

## The Juridical Implications for the Implementation of Therapeutic Agreements Between Hospitals and Patients in the Concept of Legal Certainty

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**Abstract.** *A doctor is someone who is an expert in disease and treatment and can provide health services to patients. For this reason, patients can contact doctors through medical centers, hospitals and independent practice doctors. In health services between doctors and patients, there is an oral agreement called a therapeutic agreement as a source of legal relations and in writing it regulates in detail and regularly the legal relationship that arises between doctors and patients in therapeutic agreements, the implementation of therapeutic agreements between independent practicing doctors and patients, and responsibilities. the doctor's law against the patient in the implementation of the therapeutic agreement. This research is sociological juridical legal research which is supported by empirical research with descriptive research type. The problem approach used is a qualitative approach. The results of the research and discussion show that the legal relationship between independent practicing doctors and patients is a contractual relationship which in the field of health services is known as a therapeutic agreement between the patient and the hospital. A therapeutic agreement is an agreement to perform certain services (Article 1601 of the Civil Code) and is a type of inspanning verbal service agreement. namely an agreement based on the doctor's maximum efforts to cure the patient's illness. This relationship is binding because there are rights and obligations of the doctor and patient which are realized in the implementation of the therapeutic agreement. The therapeutic agreement begins when the patient comes to the doctor's office. The patient can be held responsible for the doctor's actions that cause harm to the patient. This liability can be in the form of responsibility due to breach of contract or responsibility due to unlawful acts.*

**Keywords:** *agreement; patient; Therapeutic.*

## 1. Introduction

Hospitals in the field of civil law are considered responsible in the field of civil law if the medical personnel they employ, such as doctors, do not carry out their obligations (breach of promise), namely not providing their performance as agreed and due to unlawful acts. Doctors' actions that can be categorized as breach of contract include: Not doing what is agreed to be done, doing what is agreed to be done but late, doing what is agreed to be done but not perfectly and doing what is agreed not to be done.<sup>1</sup>

The presence of a doctor's legal responsibility towards a patient is known as a therapeutic relationship or therapeutic transaction, where there is a bond of contact, although not written, between the patient and the doctor in this case the treatment and care of the disease and between the patient and the hospital in terms of services by providing standard facilities and infrastructure. Based on this relationship, the doctor and the hospital should fulfill their obligations to provide health services according to service standards, professional standards, and standard operating procedures to patients whether requested or not. Therefore, it is very important to communicate well from the doctor or hospital about the patient's health problems completely and in detail. so that patients understand their health conditions and their rights as patients which are also protected by law.<sup>2</sup>

Problems between medical personnel such as doctors and patients often occur, even some of these conflicts involve hospitals as one of the health facilities, where the doctor devotes himself, also being sued. Several cases then appear in the mass media, even though cases that do not reach the mass media often occur. In fact, the public spotlight on the medical profession is a sign that currently some people are not satisfied with medical services and the dedication of the medical profession in society. In general, the dissatisfaction of patients and their families with the doctor's service is because their expectations cannot be met by the doctors, or in other words, there is a gap between expectations and the reality obtained by the patient.<sup>3</sup>

In line with the explanation above, the legal relationship between a doctor and a patient indirectly requires that everything the doctor does to the patient must involve the patient in determining whether or not something can be done to him/her. One form of equality in the legal relationship between a doctor and a patient is through informed consent or approval of medical action. The patient

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<sup>1</sup>Bahder Johan Nasution, *Health Law: Doctors' Responsibilities*, Rineka Cipta, Jakarta, 2013, page 108

<sup>2</sup>Arrie Budhiartie. Legal Responsibility of Nurses in the Provision of Health Services in Hospitals, *Journal of Law, Faculty of Law, University of Jambi*. Vol. 11 No. 2, 2017, p. 63

<sup>3</sup>GIRI, Nyoman Ngurah Bagus Wiradharma; PRIYANTO, I Made Dedy, 2020. LEGAL PROTECTION FOR PATIENTS AS CONSUMERS USING SERVICES IN THE FIELD OF HEALTH IN THERAPEUTIC TRANSACTIONS. *Kertha Wicara Journal of Legal Science, Udayana University*  
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has the right to decide whether to accept or reject part or all of it. action plan in the treatment that will be carried out by the doctor on him. Law of the Republic of Indonesia Number 29 of 2004 concerning Medical Practice, specifically regulates the Rights and Obligations of Doctors, in the law, it is stated that doctors are required to provide medical services according to professional standards and operational procedure standards.<sup>4</sup>

Therapeutic transactions are categorized as agreements regulated in the provisions of Article 1601 of the Civil Code, namely "In addition to agreements to provide several services regulated by special provisions for that and by agreed conditions, and if these provisions and conditions do not exist, agreements regulated according to custom, there are two types of agreements, by which the first party binds himself to do a job for another party by receiving wages, namely: work agreements and work contract agreements".<sup>5</sup>Therefore, this therapeutic transaction is a type of agreement to perform services regulated in special provisions. The special provisions are Law Number 36 of 2009 concerning Health (hereinafter referred to as the Health Law).<sup>6</sup>

The legal relationship between a doctor and a patient results in the emergence of rights and obligations that must be fulfilled by the parties, so that there is a legal responsibility that must be fulfilled by a doctor. This responsibility occurs if a doctor makes a mistake in medical services limited only as a result of the relationship born from an agreement that has been agreed upon by the doctor and the patient. Therefore, in civil law, a doctor's responsibility can be seen from three aspects, namely: a. Due to default, regulated in the provisions of Article 1243 of the Civil Code. b. Due to unlawful acts, regulated in the provisions of Article 1365 of the Civil Code. c. Due to negligence, regulated in the provisions of Article 1366 of the Civil Code.

Based on the explanation above, if you look at one of the surgical agreements given by the Hospital, it is not in accordance with the principle of balance in the agreement because the medical action agreement made by the Hospital still contains an exoneration clause that violates the principle of balance, as happened to one of the patients who was a patient affected by the implementation of the therapeutic agreement, the patient felt disadvantaged because the exoneration clause in the surgical agreement made contained a transfer of responsibility, even in the medical action agreement made by the Hospital there is a sentence that states that: "the patient has understood the action, including the risks and complications that may occur and therefore I (the patient) also realize that medicine is not an exact science, so the success of

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<sup>4</sup> Kasim, 2019. LEGAL ASPECTS OF INFORMED CONSENT AND THERAPEUTIC AGREEMENT, 2019. November 2019 Academic Scientific Journal of Media Publication of Science and [http://eSearchgate.net/publication/347656296\\_ASPEK\\_HUKUM\\_INFORMED\\_CONSENT\\_DAN\\_PERJANJIAN\\_TERAPEUTIK](http://eSearchgate.net/publication/347656296_ASPEK_HUKUM_INFORMED_CONSENT_DAN_PERJANJIAN_TERAPEUTIK)

<sup>5</sup> Achmad Busro, 2011, Contract Law Based on Book III of the Civil Code, Pohon Cahaya, Yogyakarta, p. 75

<sup>6</sup> Ibid., p. 94

medical action depends on God". Based on the sentence stated in the agreement, it can be seen that the doctor and the hospital wrote the sentence so that they cannot be held legally responsible. According to the author's initial observations, this is a form of transfer of responsibility that is prohibited in civil law.

In accordance with the author's explanation of the background of the problem above, the author is interested in conducting further research with the title: "Legal Implications on the Implementation of Therapeutic Agreements Between Patient Homes in the Concept of Legal Certainty".

## **2. Research Methods**

This research uses a sociological juridical approach method which uses specification analytical descriptive. The data used includes secondary data and primary data. Data retrieval comes from primary legal materials, secondary legal materials, and tertiary legal materials.<sup>7</sup>

## **3. Results and Discussion**

### **3.1. Therapeutic Agreement Between Hospital and Patient in the Concept of Legal Certainty**

In today's modern era, in everyday life, of course we are familiar with the term obligation which is broader than an agreement. An obligation is a legal relationship, so it is a consequence of legal norms. The relationship between two people, because one to the other according to moral or decency rules (*fatsoen*), is obliged to do certain actions, but not according to written or unwritten legal norms, is not an obligation. Or it can be said that an obligation is a legal relationship that lies in the field of wealth, both easy and difficult to value with money between two or more people where one party has the right to an achievement and the other party is obliged to an achievement.<sup>8</sup>

In medicine, there is a therapeutic agreement or therapeutic transaction, namely an agreement between a doctor and a patient that gives the doctor the authority to carry out activities to provide health services to the patient based on the expertise and skills possessed by the doctor.<sup>2</sup> This is done after the doctor has received information from the doctor regarding medical efforts that can be made to help him, including obtaining information regarding any risks that may occur.

However, it is different if the patient is admitted to the hospital, especially in the Emergency Room (IGD). Most patients who enter the ER are patients who must receive help as soon as possible, otherwise it will threaten the patient's life. Patients who experience an emergency must also immediately receive medical treatment and set aside therapeutic agreements.<sup>9</sup>

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<sup>7</sup> Soejono Soekanto, 2007, Introduction to Legal Research, UI Press, Jakarta, p. 45

<sup>8</sup> Achmad Busro Op. cit. page 6.

<sup>9</sup> Erdianto Setya Wardhana, Febia Astiawati Sugiarto, Nadya Restu Ryendra, 2023, Improving Public Understanding of Tooth Extraction and Medical Action Consent (Informed Consent) in Health

The agreement gives rise to certain legal consequences in the form of rights obtained and obligations that must be carried out by the parties. These obligations can be said to be achievements whose fulfillment is by giving something, doing something and not doing something. Including a therapeutic agreement (informed consent) made by the hospital and approved by the patient gives rise to these rights and obligations. A therapeutic agreement or therapeutic transaction itself is an agreement between a doctor and a patient that gives the doctor the authority to carry out activities to provide health services to the patient based on the expertise and skills possessed by the doctor.<sup>11</sup> This is done after he receives information from the doctor regarding medical efforts that can be taken to help him, including obtaining information about all possible risks.<sup>10</sup>

Law is generally defined as the entire collection of written regulations or rules in a society as a social structure, the entirety of behavioral rules that apply in a shared life, which can be enforced with a sanction. According to Van Apeldoorn, the purpose of law is to regulate social order peacefully and fairly. Peace among humans is maintained by law by protecting certain human interests, honor, freedom, life, property, and so on from those who harm them.

The existence of law in society is to integrate and coordinate the interests of all members of society. The regulation of these interests should be based on a balance between giving freedom to individuals and protecting the interests of society within it. The order created by the new law becomes a reality when the legal subject is given rights and obligations (Yuliati, 2005: 9). Lexically, protection is defined as a place of shelter, something or an act of protecting. Protection is defined as an act of providing guarantees or security, tranquility, welfare and peace from the protector to the protected against all dangers or risks that threaten him.

Health is a basic human need, so this need will always be met in order to improve the quality of human health, so that their lives are always guaranteed. To protect patients from errors and negligence in health services, in 1992 Law Number 23 of 1992 concerning Health was enacted (has been amended by Law Number 36 of 2009 concerning Health) and in 1999 Law Number 8 of 1999 concerning Consumer Protection was enacted. Regarding the position of patients as consumers of health services and doctors/health workers as business actors in the field of health services, it is still being debated by several parties.<sup>11</sup>

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Services in Tegal Regency, Community Service Journal, Vol 1, No 1. <https://jurnal.unissula.ac.id/index.php/dentmas/article/view/31887>

<sup>10</sup>Ibid.

<sup>11</sup>Muh Amin Dali, Warsiti Kasim, 2019. LEGAL ASPECTS OF INFORMED CONSENT AND THERAPEUTIC AGREEMENT, 2019. November 2019 Akademika Scientific Journal of Science and Technology Publication Media. [http://eResearchgate.net/publication/347656296\\_ASPEK\\_HUKUM\\_INFORMED\\_CONSENT\\_DAN\\_PERJANJIAN\\_TERAPEUTIK](http://eResearchgate.net/publication/347656296_ASPEK_HUKUM_INFORMED_CONSENT_DAN_PERJANJIAN_TERAPEUTIK)

The party that argues that the position of the patient as a consumer of health services and the doctor/health worker as a business actor in the field of health services is guided by Law Number 8 of 1999 concerning Consumer Protection. Based on the Decree of the Minister of Health 756/2004, which states that health services are included in business. While on the other hand, the therapeutic relationship is basically a special binding relationship, therefore if there is a conflict between the service provider and the recipient of health services, each party must submit to the legal concept that regulates it. In therapeutic transactions, the characteristics of the agreement are is spanning, meaning that it is not based on the final result but is based on serious efforts. In this case, the doctor or hospital is not required to provide or create a result desired by the patient, because in medical transactions there are many things that influence and are factors that are beyond the reach of the doctor's ability, such as the patient's immune system, age, physical condition, level of illness suffered, patient compliance, quality of medicine and availability of health care facilities. Therefore, this obligation is subject to the general principles of obligations as regulated in Article 1320 of the Civil Code.

Regardless of the differences of opinion above, what is no less important is the mechanism by which the dispute will be resolved. Basically, conflict resolution between patients and health service providers can be carried out through mechanisms in court or out of court. If chosen through the court route, of course there is a separate mechanism in accordance with the dispute resolution mechanism with the consequence that the resulting decision will be a win-lose solution, but in terms of certainty of law enforcement in accordance with existing positive law, it will be stronger because it will be facilitated by a judge. While in out-of-court settlements, the resulting agreement will be a win-win solution by setting aside the legal process because what is sought is a consensus agreement.

### **3.2. Efforts to Resolve Losses Experienced by Patients Based on Permanent Agreements**

The basis for medical liability is an unlawful act (on rechtmatige daad), the doctor has acted unlawfully because his actions are contrary to the principles of propriety, accuracy and careful attitude expected of him in his interactions with fellow citizens (responsibility based on law). In this case, what applies is Article 58 of Law Number 36 of 2009 concerning Health, 1365 of the Civil Code (Article 1401 BW) concerning provisions on unlawful acts. In order to file a lawsuit based on unlawful acts, 4 (four) conditions must be met as stated in Article 1365 of the Civil Code, namely:<sup>12</sup>

- a. The patient must experience some loss;
- b. There is an error or negligence (besides individuals, hospitals can also be held responsible for the errors or negligence of their employees);
- c. There is a causal relationship between the loss and the error;

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<sup>12</sup>Op cit subekti. p. 32

d. The act is against the law

In liability for unlawful acts, the element of fault stands alone (schuld wet zelfstanding vereist). On the other hand, it seems that the problem of fault in unlawful acts, in certain cases, becomes less important because there is a tendency for the element of fault to be "imagined" (deschuldfictie), "assumed" (de schuld-vermoeden), "objectified" (de schuldobjectivering).<sup>13</sup>

According to the law, every responsibility must have a basis, namely something that causes the emergence of a person's legal right to sue another person as well as something that gives rise to the legal obligation of that other person to provide accountability. In general, the principles of responsibility in law are distinguished as follows:<sup>14</sup>

- a. the principle of liability based on fault;
- b. the principle of presumption of liability;
- c. the principle of presumption of non liability;
- d. the principle of strict liability;
- e. the principle of liability with limitations (limitation of liability).

It is undeniable that even though there are many regulations governing the running of an activity, in practice there will definitely be problems that arise. Like there are parties who feel disadvantaged or feel that their rights are not fulfilled. This is known as a breach of contract or the failure to full fill an achievement that should have been done by one party to another party but did not run as it should.

Therapeutic relationship is a bond based on maximum effort where the doctor does not promise a cure but promises to make maximum effort to cure, therefore the actions taken are not necessarily successful. This relationship is called inspanningsverbintenis which is not seen from the results but is more emphasized on the efforts made the results are not as expected and this is different from the result at sverbintenis relationship which is assessed from the results achieved and does not question the efforts made. This is in accordance with the Physician's Oath in point 7 (seven) which reads "I will always prioritize the health of patients, by paying attention to the interests of society."

But an action that does have a specific procedure, for example bone grafting surgery, cesarean section, hysterectomy and so on. If the procedural thing is carried out but not according to procedure and causes harm to the patient, then it can be said to be malpractice. If there are problems that arise related to services to patients or the community, the Public Relations and Marketing (Humsar) of Bhayangkara Semarang Hospital expects the community to be active in providing criticism and suggestions so that services that are considered less than good can be changed. Even if there are complaints received, they will be

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<sup>13</sup>Ibid.p.53

<sup>14</sup>Ibid, p. 55.



processed by the Public Relations and Marketing (Humsar) section by being accommodated first. Then it will be followed up to the section that was complained about.

#### 4. Conclusion

In every civil relationship, there will be achievements for the parties, including in a therapeutic agreement that provides an obligation for the doctor to make efforts to cure the patient. However, the results of a doctor's medical actions are full of uncertainty because there are many factors beyond the doctor's control that can influence. Therapeutic agreements are oriented towards healing efforts, therefore with legal protection for patients, this will guarantee that all doctor's actions are solely for the health of the patients according to the provisions of the Health Law. Patients are protected in their rights in therapeutic agreements, including the right to quality health, the right to accept or reject medical actions (informed consent), the right to obtain information about their health (medical records), and the right to claim compensation for detrimental actions related to their health. The form of civil liability regulated by law is in the form of compensation for every act of a health worker that is detrimental. A civil liability in a violation of a therapeutic agreement, a person can only claim compensation if there is an indication of a violation of the law and there is a loss experienced by the patient based on the liability adopted by the Civil Code (Article 1365) and Article 58 paragraph (1) of the Health Law.

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