

Juridical Analysis of Therapeutic Transactions as A Form of Agreement Between Doctors and Patients (Case Study of Decision Number 1315/K/PDT/2019)

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Abstract. *The problems in therapeutic transaction still happen frequently between doctors and the patients in hospitals, because the agreement is considered as outcome agreement, not effort. Patients expect recovery after entrusting the treatment to doctors, while doctors understand their responsibility is to give the best treatment to the patients with his knowledge and the standard operational procedure, hence, recovery is not their responsibility. Generally, doctors often overcome such problems. As a result, society considers doctors untouchables. In this paper, the issue raised in the case of decision Number 1315 / K / PDT / 2019 is whether the therapeutic agreement can provide protection to patients and how the judge considers in cases of acts against the law on the therapeutic agreement. Using normative law research method, this study concludes that therapeutic agreement cannot protect patients without agreement about recovery or result, but about the right effort to heal patients. The result show a therapeutic agreement cannot provide legal protection if it refers to the object of the patient's recovery rather than appropriate efforts for the patient's recovery because the therapeutic agreement has special characteristics and features.*

Keywords: *Malpractice; Medical; Protection; Therapeutic; Transaction.*

1. INTRODUCTION

Agreement in therapeutic transaction becomes the main term in the smooth process of medical service activities in hospitals in accordance with Article 45 of the Health Law No. 29 of 2004 concerning medical practice. It states that all medical or dental procedures performed by doctors or dentists on patients require permission from the patient. Moreover, patients as hospital customers have rights to fulfil by the service providers, especially doctors. The rights refer to this matter are the right to get information on the disease and the right to give a medical approval on the medical treatment against him. However, in the application is often not as it should be. This frequently creates medical dispute. The relation between patients and doctors occurs when the therapeutic agreement is signed and has a binding strength so that it should be complied by both parties.

Medical agreement or therapeutic covenant has fulfilled all the elements of the conditions for the validity of an agreement according to Article 1320 of the Indonesian Civil Code, namely: capable, agree, certain things and halal causes. However, why the application of this therapeutic agreement is often considered not mandatory, because many patients do not understand their rights as patients. The therapeutic agreement is considered simply as hospital administrative conditions. It is proven that those who sign the agreement are often the family member of the patients although patients meet the qualifications of competent legal conduct. There are still many people do not understand the content of the therapeutic agreement or contract, so that if there is a medical action which results are beyond the patient's expectations, it is difficult to accept as part of the process that must be experienced. Meanwhile, doctor is not responsible for the results, especially if the agreement is not a contract signed by the patient.

Regarding the case examined by the writer in Decision Number 1315/K/PDT/2019, patients do not get a direct explanation about their disease and doctors do not ask for approval of therapeutic contracts before medical action carried out on patients. Therefore, patients feel their rights violated and unsatisfied. The rights that must be obtained by patients in therapeutic transactions are explained in KODEKI (Indonesian Code of Medical Ethics), namely the right to obtain complete information about the disease, the right to get proper services, the right to refuse procedures, the right to obtain humane medical services in accordance with the standards of the medical profession¹.

For medical actions carried out by doctors, unlawful acts occurred because the gauze was left in the patient's stomach, which resulted in infection, so that the patient lost some of his organs due to the infection. According to Article 1365 of the Civil Code, an unlawful act is an unlawful act committed by a person who through his fault causes harm to others.

Case Decision Number 1315/K/PDT/2019 the judge did not make the patient law's lawsuit a legal consideration, so the imprecise decision did not give legal protection and legal responsibility. Therefore, it really harmed the patient and placed the patient in a weak position. According to expert, Satjipto Raharjo, the purpose of legal protection is to protect human rights that violated by other parties and legal protection is given to people so they may enjoy all rights mandated by law.² Likewise, according to Algra et al., responsibility is an obligation to bear responsibilities and bear losses suffered (if necessary), not only legally but also administratively.³ Therefore, a research is needed to explain theories and law analysis regarding the handling of law violation case in the perspective of Health Law, to achieve common understanding among practitioners and law enforcement.

¹ Muh. Amin Dali, Warsito Kasim, dan Rabia Ajanu. (2019). Aspek Hukum Informed Consent Dan Perjanjian Terapeutik. *Jurnal UMGO*. Vol. 8 No. 2. P. 98. <https://journal.umgo.ac.id/index.php/akademika/article/view/403>

² Satjipto Raharjo, 2000. *Ilmu Hukum*, Bandung: PT. Citra Aditya Bakti, p. 55.

³ Salim & Erlies, 2014. *Penerapan Teori Hukum pada Penelitian Disertasi dan Tesis*, Buku Kedua, Jakarta: Rajawali Pers, p. 207.

After research, the novelty in this paper is: (a) that the therapeutic agreement can provide legal protection if the patient with carries out the agreement: voluntary consent, issued by the competent authority in law, notified and understood. (b). The judge's consideration in cases of unlawful acts in order to reflect what is meant in Article 178 paragraph (1) HIR, the judge must submit legal arguments that have not been raised by the parties in the case.

2. RESEARCH METHODS

The research used to solve problems is normative juridical study examining health law or written health regulations and other laws and regulations. This research also explains the results of court decisions related to cases of alleged unlawful acts committed by doctors. Furthermore, the results of the normative legal study will be analyzed qualitatively.⁴

3. RESULTS AND DISCUSSION

3.1 Agreement Concept and the Conditions

According to Sudikno Mertokusumo, agreement means legal relation between two parties or more, either individuals or legal entities based on agreement to produce legal consequences. This agreement causes obligation. Legal consequences lead to rights and obligations. In case of breach of agreement, violators face penalties or legal sanctions. Agreement determines rights and duties. Rights and duties are the granting of power in the form of individual rights on one hand, which is visible in the duties of the opposite party.⁵ The agreement explained above must meet the legal requirements of a agreement stated in Article 1320 of the Civil Code, namely:

a. Binding parties means that the parties who want an agreement must first negotiate or agree on the elements of the agreement to be made. The word approve is void if it is made due to negligence, pressure or fraud (Article 1321 of the Civil Code).⁶

b. Legal entity and individuals that are capable to make an agreement, generally, are the ones that have no legal capacity. In this case, legal capacity refers to the ability of someone to understand the law consequences of an agreement made. A person who has no legal capacity includes minors, people who are in a state of insanity, and people who are under legal supervision. (Article 1329 of the Civil Code). In the Article 1330 of the Civil Code, there are several classifications for people who cannot make a contract, namely:

- 1) Immature individuals.
- 2) Individuals under supervision.

⁴ Munir Fuady, 2003. *Hukum Kontrak (dari Sudut Pandang Hukum Bisnis)*, Buku kedua, Citra Aditya Bakti, Bandung, *Ibid.*, Hlm 10.

⁵ Cecep Tritiwibowo, 2014. *Etika dan Hukum Kesehatan*, Yogyakarta: Nuha Medika, p. 53.

⁶ P.N.H. Simanjuntak, 2016. *Hukum Perdata Indonesia*, Cetakan ke-2, Jakarta: Prenadamedia Group, p. 287.

3) Women that are legally regulated in law and prohibited by all people under the law. This legal consequences and incompetence is a contract cancellation request made in form of private deed or authentic manner to the judge.⁷

c. There is something specific, namely the existence of a specific item made as the subject of an agreement. Article 1333 of the Civil Code explains that the goods that are the subject of this contract must be determined, at least for the type. Various articles that state that the purpose of this agreement is to achieve the results of the effort achieved (the core of the agreement) that are the obligations of the debtor and the rights of the debtor. This achievement consists of 3 positive and negative actions, namely:

- 1) Sharing things,
- 2) Running things, and
- 3) Not doing things (Article 1234 of the Civil Code).⁸

d. Halal reason refers to an agreement that does not violate public order and decency and law (Article 1337 of the Civil Code), so the law does not care why someone makes an agreement. The content of the agreement stating the goals to be achieved is decisive for the law. According to Article 1335 of the Civil Code, an agreement without reason or for wrong or prohibited reasons is void. If the subjective conditions cannot be fulfilled then the contract can be canceled. If objective conditions do not meet, then this contract is considered null and void.

Overview of the Therapeutic Agreement

Agreement between a doctor and a patient that causes rights and obligations is called a therapeutic agreement or in *Kamus Besar Bahasa Indonesia* is an agreement between a doctor and a patient related to treatment.⁹ The treatment agreement or contract forms a medical relationship in the form of medical practice between doctors and patients and automatically forms a legal relationship. Legal relations are relationships between an individual and another person or legal entity in which legal obligations and individual rights arise.¹⁰

The doctor-patient legal relationship puts the doctor and patient on equal footing, so whatever the doctor does to the patient must involve the patient determining whether something can be done on it. The form of equality in the legal transaction of the patient's doctor is with informed consent or approval of medical procedures. The rights and obligations of doctors and patients after a legal relationship arises are. The rights of doctors contained in Article 50 of Law No. 29 of 2004 concerning Medical Practice.

⁷ Ibid, p. 288.

⁸ Salim HS, *Pengantar Hukum Perdata, Ibid.*, p. 165.

⁹ Misi Siti, Zulpahiyana, dan Sofyan Indrayana. 2016. Komunikasi Terapeutik Perawat Berhubungan Dengan Kepuasan Pasien. *Journal Ners And Midwifery Indonesia*. Vol 4. No. 1. P. 33. <https://ejournal.almaata.ac.id/index.php/JNKI/article/view/224/218>

¹⁰ Triana Ohoiwutun, 2008. *Bunga Rampai Hukum Kedokteran (Tinjauan dari Berbagai Peraturan Perundangan dan UU Praktik Kedokteran)*, Cetakan ke-2. Malang: Bayu Media, P. 8.

These include providing legal protection as long as doctors carry out their duties in accordance with the standard operational procedures that have been regulated, providing medical services in accordance with profession standard and standard operational procedures, getting a complete information from patients and the family; receiving payments for the services.¹¹ Beside that, in Article 51 regarding the obligations of a doctor, among others: providing medical services in accordance with standard operating procedures and patient medical needs. If testing and treatment are not possible, the patient is referred to another doctor with better knowledge and skills, keeping everything about the patient confidential even after the patient's death, providing emergency assistance on humanitarian grounds. Unless someone else is on duty and not sure that they can do so; expanding your knowledge and keeping up with medicine and dentistry.¹² The rights of patients are regulated in Article 52, among others: receiving a detailed description of medical procedures; obtaining an opinion from another doctor or dentist; receiving medically necessary services; refusing medical intervention; and receiving the contents of the medical report.¹³ While Article 53 regulates the obligations of patients, which are providing complete and honest information about their health problems, following the suggestions and advice from the doctors or dentists; enforcing regulations in health facilities; and paying for the services achieved.¹⁴

According to Endang Kusuma Astuti, the objective in this therapeutic contract is the doctor attempt to cure the patients. It is not the healing of the patients that have been treated by the doctors. If the patients' recovery becomes the focus, it would put the doctors in a difficult situation.¹⁵

Based on the explanation above, if referring to the regulations in health sector, the legal links occurred in the therapeutic agreement are as follow:¹⁶

- a. The legal object of therapeutic contract is the responsibility that needs to be fulfilled to patients that have the rights to receive medical treatment.
- b. The legal subjects of medication contract are patients, doctors and medical institution.

¹¹ Pasal 50 UU Praktik Kedokteran. Jurnal Niru Anita Sinaga. 2021. Penyelesaian Sengketa Medis Di Indonesia, Universitas Dirgantara Marsekal Suryadarma Jakarta, Vol. 11 No. 2, 5-6. <https://doi.org/10.35968/jihd.v11i2>

¹² Pasal 51 UU Praktik Kedokteran. Jurnal Ilmu Hukum Legal Opinion, 2013. Analisis Yuridis Hubungan Hukum Antara Dokter Dan Pasien Dalam Pelayanan Kesehatan. Edisi 4, Vol. 1, 188. <https://jurnal.unigal.ac.id/index.php/galuhjustisi/article/viewFile/1713/1387>

¹³ Article 52 of the Medical Practice Law

¹⁴ Article 53 of the Medical Practice Law

¹⁵ Endang Kusuma Astuti, 2009. *Transaksi Terpeutik dalam Upaya Pelayanan Medis di Rumah Sakit*. Bandung: Citra Aditia Bakti, p.97.

¹⁶ Sagung Ayu Yulita Dewantari, Putu Tuni Cakrabawa Landra. (2015). Perspektif Perlindungan Hukum Terhadap Pasien Serta Pertanggungjawaban Atas Pelanggaran Perjanjian Terapeutik Berdasarkan Hukum Perdata. *Kertha Semaya*, Vol. 3. No.1. p. 6-8. <https://garuda.kemdikbud.go.id/documents/detail/1334352>

c. The optimal legal basis of therapeutic agreement through holistic approach to health maintenance and improvement (promotion), disease prevention, disease rehabilitation. Integrated health initiative to reach sustainable public health.¹⁷

In term of executing the agreement between patients and doctors, it has to meet the requirement in order for the agreement to be legally accountable as stated by Helsinki whose compilation is based on Nuremberg Code, previously called voluntary consent, with four criteria to be completed to give voluntary valid agreement, that is:

- 1) Agreement must be given voluntarily;
- 2) Issued by a legally competent authority;
- 3) Notified;
- 4) Understood.

When a patient initiates an examination, the patient's consent is only verbal, so the consent given is a form of abstract consent, and four specific patient consents are required because the abstract consent changes into a concrete one. Therefore, if something harmful happens to the patient after the treatment process and the doctor or health worker does not follow the above four steps, it will be difficult for the patient to hold the doctor or health worker accountability.¹⁸

However, when applied in the field, it often happens that patient does not give the agreement himself. Medical officers usually ask for the consent letter to the family that has been considered automatically representing the patient. Even the medical agreement and medical action are often run together or patient is prepared for medical action in the medical treatment room without any medical consent signed by the patient. This is harmful for the patient later if something unexpectedly happens after the medical action. This means medical action agreement is still considered not an absolute condition in therapeutic transaction. Regarding the medical approval case in the case of decision number 1315/K/PDT/2019, patient is also not involved in giving medical approval to himself; even the patient does not get a complete explanation from the doctor about his illness. Therefore, the patient feels dissatisfied and harmed by the services provided by doctors and hospitals. Because of the medical action, patient experienced health problems. Nevertheless, when the patient filed a lawsuit over what he experienced, about his rights being violated, the judge did not make the lawsuit a legal consideration because the patient's family had signed the medical consent letter and it might be considered to represent the patient's consent. This means that the general view of the public and law enforcement towards therapeutic agreements has not been in accordance with what described by law. Patients are always positioned on the side that needs doctors and lower; so, many of patient's rights that are violated remain ignored.

1. Unlawful Act

¹⁷ *Ibid*, p.9.

¹⁸ Cecep Tritiwibowo, *Etika dan Hukum Kesehatan*....,p.64.

Article 1365 of the Civil Code regulates unlawful act, and whoever violates law and causes harm to others, must compensate the loss.

According to Article 1365 of the Civil Code/1401 BW, four conditions must be fulfilled to commit unlawful act.

- a. A mistake is a mistake made intentionally or negligent.
- b. Loss, there are tangible (A loss that is really suffered) and/or intangible (losing benefits or advantage that could be gained in the future)
- c. There is causal relation between unlawful act and loss. Loss suffered must be the result of unlawful act committed.¹⁹

In the case of decision case number 1315/K/PDT/2019, patient experienced unlawful act from the doctors due to the left gauze in the stomach during surgery by the doctor, thus harming the patient both materially and immaterially. Because of these actions, patients must undergo long treatment and cause complications of the disease. However, the judge, dismissing the entire patient's lawsuit, did not consider what the patient experienced. In this case, the basis for the Supreme Court's decision states that the reason for cassation cannot be justified because the counter-memory of cassation is connected with *Judex Facti's* consideration. In this case, DKI Jakarta High Court upheld the decision of the West Jakarta District Court. It turns out that *Judex Facti* did not misapply the law with the following considerations: the defendant did not commit any unlawful act in the form of malpractice in dealing with the plaintiff; there is no letter from Health Worker Disciplinary Assembly (MDTK) proofing any unlawful acts.

However, the judge's decision, if related to the provisions of Article 11(b) of Law No. 6 of 1963 concerning Health Workers, this law remains valid as long as it does not conflict with the provisions of Law No. 36 of 2014 concerning Health Workers. According to this provision, the formation of professional issues is divided into the following groups: (1) Dereliction of Duty. (2) Do what health workers are not allowed to do, both in the oath of office and in memory of the oath as a health worker. (3) Violate this Act or any provision under this Act. The negligence of the doctor sued by the patient is not a mistake in the eyes of health law, because the doctor's fault is not one of the above category groups.

4. CONCLUSION

Therapeutic agreement may provide legal protection if the patient with voluntary consent, issued by the competent law authority, performs the agreement notified and understood. A therapeutic agreement cannot provide legal protection if it refers to the object of the patient's recovery rather than appropriate efforts for the patient's recovery because the therapeutic agreement has special characteristics and features. In the case of unlawful acts in the world of health, in which the reference is a special regulation, namely Article 11 Letter b of the Health Law No. 6 of the Year 1963 about

¹⁹ M.A. Moegni Djodjodikoro, 1982. *Perbuatan Melawan Hukum Normatif*. Jakarta: Pradya Paramita, p. 17.

Medical Workers.²⁰ The principal of unlawful act or malpractice is also part of medical services, which is error due to professional duties is not a crime. That is why doctors often win malpractice case since legal protection for health service uses *lex specialis* principle. The judge's consideration in cases of unlawful acts to reflect what meant in Article 178 paragraph (1) HIR that is the Judge has the obligation to consider legal reasons that are not raised by the disputing party.

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