Jurnal Healthsains
Printed ISSN: 2722-7782
Electronic ISSN:2722-5356
jurnal.healthsains.co.id

THERAPEUTIC TRANSACTIONS AND INFORMED CONCENT AND LIABILITY AGREEMENT BETWEEN DOCTORS AND PATIENT

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Keywords:
Therapeutic transactions, informed consent, doctor and patient obligations and rights, liability agreement

ABSTRACT
In the therapeutic transaction, the relationship between patient and health service providers tends to bring conflict. Many factors caused that conflict, e.g., lack of patient health understanding, inequality of position between the patient and the provider before the law, and the imperfection of service quality handed over by the Provider. Viewed from a legal standpoint, therapeutic transactions have far-reaching consequences of a reciprocal nature between the patient and the doctor. The execution of informed consent is considered merely a formality to be signed. Juridically, the doctrine of informed consent contains the obligations imposed on doctors and the rights of patients to be fulfilled by doctors. Among the rights of the patient in the doctrine of informed consent are: the right to obtain information about his or her illness and the action to be taken against him; the right to obtain answers to questions he or she asks; the right to choose alternatives; and the right to refuse to initiate action. The right to safety, the right to be informed, the Right to Choice, and the right to Be Heard are also basic consumer rights that doctors must fulfill. These rights are guaranteed by the Consumer Protection Act. The process of informed consent is a manifestation of the preserved equality of relations between doctors and patients who are respectful and communicative; both have rights and duties to be respected, and together they determine the best course of action for patients in order to achieve the desired purpose of medical service. An informed consent is also deemed valid if: (a) the patient has been given explanation or information; (b) the patient or his authorized representative is competent to give a decision or consent; and (c) the consent must be given voluntarily. The process of obtaining informed consent is not running as it should.

INTRODUCTION

In the action of their profession, medical personnel are connected to the ethical and legal norms in force (Marina & Wahjono, 2017). Health services relate to several components such as health care, health facilities, and patients (consumers), including hospital services (James, Calderon, & Cook, 2017). Although this has a positive side, it

is inevitable that excesses or negative impacts such as excessive diagnostic measures, abuse, or unnecessary medical action will occur (Daughton & Ruhoy, 2013).

In many ways, there are commercial elements, even if not rarely, to increase the "branding or proudness" of doctors outside of medical necessities. Excessive reliance on modern equipment tends to take care of the dependency of the way and ability of clinical thinking, called intellectual erosion, which is rarely accompanied by ethical erosion, which is one of the negative impacts on technological progress. (Komalawati, 1989) The pattern of relationships between consumers and entrepreneurs is often realized through agreements, thus giving rise to agreements. Similarly, in the case of the fulfillment of the need for service, an agreement arises between two legal subjects. The service you're talking about is a health care service (Canuto, Wittert, Harfield, & Brown, 2018). A phenomenon that is currently flourishing in the midst of society is the right to obtain a health degree. Thus, health care that meets the standards is expected to reach an optimal level of health. Health services performed by doctors are professional services in the medical field or services of the medical profession (Chmielewska, Stokwiszewski, Filip, & Hermanowski, 2020).

A profession is a factor of subsistence or an autonomous job. As for the characteristics of the profession, it is to receive remuneration for the services provided, use technical terms, use the emblem of work, have formal education, ethics, internationalization, autonomy, monopoly with licenses, and social status (Chmielewska et al., 2020). In the past, the relationship between the doctor and the patient was usually paternalistic; that is, the patient always followed what the doctor said without asking anything (Timmermans, 2020). Now that the doctor is the patient's partner and the position of both is the same by law, each has certain rights and obligations (Mann, 2017). With regard to the rights of patients, among other things, the right to information, consent, medical secrecy, and a second opinion, informed consent is not only required in therapeutic transactions but also in biomedical research in humans, as enshrined in the Helsinki Declaration, whose formulation guides the Nuremberg Code, formerly referred to as voluntary consent. The emergence of awareness of human rights, especially in the field of health, and the increasing knowledge of patients about various health problems resulted in doctors not being able to properly treat patients without paying attention to the patient's condition. One of those rights is the patient's right to information. (Informed Consent: "Ethics in Medicine, University of Washington School of Medicine, http://depts.washington.edu/bioethx/topics/consent.html) Information and explanation are deemed sufficient if at least six (six) of the following things are provided in providing information and explaining, namely (Munir Fuady, 2005): 1. The purpose and prospects for the success of the medical action to be carried out 2. The medical procedure to be carried out 3. Risks and possible complications. 4. Alternatives to other available medical measures as well as their respective risks 5. The prognosis of the disease when medical action is carried out 6. Diagnosis. The above information and explanation should be provided directly by the doctor. After that, consent will be given to the patient so that the doctor can take further medical action in order to carry out his professional duties (Astuti, 2017). The importance of

informed consent given by this patient is because, when observing the development of the relationship between the doctor and his patient, one can clearly see a shift from the original relationship of paternalism towards a more consumerist relationship. If a patient once believed what the doctor said, the confidence given by the patient was very high, but now the patient does not trust the doctor at all (Pellegrini, 2017).

The patient now realizes that he has a right to know exactly what treatment the doctor is giving and even the right to consult with another doctor about his illness. Therefore, the doctor has an obligation to explain to his patient the important things about the treatment. In legal science, informed consent has a role as a means for doctors to avoid legal sanctions. For that, when the doctor gives information to his patient, he has to meet the standard of explanation. This standard requires a doctor inside. Giving an explanation must be based on the knowledge he knows that someone in a patient's position reasonably wants to know before deciding on a particular medical procedure or action. If the patient is unconscious, the information must be given to the family member. The position of the patient given information or an explanation of medical action is something that is legally guaranteed. This is as regulated by informed consent in Ministry of Health Regulation No. 585/Menkes/Per/IX/1989 of September 4, 1989 on the Medical Action Agreement. In this article will be discussed about the transaction therapeutic between doctors and patients related to inform consent

RESEARCH METHODS

Descriptive research with the aim of finding factual information and subsequent analysis will be obtained a comprehensive, systematic and accurate picture of the interaction of the patient doctor in connection with the informed concent The data taken from primary data and secondary data about regulations and legislation such as the Regulations of the Minister of Health RI No. 343/Men.Kes//Sk//X83 on the Enforcement of the Indonesian Code of Medical Ethics for Doctors in Indonesia and the Order of the Minister of Health of the Republic of Indonesia No. 585/Men.kes/Per/IX/1989 on Medical Action Agreement. As well as sources of research and general information from magazines and newspapers by conducting library studies. The data is then analyzed by describing or displaying what is revealed from the data that can be collected.

RESULTS AND DISCUSSION

A therapeutic agreement is a relationship between a doctor and a patient in a professional medical service based on competence that corresponds to specific expertise and skills in the field of medicine. (Komalawati & Siahaan, 2020). Based on the Mukaddimah code of ethics of the Indonesian medical department in the decision of the Minister of Health of the Republic of Indonesia Number 434/MEN.KES/X/1983 on the validity of the medical ethics code for Indonesian doctors, what is meant by the therapeutic agreement is "the relationship between the doctor and the patient performed in an atmosphere of mutual trust and always covered by all the emotions, hopes, and concerns of human beings". According to

(Eri Supriadi, 2001), in the legal sciences, there are two types of bonds: the verbintenis inspannings and the resultant verbtenis bonds. In an alliance, the accomplishment given by a doctor is the maximum effort possible, while in an association, the achievement that a doctor has to give is a certain outcome. Thus, in the implementation of the therapeutic agreement between the doctor and the patient, the doctor does not promise the healing of the patient but does the best possible to heal the patient. A therapeutic transaction can be described as a form of agreement between a patient and a healthcare provider where the basis of the agreement is the maximum effort for the patient's recovery carried out carefully, so that the legal relationship is referred to as a business alliance. In order to be valid, the transaction must meet four conditions, first there is the agreement of the parties binding themselves, in article 2 of the regulations of the Minister of Health of RI No. 585/MEN.KES/Per/IV/1989 states that "all medical action to be performed against a patient must be approved; both the capacity to make something, the parties that bind themselves in an agreement must be able to understand the rights and obligations between the parties; the third concerning a thing or object; and the fourth because of a legitimate cause, which means that the action performed by a doctor against the patient is an act that is not legally prohibited. (Pasal 1337 KUHP).

A legal transaction or agreement with a therapeutic transaction is not the same. In essence, therapeutic transactions relate to norms or ethics that regulate the behavior of doctors and therefore explain, detail or affirm the validity of a code of ethics designed to provide protection for doctors or patients. The relationship between therapeutic transactions and the protection of patients' rights is the right to complete explanation of the medical action to be taken, right to seek medical explanations, right of access to medical services according to medical needs, and right of refusal of medical action and right to obtain medical records. The patient's obligations in receiving medical services include providing complete and honest information about his or her health problems, obeying the advice or directions of the doctor, complying with the provisions in force in the means of health care and providing remuneration for the services received. If the person concerned has performed his duties properly according to the standards of the profession, he shall have the protection of the law. (Muchsin, 2009). The legal responsibilities of doctors and health workers are based on the ethics code of the profession, the development of ethics codes for the profession to be obeyed and implemented by its supporters has three (three) purposes, namely: first, an ethical code of a profession facilitates efficient decision-making; second, indirectly the professionals often need instructions to direct their professional behaviour; and third, ethics of the occupation creates a pattern of behavior that is expected by their clients professionally. (Koeswadji, 2002). (Muchsin, 2009) stated that with a high degree of humanity can be understood, in the exercise of his profession will treat patients on the basis of the noble values of a human being. He'll face his patient as an integral human being, who has self-esteem, rights, feelings, and even family. Responsibilities of doctors and/or health personnel are legal liabilities or better known as legal responsibilities medical liability (B. Supriadi, Harijanto, & Ridlo, 2020). In addition to

the patient, the doctor also has rights and duties to be exercised. The duty of the doctor is the duty arising from the nature of medical care, i.e. the physician must act in accordance with the standards of the medical profession or carry out his or her medical practice legally, the obligation to respect the rights of the patient that are derived from the fundamental rights in the field of health, obligations relating to the function of health maintenance. Doctors as health workers also have the right, among other things, to work in accordance with the standards of the medical profession, the right to refuse to undertake medical actions that are professionally irresponsible, the rights of refusal to perform medical actions contrary to the conscience of the patient, the Right to choose a patient, The right to terminate relationships with the patient when cooperation is no longer possible, The Right to privacy, The rights to the patient's good faith and to provide information that is fatal to his illness, Right to a fair play, Right of self-defence, Right for receipt of fees, Refusal to testify about his patient in court. In the provision of medical services or healing efforts, a legal relationship arises between a doctor and a patient, which is called a therapeutic transaction. This therapeutic transaction can happen through an agreement. The form of agreement in performing medial action is known as Informed concent. According to Veronica Komalawati, the informed consent includes rules that regulate the behaviour of doctors in interacting with patients, in addition to the ethical basis for appreciating the values of autonomy. Therefore, the basic idea of informed consent is that decisions for treatment and treatment are based on collaboration between physician and patient. Such care and treatment is the operational term of health recovery and disease healing activities, whereas action is the behavior of the physician in such activities.

Consent given by the patient, after the patient has been given sufficient information in a language that the patient can understand (so that he can make the right decision) about everything related to the action that the doctor will take. The most important purpose of informed consent is how a patient who has obtained an explanation plays an active role in determining the decisions taken about the medical action to be taken. In general, an informed consent is considered complete when the following elements are discussed in the discussion with the patient: 1. Properties and procedures performed 2. Other action options that enable 3. The risks associated with action, benefits, and uncertainty on each of the choices. 4. A doctor's estimate of how far the patient understands the action to be taken. 5. Patient acceptance of action to be taken (Medical Mapractice Attorney, Informed Consent:
(http://www.vanweyjohnson.com/CM/FSDP/medical_malpractice/detail4.asp)

With the above information and explanation, the patient's consent will be given, so that the doctor can take further medical action in order to carry out his professional duties. The manner in which the patient expresses consent can be written or oral. Absolute written consent is required for high-risk medical procedures, whereas oral consent is necessary for low-risk medical measures. By having given the doctor information and explanation to his patient, and the patient understands what has been informed and explained later, the patient declares

agreement means that there has been an informed consent. So the doctor can take medical action for the benefit of the patient. The most important thing when a doctor gives information and explanation to a patient is about the risks of such medical action. Within any medical action there are possible risks that may occur that may not be in line with the patient's expectations. The patient's lack of understanding of the risks he faces can lead to the patient bringing a lawsuit to court. The risks arising from a medical intervention can be: 1. An inherent risk, such as hair loss due to the administration of cytostatics, 2. Hypersensitivity reactions, e.g. excessive or abnormal immune response of the body to the entry of foreign substances (medicine), 3. Complications that occur suddenly and are unpredictable. (Isfandyarie, 2005) Information is the spirit of informed consent (Arnm Ball. "Informed ConsentnLegal and Ethical Aspect": http://www.ijme.in/072mi056.html). Information about the risks of the proposed medical action is the most important part of informed consent. This issue arises partly to meet the legal requirements, but also arises because of the growing modern medicine and research that has to be done pro-actively. As far as medical practice is concerned, medical law has already defined how informed consent should be carried out. But it still seems to be facing many obstacles. In Indonesia, the main concerns are socio-cultural, educational level and intelligence of patients, financial factors and so on.

The other obstacles also lie on the side of the doctor's profession itself. In the Faculty of Medicine, it seems that there are no subjects on how to deal with the patient, how to inform the patient about the disease he is suffering. Other challenges arising in daily practice in giving information to patients, among others: the language used in the delivery of information is difficult to understand by the public, especially the patient or his family, the limits of the amount of information given is also unclear, the problem of intervention. Family or third parties in terms of giving consent to medical action are very dominant. Besides information and consent, there are often differences between patients and doctors. These differences of interests, if they do not meet a meeting point that satisfies both sides, will lead to conflict of interest. Because of the routine of work, doctors are no longer sensitive to the situation and condition of the patient. Sometimes there's a difference in perception between the health service provider and the recipient of the health care that the patient thinks is important, the doctor thinks it's not important. In order to be able to determine which risks should be notified, a doctor must look at the standard of disclosure being followed. Courts and law enforcement authorities often indicate that there are differences of risk in the nature of material, substantial, probable and significant risk. It's in its implementation not to establish it, because the medical case is very cautious. In a particular case, it must be acknowledged that the risk must be disclosed, but the physician must consider in the standard figures applicable to the disclosure of such risks, whether the risk should be informed in the particular case or not. In this case, there are four(four) risk aspects that a doctor should consider in his disclosure, namely: 1. The nature of risk (the nature of the risk) 2. The benefit of risk (the magnitude of the risk) 3. The possibility of the risk. (the probability that the risk materialization) 4. The imminence

of the risk materialization When, for example, the risk of a particular procedure may be able to, or may injure the nerve that controls the movement of a member of the body: the nature of that risk is the loss of the ability to move that member. The nature of risk becomes important when it is for the patient to determine whether to agree or not to the proposed procedure. The magnitude or seriousness of the risk is interrelated with other factors. Interactions between the nature of the risk and the specific patient situation/condition should also be considered. For example, a loss of taste in a hand of a retired person who is daily missed by watching television is not so significant, but becomes critical when compared to a retiree being a sculptor. Although the probability of a risk is very serious, such as: paraplegia, blindness, death, does not mean that it should be informed, when the likelihood of occurrence is very small. Similarly, when a risk is highly likely to occur, but includes minor, then not to reveal it is still justified.

However, when a significant risk threatens a patient from a proposed medical intervention, the risk must be described, understood, understanded and accepted by the patient (The Canadian Chiropractic Association,Informed Consent: http/www ccachirro.org/clientccatnsf/web/chopinformed +consent hlm 1) Given that use, both professional and objective standards (reasonable patient standards) contain principled weaknesses, then in medical law emerges another approach that is a kind of middle way or a mixture between professional standards and an objective standard approach. As a gift: 1. Using objective standards, but in certain other cases using expert witnesses in the field of medicine. 2. The obligation to use a specific risk profile, which contains risk information for each medical procedure, plus the obligation of informing the patient orally of certain details. 3. Used standards where no disclosure of medical information is required that is considered known or should be known by the general patient. 4. Using assumptions with evidence on the patient's side. In general, it can be said that the standard/level of openness of information to cases of informed consent is equivalent to the standard(s) of transparency of information for cases of negligence to diagnose or neglect in treatment. The standard is that the doctor must meet the standard of his profession, objective standard or subjective standard. As will be explained further that because of the complexity of the problem of proofing caused by the sophistication of medical science, then the burden of the proof should be charged to the doctor. So, in order for him not to be found guilty by the court, once it is proven that there is important information that has not been disclosed, then the doctor must prove that the doctor has met the elements of professional standards.

CONCLUSION

Medical services are a complex system and vulnerable to accidents, so they must be carried out with the utmost care by people who are competent and have special authority for it. Health services basically have to start a therapeutic transaction made, that is, a transaction/alliance on an equal footing between the two sides. In addition, the communication network between the two sides is alwaysined, it is intended to minimize the occurrence of intentional actions such as certain misconduct,

negligence, or an unjustified incompetence of the healthcare provider resulting in losses to the patient. A partnership in a doctor-patient relationship will result in mutual respect and respect for each other's rights and duties. The form of a relationship as a contract can be either an expressed contract or an implied contract. (implied contract). The achievement of the therapeutic contract in the patient-doctor relationship is not a result achieved or a healing (resultaatsverbintenis), but a genuine effort, a maximum effort. (inspaningsverbintenis). In this case, the doctor takes medical action against the patient on the basis of his professional obligations and his acts on a legal basis. It's done because the patient is unconscious, while the patient needs to take medical action as soon as possible. After awakening, the patient is given information and explanation of why the medical action was carried out. Legally speaking, the doctor-patient relationship is a real relationship or maximum effort. Doctors don't promise healing, but doctors do their utmost to heal the patient. The legal status of patients and doctors is basically equal because they have equal rights and duties. For that the legal position of the patient in informed consent in accordance with consumer protection laws The informed consent process is not running as it should. What are the rights of patients, and the duties of doctors guaranteed by, whether the Ministry of Health regulations, health laws, or consumer protection laws, even medical ethics codes have not been met by the parties. The pattern of doctor-patient relationship still looks paternalistic. Some of the constraints in this regard are; (a) the understanding of the medical staff, the doctors, and the patient about informed consent is still lacking, (b) language constraint, (c) patient education constraining, and (d) patient status constrainment.

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