



Analysis of Therapeutic Relationships as a Means of Legal Protection for Patients and Doctors

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Abstract. A therapeutic transaction is an agreement between a doctor and a patient that gives authority to the doctor to carry out activities to provide health services to patients based on the expertise and skills possessed by the doctor. The legal relationship in such therapeutic transactions, gives rise to rights and obligations that must be obeyed and carried out by each party. The emergence of rights and obligations as a result of the legal relationship between doctors and patients has the potential to trigger disputes between doctors and patients or medical disputes. In an effort to avoid or reduce medical disputes that occur, it is necessary to understand the construction of a legal relationship between doctors and patients. It is from this legal relationship that will give birth to legal actions and cause legal consequences. In a legal consequence, the inseparable thing is about who is responsible, to what extent responsibility can be given. This research uses a normative juridical approach method that will be analyzed through data collection, reducing data. The therapeutic transaction positions the position of doctors and patients, on an equal relationship in the hope that it will provide legal protection for the parties, but in reality the norms have not been able to provide legal protection. This happens because there is no regulation for the implementation of therapeutic transactions consistently.

Keywords: Doctor, Patient, Legal Relations

1 Introduction

In the Field of National Health, it is stated that health covers all aspects of life whose scope and reach are very wide and comprehensive. A doctor is a health worker who performs his duty to heal patients who come to him. The relationship between the doctor and the patient begins from the moment the patient comes to the doctor and submits his complaint in the hope that he will recover after getting health services from the doctor. Although it is the duty and obligation of a doctor to cure diseases suffered by patients, there are things that are often not realized by him that there is actually a legal relationship between doctors and patients. The legal relationship here arises from the agreement between the doctor and the patient in the health sector.

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At first the relationship of doctors and patients was based on a paternalistic relationship. This pattern of paternalistic relationships, that is, the doctor is considered to be trying his best to cure the patient. This paternalistic relationship is a pattern of relationships based on a sense of trust (fiduciary relationship) between the patient and a doctor.

As for the vertical relationship pattern that gives birth to the paternalistic nature of the medicine to someone who is sick, it contains both positive and negative impacts. A vertical pattern of relationship in which the position of the doctor with the patient is not equal, the patient leaves fate entirely to the doctor who treats him. This attitude of resignation is reflected if as a result of the treatment the patient becomes disabled or even dies, then it is considered a destiny from God. Therefore it used to be rare to hear of patients or their families, blaming or suing the doctor who treated him.

Along with the development of the era, the relationship between doctors and patients with a paternalistic pattern changed to a contractual horizontal. The contractual horizontal relationship causes doctors and patients to have equal positions. Doctors and patients are legal subjects who form medical relationships and legal relationships with objects in the form of health care and disease treatment. This relationship gives rise to rights and obligations that must be fulfilled by the parties.

The legal responsibility of doctors is the "attachment" of doctors to legal provisions in carrying out the profession as a doctor. The responsibilities of a doctor in the field of law are divided into three parts, namely the legal responsibility of doctors in the fields of civil law, criminal law and administrative law.

In some literature it is mentioned that this relationship of the doctor with the patient is referred to as the therapeutic relationship, that is, the relationship to seek and apply the most appropriate therapy to cure the patient. The therapeutic relationship covers the diagnostic, preventive, rehabilitative, and promotional fields.

The doctor must fulfill his obligation to provide health services according to service standards, professional standards and standard operating procedures to patients, whether requested or unsolicited, because in principle of the therapeutic transaction, the health provider and the health receiver are both legal subjects who have equal rights and obligations in accordance with the legal principle of equality before the law and stated in Article 1320 of the Civil Code regarding the legal requirements an agreement.

This therapeutic relationship rests on two kinds of human rights, namely the right to determine one's own life and the right to information. It is based on these two basics that the doctor and the patient together determine the most appropriate therapy to be used, where before the healing effort is carried out, it is necessary to have patient consent, known as informed consent.

Literally informed consent consists of two words, namely: informed, which means information or information and consent which means consent. Informed consent in the opinion of Veronica D Komalawati states, that : "An agreement or agreement on the medical efforts made by the doctor against him after the patient has been informed by the doctor about the medical requirements that can be done to help him accompanied by possible risks".

Informed Consent or approval of medical actions is a form of parallel relationship between doctors and patients. Through the Informed Consent, the patient has the right to decide whether or not to approve, either in part or in whole, the plan of action and treatment for himself that will be carried out by the doctor.

The relationship or agreement between the patient and the doctor is related to civil law which will be subject / bound by the provisions of civil law, namely about the terms of validity of the agreement as stipulated in Article 1320 of the Civil Code, which is bound by the rules in the Civil Code Book III Chapter II concerning agreements born of agreements.

Lawsuits from parties who feel aggrieved by their rights or interests are the result of the disharmony of legal relations between the two parties due to the denial of the performance of obligations of each party.

Research in the alleged occurrence of medical malpractice cases should be carried out by going through stages, namely the investigation stage, then the investigation stage, then the prosecution stage, after having sufficient evidence, an examination is carried out at the court hearing to prove the presence or absence of errors (intentionality or negligence) committed by the health worker concerned who is considered to have committed malpractice. To find the truth about the presence or absence of errors (intentional or negligent) of health workers or health service facilities in the place concerned where this alleged case of medical malpractice occurred, the judge can use the patient's medical records as evidence to find the facts of the truth of the malpractice or not.

2 Problem Formulation

Based on the description in the introduction, the problem can be formulated as the subject of study in this study as follows:

1. What is the legal position between doctors and patients and what is the arrangement of rights and obligations in therapeutic transactions between doctors and patients according to positive law in Indonesia?
2. How does Medical Records review the law as evidence in the defense of the therapeutic relationship between doctors and patients in Court?

3 Research Methods

This researcher uses normative juridical research methods. Where this research emphasizes and directs to the way of literature study (libraryresearch) and document studies to collect data from literature related to the legal issues studied. In the collection of legal materials, as much data as possible obtained and collected is sought on issues related to this research .

4 Discussion

4.1 Legal Position Between Doctors and Patients and the Regulation of Rights and Obligations in Therapeutic Transactions Between Doctors and Patients According to Positive Law in Indonesia

The trust factor is one of the basics for patients to come to the doctor, who believes that the doctor can and is able to help cure the disease. This is because the patient is a person who is unfamiliar with medical science and does not know the disease he suffers from, so he really needs a person who can be trusted to help cure his disease. The trust of the patient is what results in the position of the doctor being higher than the position of the patient.

True therapeutic transactions position doctors and patients, on equal or equal relationships. This condition can be seen from the many laws and regulations that regulate it, ranging from (Law No. 29 of 2004 concerning the Practice of Medicine, Law No. 36 of 2009 concerning Health and Law No. 44 of 2009 concerning Hospitals), (PP Number 1960 concerning Compulsory Keeping of Medical Secrets) to regulations in the form of technical regulations regulated in the Regulation / Decree of the Minister of Health (Permenkes Number 269 of 2008) concerning Medical Records, Permenkes No. 290 of 2008 concerning Approval of Medical Measures, PermenKes Number 2052/MENKES/ PER/ X/ 2011 concerning Licenses for the Practice and Implementation of Medical Practice.

Informed Consent or approval of medical actions is a form of parallel relationship between doctors and patients. Through the Informed Consent, the patient has the right to decide whether or not to approve, either in part or in whole, the plan of action and treatment for himself that will be carried out by the doctor.

So many norms govern such therapeutic transactions in the hope of providing legal protection for the parties, but in reality they have not been able to provide legal protection.

This happens because there is no regulation for the implementation of therapeutic transactions consistently. In the sense that the parties are aware of and know their respective positions and positions, because there are still many doctors who do not understand that therapeutic transactions give rise to a legal relationship between doctors and their patients so that as a result doctors consider that patients are objects not subjects in medical services.

In the relationship between the patient and the doctor or what is known as the therapeutic transaction the agreement occurs at the moment when the patient comes to the doctor to cure the disease and the doctor promises to try to treat or cure the disease. The relationship between the patient and the doctor gives rise to rights and obligations and forms their respective responsibilities. For doctors the achievement of doing something or not doing something in this case not doing wrong or wrong in medical treatment that is solely intended for the benefit of the patient's health is a very basic legal obligation in a therapeutic agreement or contract.

Patient rights are human rights derived from basic individual rights and basic social rights. Two legal principles that underlie health law, namely the right to health care and the right of self-determination, are basic rights or primary rights in the field of health, especially medical law.

The recognition of patient rights is regulated in Permenkes No. 290/2008 concerning informed consent and Permenkes No. 269/2008 Medical Records. These rights are increasingly getting actualized with the promulgation of Law No. 36 of 2009 concerning Health, Law No. 44 of 2009 concerning Hospitals and So that even though Law Number 29 of 2004 concerning the Practice of Medicine.

The right to health care is formulated in Article 4 of Law Number 36 of 2009 concerning Health which states that "Everyone has the right to health". The concept of the right to health refers to the meaning of the right to obtain health services from health facilities in order to realize the highest degree of health.

There are several kinds of rights and obligations of patients and doctors as stipulated in Law Number 29 of 2004 concerning the Practice of Medicine. Regarding patient obligations regulated in Article 53 of Law Number 29 of 2004, namely:

1. Provide complete and honest information about his health problems;
2. Obey the advice and instructions of the attending physician;
3. Comply with the applicable provisions in health care facilities and provide compensation for services received.

Article 52 of the Medical Practice Law also states that the Right of the Patient is to get a complete explanation of medical actions that include the diagnosis and procedures for medical procedures, the purpose of the medical actions carried out, alternative actions and their risks, risks and complications that may occur, as well as a prognosis of the actions taken. Patients also have the right to ask for the opinion of a doctor or other dentist, get services according to medical needs, refuse medical procedures and obtain the contents of medical records.

On the contrary, there are rights of doctors as stipulated in Law Number 29 of 2004 as regulated in Article 50, namely as follows:

1. Obtain legal protection as long as carrying out duties in accordance with professional standards and standard operating procedures;
2. Providing medical services according to professional standards and standard operating procedures;
3. Obtain complete and honest information from the patient or his family;
4. Receive a reward for services.

There are also several obligations of doctors regulated in several articles of the Medical Practice Law, all of which if collected, the obligation of doctors is to attend continuous medical education and training organized by professional organizations and other institutions accredited by professional organizations in order to absorb the development of medical science and technology, have a Registration Certificate (STR) and a License to Practice (SIP), providing medical services in accordance with professional standards and standard operating procedures and medical needs of patients, referring patients to doctors or other dentists who have better expertise or abilities, if unable to carry out an examination or treatment, keeping everything they know about the patient confidential, even after the patient dies, carrying out emergency assistance on a humane

basis, unless he believes someone else is in charge and capable of doing so, and administers quality control and cost control.

From this, it can be seen that doctors have the right to get complete and honest information from patients or their families, which means it is the patient's obligation to fulfill the rights of doctors. The main function of information for the patient is as a basis or basis for the consent that he will give to the doctor. On the contrary, for the information provided from the patient to the doctor about the disease, the patient also has the right to get clear information from the doctor about the disease he suffers from.

If the information provided by the doctor is inadequate or the doctor does not provide any information at all, then the patient does not have sufficient grounds to decide whether to give or not give approval to the doctor. In addition to this, information for patients also serves as protection for the patient's right to determine his own destiny, in the sense that the patient has the full right to apply a medical action or not.

The patient's right to this information in everyday life receives less attention in its implementation. This situation is due to the fact that most patients never exercise this right, patients are still afraid or reluctant to ask the doctor for information about his state of health or illness as well as the medical measures that the doctor will take against him.

That until now there are still many patients consider that the achievement of the agreement between the patient and the doctor is in the form of curing the disease suffered by the patient, so many of the patients feel that there is no need to pay the doctor if it turns out that the disease suffered by the patient is not cured.

Such an assumption is erroneous, because the problem of curing a patient's disease does not depend solely on the treatment carried out by the doctor, but there are many other factors that influence it, such as the patient's physical condition, the patient's obedience to the commands given by the doctor in the context of treatment, environmental conditions, the stage of the patient's illness when he comes to the doctor and so on.

The patient is also obliged to give honorarium to the doctor for the help that has been given because in this case the patient does not have the qualifications and authority as the doctor. The therapeutic agreement between the patient and the doctor that is highlighted more is the issue of the patient's trust in the doctor. With the trust of a patient, patients can be invited to cooperate in overcoming the disease they suffer from. As already explained in advance, the success of healing is not solely on the doctor's treatment but includes the patient's adherence to the doctor's advice.

If at some point the patient no longer trusts the treatment carried out by a doctor, then the agreement they close or do has no benefit anymore, therefore unilateral termination of the relationship by a patient can be justified or allowed, because the issue of trust cannot be forced. The patient still has the right to choose which doctor he believes in and can seek healing for himself as a form of implementation of the principle of freedom of contract.

Unlike a doctor, he is not allowed to unilaterally terminate the agreement at will without seeking prior consent on the part of the patient without a reason that can be accounted for.

The doctor may terminate the relationship unilaterally without the consent of the patient if the ability to handle the case is limited further, the patient's rejection of the treatment method offered by the doctor or the presence of a non-cooperative attitude of the patient.

Doctors still have a moral obligation to remind patients of the importance of continuing treatment to another doctor and an obligation to provide him with important medical records. Under normal circumstances, the doctor is not allowed to unilaterally terminate the agreement with the patient, where the patient still needs medical assistance from the doctor concerned, this will be contrary to the oath of office and the code of ethics of the medical profession.

Although in reality doctors have reasons such as the above, doctors to unilaterally terminate the agreement of the doctor still have to consider the patient's condition, the possibility of obtaining a replacement doctor for the patient. Before the patient gets a replacement doctor, the doctor is still obliged to treat the patient concerned.

If it turns out that the doctor terminates the agreement unilaterally without the consent of the patient and without any reason that can be accounted for resulting in harm to the patient, then the patient can file a claim or lawsuit for compensation as stipulated in Article 1365 of the Civil Code regarding unlawful acts.

Juridically, if the doctor does not fulfill his obligations by doing something that alleviates or reduces feelings of pain, causing physical or non-physical harm, then the doctor concerned can be sued for compensation where explained in (Article 58 of Law Number 36 of 2009).

The law requires a doctor as a professional to carry out both relief activities and medical technical activities in accordance with the available time by complying with professional standards and respecting the rights of patients.

Everything that a patient approves or denies regarding medical action against him, including the administration of various medications, is part of what the doctor must keep secret from a third party who is not authorized to know and without the patient's permission. This understanding has the legal implication that the medical record files held by health providers belong to the doctor but the contents of the medical records belong to the patient, so the doctor is not allowed to hinder the wishes of the patient who requests the contents of the medical record for the benefit of the patient himself. Therefore this right tends to be referred to as the right of inzage of medical records or the right of access to the contents (right to view) medical records and not the right to the medical record file itself.

4.2 Review of Medical Records Law as Evidence in the Defense of the Therapeutic Relationship Between Doctors and Patients in Court

Medical Records when viewed as evidence in the Court which is regulated in Article 184 of the Criminal Procedure Code (KUHP, Law Number 8 of 1981) states: Valid evidence according to law is regulated in Article 184 which consists of; (1) witness testimony; (2) expert testimony; (3) letters ; (4)instructions; and (5) the defendant's testimony.

Indonesia adheres to the principle of negative proof in criminal law, which means that a person is not sufficient to be declared a criminal offense based on cumulative lawful evidence, but must also be accompanied by a judge's conviction. In cases where the doctor is one of the parties (a case of doctor's mistake / negligence in carrying out the profession), one of the obstacles faced in the evidentiary process is expert information regulated in article 186 of the Criminal Procedure Code. The expert information referred to herein may also have been given at the time of the examination by the investigator or public prosecutor which is set forth in one form of report and made keeping in mind the oath at the time he accepted the post/job.

If the matter is not given at the time of the examination by the investigator/public prosecutor, then at the time of the examination at the hearing is asked to give a statement and be recorded in the minutes of the examination. The statement was given after he took an oath or promise before the court regarding the veracity of his testimony as an expert witness.

An oath or promise given as an expert witness shall be distinguished from an oath/promise pronounced at the time of accepting office/employment (oath of office). The expert information intended by article 186 of the Criminal Procedure Code when associated with the relationship between the doctor and the patient can be set forth in both written and unwritten form. Expert information in written form can be in the form of Medical Records which from a formal point of view are a set of records on matters related to the history of the course of the disease and the treatment / treatment of the patient.

The legal function of Medical Records is because medical records can function as evidence in the event of a series of opinions / demands from patients and on the other hand as legal protection for doctors. Medical Records, which are records regarding the performance of certain medical actions, implicitly also contain Medical Action Approval, because that particular medical action will not be performed if there is no consent from the patient. If Medical Records that have multifunctionality are associated with article 184 of the Criminal Procedure Code, then Medical Records in addition to functioning as evidence of letters also function as evidence of expert information that is stated and is the content of Medical Records.

The problem is that the contents of the Medical Records belong to the patient and the doctor is obliged to keep it confidential. Such Medical Records summaries may be provided, recorded, or copied by the patient or authorized person or with the written consent of the patient or the patient's family entitled to it.

Explanations of the contents of Medical Records may only be made by the doctor treating the patient with the patient's written permission or under laws and regulations. Meanwhile, the head of the health service facility can explain the contents of the Medical Records in writing or directly to the applicant without the patient's permission based on laws and regulations. In this case, fulfilling the request of the law enforcement apparatus in the context of law enforcement by court order, the doctor in charge of patient care or the hospital leader may provide a photocopy of the Medical Records in addition to the conclusion (which is his opinion).

Legal expert opinion because Medical Records serves as a letter evidence as well as expert testimony evidence. This means that judges can use the Medical Records as evidence at court hearings, but that is not binding on their nature, and still depends on the judge's judgment.

Therefore, in the principle of Indonesian criminal law, the principle of negative proof applies. This means that Medical Records can be used as a basis to prove the presence or absence of a doctor's guilt or negligence in carrying out the profession, and in other respects Medical Records can be used as a basis for defense or legal protection for doctors against lawsuits or demands directed at him.

The use of Medical Records as evidence in court proceedings is thus only possible if the parties, namely the doctor against the patient and the public prosecutor file the Medical Records as evidence to find the material truth or the true truth, and make it clear whether there is any error or negligence of the doctor or hospital in carrying out their profession.

Thus Medical Records is a proof that doctors have made every effort through the stages of the health service effort process to one of the most appropriate therapeutic options in the form of certain medical procedures. For patients, Medical Records are evidence that can be used as a basis for whether certain medical actions performed by doctors or hospitals against them are in accordance with professional standards.

5 Conclusion

The legal relationship in health care is a legal relationship that is interrelated between health providers and health receivers, where the relationship will give rise to therapeutic transactions. This therapeutic transaction gives rise to rights and obligations between the parties as stipulated in Law Number 29 of 2004 concerning the Practice of Medicine, Law Number 36 of 2009 concerning Health, Law Number 44 of 2009 concerning Hospitals. Therapeutic transactions are also the basis for providing informed consent, because informed consent is the right to information of a patient. The regulation of rights and obligations, one of which is the approval of medical actions, is juridically intended to provide balanced and objective protection for both doctors and the public.

But at this time, the expected protection has not been felt by the patient. Where the factor that causes therapeutic transactions currently does not provide protection to patients regarding the implementation of the system in health services, namely, that in substance there are still regulations that clash with ethics, discipline, and law, relating to institutional functions and authorities that institutions formed as protection efforts have not shown their objectivity when handling medical dispute cases because they are only oriented towards peerage only. Similarly, cultural factors or community cultures tend to be passive and permissive in addressing problems that arise in the relationship between doctors and their patients in health services.

The cure of a patient's disease is not solely a treatment from a doctor, but is still influenced by various factors. But a doctor must strive to perform a cure, thus the achievement of the therapeutic transaction between the patient and the doctor is not the

cure of the disease but the effort of a doctor, in other words in the therapeutic transaction the object of the agreement is the effort of healing.

In the therapeutic transaction, what is highlighted is the patient's trust in the doctor, so that if the patient no longer believes in the doctor's treatment method, the patient can terminate the agreement unilaterally. On the contrary, with doctors to unilaterally terminate the agreement, they must meet several conditions, namely the doctor is limited in his ability to treat, the patient's rejection of the doctor's way of treatment, the patient is non-cooperative towards the doctor. In addition, the doctor still has to pay attention to the patient's condition, as well as the possibility of a replacement doctor.

Legal regulation of therapeutic transactions between doctors and patients based on the provisions in Law Number 36 of 2009 concerning Health, the occurrence of a relationship between doctors and patients in therapeutic agreements can occur due to an agreement that refers to the provisions of Article 1320 of the Civil Code, namely about the legal terms of transactions. In this case, informed consent plays an important role as the basis for therapeutic transactions because informed consent explains information about the disease suffered by the patient.

The civil and criminal legal responsibility between the doctor and the patient in a therapeutic transaction is if the doctor in carrying out his duties commits a mistake or negligence and breaks the promise (default) of the agreement that has been determined together. If the doctor defaults, the responsibility in the form of compensation can be in the form of money, and if the doctor makes a mistake or negligence that causes something that harms the patient, the responsibility is in the form of criminal penalties according to how severe the mistakes he made. In addition, the sanctions given can be in the form of revocation of a Practice License or a doctor's Register License. Prosecutions in the field of Criminal Law, can only be prosecuted in the event that the patient suffers from permanent disability or dies in the sense that what is known as *culpa lata* occurs. Doctors can also be prosecuted under criminal law if the doctor concerned has been proven to meet the elements of a criminal act, such as meeting the elements of malpractice that causes the patient to be disabled or die. In addition, the sanctions given can be in the form of corporal punishment to the revocation of a License to Practice or a doctor's Register License.

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