Prior to tapping the blood, the donor selection was carried out. The results of the blood were filtered and the components were separated. Furthermore, the blood is stored and then distributed to the Hospital Blood Bank (BDRS) through health workers according to the prediction of blood demand at BDRS.
2. The amount of blood that UTD needs to prepare is in accordance with the predicted needs of the hospital that is served and is carried out with good donor management. Distribution from UTD to BDRS is fully carried out by officers periodically according to the predictions of hospital needs.
3. The Hospital Blood Bank makes a prediction of needs submitted to UTD as one of the cooperation mechanisms between UTD and BDRS based on a memorandum of understanding
4. Hospital Blood Bank conducts blood stock and conducts cross-match test before the blood is submitted to the room officer for medical blood transfusion to the recipient. With the assurance of blood quality and blood supply according to the standard of 2.5% of the population, it means that patients will be protected by their health.
5. Blood and blood products play an important role in health care. The availability, safety and ease of access to blood and blood products must be guaranteed. In this regard, according to the World Health Assembly (WHA) 63.12 on Availability, safety, and quality of blood products, it is said that the ability to fulfill one's own needs for blood and blood products (self sufficiency in the supply of blood and blood products) and guaranteeing its safety is an important national health service goal.
6. Therefore, in order to provide protection to the community, blood services are only carried out by competent, authorized human resources (HR), and only carried out in health facilities.

The criteria for a person's rights in the blood ministry are:

1. Everyone can be a blood donor.
2. Blood donation is done voluntarily.
3. Blood donors must meet health requirements.
4. Blood donors must provide correct information regarding their health and life behaviour.
5. Obtain information about the rules and regulations that apply in the hospital.
6. Obtain information about the patient's rights and obligations.
7. Receive services that are humane, fair, honest and without discrimination.
8. Obtain quality health services in accordance with professional standards and standard operating procedures.
9. Receive services that are effective and efficient so that patients avoid physical and material harm.
10. File a complaint on the quality of service obtained.
11. Choosing a doctor and treatment class in accordance with the wishes and regulations that apply in the hospital.
12. Requesting consultation about the illness he is suffering from other doctors who have a license to practice (SIP) both inside and outside the hospital.
13. Obtain privacy and confidentiality of the illness, including medical data.
14. Obtain information including diagnosis and procedures for medical treatment, the purpose of medical action, alternative measures, risks and complications that may occur, and prognosis for the action taken and the estimated cost of treatment.
15. Give approval or refuse for actions to be taken by health workers against the illness they suffer.
16. Accompanied by his family in critical condition.
17. Performing worship according to religion or belief as long as it does not disturb other patients.
18. Obtaining his own safety and security while in hospital.
19. Submitting suggestions, suggestions for improvements to the hospital's treatment of himself.
20. Rejecting spiritual guidance services that are not in accordance with their religion and belief.
21. Suing and / or suing the hospital if the hospital is suspected of providing services that do not comply with standards, either civil or criminal.
22. Complained that hospital services were not in accordance with service standards through print and electronic media in accordance with the provisions of laws and regulations.

Some of the obligations of the patient:

1. Obey all rules and regulations that apply in the hospital.
2. Obey all instructions of doctors and nurses in treatment.
3. Provide honest and complete information about the illness to the treating doctor.
4. Paying / giving compensation for hospital / doctor services.
5. Fulfill things that have been agreed upon / agreements that have been made.

In several media, it is explained that in various regions there are bags of blood that are objects in health services in Law Number 36 of 2009 concerning Health Article 86 paragraph (1) which is affirmed as Blood Services. Problems arise when blood contaminated with a disease that can be transmitted through blood is detrimental to others so that whether the contaminated blood that causes the loss is a criminal act and who is responsible for the loss. The Indonesian Red Cross (PMI) Bengkulu City found 169 bags of transfused blood exposed to various viruses. Of the 169 bags of contaminated blood, 48 bags of Hepatitis B were contaminated, 52 bags of hepatitis C, 47 bags of lion king, and 2 bags of HIV. There is also a real case in Buleleng Bali, a 17-year-

old girl with leukemia was infected with the HIV virus where the transmission was indicated to have occurred through a blood transfusion, this was only discovered in December 2017.

This possibility is strengthened because the person concerned does not have deviant behaviour and the parent does not have HIV. Where did the indication come from, it could not be ascertained, because the person concerned had undergone blood transfusions in a number of places. In its development, the possibility of someone contracting the disease from contaminated blood through a transfusion is very small, but in fact there are still cases of someone contracting the disease through blood transfusions.

If the result to the patient incurred is a loss which is included in the serious injury in the Criminal Code, the act can qualify as a criminal act so that the mistake committed by the blood service health worker qualifies as negligence. PMI according to the main task of red cross in Law Number 1 of 2018 is the party responsible for blood services which is then responsible for the quality of the Blood Transfusion Unit which is responsible for blood contaminated with disease.

The procedure from the blood that has just been taken until it is stored in a blood storage place actually aims to ensure that the blood is sterile and ready to be donated to patients who need it, but if it is according to the facts and cases that occur then there is still a possibility that the procedure to get good and sterile blood is not carried out in accordance with existing procedures or there may be intentional in it, it will have legal effect.

These possibilities can be detrimental to the patient, because if it is not resolved immediately, it will allow the cases above to occur again and make public health worse which should be protected by the rights of the government is not going well. The act of transfusing contaminated blood as a criminal offense. Criminal acts in the Criminal Code have a close relationship with the legality principle where they are not penalized if an act is not regulated in law. The principle of legality in Latin is known as *nullum delictum nulla poena sine praevia lege* which means there is no criminal act, so there is no crime if there is no prior regulation that regulates it.

Simply put, material criminal law is related to acts that are prohibited and punishable. In Dutch criminal law, criminal acts use the term *strafbaar feit*. Indonesia, which is a Dutch colony which uses *WvS* is also applied to Indonesia, from this the source of the Criminal Code is Dutch *WvS* which makes the original term the same, namely *strafbaar feit*. Utrecht then translated *strafbaar feit* literally which meant a criminal event.

According to Simons, *strafbaar feit* is defined as behaviour or handling that can be punishable by punishment because of its unlawful nature related to the mistakes of someone who is able to take responsibility. The risks of transfusion that cause physical harm can range from minor to even serious injury and death.

The definition of serious injury itself is contained in Article 90 of the Criminal Code which explains that serious injuries are:

- a. Falling sick or having an injury that does not give hope of recovery, or even causing death.
- b. Cannot carry out work at all after getting injured.
- c. Losing one of the five senses.
- d. Got a serious disability.
- e. Suffering from paralysis.
- f. Impaired thinking for more than four weeks.
- g. The fall of a woman's womb.

Liability related to blood contaminated with diseases that cause harm to patients is a philosophy known as the concept of liability, according to Pound, responsibility is defined as an obligation that is carried out to pay compensation for harmful actions that the perpetrator will receive.

Criminal liability is seen when a criminal act is committed, whether the act has a fault or not because criminal responsibility itself has the principle of no action without any fault or *geen straf zonder schuld*.

From the above statement explains how important these elements are where people cannot be convicted if they do not commit a criminal act, but even though someone commits a criminal act, it cannot always be convicted, this is in accordance with the above explanation, namely the existence of legality principles, but also the ability to be responsible someone. Someone can be declared to have been able to take responsibility if :

1. A person is able to determine and have intentions, desires or wills, and there is a plan for his actions.
2. Such a person knows that his actions are deemed inappropriate to be carried out in society.
3. Someone understands the meaning or nature of an action.

C. CONCLUSION

The management of blood services as an essential and integral part of national health efforts must be the joint responsibility of the Government and local governments by still referring to the interests of the wider community. Theoretically, blood service applies not about the law that should be, pure legal theory, which is called positive law theory according to Hans Kelsen. In addition, there are ethical theories, utility theories, and guiding theories in legal systems.

The development of science and technology in the field of medicine, especially in blood service technology, the management of blood components and their use in health services must have a legal basis as a consequence of state principles based on law. The buying and selling process of blood and contaminated blood has been occurring frequently during the last ten years in this study and it is an open secret in the community, so blood services are only carried out by health workers who have the competence and authority, and only carried out at health service facilities that meet the requirements, and the most important thing is that blood that meets health requirements must always be guaranteed its availability at any time of need and should be affordable for everyone at all prices although the national blood bag supply of 2.5% of the total population has not been reached.

D. SUGGESTION

In order to provide protection to the community, the Government and Legislative Bodies as drafters and legislators are expected to play a greater role in making and improving laws related to blood services and processing, where the Laws and Government Regulations are not in accordance with the development and dynamics of life now in accordance with the positive law in effect in Indonesia. For example, Regulation of the Minister of Health No. 83 of 2014 concerning the cost of replacing blood transfusions, which may be considered too low, can be increased or adjusted to current conditions. The government and local governments add to the funding of blood services in order to guarantee the availability of blood for the benefit of health services.

The government must increase awareness of the legal aspects of blood donation to the public, for example by placing banners and posters, or through broadcasting and social media.

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