



Legal Protection for Medical Personnel in Providing Anesthesia Services to Patients Based on Health Laws

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Abstract: Medical personnel providing anesthesia services often face legal challenges, as the outcomes of such procedures may lead to patient disability or death, raising concerns of malpractice from the patient's family. While conducting their duties, medical personnel are entitled to legal protection, making it essential to examine this issue. This research, titled "Legal Protection of Medical Personnel in Providing Anesthesia Services to Patients Based on the Health Law," addresses the following questions: 1) What are the legal regulations for medical personnel in anesthesia services? 2) What risks are involved? 3) How are medical personnel legally protected in anesthesia services?. Using normative juridical research and a statutory approach, this study analyzes existing regulations and secondary sources. Although Indonesia's Health Law does not specifically address anesthesia, the Minister of Health Decree No. HK.01.07/MENKES/1541/2022 provides guidelines for anesthesiology and intensive care, given the high risks involved. To safeguard patient safety, medical personnel take preventive measures to minimize anesthesia risks. Since anesthesia is a high-risk procedure that may result in severe outcomes, including death, enhancing its categorization within the Health Law is crucial. Legal protection for medical personnel includes preventive measures, reducing the risk of legal consequences, and repressive measures, offering support if adverse events occur.

Keywords: Legal Protection, Medical Personnel, Anesthesia, Patients.

1. Introduction

The Indonesian state is a state of law and one of the dimensions that must be realized in the ideals of the constitution is to make Indonesia a prosperous, just and prosperous society (Welfare State) (Indra Yudha Koswara, 2018). One component of well-being is health. Health as part of fulfilling human rights must be realized in the form of providing various health measures to all levels of society through the implementation of quality and affordable health development for the community.

The matter as explained is mandated by the 1945 Constitution of the Republic of Indonesia (UUD 1945) which is regulated in Article 28 H paragraph (1) of the 1945 Constitution which states that "Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a comfortable living environment." good and healthy and has the right to receive health services." Therefore, to fulfill this right, the government provides health facilities which, as stated in Article 34 paragraph (3) of the 1945 Constitution, states that "the State is responsible for providing adequate health service facilities and public service facilities."

Health services are a very complex organization, because they operate in the field of services that involve various professional groups with different educational and life backgrounds. The complexity of health services will be closely related to the reporting of incidents which result in legal cases in the community (Rika Handayani, 2022). The practice of providing health services, of course, in every activity requires legal institutions that can guarantee the implementation of health services. The legal institutions that

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regulate health administration are health legal instruments. The existence of health legal instruments basically aims to guarantee legal certainty and comprehensive protection for both health providers and the community receiving health services (Rika Handayani, 2022).

Health services can be provided by medical personnel. The medical personnel referred to are regulated in Article 1 point (6) of Law Number 17 of 2023 concerning Health which states that "Medical Personnel is every person who dedicates themselves to the field of Health and has a professional attitude, knowledge and skills through medical or medical professional education. teeth that require authority to carry out health efforts."

Medical personnel can take medical action on patients in providing health services. Medical action is an action that should only be carried out by medical personnel, because the action is intended for patients who experience health problems (Danny Wiradharma, Aditya Pratama Sarwono, Dionisia Sri Hartati, 2023). Therefore, medical personnel in carrying out their practices must comply with the provisions of Article 274 of Law No. 17 of 2023 concerning Health which states that "Medical Personnel and Health Workers in carrying out their practices are obliged to provide Health Services in accordance with professional standards, professional service standards, standard operational procedures and professional ethics and patient health needs".

One of the health services provided by medical personnel in medical procedures is anesthesia services (Anesthesia Services) to patients. Anesthesia services are medical procedures that must be carried out by medical personnel. Anesthesia in Greek means loss of sensation (Ministry of Health, 2023). Anesthesia is an action taken before surgery begins to reduce pain that may occur during the surgical process (Ministry of Health, 2023).

Anesthesia services provided by medical personnel, in this case anesthesiology medicine, are regulated in the Decree of the Minister of Health of the Republic of Indonesia Number HK.01.07/MENKES/1541/2022 concerning National Guidelines for Medical Services for the Management of Anesthesiology and Intensive Therapy Concerning National Guidelines for Anesthesiology and Intensive Therapy Medical Services . Anesthesiology and intensive therapy services are part of health services that are developing rapidly along with developments in science and technology. Medical personnel in providing anesthesia services to patients are assisted by anesthesiologists.

What is meant by an anesthetist is regulated in Article 1 paragraph (1) of the Minister of Health Regulation No. 18 of 2016 concerning Licensing and Implementation of the Practice of Anesthesia, which states that "An anesthesia practitioner is every person who has completed education in the field of anesthesia nursing or an anesthesia practitioner in accordance with the legislation. ". Then, based on Article 10 of the Minister of Health Regulation No. 18 of 2016 concerning Licensing and Implementation of Anesthesia Practices, it is stated that "Anesthesia Doctors, in carrying out their professional practice, have the authority to provide anesthesia care services to: a. preanesthesia; b. intraanesthesia; and c. post-anesthesia". The authority of the anesthesiologist in carrying out anesthesia services must be under the supervision and instructions of the anesthesiology doctor. This is based on Article 13 letter (a) of the Minister of Health Regulation No. 18 of 2016 concerning Licensing and Implementation of Anesthesia Practices which states that "The implementation of anesthesia is in accordance with the instructions of an anesthesiology specialist."

When medical personnel work to provide anesthesia services, it is very possible that they will find themselves in a situation that will bring them into the realm of law. Due to the end result of a process carried out by a doctor in treatment, if a patient is treated until he dies or becomes disabled, there may be a response from the patient's family that this is malpractice (Machmud Santoso, 2014). Based on the explanation above, there is a case that has attracted quite a lot of public attention regarding medical personnel providing anesthesia services to two-year-old toddler patients at a hospital in Medan City. The cases are as follows:

“Mitra Sejati Hospital, on Jalan AH Nasution, Medan City, was visited by the child's mother and family. Cleft lip surgery will be performed on the roof of the child's mouth. The child was treated in hospital and spent the night there after having his blood and lungs checked. While waiting for the X-ray results, the child was then given an IV drip by the hospital. The operation should have been carried out at around 07.00 WIB, and the x-ray results only came out at 02.00 WIB. Before the operation, the child fasted. The next step is to put the child to sleep, accompanied by the mother. Half an hour later, the pediatrician told the mother that her son needed to be moved to the intensive care unit (ICU) because his hands were turning blue. Hospital officials informed the mother that her child had died minutes after being transferred.” (Tribun-Medan, 2024).

Based on the case above, the child's family suspects that medical personnel committed malpractice when providing anesthesia services to pediatric patients, causing the child to die. Therefore, medical personnel must receive legal protection for the medical procedures they perform. This is based on Article 273 Paragraph (1) letter a of Law Number 17 of 2023 concerning Health which states that "Medical Personnel and Health Personnel in carrying out their practice are entitled to legal protection as long as they carry out their duties in accordance with professional standards, professional service standards, standard operational procedures, and professional ethics, as well as patient health needs".

Medical personnel in carrying out their duties must be based on the Medical Code of Ethics. The Code of Medical Ethics, which in English is called "Medical Ethics", is a system of moral principles that must be adhered to and applied by doctors who provide health services to their patients or when conducting scientific research (Sutan Remy Sjahdeni, 2020). The "Code of Medical Ethics" is the "Bioethics" of a doctor in his relationship with his patients (Sutan Remy Sjahdeni, 2020). The Indonesian Medical Ethics Code was ratified in 2012 by the Indonesian Medical Ethics Honorary Council and the Indonesian Doctors Association. The 2012 Indonesian Medical Code of Ethics (KODEKI) is the final version of the Indonesian Medical Code of Ethics which was first drawn up in 2001 and then ratified by the Indonesian Doctors Association (IDI) in 2012 (Sutan Remy Sjahdeni, 2020). In addition, when medical personnel take medical action on a patient, approval of the medical action is required. Approval of medical action is known as informed consent.

After medical personnel obtain informed consent from the patient, the patient, doctor and hospital have a legal relationship. A legal relationship is a relationship regulated by law, a legal relationship (*rechtsbetrek kingen*) occurs between two or more legal subjects, where the rights and obligations of legal subjects confront each other, if the rights and obligations are not respected, legal sanctions can be imposed (Zamroni, 2022). Some legal relationships are private (civil) and some are public (criminal, administrative, etc.), one form of civil legal relationship is a relationship based on an agreement (Zamroni, 2022).

Based on the background of the problem described above, the author considers that it is necessary to study the legal regulations regarding medical personnel in providing anesthesia services to patients, the risks that occur in providing anesthesia services to patients, and legal protection for medical personnel in providing anesthesia services. to patients so that this becomes a guideline to obtain legal certainty between both parties.

This research will use several theories to support this aim. First, the Legal Protection Theory put forward by M. Isnaeni. In M. Isnaeni's opinion, legal protection analyzed from its source is divided into 2 (two), namely external legal protection and internal legal protection. The essence of internal legal protection, basically legal protection is intended to be processed by the parties making an agreement, where when drafting the articles in the agreement, the parties want their interests to be accommodated on the basis of consensus (Jonathan Elkana Soritua Aruan, 2024). External legal protection established by the government in the form of regulations for the interests and needs of weak parties, as is the essence of regulatory provisions which cannot be partial and one-sided, is proportionally required to provide fair legal protection to other parties (Luthvi Febryka Nola,

2016). Second, the Legal Certainty Theory according to Van Apeldoorn, "legal certainty can also mean things that can be determined by law in concrete matters" (Mario Julyano, 2019). Legal certainty is a guarantee that the law is implemented, that those entitled to it according to the law can obtain their rights and that decisions can be implemented. Legal certainty is a justifiable protection against arbitrary actions, which means that someone will be able to obtain something they hope for in certain circumstances (Mario Julyano, 2019). Third, Legal Theory of Health In Legal Theory, J.J.H Bruggink explains that Legal Theory is a whole statement that is interconnected with the conceptual system of legal rules and legal decisions, and this system is, for the most part, positive (Muhammad Sadi, 2017). Health law according to C.S.T. Kansil stated that Health Law is a series of statutory regulations in the health sector which regulate medical services and medical facilities, health which is meant is a condition which includes physical, spiritual (mental) and social health, and not only a condition which is free from defects, diseases and infirmities. " (Takdir, 2018).

Then H.J.J. Leenen is of the opinion that Health Law includes all legal provisions that are directly related to health monitoring and the application of civil law, criminal law and administrative law in this relationship. "As well as international guidelines, customary law and jurisprudence related to health care, autonomous law, science and literature which are sources of health law." (Destiny, 2018). So, Health Legal Theory is a legal theory that studies and analyzes laws related to the health sector. So that it can produce health laws that provide a sense of justice in society, especially people who need or need health services from health workers (JH Sinaulan, 2018).

From the background described, the main problem to be researched seems to involve three crucial aspects in the context of health services by medical personnel, especially in anesthesia practice. First, there is legal uncertainty for medical personnel regarding suspected malpractice. Although the law provides protective rights for medical personnel who carry out their duties according to professional standards, there are still concerns that the final results of medical procedures—such as death or disability in patients—could trigger malpractice claims. This raises questions about the extent to which the legal protection guaranteed by law is strong enough to provide legal certainty for medical personnel in this situation, or whether they are still vulnerable to legal action. Second, the gap in legal protection for medical personnel is often considered not to be equal or proportional, especially in cases involving pediatric patients or critical health conditions.

In this context, research needs to explore the effectiveness of existing regulations in providing adequate legal protection, both from a legal and ethical perspective, especially in incidents that are unexpected or difficult to avoid. Third, there is lack of clarity or confusion in the regulations governing the authority and responsibilities of medical personnel. In some cases, for example the role of the anesthesiologist who is under the supervision of an anesthesiologist, the potential for ambiguity in the division of authority can trigger ambiguity regarding legal responsibility when a medical incident occurs. This lack of clarity impacts the professional decisions taken by medical personnel and opens up room for varying interpretations regarding their legal responsibilities. By focusing on these aspects, this research aims to assess whether there is a need for revision or harmonization of regulations in order to create a legal system that provides certainty and justice for medical personnel, patients and other related parties.

2. Materials and Methods

The type used in this research is normative law. In normative legal research, it is intended to examine the provisions of positive law, and the positive legal instruments studied normatively will be used as a source of legal material (Jonaedi Effendi & Johnny Ibrahim, 2018).

Normative legal research is carried out with a statutory regulatory approach by examining all laws and regulations related to the research being handled (Peter Mahmud Marzuki, 2019). In the legislative approach method, researchers need to understand the

hierarchy and principles in statutory regulations (Peter Mahmud Marzuki, 2019). The laws and regulations used are as follows: a. 1945 Constitution; b. Law No. 17 of 2023 concerning Health; c. Government Regulation Number 28 of 2024 concerning Implementing Regulations of Law Number 17 of 2023 concerning Health; and d. Decree of the Minister of Health of the Republic of Indonesia Number HK.01.07/MENKES/1541/2022 concerning National Guidelines for Medical Services for the Management of Anesthesiology and Intensive Therapy discusses the scope of work of anesthesiology specialist doctors.

This study is based on secondary data, collected from various legal publications found in libraries. Gathering information from various legal sources involves searching various laws, jurisprudence, and other written works (such as books, journals, and newspapers) to obtain relevant information. Qualitative data analysis was used in this research. For data analysis purposes, qualitative analysis is a method for examining legal documents through the viewpoint of ideas, theories, laws, rules, doctrines, principles, expert testimony, or the researcher's own perspective. (Suratman and Philips Dillah, 2015).

3. Results and Discussion

3.1 *Legal Regulations Regarding Medical Personnel in Providing Anesthesia Services to Patients*

In essence, anesthesia or anesthesiology emerged because of the human need to avoid pain during medical procedures given by medical personnel. Dr. Mathias J. Seifert in 1902 coined the terms anesthesiologist and anesthesiology. An anesthesiologist is an anesthesiologist, while anesthesiology is the science of anesthesia (Anna Surgaen Veterini, 2020). Currently, almost 60 years since it was pioneered, Anesthesiology in Indonesia has developed rapidly. The scope of clinical practice of anesthesiologists has also expanded. Not only general and regional anesthesia procedures in the operating room or outside the operating room, the role of the anesthesiologist is more towards holistic perioperative medicine, including critical patient management and pain management (Margarita Rehatta., et., al, 2019).

All anesthesia services must comply with the requirements established by the American Association of Anesthesiologists. This refers to the Regulation of the Minister of Health of the Republic of Indonesia Number HK.01.07/MENKES/1541/2022 which regulates national standards for providing anesthesia and intensive care. The importance of re-establishing a Minister of Health Regulation concerning National Guidelines for Anesthesiology and Intensive Therapy Medical Services cannot be denied, considering the rapid progress of science and technology in the field of modern medicine, especially in the field of anesthesiology and intensive therapy. These changes are necessary to ensure that patients receive the highest standards of care from these medical professionals. In handling crises and emergencies, anesthesiology specialist doctors are needed. (Sep 2019 Rehatta, Margarita)

This document discusses the responsibilities of anesthesiology specialist doctors, as stated in the Decree of the Minister of Health of the Republic of Indonesia Number HK.01.07/MENKES/1541/2022. This decision is one of the main components of the professional duties of intensive care units and anesthesiologists. The emergency room, operating room, intensive care unit (ICU), procedural sedation room, pain management clinic, and anesthesiology/intensive care unit (ICU) are the most important parts of the hospital. These areas provide critical services, meaning they are high risk for patients, require a lot of healthcare resources, and are prone to problems. These factors are also related to the high operational costs that hospitals must bear. In addition, the Minister of Health of the Republic of Indonesia issued Decree of the Minister of Health of the Republic of Indonesia Number HK.01.07/MENKES/1541/2022. The National Guidelines for Anesthesiology and Intensive Care Medical Services in their contents identify four

problems that form the basis for their preparation, namely: high-risk procedures, high volume of workload, high costs, and processes that are prone to problems. Every medical practice requires its medical staff to have a Practice License (SIP) in order to provide medical services. This is in accordance with the 2023 Health Law as amended, in particular Government Regulation Number 28 of 2024. What is meant by "Practicing Permit, hereinafter abbreviated as SIP, is written evidence given to medical personnel and health workers as giving authority to practice." in Article 1 paragraph (32) of Government Regulation Number 28 of 2024 concerning Implementing Regulations of Law Number 17 of 2023 concerning Health. Furthermore, in accordance with Article 681 paragraph (1) of Government Regulation Number 28 of 2024 concerning Implementing Regulations of Law Number 17 of 2023 concerning Health, "(1) Every Medical Personnel and Certain Health Personnel who will carry out their professional practice are required to have a SIP." This regulation regulates the requirements for medical personnel to have a SIP.

With the word mandatory, medical personnel must have this SIP in order to practice medicine and provide health services in accordance with applicable regulations. The SIP in question only applies to 1 (one) practice place, as regulated in Article 682 paragraph (2) Government Regulation Number 28 of 2024 concerning Implementing Regulations of Law Number 17 of 2023 concerning Health. Furthermore, Article 682 paragraph (3) states that "the SIP for Medical Personnel and Health Personnel of Indonesian citizens as referred to in paragraph (1) is valid for 5 (five) years and can be extended as long as it meets the requirements. The SIP for Medical Personnel is valid for 5 (five) years and can be extended as long as the requirements are met."

Apart from that, medical practice must have ethics and morals in accordance with the 2012 Indonesian Medical Code of Ethics (KODEKI). KODEKI consists of several provisions regarding the obligations of Medical Personnel (doctors), which are divided into: 1. Obligations of General Practitioners; 2. Doctor's Obligations to Patients; 3. Doctor's Obligations to Colleagues; 4. Doctors' Obligations Towards Themselves. If a doctor violates the Indonesian Medical Code of Ethics mentioned above, the doctor is legally considered to have committed medical malpractice (Ns. Pamuji, 2022).

Medical personnel have an obligation to carry out their medical practice. Based on Article 735 paragraph (1) Government Regulation Number 28 of 2024 concerning Implementing Regulations of Law Number 17 of 2023 concerning Health states that "(1) Medical Personnel and Health Personnel in carrying out practices are obliged to: a. provide health services in accordance with professional standards, professional service standards, standard operational procedures, and professional ethics as well as patient health needs; b. obtain consent from the patient or his family for the action to be given; c. create and store records and/or documents regarding examinations, care and actions taken; and e. refer patients to medical personnel or other health personnel who have the appropriate competence and authority."

Based on the description above, Law No. 17 of 2023 concerning Health does not yet include the types of medical procedures carried out by medical personnel, such as providing anesthesia services to patients. So, when administering anesthesia, medical personnel still refer to the Decree of the Minister of Health of the Republic of Indonesia Number HK.01.07/MENKES/1541/2022 concerning National Guidelines for Medical Services for the Management of Anesthesiology and Intensive Therapy. This Ministerial Decree is a guideline in the implementation of anesthesia services, because this action is an action that has quite a high risk for the patient.

3.2 Risks In Providing Anesthesia Services To Patients

All working professionals face risks when working, so work must be carried out in accordance with professional standards and standards. In specialist medical services, disease and support standards are part of professional standards, which function as a tool to measure how good public health services are and how well medical practice is

carried out. Therefore, an anesthesiology specialist providing anesthesia services must be in accordance with the needs and standards of service to the patient.

The implementation of anesthesia services is not only risky for professional medical personnel, where in carrying out medical procedures, the stages of doctors in carrying out their work have written standards as guidelines for doctors in providing medical procedures who have duties and responsibilities in law. Because the steps taken by doctors are regulated by the medical practice law which has implications for civil and criminal lawsuits. The medical profession is autonomous, all provisions relating to the work of the medical profession are determined by the profession itself (Ns. Pamuji, 2022).

However, anesthesia services are also very risky for patients, even resulting in patient death. Because this action is a high risk action. Like the case that has attracted quite a lot of public attention regarding medical personnel providing anesthesia services to two-year-old toddler patients at a hospital in Medan City, it is suspected that medical personnel committed malpractice which caused the child patient to die.

The Anesthesia category is regulated in Chapter V of the Decree of the Minister of Health of the Republic of Indonesia Number HK.01.07/MENKES/1541/2022 concerning National Guidelines for Medical Services for the Management of Anesthesiology and Intensive Therapy. The Anesthesia categories are as follows: a). General Anesthesia ; General anesthesia alters consciousness reversibly, without globally shutting down brain function. b). Regional Anesthesia ; 1. Subarachnoid Block for Regional Anesthesia: An anesthesia and intensive therapy specialist will inject a local anesthetic into the subarachnoid space, which will be mixed with cerebrospinal fluid (CSF) to provide analgesia and anesthesia down to specific dermatomes. 2. The second method is regional anesthesia using an epidural catheter, which is inserted by an anesthesiologist or intensive care unit specialist. The patient will be given local anesthetic medication either periodically or continuously. 3. Caudal regional anesthesia, which involves specialist anesthesia and intensive therapy administering drugs into the epidural space through the sacral hiatus. 4. A variation of regional anesthesia that combines a spinal epidural given by an anesthesia specialist and intensive therapy. A bolus of local anesthetic is administered into the epidural space after a gradual intrathecal local anesthetic injection is administered to induce anesthesia. 5. Regional anesthesia of the abdominal wall: the anesthesiologist provides this type of anesthesia by injecting local anesthetic into the abdominal wall and then using ultrasonic instruments to block the innervation of the abdominal nerves. 6. Regional anesthesia of the chest wall: This technique involves the anesthesiologist injecting a local anesthetic into a specific area of the body, either with or without the use of an ultrasonic device. The goal is to block the innervation of the thoracic nerves near the exit of the spinal nerves from the intervertebral foramen (a technique called thoracic paravertebral block) or the space between two planes of muscle and fascia, causing numbness to occur only in the specified area. 7. Regional Anesthesia for Upper Extremities: This type of anesthesia is administered by anesthesia and intensive therapy specialists. Patients are given local anesthetic medication via injection near the nerve cluster to anesthetize the area of the body that needs surgery, or the injection is done without using any tools. 8. Regional Anesthesia for the Lower Extremities: This type of anesthesia is administered by a trained anesthesiologist using a nerve stimulator, ultrasound, or other device to inject local anesthetic medication. The goal is to anesthetize only the surgical area by blocking the innervation in the plexus or by injecting near a cluster of nerves. c). Special Anesthesia ; 1. Pediatric Anesthesia: This guideline is implemented on all pediatric patients who will undergo anesthesia, and then determines the medical condition and physical status of the patient based on American Society of Anesthesiologists (ASA) class 1 to 5, if emergency surgery is added the code (emergency). 2. Anesthesia in patients with congenital abnormalities 3. Anesthesia for outpatient surgical patients: This is an anesthesia procedure for outpatients who are planned for surgery and meet the criteria to be discharged on the same day. 4. Anesthesia in Tonsil Surgery: Tonsillectomy is a surgical procedure performed with or without adenoidectomy by removing the entire tonsil, including the capsule, by cutting the peritonsillar

space between the tonsil capsule and the muscle wall. 5. Anesthesia in abdominal and urogenital surgery. 6. Anesthesia in Trauma. 7. Anesthesia in emergency surgery: Emergency surgery is a surgical procedure that aims to save the patient's life, organs or limbs and is carried out simultaneously with resuscitation steps. The decision to perform an emergency surgical procedure is made in a matter of minutes or hours.

Based on the anesthesia categories above, it is known that anesthesia has risks when given to patients. The risks of providing anesthesia services to patients are as follows:

First, the risk of death. In the 1940s, one in a thousand healthy subjects died from anesthesia. Anesthesia safety has progressed substantially with better understanding of anesthesia-related deaths, the emergence of better monitoring practices, better airway management tools, safety knowledge sharing and peer review. Currently, anesthesia-related deaths are approximately 1.1 per million people per year in the United States (Anna Surgeon Veterini, 2021). In 2010-2011, the death rate related to anesthesia was 5 per 10,000 anesthesia procedures at Dr Sardjito General Hospital, Indonesia (Fanny Gunawan, Sudadi, Mahmud, 2022). Furthermore, there were 39,965 patients who underwent anesthesia from January 2017 to May 2021 (Fanny Gunawan, Sudadi, Mahmud, 2022). One hundred and nine patients died within 24 hours after anesthesia and the data was then traced through medical records and it was found that 30 patients died related to anesthesia, 65 patients died not related to anesthesia, and 14 patients died who could not be determined (Fanny Gunawan, Sudadi, Mahmud, 2022).

Second, the risk of losing the airway/difficulty in tubing. Inability to intubate or mask ventilate is one of the most feared complications in anesthesiology. In 1913, Jane-way created a laryngoscope to assist tracheal intubation so as to improve intubation capabilities. However, until now there is no device that has a 100% guarantee of success. In addition to airway management tools, anesthesiologists study the characteristics of the human airway in an effort to assess the ease or difficulty of performing intubation or mask ventilation (Anna Surgeon Veterini, 2021).

Third, the risk of nerve injury. The number of claims related to neuraxial anesthesia has decreased, but there are 74% of claims related to nerve injuries including direct damage to the nerve cord or root as well as local anesthetic-induced toxicity to these structures. This incident often causes disability. The patient risk factors most associated with neuraxial injury are the elderly and women. Death or brain damage is quite rare, but each accounts for 9% of neuraxial technique claims. An important cause in which death or brain damage occurs, namely failure to rescue from a heart attack due to a high spine and oversedation (Anna Surgeon Veterini, 2021).

Fourth, the risk of losing vision. Vision loss in the perioperative period is usually permanent. The most common procedures are spine surgery and heart bypass surgery. However, any surgery in the prone position or where the head is placed lower than the heart for a long time can cause postoperative vision loss (POVL) (Anna Surgeon Veterini, 2021). Anatomical variations that cannot be seen by the anesthesiologist may influence which patients experience this rare complication and when discussing POVL both the surgeon and/or the anesthesiologist may include informed consent, one study shows that patients prefer the surgeon address POVL issues before the day of surgery (Anna Surgeon Veterini, 2021).

Based on the description above, medical personnel continue to strive to reduce the risk of anesthesia occurring to patients. Medical personnel are very concerned about the safety of patients undergoing anesthesia. Anesthesia is an action that has a high risk, because this action can cause the patient to die or die.

3.3 Legal Protection for Medical Personnel in Providing Anesthesia Services to Patients

Various preventive and repressive legal instruments are used in an effort to protect the government or authorities from legal subjects (Sismulyanto, 2023). In an effort to stop violations that can result in material or immaterial losses for other parties, the government offers preventive legal protection before violations occur. According to Muhammad

Irfan Reza Mahendra and Jeane Neltje (2023), the special rules contained in the statutory regulations are the preventive legal protection in question. The rules referred to here are rules that function as preventive legal protection. Restoring the condition of the injured party, finding a valid legal solution, and obtaining compensation are the goals of repressive protection. (Muhammad Irfan Reza Mahendra and Jeane Neltje, 2023).

All medical procedures involving patients must be protected by law. This decision is based on consideration of several existing alternatives; is ethical because it is carried out by humans towards other humans who generally need help; and is especially intended for patients who experience health problems, so medical procedures can only be carried out by medical personnel (Sigit Lemonojati, 2019).

Protecting medical personnel who provide anesthesia to patients is a top priority. When treating unconscious patients and performing anesthesia procedures in confined spaces, it is important to carefully monitor for any potential hazards.

According to applicable rules and regulations, medical personnel who provide anesthesia have duties that fall into the administrative, criminal, civil, professional and ethical categories. Article 273 paragraph (1) letter a of Law Number 17 of 2023 concerning Health states that "Medical and Health Personnel in carrying out their practices have the right to be protected by law as long as they fulfill their responsibilities in accordance with the professional code of ethics, operational process standards, professional service standards, and patient health requirements." This means that medical personnel have the right to obtain legal protection while practicing.

To obtain legal protection rights when providing anesthesia services to patients, medical personnel must also pay attention to their obligations. This is as regulated in Article 274 letters a and b of Law No. 17 of 2023 concerning Health which states that "Medical Personnel and Health Workers carry out mandatory practices (a). provide health services in accordance with professional standards, professional service standards, standard operational procedures, and professional ethics and patient health needs, (b). obtain consent from the patient or his family for the action to be given." Apart from adjustments in accordance with professional standards, professional service standards, standard operational procedures, anesthesiology specialist doctors must have several aspects of skills in carrying out their practice. The aspects of skills that an anesthesiology specialist must have are as follows:

First, the aspect of professionalism in anesthesiology. These aspects related to oneself are self-understanding of physical and mental abilities to obtain good anesthesia practice (physician wellbeing), the ability to handle a case (competence, awareness, recognition of limitations), and the desire to continue to develop (motivation to improve) (N. Margareta Rehatan, 2019).

Second, the communication aspect. Anesthesiology specialist doctors must have good and effective knowledge and communication skills. In this sense, an anesthesiology specialist is also required to be able to apply good verbal and non-verbal communication in accordance with the situation faced (N. Margareta Rehatan, 2019). Another thing that makes the profession of an anesthesiology specialist unique when compared to other medical professions is: 1) patients often do not know or even know who an anesthesiology specialist is; 2) anesthesiology specialist doctors also do not know their patients because generally all patients come on the basis of consultations with other doctors; 3) consultation by an anesthesiology specialist only once for a limited time; 4) in general, patients are stressed because they have to undergo surgery; 5) the information that must be conveyed contains a lot of things that can frighten the patient; 6) Anesthesiology specialist doctors must be ready at any time to convey bad news to the patient's family (because the patient is in critical condition in the operating room or ICU) (N. Margareta Rehatan, 2019).

Third, the aspect of conveying bad news. Every patient treated by an anesthesiologist can experience rapid or critical changes in condition. In situations like this, anesthesiology specialists need the skills to convey unpleasant information (bad news) to the

patient's family. Giving bad news to patients or their families is an art that must be learned (N. Margareta Rehatan, 2019).

Apart from that, one thing that is needed in providing anesthesia services is consent from the patient or his family for the action to be given by medical personnel (consent to medical action). This is as regulated in Article 274 letter b of Law No. 17 of 2023 concerning Health which states that "b. obtain consent from the patient or his family for the action to be given." The approval for medical action in question is informed consent or a consent sheet which can be defined as informed consent as a tool for self-determination that functions in a doctor's practice (NS Pamuji, 2022). Informed consent occurs after the right to information and then the right to give consent from the patient to the doctor's efforts in providing health care (NS Pamuji, 2022). When submitting informed consent to patients and the patient's family, information or information must be provided clearly and use simple language that is easy to understand according to their educational and intellectual level (MediaKom, 2019). With this informed consent, doctors feel safe carrying out medical procedures on their patients and avoid malpractice claims from their patients.

When medical personnel convey information regarding the patient's informed consent to carry out medical procedures, it must be conveyed well and clearly. So medical personnel must have good communication skills. Because patients have rights as regulated in article 276 of Law No. 17 of 2023 concerning Health which states that "Patients have the rights: a. get information about his/her health; b. receive an adequate explanation regarding the Health Services they receive; c. obtain Health Services in accordance with medical needs, professional standards and quality services; d. refuse or agree to medical treatment, except for medical action necessary to prevent infectious diseases and control outbreaks or epidemics; e. gain access to information contained in medical records; f. ask for the opinion of Medical Personnel or other Health Personnel; and g. obtain other rights in accordance with the provisions of the laws and regulations." Consent to medical procedures from patients is a form of legal protection for medical personnel in carrying out the practice of medical procedures. This is very important for medical personnel when administering anesthesia to patients.

The form of permission or approval can be in the form of Written Consent, Oral Consent, and Without Consent (Sutan Remy Sjahdeni, 2020). After receiving information or explanation from a doctor or other health professional, the patient or their family provides written consent in the form provided. Written consent is required for medical procedures that have a high risk or results that are difficult to predict or questionable.

Consent from the patient, in this case has a fairly broad meaning because once the patient signs his or her name on the medical action consent form, it is deemed that the patient has informed consent and the patient has handed over his fate to the doctor, and the doctor can carry out what the doctor thinks is good (Endang Kusuma Astuti, 2009). This signing has the consequence that what is called an agreement has been reached by the binding parties, as a condition for the agreement to carry out medical procedures. This agreement has binding force, in the sense that it has legal force, meaning the doctor has carried out his obligation to provide information and gives the doctor the right to carry out medical procedures (Endang Kusuma Astuti, 2009). Then there are the elements of informed consent in question, namely (Dionisius Felenditi, 2009): a. Competence, in this context, competence refers to a precondition for acting voluntarily because of understanding the importance of information. Competence is the patient's ability to make decisions about treatment by considering all relevant factors; b. In conveying information, conditions are needed that allow someone to obtain sufficient information to make a decision (informed choice); c. understanding of information, if the information provided is incomplete, there will be many conditions that can limit the patient's understanding of expressing his or her consent; d. Freedom and consent, freedom here means that a person can make decisions without coercion or other oppressive influences, whether in the form of violence, threats or manipulation (Dionisius Felenditi, 2009).

Based on the description above, the forms of legal protection obtained by doctors in carrying out their professional duties are, namely preventive legal protection and repressive legal protection. In terms of preventive legal protection, Medical Personnel have the right to receive legal protection as regulated in Article 721 of Government Regulation No. 28 of 2024 concerning Implementing Regulations of Law Number 17 of 2023 concerning Health which states that "Medical Personnel and Health Personnel in carrying out their practice have the right to: a . obtain legal protection as long as they carry out their duties in accordance with professional standards, professional service standards, standard operational procedures and professional ethics, as well as the patient's health needs; b. obtain complete and correct information from c. Patient or family; receive appropriate salaries/wages, service benefits and performance allowances in accordance with statutory provisions; d. avoid danger at work; e. obtain health and employment insurance in accordance with statutory provisions; f. avoid treatment that violates human dignity, morality and socio-cultural values; g. obtain awards in accordance with statutory provisions; h. get the opportunity to develop professionally by acquiring new skills and expanding their knowledge; i. can refuse requests from patients or other parties that conflict with professional standards, service standards, standard operational procedures, codes of ethics, or statutory provisions; and finally, obtain additional rights as intended in the statutory regulations."

Furthermore, Article 722 of Government Regulation No. 28 of 2024 concerning Implementing Regulations of Law Number 17 of 2023 concerning Health states that "Legal protection as intended in Article 721 letter a is intended for: a. provide legal certainty to Medical Personnel and Health Personnel in carrying out Health Services in accordance with statutory provisions; b. guarantee work without coercion and threats from parties c. other; and guarantee that they work in accordance with their authority and professional competence."

Article 723 paragraph (2) Government Regulation No. 28 of 2024 concerning Implementing Regulations of Law Number 17 of 2023 concerning Health which states that "Form of legal protection in order to prevent Medical Personnel or Health Personnel from committing violations as intended in paragraph (1) letter a in the form of: a. professional standards, service standards, standard operational procedures, norms, standards, procedures and criteria related to the professional practices of Medical Personnel and Health Personnel); b. ensure that medical personnel and health workers have STR and SIP; c. ensure that Medical Personnel and Health Personnel carry out professional practices in accordance with clinical authority; d. consent from the patient and/or family for actions carried out by medical personnel and health workers, except in emergency conditions; and e. facilitating medical personnel or health workers to have the benefit of protecting professional liability." Therefore, preventive protection focuses on preventative measures so that medical personnel do not enter the realm of law or are suspected of committing violations or malpractice.

Specifically, Article 310 of Law Number 17 of 2023 concerning Health states that "Before taking the litigation route, any dispute that arises as a result of alleged errors by medical or health personnel that cause injury to patients must be resolved through alternative non-judicial dispute resolution methods." This provision is repressive and relates to health services. According to the Health Law, it is stated "b. legal protection for Medical Personnel and Health Personnel who are facing legal problems." Furthermore, Article 723 paragraphs (3) and (4) states that "(3) The form of legal protection as intended in paragraph (1) letter b can be carried out through: a. dispute resolution; b. upholding professional ethics; c. enforcement of scientific discipline, and d. law enforcement." "The agency where Medical Personnel and Health Personnel work is obliged to provide legal protection and assistance to Medical Personnel and Health Personnel who carry out their duties in the form of: a. legal consultation; and/or b. provide assistance in resolving disputes," reads Article 723 paragraph (4) of Government Regulation Number 28 of 2024 which is an implementing regulation of Law Number 17 of 2023 concerning health. Thus,

solving problems faced by medical personnel is the main subject of restrictive legal protection.

4. Conclusions

Law No. 17 of 2023 concerning Health and Government Regulation No. 28 of 2024 concerning Implementing Regulations of Law Number 17 of 2023 concerning Health have generally regulated legal protection for medical personnel in providing medical procedures. However, there are no specific regulations regarding anesthesia. So, when administering anesthesia, medical personnel still refer to the Decree of the Minister of Health of the Republic of Indonesia Number HK.01.07/MENKES/1541/2022 concerning National Guidelines for Medical Services for the Management of Anesthesiology and Intensive Therapy. This Ministerial Decree is a guideline in the implementation of anesthesia services, because this action is an action that has quite a high risk for the patient. There is a need for implementing regulations regarding anesthesia services. To strengthen medical personnel in providing anesthesia services to patients. Medical personnel are very concerned about the safety of patients undergoing anesthesia. Medical personnel continue to strive to reduce the risks of anesthesia for patients. There is a need to develop anesthesia services to reduce the high risk to patients. Anesthesia is a high risk procedure, because this action can cause the patient to die or die. The form of legal protection obtained by doctors in carrying out their professional duties, namely preventive legal protection which is regulated in Articles 721, 722 and 723 of Government Regulation No. 28 of 2024 concerning Implementing Regulations of Law Number 17 of 2023 concerning Health. Repressive legal protection is regulated in Article 310 of Law Number 17 of 2023 concerning Health and Article 723 paragraph (1), paragraph (3) and (4) letter b of Government Regulation No. 28 of 2024 concerning Implementing Regulations of Law Number 17 of 2023 about Health. There needs to be a law that specifically regulates the legal protection of doctors. In order to strengthen dispute resolution as a form of legal protection for medical personnel in carrying out their professional duties.

In anesthesia procedures that are known to be high-risk procedures, a risk-based approach is necessary for the prevention and mitigation of medical risks that may arise. This approach begins with risk identification at an early stage, which includes a comprehensive examination of the patient's health condition, including disease history, allergies, and laboratory or radiology examination results. Based on these results, the anesthesia plan can be tailored to the patient's specific needs to minimize the risk of complications during and after the procedure. In addition, risk-based anesthesia procedures also emphasize the importance of strict standard operating procedures (SOP), including appropriate medical treatment in emergencies, drug preparation, as well as adequate training and qualifications for the medical personnel involved. Prevention of this risk is strengthened by sophisticated monitoring equipment, such as heart and oxygenation monitors, which can detect early signs of complications, so that appropriate intervention can be carried out immediately.

References

Aktariyani, T., Darwito, Rimawati, & Trisnantoro, L. (2020). Resident legal protection in handling Covid-19 patients in Indonesia.

- Indonesian Journal of Health Policy, 09(04), 225–231.
- Ampera, A. (2018). Hospital Responsibility towards Patients in the Implementation of Health Services. *Al-Ishlah: Legal Scientific Journal*, 21(2), 59–74. <https://doi.org/10.33096/aijih.v20i2.17>
- Aruan, J. E. S. A. (2024). Personal Data Protection Viewed from the Theory of Legal Protection and the Theory of Protection of the Right to Privacy. *Journal of Legal Globalization*, 1.(1). 1-22. <https://doi.org/10.25105/jgh.v1i1.19499>
- Astuti, E. K. (2009). Therapeutic Transactions in Medical Service Efforts in Hospitals. Bandung: PT Citra Aditya Bakti.
- Benhard, F. (2017). Legal Protection for Victims of Criminal Malpractice According to Law no. 36 of 2009. *Lex Administratum*, 5(1), 140–147. <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/15142>
- Dairse. (2009). No Title Экономика Региона, Kolisch 1996, 49–56.
- Dari, L., Anesthesia, D., & Kuntardjo, C. (2024). Obscurity Of Norms: Nurses As Recipients Of Delegated Tasks From Anesthesiologists Obscurity Norms Nurses As Recipients Of Assignments. 10(2), 495–502.
- Destiny. (2018). Introduction to Health Law. Palopo. IAIN Palopo Campus Publishing Institution.
- Felenditi, D. (2009). Enforcement of Patient Autonomy Through Informed Consent, 01(01). 29-40. <https://doi.org/10.35790/jbm.1.1.2009.808>
- Fortune, P. M. (2019). Legal Research. East Jakarta: PRENADAMEDIA GROUP.
- Gunawan, F., Sudadi, & Mahmud. (2023). DEATH RATE RELATED TO ANESTHESIA DR. SARDJITO 2017-2021. *Journal of Anesthesia Complications*, 9(2), 43-51. <https://doi.org/10.22146/jka.v9i2.8344>
- Handayani, R., Syamsuriyati., Misrawati., (2009). Health Care System. Yogyakarta: Bintan Semesta Media.
- Harmoni, D., Indrayuni, D., Das'at, Z., & Triani, Y. (2022). Hospital Responsibility for Negligence of Health Personnel in Medical Emergency Services. *Humantech: Indonesian Multidisciplinary Scientific Journal*, 2(1), 12. <https://journal.ikopin.ac.id/index.php/humantech/article/view/1076>
- Javadikasgari, H., Soltesz, E. G., & Gillinov, A. M. (2018). Surgery for Atrial Fibrillation. In *Atlas of Cardiac Surgical Techniques* (pp. 479–488). <https://doi.org/10.1016/B978-0-323-46294-5.00028-5>
- Lemonojati. S. (2019). Criminal Liability for Negligent Acts in Medical Procedures in Hospitals. Surabaya: Scopindo Media Pustaka.
- Liani, N. A., & Mangesti, Y. A. (2023). The 6th Conference on Innovation and Application of Science and Technology (CIASTECH 2023) LEGALITY OF NURSES IN PROVIDING HEALTH SERVICES ABSTRACT ARTICLE INFORMATION. *Ciastech*, 309–315. <https://ocs.ciastech.net>
- Mahendra, M. I. R. Neltje, J. (2023). Preventive and repressive legal protection against acts of plagiarism in song or music creations. *Journal of Social Sciences*. 10(4). 1688-1691. <http://dx.doi.org/10.31604/jips.v10i4.2023.1687-1691>.
- MediaCom. (2019). Understanding Informed Consent in Medical Procedures. <https://mediakom.kemkes.go.id/2019/09/mengenal-informed-consent-dalam-aksi-kedokteran>
- Ministry of Health. (2023). Anesthesiologist's Role and Responsibilities in the Operating Room. https://yankes.kemkes.go.id/view_article/2397/dokter-anestesi-peran-dan-respons-respons-di-ruang-operasi#I.
- Nola, L. F. (2016). Integrated Legal Protection Efforts for Indonesian Workers (TKI). *RULE OF LAW*, 7(1). 35-52. [10.22212/jnh.v7i1.949](https://doi.org/10.22212/jnh.v7i1.949)
- Pamuji, NS. (2022) Authority of Specialist Doctors in Carrying Out Medical Procedures in Main Inpatient Clinics. Surabaya: Scopindo Media Pustaka. 2022.
- Pendewal. (2021). Doctor's Legal Protection. <https://pendewal.com/perlindungan-Hukum-dokter/>
- Prayitno, E. (2021). Legal Responsibility for Practice Without a License by Anesthesia Practitioners in Hospitals. *Journal of Health Law and Ethics*, 1(1), 73–84.
- Rajumi, A., Liyus, H., & Siregar, E. (2023). Legal Protection for Victims of Doctor Malpractice from a Criminal Law Perspective. *PAMPAS: Journal of Criminal Law*, 3(3), 296–309. <https://doi.org/10.22437/pampas.v3i3.23584>
- Rehatan, N. M., Hanindito, E. Tantri, A. R., Redjeki, I. S. Soenarto, R. F., Bisri, D. Y. Musba, A. M. T., Lestari. M. I. (2019). *Anesthesiology and Intensive Therapy*. Jakarta: Gramedia Pustaka Utama

- Sadi, M. (2017). *Health Ethics & Law Theory and Application in Indonesia*. Jakarta: Kencana.
- Sinaulan, JH. (2018). Legal Protection for Community Citizens. *Ideas: Educational, Social and Cultural Journal*, 04(01), 75-84. <https://jurnal.ideaspublishing.co.id/index.php/ideas/article/view/67>
- Sismulyanto. (2023). Legal Protection for Anesthetist Nurses on the Delegation of Authority from Specialist Anesthetists in Health Services Based on Legislative Regulations.
- Sjahdeni, S. R. (2020). *Health Law Concerning Malpractice Law for Medical Personnel*, Bogor: IPB Press.
- Sapri, A. (2019). Responsibilities of Surgical Operator Assistant Nurses in Carrying Out Their Profession in the Operating Room (Study at the H.Abdul Moeloek Regional General Hospital, Lampung Province). *Cepalo*, 1(1), 57. <https://doi.org/10.25041/cepalo.v1no1.1755>
- Sibarani, S. (2017). Aspects of Legal Protection for Patients Victims of Malpractice Seen from a Legal Perspective in Indonesia. *Justitia et Pax*, 33(1), 1–22. <https://doi.org/10.24002/jep.v33i1.1417>
- Tribune-Medan. (2024). Entering Healthy 2 Year Old Child Dies When He Wants to Have Cleft Lip Surgery. <https://www.msn.com/id-id/berita/other/cepat-sehat-anak-2-tahun-meninggal-dunia-saat-mau-jalankan-operasi-bibir-sumbing-di-rs-mitra-true/ar-BB1p9FhT?apiversion=v2&noservercache=1&domshim=1&renderwebcomponents=1&wcseo=1&batchservertelemetry=1&noservertelemetry=1>.
- Trihandini, D. (2020). Concept of Legal Protection for Medical Personnel in Handling Covid-19. *Journal of Law and Economic Development*, 8(2), 13. <https://jurnal.uns.ac.id/hpe/article/download/52619/32180>
- Vidi Galenso Syarief. (2023). Legal Protection of Medical Personnel and Health Personnel Through the Assembly Formed by the Minister of Health Following the Omnibus Law on Health. *Collegium Studiosum Journal*, 6(1), 336–343. <https://doi.org/10.56301/csj.v6i1.933>
- Veterini, A. S. *General Anesthesia Technique*. (2021). Surabaya: Airlangga University Press.
- Wiradharma, D. Sarwono, A. D. Hartati, D. S. (2023). *Ethical & Juridical Aspects of Medical Procedures*. Jakarta: Trisakti University.
- Widodo, N., Putera, A. P., & Nugraheni, N. (2023). Emergency Actions by Doctors Due to Accidents in Patients Who Are Incompetent and Without Family. *Collegium Studiosum Journal*, 6(1), 350–359. <https://doi.org/10.56301/csj.v6i1.942>
- Yudha Koswara I. (2018). Protection of Health Workers in Regulatory Perspective. *POSITUM Law Journal*, 3(1), 1–18.
- Zamroni. (2022). *Health Law: Liability of Doctors and Hospitals in the Practice of Medical Services*. Surabaya: SCOPINDI Media Library.