

LEGAL PROTECTION OF HEALTH PERSONNEL (ANESTHESIANS)

AFTER THE ISSUE OF THE HEALTH LAW

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By:

¹Gunawan Wahyudiono, ²Joko Ismono, ³Nuryanto A. Daim

^{1,2,3}Master of Law Wijaya Putra University Surabaya

Email : ¹gunawanwahyudiono1@gmail.com, ²jokoismono@uwp.ac.id,

³nuryantoadaim@uwp.ac.id

Abstract

Anesthesiology services and intensive therapy in hospitals are part of health services that are developing rapidly in line with improvements in science and technology in the field of anesthesia. Law no. 17 of 2023 concerning Health provides a glimmer of hope that there will be a solution to meet the needs of specialist/subspecialist doctors in various regions. The formation of Law Number 17 of 2023 concerning Health has proven to cause obstacles. The regulations tell how hospitals as an extension of the minister, provincial government and district/city government should act, how to respond and what sanctions there will be. However, the existence of anesthesia practitioners who practice without STRPA and SIPPA is an indication that the law is not working optimally in society.

Keywords: Legal Protection, Regulation, Anesthesia Management

I. Introduction

A. Background

Health is very important for human beings, without health life is meaningless. Health is a basic right that affects all aspects of life, then health is also a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation as referred to in Pancasila and the 1945 Constitution, that every activity in an effort to maintain and improve the highest degree of public health is carried out based on the principle of non-discriminatory, participatory and sustainable in order to the formation of Indonesian human resources, as well as increasing the nation's resilience and competitiveness for national development. One of the services in the health sector is health services in hospitals, both in government hospitals and in private hospitals.

According to Law of the Republic of Indonesia Number 17 of 2023 concerning Health, it is determined that health is a state of health, both physically, mentally,

spiritually and socially that allows everyone to live a productive life socially and economically. Health is an important element in human life. Fulfillment of health is one of the needs that must be met by humans and is the right of everyone, the fulfillment of health is obtained through health services based on Article 28H and Article 34 paragraph (3) of the 1945 Constitution, health is the right of citizens and the responsibility for the state to provide health services. Health *care service* is the right of everyone guaranteed in the 1945 Constitution to make efforts to improve the health status of individuals and groups (society) as a whole.¹

Very few records have been written about the history of Indonesian nurse education, its practices, and the legal regulations of Indonesian nurse anesthetists. Previously, Indonesia already had a law regulating health, namely Law Number 36 of 2009 concerning Health, but along with the development of information and technology, the old rules needed to be repealed and revise the law.²

Therefore, the Government of the Republic of Indonesia through the House of Representatives initiated to make changes or revisions related to the Health Law. The House of Representatives drafted the Health Law using the omnibus law method which aims to serve as a strong and comprehensive regulatory basis to overcome various health problems. In addition, the selection of the omnibus law method for this law is expected as an improvement in health sector regulations is needed to ensure that the structure of laws in the health sector does not overlap and does not conflict with each other as is done with Law Number 11 of 2020 concerning Job Creation.

Health services are one aspect of national development developed through health efforts. Health efforts can be carried out in health facilities. One of the health facilities is the Hospital, which is a health service facility that provides individual health service efforts in a plenary manner including preventive, promotive, curative and rehabilitative efforts.³ One of the health service efforts at the hospital, namely anesthesia services, where in the provision of medical services related to anesthesia actions that require fast, precise and accurate action for rescue. Anesthesiology and intensive therapy services in hospitals are one part of health services that are growing rapidly along with the improvement of science and technology in the field of anesthesia. Anesthesia services in hospitals include anesthesia services in the surgical room and outside the surgical room, perioperative medicine services, acute and

¹ Veronica, Komalawati, *Law and Ethics in Medical Practice*, Jakarta : Pustaka Sinar Harapan, 1989, p.77,

² Dhanya Pandu Satresna, "Regulation of the Omnibus Method in Law No. 13 of 2022 concerning the Establishment of Laws and Regulations," APHTN-HAN Journal, Yogyakarta, 2023

³ Endang Wahyati Yustina, *Getting to Know Hospital Law*, Bandung: CV. Keni, 2012

chronic pain management, cardiopulmonary and brain resuscitation, emergency services and intensive therapy.⁴

Anesthesia Services are high-risk medical procedures that require special expertise, skills, and vigilance in order to facilitate surgery and ensure the safety, security, and comfort of patients. Anesthesia is performed by a team of Anesthesiologists led by Anesthesiologists. Permenkes Number 519 of 2011 concerning Guidelines for the Implementation of Anesthesiology and Intensive Therapy Services in Hospitals and Permenkes Number 31 of 2013 concerning the Implementation of Anesthesia Nurse Work are legal products that regulate the implementation of Anesthesia services. In both Permenkes, it has been regulated that the act of Anesthesia is the authority and responsibility of the Anesthesiologist who has the expertise and authority to do so. Anesthesia services in Indonesia, especially in district areas, are mostly carried out by Anesthesiologists. This profession has proven to make a significant contribution to health services, especially anesthesia services. However, few realize the great contribution to health care made by nurse anesthetists.

Health Human Resources incorporated in anesthesia services are carried out by a team consisting of anesthesiologists and / or anesthesiologist consultants, doctors participating in the anesthesiologist education program for teaching hospitals and assisted by nurses or general practitioners. Based on Kepmenkes number 799 / Menkes / SK / VIII / 2008 point C of energy stated, the requirements for anesthesia nursing personnel include:

1. Nurse anesthetists are nurses trained in anesthesia and have completed a triple anesthesia diploma program or equivalent.
2. Proficient nurses / trained in the field of anesthesia are nurses who have received education for at least 6 (six) months or nurses who have worked in anesthesia services in hospitals for at least 1 (one) year.
3. Experienced nurses in the field of nursing/intensive therapy, namely nurses who have received training and education for at least 6 (six) months or nurses who have worked in services in the intensive service room (ICU) for at least 1 (one) year.

Referring to the Regulation of the Minister of Health of the Republic of Indonesia Number 519 of 2011 concerning Guidelines for Anesthesiology and Intensive Therapy Services that anesthesia services are carried out in teams between anesthesiologists assisted by nurse anesthetists. In its development in 2016, the minister of health issued the Minister of Health Regulation Number 18 of 2016 which

⁴ Ministry of Health of the Republic of Indonesia, 2011, Regulation of the Minister of Health of the Republic of Indonesia Number 519/MENKES/PER/III/2011 concerning Guidelines for the Implementation of Anesthesiology and Intensive Therapy Services in Hospitals, p. 1.

in the closing paragraph expressly states the change in the nomenclature of nurse anesthiologists, which is interpreted as anesthesia stylists. Regulations in hospital accreditation activities are also explained in the working group of anesthesia and surgical services in its parameters, saying that anesthesia and sedation services are carried out or carried out by competent care personnel or professionals in their fields, one of which in the field of anesthesia is anesthiologists and anesthiologists.

Every law formation always aims to protect society from lawless chaos. So that the goals to be achieved are order, justice, and expediency and legal certainty. The achievement of the legal objectives mentioned above will certainly bring the greatest happiness to the general public, especially the legal subjects involved in health services. Law without power will cause law cannot be enforced, but power without law will be very dangerous, will cause arbitrariness (anarchy) so the law must limit power by passing it which is called authority. The authority permitted by law, limits the actions of a person beyond his control, so that if there is an action outside the authority, then an act of violation of the law occurs. Every legal arrangement aims to provide the greatest happiness to the community, so that legal certainty can be achieved. In addition, the purpose of the law is also to provide justice and benefit for everyone in accordance with their rights.

Legal protection is needed in anesthesia services considering the risks of anesthesia, in a closed room and facing unconscious patients. Legal protection is an effort to protect the government or ruler with a number of regulations on legal subjects in the form of legal instruments, both preventive and repressive. With another meaning legal protection as a benefit of the function of law itself, namely the process by which law can provide certainty, justice, order, expediency and peace. Legal protection of nurses focuses on nursing actions carried out against their clients. Nurses are expected to be responsible for every action they take, especially while carrying out their duties as an anesthesia team in the hospital in accordance with their service placement letter.

On August 8, 2023, the President of the Republic of Indonesia signed Law Number 17 of 2023 concerning Health which has been passed in the Plenary Meeting of the House of Representatives on July 11, 2023, namely Health Law Number 7. For derivative rules from Law Number 17 of 2023 concerning Health, namely in the form of Government Regulations, which will be completed by the end of 2023. With the enactment of the Omnibus Law, Law Number 17 of 2023 concerning Health, it is hoped that it will present solutions to various problems in the health sector. Such as health services which are still dominated by curative approaches, availability and distribution of Health Resources (HR), readiness to face health crises, aspects of pharmaceutical independence and Aris Medical Devices.

In addition, Law Number 17 of 2023 concerning Health is also expected to provide legal protection for health service actors. As we know that there are many

cases or legal actions received by health workers but there is no legal umbrella that protects these health workers. In addition, the regulations in this Health Law can advance the health of the Indonesian people through the provision of the best health services. That way, people have wide opportunities to access quality health services in their own country, and can improve the image of the Indonesian nation in the eyes of the international world.⁵

In responding to the regulation of the minister of health, professional organizations take concrete steps to adjust first, strengthen the organization, the second, conduct hearings with the health resource training center of the ministry of health, the third, consult with the director general of higher education of the ministry of education and culture in an effort to open higher education in the field of applied nursing anesthesiology. In the last sentence, still using anesthesiology nursing in regulation, the Directorate General of Higher Education said that the name of the study program certainly still refers to the licensing process, however, graduates from the study program based on the regulations of the Ministry of Education and Culture are called anesthesiologists with a bachelor's degree in applied health (S.Tr.Kes)

The long journey of this profession since 1983 the embryo of this profession is an anesthesia academy in Jakarta which was founded by the first anesthesiologist in Indonesia, its alumni called Penata Anesthesiologist. Then there was a change in regulations due to government policy that this profession was included in the nursing family and the graduates were called Nurse Anesthetists. In 2017 the government with various considerations and stakeholder *inputs* in the field of health services issued several regulations on this profession with higher education equivalent to strata 1 and its alumni are called Anesthesiologists with a strict registration certificate called Anesthesiologists.

Changes in regulations regarding the Anesthesiologist profession have not been implemented well in the field, considering that several health institutions have not implemented this regulation thoroughly, including the possession of an anesthesiologist registration certificate, even though this profession has a risk of vulnerable legal cases that need legal protection and this profession requires high competence under the supervision of an anesthesiologist.

B. Problem Formulation

Based on the above background, the problems to be studied in this study are formulated as follows:

⁵ Satria Indra Kesuma, JOURNAL OF LAW AND GOVERNANCE Socialization on Review of Law Number 17 of 2023 concerning Health Vol.1, No.4 December 2023

1. Are professional actions taken by health workers (anesthesiologists) accommodated in laws and regulations?
2. Has the health institution that employs Anesthesiologists implemented the appropriate regulations?

II. Discussion

A. Legal Protection of Anesthesiologist Health Workers in Laws and Regulations

The Anesthesiologist profession was originally named the Anesthesia Academy Alumni Association (IKLUM AKNES) in 1980 where its members consisted of graduates of the Anesthesia Stylist School which was then established by the Ministry of Health with the aim of meeting the need for human resources in providing health services in the field of anesthesia arrangement. The Association of Anesthesia Academy Alumni (IKLUM AKNES) changed its name to the Indonesian Nurse Anesthesia Association (IPAI). Current technological advances require health care providers to provide quality services. Therefore, in order to improve the degree of public health, improving the quality of service quality is one very important aspect. Nurse anesthesiologist as one of the health service providers who has the task and function of providing professional and quality anesthesiology service care. In line with these efforts, in order for Anesthesia Nurses in health care facilities to provide excellent service for their patients, a regulation is needed that can be used as a reference in every action taken in providing anesthesiology service care.

Anesthesiology and intensive therapy services in health care facilities are one part of health services that are growing rapidly along with the improvement of science and technology in the field of anesthesia. The increase in the need for anesthesiology and intensive therapy services is not matched by the number and distribution of anesthesiologists evenly. This situation causes anesthesia in health care facilities to be carried out by nurse anesthesiologists / anesthesiologists so that responsibility for this service becomes unclear, especially for health care facilities that do not have anesthesiologists. Anesthesia services in health care facilities include anesthesia / analgesia services in the surgical room and outside the surgical room, perioperative medicine services, acute and chronic pain management, cardiopulmonary and brain resuscitation, emergency services and intensive therapy. The type of services provided by each health service facility will be different, depending on the facilities, facilities, and resources owned by the hospital.

Anesthesiologist is one of the types of health workers who have the authority to provide health services in the form of anesthesia arrangement care in accordance with their field of expertise. In order to protect the community receiving health services, every health worker who will carry out their professional practice must have a license in accordance with the provisions of laws and regulations.

The implementation of health services in hospitals has very complex characteristics and organizations. Different types of health workers with their own scientific devices interact with each other. The juridical definition of Anesthesia Services in accordance with Chapter II letter A number 1 of the Minister of Health Regulation Number 519 of 2011 concerning Guidelines for the Implementation of Anesthesia and Intensive Therapy in Hospitals is a high-risk medical action that requires special expertise, skills, and vigilance in order to facilitate surgery and ensure the safety, security, and comfort of patients. Anesthesia is performed by a team of Anesthesiologist service providers led by Anesthesiologists.

Given the impact of anesthesia measures, legal protection is needed for nurse anesthetists. According to Philipus M Hadjon, legal protection aims to provide protection of human dignity and dignity, as well as recognition of human rights possessed by legal subjects based on legal provisions. Furthermore, Hadjon classified the forms of legal protection based on means, namely preventive and repressive protection. The meaning of preventive protection is that the community is given the opportunity to submit its opinion before the government decides on definitive rules to prevent conflict. Then, repressive protection aimed at resolving conflicts. Legal protection is a form of protection provided by the state to its people to be able to maintain legal rights and interests as legal subjects.⁶

The practice of nurse anesthesia is regulated in the Regulation of the Minister of Health Number 519 / Menkes / Per/III / 2011 concerning Guidelines for the Implementation of Anesthesiology and Intensive Therapy Services in Hospitals and Regulation of the Minister of Health Number 31 of 2013 concerning the Implementation of the Work of Anesthesiologists, the legality of nurse anesthesia is increasingly blurred with the issuance of Minister of Health Regulation Number 18 of 2016 concerning Licensing and Implementation of Anesthesia Practice in the closing provisions read. When this Minister of Health Regulation comes into force it comes into force:

1. All nomenclature of Nurse Anesthesiologist in the Regulation of the Minister of Health Number 519 / Menkes / Per/III / 2011 concerning Guidelines for the Implementation of Anesthesiology and Intensive Therapy Services in Hospitals (State Gazette of the Republic of Indonesia Year 2011 Number 224) must be read and interpreted as Anesthesia Stylist; and
2. Regulation of the Minister of Health Number 31 of 2013 concerning the Implementation of Anesthesia Nurse Work (State Gazette of the Republic of Indonesia of 2013 Number 673) is revoked and declared invalid.

⁶ Philipus M. Hadjon, *Legal Protection for the People in Indonesia, a study of its Principles, Handling by Courts in the General Judicial Environment and Establishment of Administrative Justice, Civilization, Jakarta, 2007*

The impact of the repeal of Minister of Health Regulation Number 31 of 2013 concerning the Implementation of Anesthesia Nurse Work makes anesthesia nursing services not strong so that it has an impact on health services in hospitals, so there is a need for legal protection for the anesthesia nurses. Legal protection is needed in anesthesia services considering the risks of anesthesia, in a closed room and facing unconscious patients. Legal protection is an effort to protect the government or ruler with a number of regulations on legal subjects in the form of legal instruments, both preventive and repressive. With another meaning legal protection as a benefit of the function of law itself, namely the process by which law can provide certainty, justice, order, expediency and peace. Legal protection of nurses focuses on nursing actions carried out against their clients. Nurses are expected to be responsible for every action they take, especially while carrying out their duties as an anesthesia team in the hospital in accordance with their service placement letter.

Some arrangements that distinguish between the new Health Law (Law Number 17 of 2023 concerning Health) and the previous Health Law (Law Number 36 of 2009 concerning Health) include Law Number 17 of 2023 concerning Health, health service facilities can provide tele health and telemedicine services, telemedicine services include: between health service facilities (polyclinics, auxiliary health centers, good public hospitals both government and private property) with the community. (Article 172 of Law Number 17 of 2023). Tele Health is the provision and facilitation of health services, including public health, health information services, and self-service, through telecommunications and digital communication technology. Telemedicine is the provision and facilitation of clinical services through communication and digital communication technology.

Whereas in the previous Health Law, it did not regulate telehealth and telemedicine services, telehealth and telemedicine services are comprehensively regulated in the Regulation of the Minister of Health of the Republic of Indonesia Number 20 of 2019 concerning the Implementation of Telemedicine Services Between Health Service Facilities. Telemedicine services consist of services (Regulation of the Minister of Health of the Republic of Indonesia Number 20 of 2019), namely:

1. Teleradiology, is a radiology service using electronic transmission of all radiology modalities from the health facility requesting consultation to the consulting facility to obtain expertise (results of analysis and conclusions by specialists/subspecialists and / or experts) in terms of establishing the diagnosis.
2. Tele Electrocardiography, is an electrocardiographic service using electronic transmission of all electrocardiographic modalities from the health facility requesting consultation to the consulting facility to obtain

expertise (results of analysis and conclusions by specialists/subspecialists and / or experts) in terms of establishing the diagnosis.

3. Tele Ultrasonography, is an ultrasound service using electronic transmission of all ultrasound modalities from the health facility requesting consultation to the consulting facility to obtain expertise (results of analysis and conclusions by specialists/subspecialists and / or experts) in terms of establishing the diagnosis.
4. Teleconsultation clinical is a remote clinical consultation service to help establish the diagnosis, and / or provide consideration / management advice (can be done in writing, voice or video).

In addition, clinical teleconsultation must be recorded and recorded in medical records in accordance with the provisions of laws and regulations. Article 273 paragraph (1) of Law Number 17 of 2023 concerning Health states that medical personnel are entitled to legal protection as long as they carry out their duties in accordance with the standards set by the profession, including service standards, operational procedures, professional ethics, and pay attention to the health needs of patients. The purpose of this law is to protect patients, improve the quality of health care, and provide legal clarity for the public as well as the medical profession, including doctors and dentists. In this case, the right to health in carrying out practice is as follows: obtain legal protection as long as carrying out duties in accordance with professional standards, professional service standards, standard operational procedures, and professional ethics, as well as the needs of patient health; obtain complete and correct information from the Patient or his/her family; obtain adequate salaries/wages, service rewards, and performance allowances in accordance with the provisions of laws and regulations; obtain protection for safety, occupational health, and security; obtain health insurance and employment security in accordance with the provisions of laws and regulations; obtain protection against treatment that is not in accordance with human dignity and dignity, morals, decency, and socio-cultural values; get awards in accordance with the provisions of laws and regulations; get the opportunity to develop themselves through the development of competencies, science, and careers in their professional fields; refuse the wishes of the Patient or other parties that are contrary to professional standards, service standards, standard operational procedures, codes of ethics, or the provisions of laws and regulations; and obtain other rights in accordance with the provisions of laws and regulations.

B. Regulation of Anesthesiologist Health Workers in Regional Agencies

Health laws and regulations state that health workers receive legal protection in carrying out practices as long as they are carried out in accordance with service standards, professional standards, and standard operational procedures. In Law

Number 17 of 2023, it appears that the government's involvement in the world of health, from the center to the regions, is so dominant and reduces the role of professional organizations. According to the government, the dominance of health organizations hinders the growth of specialist doctors due to the high cost of obtaining a license to practice. In fact, the ratio of specialist doctors in Indonesia is still far below standard.

Regulation of the Minister of Health Number 31 of 2013 concerning the Implementation of Anesthesia Nurse Work, is considered to be incompatible with the development of legal dynamics and the needs of the service recipient community. Therefore, to implement the provisions of Article 46 paragraph (7) of Law Number 36 of 2014 concerning health workers, Regulation of the Minister of Health Number 18 of 2016 concerning Licensing and Implementation of Anesthesia Practitioner Practices was established. The Ministerial Regulation emphasizes the status of the Nurse Anesthesiologist that has been there, due to changes in existing regulations, it can be elaborated that Article 24 of this Ministerial Regulation states, among others:

1. All nomenclature of Nurse Anesthesiologist in the Regulation of the Minister of Health Number 519 / Menkes / Per/III / 2011 concerning Guidelines for the Implementation of Anesthesiology and Intensive Therapy Services in Hospitals (State Gazette of the Republic of Indonesia Year 2011 Number 224) must be read and interpreted as Anesthesiologist.
2. Regulation of the Minister of Health Number 31 of 2013 concerning the Implementation of Anesthesia Nurse Work (State Gazette of the Republic of Indonesia of 2013 Number 673) is revoked and declared invalid.

To implement the provisions of article 66 paragraph (2) of Law number 36 of 2014 concerning health, the Minister of Health of the Republic of Indonesia issued a decree number HK.01.07/MENKES/722/2020 concerning professional standards for anesthesiologists. This competency standard is intended as a guideline for anesthesiologists in providing measurable, standardized, and quality anesthesia management care in health care facilities. As well as improving the quality of anesthesiologists in accordance with competency standards and professional ethics in carrying out anesthesia structuring care in health care facilities, as well as for curriculum preparation and educational development.

Regulation of the Minister of Health of the Republic of Indonesia Number 18 of 2016 concerning Licensing and Implementation of Anesthesia Management Practice is one of the types of health workers who have the authority to provide health services in the form of anesthesia management care in accordance with their field of expertise. In order to protect the community receiving health services, every health worker who will carry out their professional practice must have a license in accordance with the provisions of laws and regulations. Regulation of the Minister of Health Number 31 of 2013 concerning the Implementation of Anesthesia Nurse Work, is considered no

longer in accordance with the development of legal dynamics and the needs of the community receiving health services. Based on the above considerations, to implement the provisions of Article 46 paragraph (7) of Law Number 36 of 2014 concerning Health Workers, it is necessary to establish a Regulation of the Minister of Health concerning the Licensing and Implementation of Anesthesia Management Practices.

According to Prof. Soerjono Soekanto, the factors of regulatory effectiveness can be described as follows: The legal factors themselves (laws). Minister of Health Regulation Number 18 of 2016 concerning the licensing and implementation of anesthesia management practices is quite clear and coherent in regulating the licensing and implementation of anesthesia management practices. In accordance with Law number 36 of 2014 concerning health workers in articles (44) and (46). The regulation has also clearly applied the rights and obligations of anesthesiologists, coaching, supervision including sanctions that will be imposed in case of violations. Until now, the regulation is still in effect which indicates that there is no confusion in legal factors; Law enforcement factors, namely those who form and apply the law. In this matter, ministers, provincial local governments, and district/city local governments play a role in coaching and supervising. In the case of hospitals, especially regional hospitals, the hospital director is an extension of the district/city government which should conduct guidance and supervision of the license and implementation of anesthesia management practices.

Most hospitals are known not to know about the intentions contained in the regulation, so the managerial parties under it are not serious about addressing this problem. Not to mention that internal problems related to staffing and payroll make the problem of transferring positions or recruiting new competent personnel ignored. In the field of practice, with the protection of doctors in charge of anesthesiology in perioperative services, administrative problems are not considered an important problem as long as the service continues; The factor of supporting facilities or facilities, facilities are generally divided into two, namely physical and non-physical facilities. Physical facilities such as offices, buildings, warehouses, the number of employees, and so on. In this case, the physical facilities of anesthesiologists with STRPA and SIPPA are still fairly rare. While non-physical facilities include software / software, data base, skills / abilities of officers, and so on. In this case, it is the ability of the hospital to recruit new anesthesiologists with STRPA and SIPPA, or to transfer the position of anesthesiologist who is already working without STRPA and SIPPA. Both depend on how the hospital manages the source of revenue and financing related to the problem; Community factors, this factor focuses on the situation and condition of the community itself. In the past, anesthesiologists were nurses who were specially trained to be able to partner with doctors in charge of anesthesiology in the perioperative anesthesiology service area. The times and

service demands related to minimum service standards and accreditation require hospitals and anesthesiologists themselves to comply with the latest regulations regarding the licensing and implementation of anesthesia management practices. Therefore, all components must improve legal education and knowledge related to the problem; Cultural factors, looking at the dimensions of behavior and propriety of the local community. In this issue, the cultural factor is the attitude of hospitals and anesthesiologists without STR and SIP Anesthesiologists towards the regulations for the implementation of anesthesia management practices. The presence of anesthesiologists practicing without STRPA and SIPPA indicates a low level of legal compliance. The hospital's neglect of this is a major threat to the safety and comfort of perioperative anesthesiology services.

The content of the 2023 Health Bill passed into law by the House of Representatives (DPR) has become a pro and con among health workers. Some of the contents of the 2023 Health Bill that raise pros and cons include:

1. STR is valid for life and professional organization recommendation to get SIP

One of the contents of the 2023 Health Bill is the dominance of health professional organizations. The government assessed that some homework could be completed through the Health Bill, including the creation of specialist doctors. The Health Law also changes the requirements for a doctor to obtain a SIP. To obtain a SIP (License to Practice) as referred to in Article 234 paragraph 2, health workers must have a Registration Certificate (STR), practice address and proof of competency fulfillment," said article 235 paragraph 1 of the Health Law.

2. Health budget allocation

The House of Representatives of the Republic of Indonesia and the government agreed to remove the health budget allocation of at least 10 percent from the previous 5 percent. The government considers that the abolition aims to regulate *mandatory spending* not based on the amount of allocation, but based on the commitment of government budget spending. Thus, certain strategic programs in the health sector can run optimally. However, the omission of the article is not in accordance with the mandate of the Abuja Declaration of the World Health Organization (WHO) and TAP MP RI X / MPR / 2001.

3. Foreign health workers in Indonesia

The issue highlighted by health workers in the revised Health Law is the ease of granting permits to foreign doctors. The newly passed regulation states various requirements for foreign doctors and Indonesian doctors who are diaspora and want to return to the country to open a practice. The requirements that must be pocketed for them to open a practice in the country are to have a temporary Registration Certificate (STR), Practice License (SIP), and Minimum Practice Requirements.

In Article 187 of Law Number 17 of 2023 concerning Health, hospitals can be designated as teaching hospitals and collaborate with universities in organizing

academic, vocational and professional programs. This means that the hospital has a function as a place of education, research, and health services in an integrated manner in the field of education of medical personnel and health workers as well as multiprofessional continuing education. Whereas the previous health law did not regulate this.

There are 2 (two) things that must be considered if the Hospital can be used as an educational center for medical personnel, namely:

1. The availability of sufficient and competent teaching staff with different subspecialty (consultant) qualifications for each type of specialization. The role of the collegium as a teacher of knowledge in each specialization is absolutely necessary to guide and at the same time participate in supervising the course of education.
2. The availability of complete equipment and facilities so that the education and training process can be carried out properly. In addition, the financing factor for participants of specialist education programs that are planned to be given by the government as salaries and free from education fees should be really well planned.

This means that the promulgation of Law No. 17 of 2023 concerning Health provides a glimmer of hope that there will be solutions to meet the needs of specialists/subspecialists in various regions.

1. Health human resources are divided into three parts which include: medical personnel (consisting of doctors and dentists), health workers (consisting of 11 groups of health workers); health support or support personnel (personnel who work in health care facilities or other institutions in the health sector);
2. A registration certificate (STR) is issued by the council on behalf of the Minister of Health and is valid for life;
 - a. A registration certificate (STR) is written evidence provided by the government to health workers who already have a certificate of competence. Every health worker who already has an STR can carry out health service activities.
 - b. Health workers who practice are required to have an STR.
 - c. STR is valid for five years and can be extended every five years by every health worker (doctor, dentist, midwife, nurse, pharmacist) and is regulated in Article 3 paragraph (2) of the Regulation of the Minister of Health of the Republic of Indonesia Number 83 of 2019 concerning Health Worker Registration. However, since the promulgation of Law Number 17 of 2023, STR is valid for life. In addition, expired STRs can be extended through the participation of health workers in educational

and / or training activities, other scientific activities in accordance with their profession, and community activities.

3. A license to practice (SIP) is granted by the District/City Government or the Minister of Health under certain conditions and does not require professional recommendations and organizations;
4. The utilization of medical personnel and health workers of Indonesian citizens (WNI) and Foreign Citizens (WNA) graduates abroad can be done through portfolio assessment for those who practice at least 2 years for Indonesian citizens and 5 years for foreigners or are experts in certain superior fields in health services.
5. The enforcement of medical personnel discipline is carried out by an Assembly formed by the Minister of Health. These assemblies can be permanent or ad hoc.
6. Medical personnel suspected of violating the law in the implementation of health services that can be subject to criminal sanctions, must first be asked for recommendations from the Honorary Disciplinary Council.

Health Law 17 of 2023 (Article 310) clarifies that when medical personnel make mistakes in carrying out their profession that cause harm to patients that lead to disputes, therefore the first step that can be taken is to report the problem to the Professional Discipline Panel (as the enforcement of professional discipline / assembly formed by the Minister of Health). The results of the Professional Discipline Panel examination are binding on medical personnel. If there are allegations of criminal acts, it can be pursued through the mechanism of restorative justice. The mechanism refers to Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.

The establishment of Law Number 17 of 2023 concerning Health has proven to cause inhibition / obstruction. This means that inhibition is carried out by circulars to medical personnel not to provide input, in this case as civil servants are prohibited from providing input or views on the Health Bill. In this case, the medical personnel are civil servants who are members of professional organizations.

From the beginning of the discussion of the Bill on Health to become law in the DPR, it often drew rejection from various elements of society, and various health professions. At the time this article was created, a Formil examination (judicial review) of Law No. 17 of 2023 concerning Health against the Constitution of the Republic of Indonesia of 1945 was being submitted at the Constitutional Court of the Republic of Indonesia based on case No. 130 / PUU-XXI / 2023.

In general, civil liability is indemnity liability. However, it is possible that the hospital is not liable under civil law for distortions in service (malpractice) harmful by anesthesiologists who practice without a license at the hospital. This happens in the situation where the hospital denies anesthesiologists as its workforce, which is

evidenced by showing that the cooperation that exists is only cooperation between anesthesiologists and hospitals. The hospital is able to prove that the anesthesiologist is not a hospital worker, including no list of names, no list or salary slips, no attendance and such data that shows that the anesthesiologist is a hospital worker. However, if it is proven that the anesthesiologist is a subordinate labor of the hospital, then the hospital is civilly liable for losses caused by the anesthesiologist's negligence.

III. Conclusion

The practice of nurse anesthesia is regulated in the Regulation of the Minister of Health Number 519 / Menkes / Per/III / 2011 concerning Guidelines for the Implementation of Anesthesiology and Intensive Therapy Services in Hospitals and Regulation of the Minister of Health Number 31 of 2013 concerning the Implementation of the Work of Nurse Anesthetists, the legality of nurse anesthesia is increasingly blurred with the issuance of Minister of Health Regulation Number 18 of 2016 concerning Licensing and Implementation of Anesthesia Nurse Practice. The impact of the repeal of Minister of Health Regulation Number 32 of 2013 concerning the Implementation of Anesthesia Nurse Work makes anesthesia nursing services not strong so that it has an impact on health services in hospitals, so there is a need for legal protection for the anesthesia nurses.

Law No. 17 of 2023 concerning Health provides a glimmer of hope that there will be solutions to meet the needs of specialists/subspecialists in various regions. The establishment of Law Number 17 of 2023 concerning Health has proven to cause inhibition / obstruction. This means that the inhibition carried out by the circular of medical personnel not to provide input, in this case as civil servants are prohibited from providing input or views on the Health Bill. In this case, the medical personnel are civil servants who are members of professional organizations.

The regulation already tells how hospitals as an extension of ministers, provincial and district / city governments should act, how to respond and sanctions. However, the presence of anesthesiologists who practice without STRPA and SIPPA is an indication that the law is not working optimally in society.

BIBLIOGRAPHY

Book

Endang Wahyati Yustina, 2012, *Mengenal Hukum Rumah Sakit*, Bandung: CV. Keni, hlm. 9.

Hakim Lukman dkk, 2022, *Komplikasi Regulasi Penata Anestesi*, Surabaya : Ikatan Penata Anestesi Indonesia

Philipus M. Hadjon, 2007, *Perlindungan Hukum Bagi Rakyat di Indonesia, sebuah studi tentang Prinsip-Prinsipnya, Penanganannya oleh Pengadilan dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Administrasi*, Jakarta : Peradaban

Legal Regulations

Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja

Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan

Permenkes

Permenkes Nomor 519 Tahun 2011 tentang Pedoman Penyelenggaraan Pelayanan Anestesiologi dan Terapi Intensif di Rumah Sakit

Permenkes Nomor 18 tahun 2016 tentang Izin dan Penyelenggaraan Praktik Penata Anestesi

Journal

Dhezya Pandu Satresna, "Pengaturan Metode Omnibus Dalam Undang-undang No. 13 Tahun 2022 tentang Pembentukan Peraturan Perundang-undangan, " Jurnal APHTN-HAN, Yogyakarta, 2023

Prayitno Edi, Tanggung Jawab Hukum Praktik Tanpa Surat Izin oleh Penata Anestesi di Rumah Sakit, Jurnal Hukum dan Etika Kesehatan, Vol. 1, No. 1 Maret-September 2021

Satria Indra Kesuma, Sosialisasi Tentang Ulasan Undang-Undang Nomor 17 Tahun 2023 Tentang Kesehatan, Jurnal Ilmu Hukum Dan Tata Negara , Vol.1, No.4 Desember 2023

Kumala Rina dkk, Efektivitas Regulasi Penyelenggaraan Praktik Penata Anestesi Dengan STRPA dan SIPPA Dalam Pelayanan Anestesiologi Perioperatif, Jurnal Kebijakan Kesehatan Indonesia, Vol. 12, No. 01 Maret 2023

Internet

Aryo Putranto Saptohutomo, 2023, "Poin-poin Keberatan Nakes Atas UU Kesehatan yang Baru Disahkan", <https://nasional.kompas.com/read/2023/07/11/18443501/poin-poin-keberatan-nakes-atas-uu-kesehatan-yang-baru-disahkan>, diunduh 26 Januari 2024.

Nur Rohmi Aida, Farid Firdaus, 2023, "Pro Kontra UU Kesehatan yang Baru Disahkan", <https://www.kompas.com/tren/read/2023/07/12/123000265/pro-kontra-uu-kesehatan-yang-baru-disahkan>, diunduh 26 Januari 2024.