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Implementation Of Standard Clauses In Therapeutic Agreements Related To The Legal Protection Of Consumer Health Services

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Abstrak

Penelitian ini dimaksudkan untuk menjawab dua permasalahan penelitian, "Bagaimana penerapan klausula baku dalam perjanjian terapeutik bagi konsumen jasa kesehatan?", dan "Bagaimana penerapan perjanjian terapeutik dalam mewujudkan perlindungan hukum bagi konsumen jasa kesehatan"? Di Indonesia, konsep hubungan antara dokter dan pasien atau dikenal perjanjian terapeutik untuk pelayanan kesehatan masih menggunakan klausula baku UU Perlindungan Konsumen Indonesia yang menggolongkan pasien sebagai konsumen dan dokter sebagai pelaku usaha, sehingga ketentuan klausula baku tidak sesuai. bila diterapkan dalam konteks pelayanan kesehatan. Berbeda dengan hubungan antara pelaku usaha dan konsumen, hubungan antara dokter dan pasien lebih menekankan pada gotong royong (tidak sepihak) daripada menekankan "hasil" (resultant verbintenis) tetapi pada "penyembuhan dan keseriusan" (inspanning verbintenis). Dalam Disertasi ini digunakan Teori Perlindungan Hukum sebagai Grand Theory, Teori Kesehatan sebagai Middle Theory, dan Agreement Theory sebagai Applied Theory. Metode penelitian yang digunakan adalah Metode Yuridis Normatif yang menekankan pada pendekatan hukum positif (dogmatis) untuk mengkaji data sekunder. Kajian ini juga mengkaji asas-asas hukum, peraturan perundang-undangan, perbandingan hukum normatif dan hukum. Metode penelitian normatif digunakan sebagai acuan untuk mengkaji asas kepastian hukum yang berkaitan dengan masalah penelitian. Data penelitian yang digunakan berupa bahan hukum primer, bahan hukum sekunder dan bahan hukum tersier. Data primer berupa norma atau aturan dasar hukum sebagai peraturan yang digunakan dalam analisis yuridis kualitatif. Hasil penelitian menyimpulkan bahwa: (1) Penerapan klausula baku dalam perjanjian terapeutik belum memberikan perlindungan hukum baik dari perspektif Hukum Kesehatan maupun Teori Perjanjian, dan Undang-Undang Perlindungan Konsumen Indonesia belum memberikan perlindungan hukum kepada pasien yang menggunakan alat kesehatan jasa. (2) Putusan pengadilan tentang kasus malpraktik belum diselesaikan secara tuntas menurut perspektif UU Kesehatan.

Kata Kunci: *Klausula Dasar, Kontrak Terapeutik, Perlindungan Hukum, Kesehatan, Konsumen Jasa.*

Abstract

This research is intended to answer two research problems, "How is the implementation of standard clauses in therapeutic agreements for consumers of health services?", And "How is the implementation of therapeutic agreements in realizing legal protection for consumers of health services"? In Indonesia, the concept of the relationship between doctors and patients or known therapeutic agreements for health services still uses the standard clause of the Indonesian Consumer Protection Act which classifies patients as consumers and doctors as business actors, so the provisions of standard clauses are not appropriate when applied in the context of health services. In contrast to

the5409elationnship between business actors and consumers, the relationship between doctors and patients places more emphasis on mutual cooperation (not unilaterally) rather than emphasizing “results” (resultant verbintenis) but on “healing and seriousness” (inspanning verbintenis). In this Dissertation the Law Protection Theory is used as Grand Theory, Health Theory as Middle Theory, and Agreement Theory as Applied Theory. The research method used is the Normative Juridical Method which emphasizes the positive legal approach (dogmatic) to study secondary data. This study also examines the principles of law, legislation, comparison of normative laws and laws. Normative research methods are used as references to examine the principle of legal certainty related to research problems. The research data used are in the form of primary legal materials, secondary legal materials and tertiary legal materials. Primary data consists of legal basis norms or rules as regulations used in qualitative juridical analysis. The results of the study concluded that: (1) Implementation of standard clauses in therapeutic agreements has not provided legal protection either from the perspective of Health Law and Agreement Theory, and the Indonesian Consumer Protection Act has not provided legal protection to patients who use health services. (2) Court decisions regarding malpractice cases have not been resolved thoroughly according to the perspective of Health Law.
Keywords: *basic clause, therapeutic contractual, legal proetction, health, service consumer.*

INTRODUCTION

Health services are service efforts that are carried out alone or together within a body or organization that are useful for preventing, maintaining, healing and restoring the health of a person or group. From this definition, it is explained that health services are absolute to serve people who want to get treatment until they recover from their illness.

One important factor that has a major influence on health services is the quality of public health services, namely services that can provide satisfaction to every user of health services and their providers in accordance with standard procedures and compliance with professional codes of ethics. The definition of health services can be applied optimally by improving the management of public health services and the quality of public health services.

The definition of a consumer is contained in Article 1 number 2 of the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, namely, "every person who uses goods and/or services available in the community, both for the benefit of himself, his family, other people and living beings. other and not to be traded”.

From the definition of patients and consumers mentioned above, it can be interpreted that of course consumers are different from patients. Consumers are more closely related to the economic field (business), while patients are closely related to the context of the health service sector. Patients are consumers of health service users. As users of health services, patients are also referred to as consumers so that in this case the provisions of the Consumer Protection Act also apply.

Through differences in understanding between consumers and patients, related to the use or implementation of standard clauses in therapeutic agreements for health services, it is considered inappropriate if standard clauses are applied in health services which until now still use clauses and are regulated in Law Number 8 of 1999 concerning Consumer Protection, because patients are still positioned as consumers, as well as doctors (hospitals) are still considered as business institutions.

This is confirmed by the opinion of Ida Marlina, a researcher from the Indonesian Consumer Protection Foundation (YLKI), that basically patients have a position as consumers who get services from doctors. The problem, said Ida, is that doctors tend to disagree if the medical profession is included in the Consumer Protection Act.

In the National Health system, it is stated that health concerns all aspects of life whose scope and reach are very broad and complex. This is in accordance with the definition of health given by the international community as follows: A state of complete physical, mental, and social well being and not merely the absence of disease or infirmity.

In an effort to improve the quality of life and adequate health services, the government and the private sector provide health service institutions known as hospitals. Hospital which is a complete individual health service provider that provides inpatient, outpatient and emergency services is provided for the benefit of the community in terms of improving the quality of life. Advances in science and technology in the health sector have developed rapidly and are supported by increasingly sophisticated health facilities, these developments also affect professional services in the health sector which from time to time are growing as well. Various ways of treatment are developed so that the consequences are also greater, and the possibility of making mistakes is also greater.

In the era of globalization that is happening at this time, the medical profession is one of the professions that gets a lot of public attention, both the spotlight is delivered directly to the Indonesian Doctors Association as the parent organization of doctors, as well as those broadcast through print media and electronic media. On the one hand, the Indonesian Doctors Association considers these highlights as a good critique of the medical profession, in order to improve the services of the medical profession to the public. On the other hand, the Indonesian Doctors Association realizes that the criticisms that arise are "the tip of the iceberg". This is accompanied by many criticisms that do not come to the surface because of the reluctance of patients or their families to consider what they are experiencing is something natural. For the Indonesian Doctors Association (IDI), the public spotlight on the medical profession illustrates that people are not satisfied with the health services provided by doctors. This is a sign that currently some people are not satisfied with medical services and the service of the medical profession in the community. In general, patients and their families are dissatisfied with doctors' services because their expectations cannot be met by doctors, or in other words, there is a gap between expectations and the reality obtained by patients.

A jargon released by the World Health Organization (WHO) “Healthy is the Future”, implies that health is not everything but without health everything is meaningless. This can be interpreted that there is an interdependence between human social life in all aspects or dimensions that correlate to both physical and mental health.

Health is the most important thing for every human being. This means that without health human life will not be perfect, including in carrying out their daily duties. The relationship between doctors and patients in the medical field involves several important aspects, namely health services, health facilities related to hospitals, doctors' practices, health centers, and health workers which include doctors, nurses, pharmacists, midwives. Health is also one of the basic human needs in addition to clothing, food and shelter. Without a healthy life, human life becomes meaningless, because in a state of illness it is impossible for humans to carry out daily activities properly. Apart from primary, secondary, and tertiary needs , the fulfillment of health is the key for humans to carry out all their activities and in the end can meet the three elements of human needs. Humans are creatures that are susceptible to all kinds of diseases, therefore health care must also be supported by good health service facilities and infrastructure.

Now the relationship between doctor and patient is equal, patients have understood their rights which are horizontal and contractual. However, it often happens that patients do not understand and do not exercise their rights because they are sick and cannot think clearly and are still unfamiliar, so the patient becomes passive. On the other hand, doctors and hospitals have stronger patients because

they are well versed in medicine and are professionals in their work. Health care is a patient's right, but of course that does not mean that this right is obtained free of charge (free).

In Indonesia, medical practice is carried out based on an agreement between doctors and dentists with patients in an effort to maintain health, prevent disease, improve health, treat disease and restore health. Many people often do not understand their rights as patients, for example: asking about the drugs prescribed for themselves. On the other hand, doctors also do not try to explain in detail and detail the actions that will be imposed on patients, although not all doctors apply that way.

The 1945 Constitution of the Republic of Indonesia has regulated the rights granted to Indonesian citizens. One of them is in Article 28H Paragraph (1) which states that "Every citizen has the right to health services". Every Indonesian citizen is guaranteed by law and they have the right to health services regardless of their social status. Furthermore, the rights of patients are further regulated in the Law of the Republic of Indonesia Number 44 of 2009 concerning Hospitals, Law of the Republic of Indonesia Number 29 of 2004 concerning Medical Practice, Law of the Republic of Indonesia Number 36 of 2009 concerning Health, and as a consumer of health services, it is regulated by Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection.

In medical services, doctors, patients, and hospitals are the three legal subjects related to the field of health care which in turn form both medical and legal relationships. The medical and legal relationship between doctors, hospitals and patients is a relationship whose object is health care in general, and health services in particular. Doctors as providers of health services and patients as recipients of health services. Patients and doctors in health practice have an interrelated relationship with each other that cannot be separated from an agreement known as a therapeutic agreement.

Therapeutic transactions are relationships between doctors and patients that are carried out in an atmosphere of mutual trust, and are always filled with all the emotions, hopes, and worries of human beings. The therapeutic agreement itself is also an agreement between a doctor and a patient, in the form of a legal relationship that gives birth to rights and obligations for both parties. In contrast to agreements made by society in general, where therapeutic agreements have special objects and characteristics and are not just ordinary agreements. The most important aspect of this agreement lies in the object of the agreement and its nature. While the meaningful object of this agreement is service. health services carried out by doctors and are in the form of inspanningverbitenis, namely as a doctor's effort to cure patients.

According to the Regulation of the Minister of Health Number 290 of 2008 concerning Permits for Medical Actions, what is meant by therapeutic transactions is a relationship between a doctor and a patient that is carried out in an atmosphere of mutual trust (confidential), and is always filled with all emotions, hopes, and concerns of human beings.

Black's Law Dictionary defines therapeutic transactions as a relationship between doctors and patients in professional medical services based on competencies that are in accordance with certain expertise and skills in the field of medicine. The Big Indonesian Dictionary defines therapeutic transactions as activities in the implementation of doctor's practice in the form of providing medical services, and medical services themselves are a major part of health effort activities involving health resources as support for its implementation, which must continue to be carried out in accordance with their functions and responsibilities.

According to Black's Dictionary Law, a paradox is a statement that seems contradictory, hard to believe, seems far-fetched, but can be true in everyday events. This implies that the non-use of the rights that have been granted or not implemented by the Consumer Protection Act to consumers who are their rights is a paradox.

Informed consent can be interpreted as an agreement or patient consent for medical efforts that will be carried out by the doctor against the patient, after the patient has received information from the doctor regarding medical efforts that can be taken to help the patient, accompanied by information about all risks that may occur, in addition to informed consent. Consent is the most important condition for the occurrence of a therapeutic transaction. When viewed in terms of form and content, informed consent can be considered as a standard clause that has been printed and standardized in form and made unilaterally by both the doctor and the hospital, and the patient only needs to sign it.

In this regard, the government represented by the Minister of Industry and Trade (Menperindag) stated that basically this standard agreement does not exist, thus suggesting a new formulation, namely that business actors are obliged to adjust standard clauses that are contrary to the law. So the standard clause is adjusted but not the agreement, because this standard clause does not actually exist".

The engagement between the hospital or doctor and patient can be interpreted as a business engagement (inspanning verbintenis) or a result engagement (resultaats verbintenis). The legal relationship in this therapeutic transaction is a vertical relationship. Starting from this therapeutic transaction, it is not surprising that there are many patient lawsuits against doctors. The lawsuit to hold doctors accountable is based on two legal grounds, namely based on default (contractual liability), and as a violation of the law (onrechmatigedaad). In this case, there are several cases of malpractice in the health sector that occurred in several hospitals in Jakarta, both in terms of civil aspects caused by defaults that did not meet professional standards, as well as crimes due to negligence, medical negligence, errors and so on. It is evident that in practice this hospital is considered to still do not understand in fulfilling patient rights as the implementation of the Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, which furthermore states that doctors have violated patient rights (malpractice) in the field of health services.

There are court decisions regarding malpractice cases in the context of a therapeutic relationship between doctors and patients, which harm patients as happened in several hospitals in Jakarta caused by medical errors, neglect or neglect, negligence or negligence of doctors in carrying out their duties, hereinafter referred to as malpractice. even the media themselves often confuse any ongoing failure in the health care process as malpractice.

It has become an axiom, where a sick person will try to recover by going to the doctor. Since the doctor agrees, there is an agreement as well as between doctors (as professional service providers) and patients (health service users) which is then known as therapeutic transactions where rights and obligations arise between doctors and patients that are binding in health services. Therefore, the therapeutic relationship between the patient and the doctor (hospital) is a contractual relationship.

Findings in the field indicate that many patient rights are still ignored and have not fully obtained the rights regulated in the legislation. Patients who experience medical disputes with doctors and/or dentists as medical personnel and also with hospitals as service providers health, tend to not get the patient's rights fully. Meanwhile, the existing phenomenon regarding the therapeutic relationship between doctors and patients in medical services found that there were 182 cases of malpractice throughout Indonesia, 60 cases were carried out by general practitioners, 49 cases were carried out by surgeons, 33 cases were carried out by obstetricians, and 16 cases were carried out by pediatricians, and 27 cases were committed by other types of malpractice.

From the facts and existing phenomena, this raises problems related to the implementation of the Consumer Protection Law in the context, the relationship between doctors and patients is where health service providers (health workers) such as doctors or hospitals are considered as business

actors, while some argue that doctors are not business actors, as well as patients there are those who think that patients are consumers of users and users of goods and services, on the other hand there are those who think that patients are not the same as consumers, where patients are recipients of health services.

Based on the background stated above, the researcher is interested in presenting a dissertation with the title: "Implementation of Standard Clauses in Therapeutic Agreements in Relation to Legal Protection of Healthcare Consumers". This research specifically focuses on the study of the implementation of standard clauses in therapeutic agreements in an effort to realize legal protection by emphasizing the implementation of the Health Law as an effort to realize legal protection for consumers of health services, but not with the Consumer Protection Act. To the best of the researcher's knowledge, there has been no dissertation research in Indonesia that discusses the Implementation of Standard Clauses in Therapeutic Agreements and Its Relation to Legal Certainty. As far as the researcher knows, there have been previous dissertation studies conducted, First, Mariam Darus Badrulzaman, with the title "Some Legal Problems in Bank Credit Agreements with Mortgage Collaterals and Their Obstacles in Practice in Medan" at the Postgraduate Program of the University of North Sumatra, Medan, 1978 According to Mariam, the use of standard clauses often negates the consensual principle and does not differentiate the conditions of the debtor because this agreement does not fulfill the required elements of 1320 jo. 1338 Civil Code. Furthermore, the neglect of the consensual principle can lead to differences in the positions of the parties, where the position of the debtor is weaker than the agreement maker so that he cannot do real bargaining with the party who sets the standard clause in the agreement.

METHODS

Based on the type of research used, the research method used is normative juridical or normative legal research. While the approach used is normative juridical and empirical juridical. The normative juridical approach does not rule out the possibility for a legal researcher who uses the type of normative legal research to take advantage of the findings of empirical juridical law, and for the need for legal analysis in accordance with the character of normative legal science, which in turn involves various legal materials of an empirical nature, which contained in a norm such as legal history and legal cases that have been decided.

This study also uses a statutory approach, which is defined as follows:

In normative legal research, a statutory approach must be used because the research involves various legal rules, rules, and legal principles which are the central focus to be revealed and explained as findings in a study. The statutory approach is intended to analyze and explain various norms, rules, and legal principles related to the legal concept of consumer protection, especially fair medical settlements for consumers who use health services in an effort to realize the rights of consumers who use services. health in a therapeutic agreement. The legislation in question is the legislation governing consumer protection and medical practice.

Furthermore, this study uses a conceptual approach that serves to support the concepts of normative juridical and empirical juridical. The conceptual approach according to Peter Mahmud is: "An approach that refers to legal principles that can be found in legislation or legal doctrines. Sources of data used in this study are primary legal materials, secondary legal materials and tertiary legal materials. Primary legal materials are binding materials and consist of norms or basic rules of legislation; Secondary legal materials are legal materials that contain an explanation of primary law, namely Law Number 8 of 1999 concerning Consumer Protection, and other secondary materials such

as books, papers, articles on Consumer Protection, Hospitals, Dispute Resolution and Rights. Patient; Tertiary legal materials are materials that provide directives or instructions or explanations for primary and secondary legal materials. Tertiary legal materials can be in the form of dictionaries, encyclopedias, or support from the Indonesian Health Consumer Empowerment Foundation (YPKKI) and the Indonesian Consumers Foundation (YLKI) in an effort to enforce consumer rights in Indonesia.

The collection of data used in this research comes from a literature study of the legislation, civil law theory books that support and provide an explanation of the tendency of laws and regulations and court decisions. Collecting data obtained from medical dispute case documents, literature books, papers, articles or research results and applicable laws and regulations as well as theories related to this research. described and analyzed to answer research problems.

RESULTS AND DISCUSSION

In relation to the protection of the security rights of every human being, the Covenant on Civil and Political Rights and the United Nations (UN) Declaration of Human Rights in its articles explain that every human being before the law has the right to obtain protection from the same law without discrimination. All individuals are entitled to equal protection against any form of discrimination contrary to this statement and against any incitement leading to such discrimination.

Article 26 of Law Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights states:

"*All persons are equal before the law and are entitled to equal protection of the law without any discrimination. In this regard the law shall prohibit any discrimination, and ensure equal and effective protection for all against discrimination on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*." Protecting, for example giving protection to the weak.

The National Legal Development Agency (BPHN) views legal protection as protection given to legal subjects in the form of legal instruments, both preventive and repressive, both written and unwritten. In other words, legal protection is a description of the function of law, namely the concept where the law can provide justice, order, certainty, benefit and peace. Meanwhile, Satjipto Rahardjo in his view argues that the meaning of legal protection theory must be able to protect the interests of the community by integrating and coordinating various interests in society because in a traffic of interests, protection of certain interests can only be done by limiting various interests on the other hand. The interest of the law is to take care of human rights and interests, so that the law has the highest authority to determine human interests that need to be regulated and protected.

Preventive protection and repressive protection, based on and based on the recognition and protection of human rights and based on the principle of the rule of law. Legal protection is always related to the role and function of the law as a regulator and protector of the public interest, Bronislaw Malinowski in his book entitled Crime and Custom in Savage, says "that the law does not only play a role in situations full of violence and conflict, but that the law also plays a role. in daily activities".

In realizing equality and legal protection, everyone must have the same opportunity to get legal protection through the legal process carried out by law enforcers, especially the perpetrators of judicial power. One of the main tasks of institutions within the jurisdiction of the judiciary is to expand and facilitate public access to justice (access to justice) as a form of equality before the law (Similia Similius) and to obtain equal legal protection without discrimination.

Health Law Theory

Health Law is a legal regulation and provision not only in the field of medicine, but covers all fields of health such as pharmacy, medicine, hospitals, mental health, public health, occupational health, environmental health and others.

Unlawful acts, mistakes, causal relationships and relativity are each a necessary condition (noodzakelijk) and collectively constitute a sufficient condition (veldoende) for liability under article 1365. This article opens the possibility of filing various claims. Among them are compensation, legal statements or prohibitions, and legal orders or prohibitions.

Based on the various expert explanations above, in this paper, researchers tend to use the term accountability rather than responsibility. Thus, the discussion of risk liability in the legal aspect of health will be more focused on the field of civil law.

Health law is included in the legal domain "lex specialis", which aims to provide special protection to health professionals and providers (providers) in human health service programs towards the goal of the "health for all" declaration and protection of patients specifically as "receivers". health services to obtain health services. Thus, this health law also stipulates and regulates the rights and obligations of health service providers (health providers) and health service recipients, either as individuals (patients) or community groups.

The Indonesian Health Law Association in its statutes states “Health law is all legal provisions that are directly related to health care/services and their implementation as well as the rights and obligations of both individuals and all levels of society as recipients of health services as well as from the health service providers in all aspects of the organization; national/international medical guidelines, law in the field of medicine, jurisprudence and science in the field of health medicine. What is meant by medical law is the part of health law that relates to medical services.

From the above provisions it can be interpreted that, all of these requirements are the legal basis for doctors and dentists in carrying out health services. That is, the "principle of legality" in health services is later implied in Law No. 29 of 2004 concerning Medical Practice.

Covenant Theory

According to Book III of the Civil Code, in Article 1313 of the Civil Code, what is meant by an agreement (verbintenis) is an act where one or more people bind themselves to one or more other people. An agreement is the source of the engagement. Where the engagement that was born because of the agreement has legal consequences that are desired by the parties, because the agreement is based on the agreement of the parties. While the engagement that is born is desired by the parties, however, the legal relationship and its legal consequences are determined or regulated by law. An agreement or Verbintenis is a legal relationship between two or more people, which gives the right to one party to gain achievement and at the same time obliges the other party to fulfill the achievement.

The word of agreement in the agreement is basically a meeting or conformity of will between the parties in the agreement. A person is said to give his consent or agreement (Toestemming) if he really wants what was agreed. Mariam Darus Budrulzaman describes the notion of agreeing as a condition of an agreed will (Overeenstemande Wilsverklaring) between the parties. The statement of the party offering is called the offer. The statement of the party who accepts the offer is called acceptance.

Contract law also adheres to the principle of freedom of contract or contractvrijheid or partijautonomie, as a very important element in realizing an agreement between the parties. This means that legal subjects are given the freedom to enter into or carry out contracts/agreements according to their will in determining the contents and conditions based on the agreement as long as

they fulfill the restrictions.

Based on the objectives to be achieved by the parties, as well as the need for regulations that are able to accommodate the interests and provide legal protection for economic actors (the parties), the development of contract law has an impact on new forms of contract law which require effective, simple , practical, and does not require a long process and time is possible in the principle of freedom of contract.

From the understanding of the agreement put forward, it is clear that what is meant by an agreement or engagement is a relationship made between a person or more and a civil legal entity with each other where they bind themselves to each other to give something, to do something, or not to do something. So in making an agreement, it must have a goal, namely the achievement to be carried out.

Therapeutic Agreements in Health Services.

Legal Relations Between Doctors and Patients

There are two types of legal relationships between patients and doctors in health services, namely the relationship between doctors because of an agreement or therapeutic contract and a relationship because of the regulations. In the first relationship, it begins with an (unwritten) agreement so that the will of both parties is assumed to be accommodated when an agreement is reached. The agreement reached included approval of medical treatment or even rejection of a medical action plan. Relationships due to regulations usually arise because of the obligations imposed on doctors because of their profession without the need for patient consent.

Legal Relations Between Doctors and Hospital

The legal relationship between doctors and the hospital is the relationship between legal subjects and the hospital. Based on this relationship, there are reciprocal rights and obligations that regulate the rights and obligations of the parties based on a contract or work bond. The legal relationship between doctors and hospitals can be seen from the status of doctors at work or as employees in a hospital. Based on this relationship, it can be further classified into 3 (three) doctor statuses with the hospital being legally reviewed, namely doctors practicing in hospitals, doctors as employees in hospitals, and doctors practicing independently (individuals).

Legal Concepts in Therapeutic Agreements (Medical Transactions).

Therapeutic agreement is also categorized as an agreement to perform a job as regulated in Article 1601 Chapter 7A Book III of the Civil Code, it can be categorized that a therapeutic agreement is a type of agreement to perform services regulated in special provisions. In addition, if you look at its characteristics, namely the provision of assistance which can be categorized as managing other people's affairs (Zaakwaarneming) as regulated in Article 1354 of the Civil Code, the therapeutic transaction is a sui generis (factual) agreement.

Transaction or agreement is a legal relationship between 2 (two) legal subjects who bind themselves based on mutual trust. In a therapeutic agreement, mutual trust will grow if there is open communication between the doctor and the patient, because each will provide each other with information or information needed for the implementation of good cooperation and the achievement of the goal of the transaction or therapeutic agreement, namely patient recovery.

Therapeutic agreement is an engagement between a doctor and a patient, in the form of a legal relationship that gives birth to rights and obligations for both parties.

Informed Consent

Informed consent is an agreement or patient consent for medical efforts to be carried out by the doctor against the patient, after the patient has received information from the doctor regarding medical efforts that can be taken to help the patient, accompanied by information about all possible risks.

Specific regulations regarding informed consent are contained in the Regulation of the Minister of Health of the Republic of Indonesia Number 290 of 2008 concerning Approval of Medical Actions. According to this Regulation of the Minister of Health of the Republic of Indonesia, the consent given by the patient must be based on the information received by the patient regarding several matters concerning medical actions and the information provided by the doctor must be understood by the patient.

Rights and Obligations of Patients and Doctors.

Patient Rights and Obligations

In Indonesia, efforts to provide adequate health services, namely meeting health service standards, have been attempted and stated in government policies which essentially seek health development in order to realize optimal health degrees as outlined in Law Number 36 of 2014 concerning Health. a series of activities and/or a series of activities carried out in an integrated, integrated and sustainable manner to maintain and improve the health status of the community in the form of disease prevention, health promotion, disease treatment, and health restoration by the Government and/or the Indonesian people as a whole.

In Indonesia, the need for protection of patient rights is increasing, for example: the patient wants to have an operation, the patient or his family has the right to ask the doctor about what rights the patient/family has in carrying out medical operations.

Doctor's Rights and Obligations

It can easily be said that the rights of the patient in the therapeutic contract are the obligations of the doctor, while the rights of the doctor in the therapeutic contract are the obligations of the patient. Doctors' rights are as follows:

a. The right to refuse to carry out medical actions because professionally cannot be held responsible.
b. The right to refuse a medical action that according to his conscience is not good. If he has a case like this, then he has an obligation to refer to another doctor.
c. The right to end a relationship with a patient if he considers that the patient's cooperation with the doctor is no longer useful. In this case the patient will be referred to another doctor.
d. The right to privacy of doctors. Patients must respect and respect matters concerning the doctor's privacy, for example, do not expand on the very personal things of the doctor that he knows while receiving treatment.
e. The right to information or first notification in dealing with patients who are dissatisfied with the doctor's work (patient's good faith). If a patient is dissatisfied and wants to file a complaint, the doctor has the right to have the patient talk to him first before taking other steps, such as reporting to the Indonesian Doctors Association (IDI).
f. Right to remuneration. This right is in accordance with the therapeutic agreement where on the part of the patient, apart from having rights as a patient, he also has an obligation to give an honorarium to the doctor and the patient's obligation is one of the rights of a doctor.

g. Right to self-defense.
h. Right to choose patients.
i. The right to refuse to give information about a patient in court.

Standard Clauses are defined as "every rule or provision and conditions that have been prepared and determined in advance unilaterally by business actors as outlined in a document and/or agreement that is binding and must be fulfilled by consumers". For some people, this standard clause is also often referred to as a “standard contract or take it or leave it contract”. By having prepared in advance the provisions in an agreement, the consumer can no longer negotiate the contents of the contract. From this point of view, there is a gap between the parties.

Medical malpractice is a medical practice that is wrong, deviant, inappropriate, violates the law or code of ethics. This term is commonly used of the behavior of doctors, lawyers, and accountants. Failure to provide professional services and do so at a reasonable level of skill and intelligence by average peers from the profession in society, resulting in injury, loss, or harm to service recipients who trust them, including the wrong attitude of the profession, inappropriate lack of skills, violation of professional or legal obligations, very bad practice, illegal, or immoral behavior.

Medical malpractice is a process that involves an error in the procedure for handling a patient by a doctor. Errors in question include errors in diagnosis, medication errors, therapy errors or patient handling errors by doctors. In all cases of medical malpractice, the patient is certainly the one who is harmed. The losses incurred are not only material, but more than that it can be in the form of psychological and mental losses for patients and their families.

There is a difference between medical malpractice and medical negligence. The terminology of medical malpractice (medical malpractice) and medical negligence are 2 (two) different things. Medical negligence does include medical malpractice, but in medical malpractice there is not only an element of negligence, it can also be intentional. If seen from the definition above, it is clear that malpractice has a broader meaning than Negligence because in addition to including the meaning of negligence, the term malpractice also includes acts that are carried out intentionally (international, dolus, opzettelijk) and violate the law.

A clearer difference between malpractice and negligence seen from the motive is: in malpractice (in the sense that it is intentional): the action is done consciously, and the purpose of the action is already directed at the result to be caused or does not care about the result, even though he knows or should know that his actions are contrary to the applicable law, while in negligence: there is no motive or purpose to cause the consequences that occur. The consequences that arise are due to negligence that actually occurs against his will.

Standard Clauses from the perspective of legal protection

The Law of the Republic of Indonesia Number 8 of 1999 concerning Consumer Protection, although basically it does not conflict with the Medical Code of Ethics and the Doctor's Oath, does not mean that Law Number 8 of 1999 concerning Consumer Protection can be directly applied to health services. Health services as a service have various characteristics of their own.

Standard Clauses from the Perspective of Health Law

In the event of a medical dispute caused by malpractice by a doctor or health worker, with the presence of the Law of the Republic of Indonesia Number 29 of 2004 concerning Medical Practice, this has opened the door of justice which is very meaningful for the patient so that whenever there is an error or negligence of the doctor (the principle of presumption of innocence must be carried out on

the negative effects experienced by the patient). Although it has not been stated explicitly about the definition of medical dispute, it is given in this Law. This is in accordance with what is mandated by Article 58 of the Law of the Republic of Indonesia Number 29 of 2004 concerning Health.

Article 58 of Law no. 29 of 2004 concerning Medical Practice states that "Everyone has the right to claim compensation for a person, health worker, and/or health provider who causes losses due to errors or omissions in the health services he receives". Furthermore, Article 66 Paragraph (1) states that "Everyone who knows or whose interests have been harmed by the actions of a doctor or dentist in carrying out medical practice can make a written complaint to the Chairperson of the Indonesian Medical Discipline Honorary Council".

Through the description and discussion of the implementation of standard clauses according to the perspective of health law, it can be stated explicitly that Law Number 36 of 2014 concerning Health Workers is considered to have not provided legal protection to consumers of health services, because in its articles there is no one regulating the use of health services. standard clause in health services. Furthermore, Law Number 36 of 2014 concerning Health Workers also still uses the provisions of standard clauses, so that the application of therapeutic agreements in health services creates a paradox because they still use the terms patients as consumers, and doctors (hospitals as business actors).

Standard clauses are reviewed from the theory of treaties

Basically all forms of agreements, including therapeutic agreements, rely on contract law and the principle of freedom of contract as a condition for the validity of an agreement stipulated by the parties. In Indonesia, all forms of agreements have been regulated and must comply with Article 1320 of the Civil Code.

The object of the therapeutic transaction is in the form of professional medical efforts characterized by providing assistance and patient healing efforts. The main goals of therapeutic transactions are (1) to cure and prevent disease, (2) to relieve suffering and to accompany the patient. While the standard form of clause in health services that requires agreement from the parties is informed consent. Informed consent is a form of agreement or patient consent for medical efforts to be carried out by the doctor against the patient, after the patient has received information from the doctor regarding medical efforts that can be taken to help the patient, along with information about all possible risks. Thus it can be said that informed consent is a condition for the occurrence of a therapeutic transaction and not a condition for the validity of an agreement. In the most important therapeutic transaction is the terms of responsibility, this means that the therapeutic transaction is a consensus agreement. In addition, informed consent stipulates exceptions, namely in the event that the patient is not old enough, due to old age, or is mentally disturbed, and the patient is unconscious.

We know that a contract or agreement made must meet the conditions for a valid agreement, as regulated in Article 1320 of the Civil Code. In order for an agreement to be valid, four conditions are required: (a) the agreement of those who bind themselves; (b) Ability to enter into an engagement; (c) A certain matter; and (d) A lawful cause. These four conditions are subjective conditions (conditions 1 and 2) and objective conditions (requirements 3 and 4) for the validity of an agreement. If the subjective and objective conditions are not fulfilled as a condition for the validity of the agreement, then an agreement is null and void or not and is not legally binding on the parties who made it. So making a written agreement (contract) is very necessary to provide legal certainty for the parties. So that in the event of a dispute or dispute, the interested parties can submit an agreement that has been made as a legal basis or evidence to sue the party who has harmed.

According to the researcher, the concept of the standard clauses of the Consumer Protection Act is considered to be not in line with the breath of Indonesian law and has not been able to provide legal protection to consumers of health services, has various weaknesses, because until now the Indonesian Consumer Protection Act has not contained a single article that regulates more specifically regarding standard clauses in the therapeutic agreement for health services or does not contain an article that distinguishes between the inclusion of standard clauses in the economic field (business/products) and standard clauses in the service sector, especially health services which clearly have not been regulated at all considering the context of the patient is different from that of the patient. consumers, and the context of doctors/hospitals is very different from business organizations (business institutions).

Based on the discussion that highlights the implementation of standard clauses from the perspective of Agreement Theory, the researcher concludes that on the one hand, the use of standard clauses in Therapeutic Agreements is considered unable to provide legal protection and legal certainty for consumers of health services. The standard clause is clearly contrary to the principle of agreement as regulated in Article 1320 of the Civil Code, because its contents are made by one party / "unilaterally", which contains the connotation that there is no agreement from the parties bound in the agreement with the main objective being only to the interests and advantages of one party, namely only business actors (doctors), so that it greatly weakens and harms the position of consumers (patients). The standard clauses have also abused the circumstances (undue influence), including: (a) the content of the standard contract is unreasonable, inappropriate, contrary to humanity (unfair contract terms), (b) the party closing the standard contract is in a state of stress, (c) the the closing of the standard contract has no other choice, but to accept and sign without being able to renegotiate its contents, (d) the rights and obligations of the parties are not balanced. On the other hand, the use of standard clauses in health service therapeutic agreements also does not fulfill the principle of freedom of contract, because there is no freedom in making types of agreements, freedom in regulating its contents and freedom to regulate its form in accordance with Article 1338 of the Civil Code. In addition, standard clauses can harm consumers (patients) with regard to the following conditions: (1) How to terminate the agreement, (2) How to extend the validity of the agreement, (3) How to settle disputes, and (4) Exoneration clauses.

As the conclusion of the researcher, regarding the problem of implementing standard clauses from the perspective of the Consumer Protection Law, Health Act and Agreement Theory, the researcher concludes that from the perspective of Legal Protection Theory, the inclusion of clauses creates a paradox because it treats patients as consumers, and doctors (hospitals) as consumers. business agency. The standard clause places consumers (patients) in a weaker position, consumers have a lower bargaining position than business actors (doctors/hospitals). Thus, the standard clauses of the Consumer Protection Act are not appropriate when applied in the context of health services, because the concept of an agreement in the economic (business) sector is very different from the health service sector. Patients cannot be equated with consumers, and hospitals (doctors) are not business institutions.

In this section, it will be analyzed and discussed in detail regarding the implementation of therapeutic agreements in terms of legal protection theory, malpractice cases in terms of the health law perspective and agreement theory.

Therapeutic Agreements in terms of Legal Protection Theory.

Currently, Indonesia adheres to 2 (two) mixed legal systems of the world's legal system, the codified civil law system and the common law system. For a pluralistic society like Indonesia, it is possible to adopt a mixed legal system. In this regard, in order to provide legal certainty and protection, both for providers of health services and for recipients of health services, in order to improve, direct and provide the basis for development in the health sector, a dynamic health law is required. There have been many changes to health rules, especially regarding the rights and obligations of the parties involved in health efforts as well as legal protection for the parties concerned.

We know that a therapeutic agreement is an agreement or agreement that involves a legal relationship between a doctor and a patient and a legal relationship between a doctor and a hospital. In an effort to provide legal protection, the doctor or hospital is very demanding of its role and responsibility in providing the rights of consumers of health services. In connection with the efforts to realize the legal protection, referring to therapeutic transactions or agreements, many patient lawsuits are found against doctors or hospitals as a result of violations of patient rights or malpractice in the medical field. The basis for the lawsuit filed by the patient to the doctor/hospital is based on the demand for the doctor's liability due to default and unlawful acts. Several forms of malpractice in health services can be viewed from a civil and criminal perspective, including violations due to default, inappropriate professional standards, medical neglect, errors, negligence of doctors' actions and so on. In fact, it was found that doctors or hospitals were considered to still have not fully understood the rights of patients, which in turn the doctors were declared to have violated patient rights (malpractice) in the field of health services, due to lack of understanding of patient rights and not having maximum functioning of the Hospital Law in realizing legal protection for patients.

Based on the facts found, the researcher asserts that the application of standard clauses that are not appropriate in the context of health services often leads to a violation of patient rights (malpractice) and in some cases of malpractice decisions in court, the patient is more dominant as the losing party. This is contrary to the Theory of Legal Protection as stated in the Covenant on Civil and Political Rights and the United Nations (UN) Declaration of Human Rights, which asserts that “every human being before the law has the right to obtain protection from the same law without discrimination. All individuals are entitled to equal protection against any form of discrimination contrary to this statement and against any incitement leading to such discrimination. This is also contrary to Article 26 of Law Number 12 of 2005 concerning the Ratification of the International Covenant on Civil and Political Rights which states that "All persons are equal before the law and are entitled to equal protection of the law without any discrimination". In this regard the law shall prohibit any discrimination, and ensure equal and effective protection for all against discrimination on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Protecting, for example giving protection to the weak.

From what has been described above, the researcher concludes that from the perspective of Legal Protection Theory, on the one hand, one of the reasons why legal protection has not been realized for patients is that therapeutic agreements made by doctors or hospitals still use the context of standard clauses of the Consumer Protection Law. , whose contents are determined or made unilaterally and have been standardized as outlined in the informed consent. The patient has no other choice and just resigns himself to accepting and signing it, which can further put the patient in a weak position and always be harmed by the hospital/doctor. On the other hand, legal protection has not been fully enforced for consumers of health services because malpractice cases are still being resolved by using the context of the Consumer Protection Law (Law of the Republic of Indonesia Number 8 of

1999 concerning Consumer Protection) and the Civil Code, but it should be handled from the perspective of the Law on Health.

Therapeutic Agreements From the Perspective of Health Law.

Violation of patient rights or known as malpractice is an act of carelessness or recklessness (professional misconduct) or unacceptable inability and incompetence (unreasonable of skill) which is measured according to the level of expertise and skills in accordance with the scientific degree practiced in every condition and situation in a community of professional members who have been provided with skills far above average and a reputation that results in accidents, losses or losses experienced or suffered by patients as recipients of health services. This malpractice can be considered a violation of patient rights based on the presence of an element of intent which is clearly carried out intentionally as a form of violation both civil and criminal related to violations of the professional code of ethics and administrative law.

Deliberate malpractice is an act that is carried out intentionally in the form of fraud, detention of patients, actions that harm patients, violations of the obligation to keep medical secrets, euthanasia, sexual assault, illegal abortion, false information, using expertise and knowledge and technology untested, deliberately violates professional standards, carries out practices outside of their expertise or competence, or opens illegal practices without a permit and so on.

Therapeutic Agreements in terms of Covenant Theory.

We know that a contract or agreement made must meet the conditions for a valid agreement, as regulated in Article 1320 of the Civil Code. Where For the validity of an agreement, four conditions are required: (a) Agree from those who bind themselves; (b) Ability to enter into an engagement; (c) A certain matter; and (d) A lawful cause. These four conditions are subjective conditions (conditions 1 and 2) and objective conditions (requirements 3 and 4) for the validity of an agreement. If the subjective and objective conditions are not fulfilled as a condition for the validity of the agreement, then an agreement is null and void or not and is not legally binding on the parties who made it. So making a written agreement (contract) is very necessary to provide legal certainty for the parties. So that in the event of a dispute or dispute, the interested parties can submit an agreement that has been made as a legal basis or evidence to sue the party who has harmed.

We know that standard clauses in health services are stated in the form of informed consent which is made in the form of a standardized form and must be signed as a statement of consent from the patient. The informed consent contains clauses that have been unilaterally determined by the business actor or hospital. Patients as consumers of health services cannot negotiate the provisions contained in the informed consent. If the application of informed consent as a standard clause used in a therapeutic agreement with reference to Article 18 of the Consumer Protection Act, then this is contrary to the full validity of the agreement, which in turn will lead to medical disputes between patients and doctors (malpractice) in the health sector.

The implementation of the standard clauses of the Consumer Protection Act creates a paradox in the therapeutic agreement for health services, because the standard clauses of the Consumer Protection Act regulate the context of the relationship between producers and consumers, while the therapeutic agreement for health services emphasizes the relationship between doctors and patients. If the therapeutic agreement is related to the provisions in Article 1338 paragraph (1) of the Civil Code, that all agreements made legally apply as law for those who make them. This provision implicitly regulates the principle of freedom of contract in the agreement. However, in reality, it was found that

the implementation of standard clauses in the therapeutic agreement for health services was considered not to have fulfilled the legal requirements of an agreement as regulated in Article 1320 of the Civil Code, namely that the agreement and skills between the parties had not been fulfilled.

Related to the problem of research resulting in conclusions from the perspective of Agreement Theory, the inclusion of standard clauses in therapeutic agreements has not provided reciprocal benefits for each party, both socially and economically (Article 1320 of the Civil Code). Furthermore, the standard clause also does not provide legal protection to consumers of health services because the contents of the standard agreement are made unilaterally by the producer/business actor, even though in a contract it is said that the parties have the freedom to determine and understand the contents of the agreement made as long as it does not conflict with the law. -Law, decency and public order.

CONCLUSION

Implementation of standard clauses has not provided legal protection to consumers of health services. From the perspective of Legal Protection Theory, the standard clause rules are made unilaterally, still placing patients as consumers and doctors (hospitals) as business actors/business institutions, so that they always place consumers (patients) in a weaker position and are always at a disadvantage. From the Health Law perspective, the Health Law still uses the standard clause rules of the Consumer Protection Act which still places the patient's position as a consumer, and the position of a doctor/hospital as a business institution. In addition, there is not a single article in the Health Law that regulates the inclusion of standard clauses in the therapeutic agreement for health services. From the perspective of Agreement Theory, the contents of standard clauses are only determined unilaterally without being negotiated by the patient which is considered contrary to the conditions of the validity of the agreement (Article 1320 of the Civil Code), and does not provide contractual freedom to other parties.

Based on the perspective of Legal Protection Theory, malpractice cases and medical disputes occur as a result of inappropriate implementation of standard clauses in health services, not yet providing legal protection for health service consumers and finalizing decisions on malpractice cases in court still using the context of Consumer Protection Law (Law on Consumer Protection). Republic of Indonesia Number 8 of 1999 concerning Consumer Protection), is not resolved according to the perspective of the Health Law. Court decisions on cases of malpractice in the health sector have not been completely resolved according to the principles of justice in protecting consumers of health services (Supreme Court Decision of the Republic of Indonesia Number 515 PK/Pdt/2011, Decision of the Supreme Court of the Republic of Indonesia Number 822 K/Pid.Sus/2010, Decision of the Supreme Court of the Republic of Indonesia Number 3203K/Pdt/2017). These court decisions still place patients who use health services as weak parties, this indicates that the implementation of therapeutic agreements has not been able to realize legal protection for patients who use health services in resolving malpractice disputes in court.

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