

## Legal Protection against Health Workers in Taking First Aid Medical Measures

Julianto Jover Jotam Kalalo<sup>1</sup>, Chyntia Novita Kalalo<sup>2</sup>

<sup>1</sup> Faculty of Law, Musamus University, Merauke-Indonesia, kalalo@unmus.ac.id

<sup>2</sup> Faculty of Teacher Training and Education, Musamus University, Merauke-Indonesia, novita@unmus.ac.id

### ABSTRACT

Health workers are a noble job, this is because they are the foremost fighters in terms of health services. Health workers are part of a health service that needs legal protection in carrying out their duties and responsibilities as public health servants. In carrying out its duties, health workers are given the authority to carry out health service efforts in accordance with applicable regulations. This authority in the form of legal rules that can be used as a guideline or basis for health workers to carry out a medical action in a case of health they face. Health workers in taking first aid medical actions must obtain a protection in carrying out their performance as health workers in accordance with Tupoksi and oaths of appointment as health workers. In the oath of appointment as a health worker in taking the first action is regulated in the rules of the code of ethics and hospital regulations and others. Efforts that can be made by the government in this case the Health Office, Hospital and Regional Government are making a rule that can regulate the implementation of the first level medical action in dealing with patients inside the hospital or in an accident.

### ARTICLE INFO

#### Keywords:

Legal protection; Health workers; Medical treatment.

#### How to cite:

Kalalo, J. J. J., Kalalo. C. N., (2018). Legal Protection Against Health Workers in Taking First Aid Medical Measures. *Musamus Law Review*, 1(1), 40-52

Copyright © 2018 MuLaRev.  
All rights reserved.

### 1. INTRODUCTION

Indonesia is a sovereign country and has laws in carrying out a regulation. Based on the 1945 Constitution of the Indonesian Republic of Indonesia Article 28 H Paragraph (1), each person has the right to live in physical and spiritual prosperity, to live, and to get a good and healthy environment and the right to receive health services.

The need for health workers, namely doctors, dentists, nurses and midwives is one of the government's concerns so that health services can be affordable in all regions in Indonesia. However, the problem faced by the government is the number and

distribution of health workers that are not evenly distributed throughout Indonesia. One area that faces the problem of limited health workers is the Papua Province, especially Merauke Regency.

Based on the results of preliminary observations in the field, the authors see health workers who are in the practice of nursing often take actions that are beyond authority. This situation is due to the limited number of doctors at the Puskesmas. Therefore, nurses and midwives often carry out tasks that are the authority of the doctor by reason of carrying out the task of health services is to help sick people and provide health services that are evenly distributed to the community, especially in carrying out government duties.

In this study the authors limit health workers, namely nurses who carry out medical actions in first aid. Nursing practice is at the core of various activities in the implementation of health efforts that must be continually improved through registration, certification, accreditation of continuing education and training and monitoring of nursing staff in accordance with the development of science and technology.

In practice the implementation of medical actions is often encountered in emergency conditions where health workers (nurses) must act quickly and precisely to be able to save the lives of patients from death. Under these conditions health workers must race against time so that they do not have time to give written informed consent. Although the existence of informed consent is very important for the protection of the rights and interests of patients and health workers, this should not be a barrier for health workers to save patients' lives.

Overlapping in nursing staff as well as with other health professions is a matter that is often difficult to avoid in practice, especially in emergencies and due to limited labor in remote areas. In an emergency, nurses who in their daily duties are beside the client for 24 hours, often face a client's emergency, while the doctor is not there. In this situation the nurse is forced to take medical action that is not his authority for patient safety. This action is carried out by the nurse without the presence of a delegation and its protection from the doctor and / or the manager of the Hospital.

The limitation of doctors, especially in Puskesmas, which only has one doctor who functions as the manager of the Puskesmas, often creates a situation that requires nurses to take medical treatment. Treatment actions by nurses which have been a common sight in almost all Puskesmas, especially those in the area, are carried out without written written authority and procedures. By transferring the function of the nurse to the doctor's function, it is certain that the function of the nurse will be neglected and of course this cannot be accounted for professionally.

In people's lives, especially in Merauke district, especially in the Kuprik health center, doctors are very limited and there are not even doctors while nurses are not given the authority to practice outside hospitals or health centers. Legally nurses cannot provide health services independently Legal protection for nurses is still minimal. In some cases in the field of health services occurred in Merauke District Hospital, such as cases of nurse errors in giving medication to patients, cases of expired infusions, and cases of misuse of transfusions (different blood groups. With various cases, not a few nurses who finally had to deal with the law due to their ignorance about the limits to which nurses could provide medical services to patients, not only that, the position of nurses was still considered no more as a doctor's assistant. instead handed over to nurses, such as changing verband, attaching catether, attaching IV,

sewing/treating wounds, removing pus from the wound, removing live tampons after the nose surgery patient, injecting, and so on.

Based on the existing problems, the authors are interested in reviewing, examining the Legal Protection of Health Workers in First Medical Action.

## **2. METHOD**

The research method used is Normativ Research which is researching and analyzing legal rules relating to the protection of health workers. The data used are primary, secondary and tertiary legal materials, in addition to supporting this research the authors conducted field research to see the interactions that exist within the community both those obtained through the community directly and from other official documents. The technique of collecting data uses literature studies, field studies, documentation and observation. The overall data obtained will be analyzed qualitatively.

## **3. RESULTS AND DISCUSSION**

### **3.1. Legal Protection Against Health Workers in Taking First Aid Medical Measures**

Legal protection is a combination of words of protection and law, in the Big Dictionary of Indonesian the term grammatical protection means: a place of refuge, or a thing (action) protecting.<sup>1</sup> The term legal protection theory comes from the English language, namely legal protection theory, while in Dutch it is called theorie van wettelijke bescherming, and in German is called theorie der rechtliche schutz.<sup>2</sup> Harjono tried to build a concept of legal protection from a legal scientific perspective. According to him, legal protection has the meaning of protection by using legal means or protection provided by law, aimed at protecting certain interests, namely by making the interests that need to be protected into a legal right. Furthermore, Satjipto Rahardjo provides an understanding of legal protection in order to provide protection for human rights which are harmed by others and that protection is given to the community, so that they can enjoy all the rights granted by law.<sup>3</sup> Whereas according to Philipus M Hudjon, Legal Protection is the protection of dignity, as well as recognition of human rights possessed by legal subjects based on legal provisions of arbitrariness.<sup>4</sup>

Theoretically, the form of legal protection is divided into 2 (two) parts, that is:<sup>5</sup>

#### **1. Preventif Preventive protection**

In this preventive legal protection, legal subjects are given the opportunity to submit their objections or opinions before a government decision gets a definitive form. The aim is to prevent disputes. Preventive legal protection is very significant for government actions based on freedom of action because with preventive legal protection the government is encouraged to be careful in

---

<sup>1</sup> Indonesia Dictionary.

<sup>2</sup> Salim HS dan Erlies Septiana Nurbani. (2013). *Penerapan Teori Hukum Pada Penelitian Tesis dan Disertasi*. Jakarta: Raja Grafindo Persada, p. 259

<sup>3</sup> Satjipto Rahardjo. (2000) *Ilmu Hukum*. Bandung: Citra Aditya Bakti, p. 54.

<sup>4</sup> Philipus M. Hadjon. (1987). *Perlindungan Hukum Bagi Rakyat Indonesia*. Surabaya: Bina Ilmu, p. 2

<sup>5</sup> Salim HS dan Erlies Septiana Nurbani, *Op. Cit*

making decisions based on discretion. In Indonesia there are no specific arrangements regarding preventive legal protection.<sup>6</sup>

## 2. Repressive protection

Repressive legal protection aims to resolve disputes. Handling legal protection by the General and Administrative Courts in Indonesia includes this category of legal protection. The principle of legal protection against government actions rests and comes from the concept of recognition and protection of human rights because according to history from the west, the birth of concepts about the recognition and protection of human rights is directed at limiting restrictions and laying down the obligations of society and government. The second principle that underlies legal protection against acts of government is the principle of the rule of law. Associated with the recognition and protection of human rights, recognition and protection of human rights has a central place and can be linked to the objectives of the rule of law.<sup>7</sup>

Health Workers are those who devote themselves to the health sector and possess knowledge and/or skills through education in the health sector which requires certain types of authority to carry out health efforts.<sup>8</sup>

The grouping of Health Workers is as follows: medical personnel include doctors, dentists, specialists, specialist dentists, clinical psychology personnel are clinical psychologists, nursing staff consists of various types of nurses, midwifery workers are midwives, pharmacy personnel include pharmacists and pharmacy technical personnel. Public health personnel consist of health epidemiologists, health promotion and behavioral workers, occupational health advisers, health policy and administration personnel, biostatistics and population, as well as reproductive health workers and families, environmental health personnel consisting of environmental sanitation personnel, health entomologists, and health microbiologists, nutritionists consist of nutritionists and dietitians, physical therapists consist of physiotherapists, occupational therapists, speech therapists, and acupuncturists, medical technical personnel consisting of medical recorders and health information, cardiovascular techniques, blood service technicians, optician / optometrist refractionist, dental technician, anesthetist, dental and oral therapist, and audiologist, biomedical engineering staff consists of radiographers, electromedics, medical laboratory technologists, medical physicists, radiotherapists, and prosthetic orthotics, traditional health personnel consisting of traditional health workers potions and traditional health personnel skills, other health workers consist of health workers determined by the Minister who oversees health matters.<sup>9</sup>

Legal protection is the regulation of certain things in order to obtain a safe place, or regulate something by law so that the rights and obligations are protected by law. Therefore every action taken based on applicable legal provisions will get legal protection.

If the health worker is harmed by an act of another party either intentionally or negligently, the health worker can ask for legal responsibility to those parties both civil, criminal and administrative. As well as compensation, legal assistance, good name recovery and can be seen from the rights and obligations of health workers.

---

<sup>6</sup> Philipus M Hadjon, *Op. Cit*, p. 30

<sup>7</sup> *ibid*

<sup>8</sup> Pasal 1 Angka 1, UU No. 36 Tahun 2014 tentang Tenaga Kesehatan

<sup>9</sup> [https://id.wikipedia.org/wiki/Tenaga\\_Kesehatan](https://id.wikipedia.org/wiki/Tenaga_Kesehatan)

**a) Responsibility in terms of civil law**

There are two terms that refer to civil law liability in the legal dictionary, namely responsibility and liability.<sup>10</sup>

Responsibility means things that can be accounted for for an obligation, and including decisions, skills, abilities and skills including the obligation to be responsible for the laws implemented. In terms of practical use and use, the term responsibility refers to political responsibility or responsibility for one's own mistakes.

Liability is a broad legal term that refers to almost all definite risk or responsibility characters, which depend on all actual or potential characters of rights and obligations such as losses, threats, crimes, costs or conditions that create the task of implementing the law. The term liability refers to legal liability, namely accountability due to mistakes made by legal subjects or other people.

The responsibility is based on the provisions of article 1365 and article 1367 of the Civil Code which states as follows:

In terms of civil law, it is based on the provisions of Article 1365 BW (Burgerlijk Wetboek), which reads as follows:

"Every act that violates the law, which brings harm to another person, requires people who are due to the wrong issue of loss caused by negligence or inadvertently."

The law does not provide a limit on acts against the law, which must be interpreted by the court. However, since 1919 the jurisprudence has still given an understanding, namely every action or negligence either: (1) Violating the rights of others (2) Contrary to self-legal obligations (3) Violating the commonly held ethical views (good customs) ( 4) Not in accordance with compliance and accuracy as a requirement about the person and object of a person in social life.

In article 1366 of the Civil Code, a health worker other than being prosecuted on the basis of default and violating the law as mentioned above, can also be prosecuted on the basis of negligence, causing losses. The claim on the basis of this negligence is regulated in Article 1366 of the Civil Code, reads as follows:

"Everyone is responsible not only for losses caused by his actions, but also for losses caused by negligence or lack of heart".

Explanation Article 1366 of the Civil Code states that each person is responsible not only for losses caused by his actions, but also for losses caused by negligence or inadvertence.

While the provisions of Article 1367 of the Civil Code mention the following:

"A person must provide accountability not only for the losses incurred and his own actions, but also for the losses arising from the actions of others who are under his supervision."

Thus, in principle, the provisions of Article 1367 of the Civil Code regulate the payment of compensation by the party who ordered or ordered something that caused harm to the other party.

**b) Responsibility for Criminal Law Terms**

The responsibility of criminal law, recognizes the element of intentions (dolus) and negligence (culpa):<sup>11</sup>

---

<sup>10</sup> Ridwan H.R. (2006). *Hukum Administrasi Negara*. Jakarta: Raja Grafindo Persada, p. 335-337

<sup>11</sup> Bambang Poernomo. (1984). *Azas-Azas Hukum Pidana*. Jakarta: Galia Indonesia, Hal. 138

Intentions (dolus), where this is found in violations of decency (Article 281 of the Criminal Code), deprivation of liberty (Article 333 of the Criminal Code), murder (Article 338).

Negligence / negligence (culpa), where this is contained in the deprivation of independence (Article 334 of the Criminal Code), and causes death (Article 359 of the Criminal Code), and others.

The following will be elaborated on errors caused by negligence and intentional elements:

Caused by negligence (Culpa)

Simplified negligence means not being careful and not careful, careless. But because of his mistake, there was a mistake which resulted in the occurrence of the prohibited thing.

Caused by an element of intentions (Dolus)

In everyday life, we often witness actions carried out by someone against each other in which actions and / or actions occur unintentionally and some are done intentionally. From the deliberate words, a conclusion is taken that the action is carried out by knowing the extent to which the consequences that can arise from the act.

The interpretation and application of these articles must be carried out extra carefully, professionally, and through expert opinion in the fields of medicine and other health.

c) Responsibilities in terms of administrative law

In terms of administrative law, as stated in article 69 paragraph (3) Law number 29 of 2004 concerning medical practice in its explanation, health workers can be subject to sanctions in the form of reprimand (oral or written), transfer, delay in promotion, demotion, suspension and even dismissal and revocation of practice licenses when taking medical action without the consent of the patient or his family. Administrative actions can also be imposed if a health worker:

- 1) Neglecting obligations;
- 2) Doing something that should not be done by a health worker, either remembering his oath of office or remembering the oath as a health worker;
- 3) Ignoring something that should be done by health workers;
- 4) Violates a provision according to or under the law.

The aspects of State Administration Law include licensing and conditions that must be fulfilled by doctors as one of the professional health personnel and hospitals as providers of health care facilities. A hospital must meet the requirements regarding licensing, staffing, and completeness of health care facilities.

Whereas according to Law Number 36 of 2009, it can be stated in article 2 that health development is carried out based on humanity, balance, benefits, protection, respect for the rights and obligations of gender justice and non-discrimination and religious norms. About health workers, regulated in Article 27:

- 1) Health workers are entitled to receive compensation and legal protection in carrying out their duties in accordance with their profession;
- 2) Health workers in carrying out their duties are obliged to develop and improve their knowledge and skills.
- 3) Provisions regarding the rights and obligations of health workers as referred to in paragraph (1) and paragraph (2) are regulated in government regulations.

### **3.2. Judicial justification for taking the first medical action for health workers in an emergency.**

One aspect of civil law in health services between health workers and patients can be seen in a therapeutic transaction made by both parties. Transactions are generally regulated in the Civil Code, which for the validity of the transaction in general must fulfill 4 (four) conditions in Article 1320 of the Civil Code, namely:

1. An agreement from those who bound themselves;
2. Skills for making an engagement;
3. Regarding certain things;
4. For a reason that is lawful.

In these therapeutic transactions both parties must fulfill the above conditions, and if the transaction has already taken place, both parties are burdened with the rights and obligations that must be fulfilled. As stated in article 1338 of the Civil Code which reads:

"All agreements made legally apply as laws for those who make them. An agreement is irrevocable in addition to agreeing with both parties, or for reasons that are stated by law to be sufficient for that. An agreement must be carried out with good intention."

Between health workers and patients, reciprocal rights and obligations arise. If these rights and obligations are not met by one of the parties in a therapeutic transaction, then it is only natural that the other party, especially the party who feels disadvantaged, will sue

From the above, we can understand that the actions of a health worker cannot be separated from medical or legal risks, whether intentional or accidental. If the above is done intentionally, health facilities or health workers as legal subjects are involved in a series of long legal processes as a form of accountability before the law, but if the incident happens unintentionally and even out of authority due to negligence of patients or violations of therapeutic agreements, for example. There needs to be protection to ensure justice occurs to officers and patients.

The right to information and the right to express will in the framework of medical decisions is a basic matter. The right to confidentiality and the right to privacy are supporting rights in order to realize the characteristics of autonomous patients.<sup>12</sup>

The types of medical actions that require written approval are as follows:<sup>13</sup>

1. Actions that are invasive and operative or require anesthesia, both to establish a diagnosis and therapeutic measures;
2. Special treatment measures, such as therapy for cytostatics or radiotherapy for cancer;
3. Special actions relating to medical research or clinical trials (related to bioethics) are not discussed in the activities of this medical skill.

The conditions that must be fulfilled for the delegation of medical actions are as follows:<sup>14</sup>

<sup>12</sup> Dinarjari Eka Puspitasari. (2018). Aspek Hukum Penanganan Tindakan Malpraktek Medik di Indonesia. *Lambung Mengkurat Law journal*. 3(2), September 2018:p. 119-128

<sup>13</sup> Dental Universe Indonesia, "Persetujuan Tindakan Medik (Inform Consent)", <http://www.dentaluniverseindonesia.com/home/62-persetujuan-tindakan-medik.html>.

<sup>14</sup> Noor M Aziz. (2010). *Laporan Penelitian Hukum Tentang Hubungan Tenaga Medic, Rumah Sakit Dan Pasien*. BPHN: Jakarta.

1. Enforcement of diagnosis, administration or determination of therapy and determination of indications must be decided by the doctor himself. The decision making cannot be delegated. Only in the context of implementing these decisions can authority be delegated, but the doctor is still responsible for delegating the authority.
2. Delegation of medical action is only permissible if the doctor is fully convinced that the delegated person is able to carry it out properly.
3. The delegation must be done in writing, including clear instructions for implementation, how to act if complications arise, etc.
4. There must be medical guidance or supervision in the implementation. This supervision depends on the actions taken. Is the doctor in that place or can he be called and come in a short time.
5. The person who wants to be handed over the delegation of authority has the right to refuse if he feels unable to carry out the medical action.

Based on research, in the national positive legal system there are several laws and regulations relating to legal protection of health workers in carrying out their profession, among others, as follows:

#### 1. Law No. 36 of 2009 concerning Health

Law Number 36 of 2009 concerning Health is contained in the State Gazette of the Republic of Indonesia Number 144 of 2009, Additional State Gazette of the Republic of Indonesia Number 5063. Health Law No. 36/2009 functions as a "legal umbrella" which refers to the responsibilities of the central government and then determines what expected from the central government from the regional government.

Law No. 36 of 2009 consists of 22 chapters and 205 articles. From the 22 chapters which are directly related to the protection of health workers, there is a chapter V on health sector resources contained in article 23 paragraph (3) which reads:

"In providing health services, health workers must have permission from the government"

In article 23 above, it is explained that health workers in carrying out health services and their duties, health workers must have permits in the form of SIK (Izin Kerja) or SIP (Practice License) from the government.

#### Article 27

- (1) Health workers are entitled to receive compensation and legal protection in carrying out their duties in accordance with their profession.
- (2) Health workers in carrying out their duties are obliged to develop and improve their knowledge and skills.
- (3) Provisions regarding the rights and obligations of health workers as referred to in paragraph (1) and paragraph (2) are regulated in Government Regulations.

Explanation of article 27 above, health workers have the right to obtain legal protection if patients as health consumers accuse / harm health workers where health workers have carried out tasks according to their expertise and the obligation to develop and improve knowledge and skills is intended so that health workers concerned can provide services that quality in accordance with the development of new science and technology.

#### 2. Law No. 29 of 2004 concerning Medical Practice

The Medical Practice Law was promulgated on the 6th of October 2004. The Medical Practice Law was enacted to regulate medical practice with the aim of

providing protection to patients, maintaining and improving the quality of medical services and providing legal certainty to the public, doctors and dentists .

This Act systematically consists of 12 Chapter 88 Article. This Law Number 29 of 2004 specifically regulates Medical Practice. This Law is a guideline or guideline that must be adhered to by health personnel in carrying out or carrying out tasks according to their profession. and aims to provide protection for health workers contained in chapter VI about administering medical practices. The rights and obligations of doctors are regulated in article 50 and article 51 of Law No.29 of 2004 are: Doctors or dentists in carrying out medical practices have the rights regulated in article 50:Memperoleh perlindungan hukum sepanjang melaksanakan tugas sesuai dengan standar profesi dan standar prosedur operasional.

- a. Providing medical services according to professional standards and standard operating procedures.
- b. Obtain complete and honest information from patients or their families, and
- c. Receive service fees.

Doctors or dentists in carrying out medical practices have obligations regulated in article 51:

- a. Providing medical services in accordance with professional standards and standard operating procedures and medical needs of patients;
- b. Refer patients to doctors or other dentists who have better skills or abilities, if they are unable to carry out an examination or treatment;
- c. Keep everything she knows about patients, even after the patient dies;
- d. Conduct emergency assistance on the basis of humanity, unless he believes someone else is on duty and able to do so; and
- e. Adding knowledge and following the development of medical or dental science.

Explanation of article 50 and article 51 above, What is meant by "professional standards" is the minimum limit of knowledge, skill and professional attitude that must be mastered by an individual to be able to carry out his professional activities on an independent society made by professional organizations while those who referred to as "standard operating procedures" is a set of instructions / steps that are standardized to complete a certain routine work process.

### **3. Law Number 36 of 2009 concerning Health**

Law No. 36 of 2009 consists of 22 chapters and 205 articles. From the 22 chapters which are directly related to the protection of health workers, there is a chapter V on health sector resources contained in article 27 paragraph (1) which reads:

"Health workers are entitled to receive compensation and legal protection in carrying out their duties in accordance with their profession."

Explanation of article 27 above, health workers have the right to obtain legal protection if patients as health consumers accuse / harm health workers where health workers have performed tasks according to their expertise and the obligation to develop and improve knowledge and skills is intended so that health workers concerned can provide quality services in accordance with the development of new science and technology.

In the political concept of health law when connected with the Health Act Number 36 of 2009 concerning Health, there is a principle of protection which means that health development must be able to provide protection and legal certainty to providers and recipients of health services.

**4. Law No. 44 of 2009 concerning Hospitals**

Law Number 44 of 2009 concerning the Hospital consists of 15 chapters and 66 articles. The provisions contained in Law Number 44 of 2009 are mostly related to the health services and responsibilities of health workers to hospitals and as follows:

Article 29 (article 1 point s)

(1) Every hospital has an obligation:

s. protect and provide legal assistance for all Hospital officers in carrying out their duties; and.

In this case, the hospital must be able to provide protection and legal certainty for all health workers who provide health services in the hospital through the establishment of various rules in the hospital including, internal regulation of medical staff, standard operating procedures and various health service guidelines and through provision HR (Human Resources) who have competence in the field of medicolegal.

**5. Law No. 36 of 2014 concerning Health Workers**

Law No. 36 of 2014 is systematic, there are 16 Chapters and 96 Articles. Related to supervision and protection, this law contains guidance and supervision on the quality of health personnel primarily aimed at improving the quality of health workers in accordance with the expected competencies in supporting the implementation of health services for the entire population of Indonesia. Fostering and monitoring the quality of health workers is carried out through increasing commitment and coordination of all stakeholders in the development of health personnel and legislation which include certification through competency testing, registration, licensing, and the rights of health workers.

In order to provide legal protection and legal certainty to health workers, both those who provide direct services to the community and those who do not directly, and to the communities receiving the services themselves, there is a need for a strong legal foundation that is in line with the development of science and technology in the health sector. Socio-economic and cultural. Supervision and protection of health workers is contained in the following articles:

Article 3 (e) "provides legal certainty to the public and Health Workers."

**Article 4 (points a and c)**

The Government and the Regional Government are responsible for:

- a. Regulation, guidance, supervision, and improvement of the quality of personnel Health;
- b. Protection to Health Workers in carrying out practices.

**Article 27 (paragraph 2)**

"Health workers serving in disadvantaged border areas and islands and health problem areas receive special promotion rights and protection in carrying out tasks."

**Article 57 (point a, point d and point f)**

Health personnel in carrying out the practice have the right:

- a. obtain legal protection as long as carrying out their duties in accordance with Professional Standards, Professional Service Standards, and Standard Operating Procedures;
- b. obtain protection for occupational safety and health, treatment in accordance with human dignity, morality, morality, and religious values;

- c. reject the wishes of Health Service Recipients or other parties that conflict with Professional Standards, codes of ethics, service standards, Standard Operating Procedures, or provisions of Legislation; and

**Article 75**

Health personnel in carrying out the practice have the right to obtain legal protection in accordance with the provisions of the Legislation.

**Article 80**

The Government and the Regional Government conduct guidance and supervision of Health Workers by involving their respective Counselors of Health Workers and Professional Organizations in accordance with their authorities.

**Article 81 (paragraph 1 point c)**

- (1) The guidance and supervision referred to in Article 80 are directed to:
  - c. provide legal certainty for the community and health workers.

**6. Law No. 38 of 2014 concerning Nursing**

The Nursing Law contains 13 Chapters and 66 articles, one of which aims to provide legal certainty and legal protection and to improve, direct, and organize various legal instruments that regulate the implementation of Nursing and Nursing Practices that are responsible, accountable, quality and safe. in accordance with the development of science and technology. This law contains arrangements regarding the types of nurses, nursing higher education, registration, practice permits, and re-registration, nursing practice, rights and obligations for nurses and clients, institutions related to nurses (such as professional organizations, collegials, and counselors), development, guidance, and supervision for nurses, as well as administrative sanctions. One of the articles that contains legal supervision and protection of nurses is as follows:

**Article 55**

The Government, Regional Government, Nursing Council, and Professional Organizations foster and supervise Nursing Practices in accordance with their respective functions and duties.

**Article 56**

Guidance and supervision of Nursing Practices as referred to in Article 55 are directed to:

- a. Improve the quality of Nursing Services;
- b. Protect the public for the actions of nurses who are not in accordance with the standards; and
- c. Provide legal certainty for nurses and the community.

A noble person is a person who always prioritizes obligations over rights or personal interests. However, as a human being, health workers have responsibility for their personal and family, as well as their professional responsibility to the community. The following are the rights and obligations of health workers in general, that is:

- a) The right of health workers:
  - 1. Receive true and honest information
  - 2. Get Service Rewards
  - 3. Obtain legal protection
  - 4. Reject the patient's secret unless the patient demands and gives information to the print media is deemed to have given up his rights (art. 44 RS)
  - 5. Can sue and sue

b) Obligations of health workers:

1. Have a SIP / SIK (Practice License / Work Permit)
2. Following SP, SPO, ethics (Standard Operating Procedure)
3. Respect the rights of patients
4. Prioritizing patient safety

A formation of legislation is a manifestation of preventive legal protection, because it prevents the occurrence of accidents. The consumer protection law regulates more broadly the subject that can be sued for compensation. Not only can consumers sue producers, but consumers can also sue business actors including health workers who are considered as business actors.

In the medical field, it can be understood that not all the harm suffered by the patient is a result of the fault of a health worker. Losses can arise as a result of the course of the disease or can also be caused by the risk or complications of the medical action, which is unavoidable but due to negligence. In both cases a doctor cannot be held responsible for compensation.

Regarding the protection of human rights, the 1945 Constitution of the Republic of Indonesia in 1945 was sufficient to accommodate human rights issues in full. When referring to Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which says:

"Everyone has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law."

Legal assistance has been specifically regulated in Law number 16 of 2011 concerning Legal Aid. The presence of this law is expected to guarantee the constitutional rights of every citizen to obtain appropriate legal protection in accordance with their respective proportions.

The purpose of providing legal assistance must be those who are in accordance with the criteria referred to in the law. According to Article 5 of the Legal Aid Act, those who are entitled to legal assistance are as follows:

1. Recipients of Legal Aid as referred to in Article 4 paragraph (1) include every person or poor group who cannot fulfill basic rights appropriately and independently.
2. The basic rights referred to in paragraph (1) include the right to food, clothing, health services, education services, employment and business, and / or housing.

#### **4. CONCLUSION**

Health personnel in taking first aid medical actions must obtain a protection in carrying out their performance as health workers in accordance with the Tupoksi and pledge oath as health workers. In making decisions the first action is a clear effort and must be carried out by health personnel in carrying out their duties. In the oath of appointment as a health worker in taking the first action is regulated in the rules of the code of ethics and hospital regulations and others. Efforts that can be made by the government in this case the Health Office, Hospital and Regional Government are making a rule that can regulate the implementation of the first level medical action in dealing with patients inside the hospital or in an accident.

### **ACKNOWLEDGMENTS**

Thank you to all health workers in Merauke District for their participation in completing this research, as well as the Unmus LPPM who provided facilities and assistance in completing this research.

### **REFERENCES**

Bambang Poernomo. (1984). *Azas-Azas Hukum Pidana*. Jakarta: Galia Indonesia.

Dental Universe Indonesia, "Persetujuan Tindakan Medik (Inform Consent)", <http://www.dentaluniverseindonesia.com/home/62-persetujuan-tindakan-medik.html>.

Dinarjari Eka Puspitasari. (2018). Aspek Hukum Penanganan Tindakan Malpraktek Medik di Indonesia. *Lambung Mengkurat Law journal*. Volume 3 Issue 2, September 2018: 119-128

Hamdallah. (2016). Perlindungan Hukum Bagi Pihak Pembeli yang Beritikad Baik dalam Jual beli Tanah. *Lambung Mengkurat Law Journal*, Volume 1 Issue 2, September 2016: 150-169.

Harjono. (2008). *Konstitusi Sebagai Rumah Bangsa*. Jakarta: Sekertariat Jenderal dan Kepaniteraan Mahkamah Konstitusi.

Julianto Jover Jotam Kalalo. (2018). *Politik Hukum Perlindungan Hak Ulayat Masyarakat Hukum Adat di Daerah Perbatasan*. Makassar: Disertasi Universitas Hasanuddin.

Kamus Besar Bahasa Indonesia.

Noor M Aziz, SH., MH., MM. (2010). *Laporan Penelitian Hukum Tentang Hubungan Tenaga Medic, Rumah Sakit Dan Pasien*. Jakarta: BPHN.

Philipus M. Hadjon. (1987) *Perlindungan Hukum Bagi Rakyat Indonesia*. Surabaya: Bina Ilmu.

Ridwan H.R. (2006). *Hukum Administrasi Negara*. Jakarta: Raja Grafindo Persada.

Salim HS dan Erlies Septiana Nurbani. (2013). *Penerapan Teori Hukum Pada Penelitian Tesis Dan Disertasi*. Jakarta: Raja Grafindo Persada.

Satjipto Rahardjo. (2000). *Ilmu Hukum*. Bandung: Citra Aditya Bakti.

Wikipedia. [https://id.wikipedia.org/wiki/Tenaga\\_Kesehatan](https://id.wikipedia.org/wiki/Tenaga_Kesehatan).