



## Study Of Consumer Protection Law Between Patients And Doctors

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### ABSTRACT

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*Patients as parties who use health services in conjunction with health service providers are domiciled as consumers. Consumer Protection Act No.8 of 1999 does not provide specific protection for patients, even almost all of the material does not touch or cannot be applied in providing protection for users of health services, in addition, legislation in the field of health as a special regulation referred to by law- the Consumer Protection Act turns out that the substance of consumer protection is not regulated at all and even points back to the applicable general law, namely the Criminal Code and the Civil Code through criminal charges and / or civil suits that still use the principle of responsibility based on errors that must be proven so as to place consumers of Health.*

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### INTRODUCTION

Humans have various needs in maintaining their lives, one of the essential human needs is to keep themselves healthy, a condition that not only points to the absence of real disease, but also a state of disease that is not real. To obtain such a situation, humans often need the help of other humans who have expertise in the field of Health, to obtain health maintenance and improvement services, as well as healing and treatment of diseases, especially from professionals in the field of Medicine. The medical profession as one of the Health Professions is a unique profession, its uniqueness lies in the relationship between members of the profession with consumers. Because the consumer is a human being who is the most dignified and valuable creature on this earth, then negligence and mistakes made by doctors or other health workers can cause harm and disability and even death that cannot be assessed with money. Therefore, the specificity appears in the fact that the work of the medical profession is bound by various very rigid

rules in order to protect consumers who, in this case, are patients. Various rules such as Doctor's oath, Code of Medical Ethics, and other laws and regulations are made as signs that are expected to prevent actions that can harm patients, including Health Law No. 36 year 2009 and Law No, 29 year 2004 on the practice of Kedokteran, as well as relating to its services to patients, of course also applies law no. 8 of 1999 on consumer protection, as well as general laws in force, namely the Civil Code and the Criminal Code.

Sociologically and psychologically, the relationship between doctors and patients is often unbalanced, in the sense that the doctor's position is higher than that of his patients. Patients are on the receiving end of the service can not assess the kind of service that will be received. Such a relationship can be obtained only in the event of a trusting relationship. Without trust, healing does not work efficiently. Therefore, the level of expertise and professional behavior of doctors and other medical personnel should be such that the patient believes that the treatment he receives is the best for his interests.

Mutual trust will be easily obtained if the doctor shows a noble attitude and behavior.

The legal relationship between doctors and patients is commonly called therapeutic transactions or medical transactions, namely transactions between doctors and patients, where doctors seek/find the most appropriate therapy as an effort to cure the patient's disease.<sup>1</sup> In conducting this legal relationship each party is bound by its rights and obligations. Patient's right to health care. Is a basic social right, meaning that in terms of fulfilling only the patient needs the help of other parties, namely doctors. This basic social right in its development is supported by two kinds of basic rights that are individual, namely the right to information (the right of information) and the right to self-determination.

In recent years, the problem of the relationship of doctors with patients has received increasing attention from the public, both among the medical profession and among other communities. This increased attention is mainly due to the widespread publication in the mass media related to the dissatisfaction of patients with doctors and health workers to the extent that it is submitted to the court. For the medical profession, it can cause unrest that can affect health services for the community. As a result, it can lead to substandard services (services below the quality should be) or perhaps overstandard services (services excessive than needed), which can harm the community.

The actions of doctors and other elements that are considered negligent or less careful in carrying out their duties to the detriment of the patient (eg disability or even death), if they meet the criminal elements, they can be prosecuted in accordance with applicable criminal law, or can be sued civilly, it is also possible to be subject to administrative measures in the form of- for a long time, proving the existence of injuries to patients is relatively easy, but proving the existence of errors or omissions on the part of doctors who deviate from medical standards (commonly called malpractice) is not easy. There are certain guidelines for assessing negligence that can be categorized as medical malpractice. Each case that arises must be viewed objectively, not only looking at the consequences it causes, but must prove the existence of a negligence that deviates from medical standards and there is a causal relationship between injuries that cause harm to patients with elements of negligence, and must also be known and investigated in advance all other factors that affect the course or process of patient treatment.

## **METHOD**

The research method used in writing this law is a normative juridical approach. Normative juridical approach is a study that uses secondary data sources / data obtained through library materials. This normative legal research usually includes: research on legal principles, research on legal Systematics, research on vertical and horizontal synchronization levels, Comparative Law and legal history. The method of this approach is carried out by studying the legal norms in legislation.

## **RESULTS AND DISCUSSION**

### **Legal analysis of the relationship between doctor and patient**

The relationship between health care providers (doctors) and health care recipients (patients), was originally a vertical relationship pattern, and therefore also gave birth to a paternalistic pattern or form of relationship between doctors and patients. In this vertical relationship pattern, the position or position between health service providers and health service recipients is not equal, because health service providers know about everything related to the disease, while health service recipients do not know about the disease, let alone the cure. Therefore in this paternalistic relationship, the patient completely leaves his fate to the doctor.

The relationship between doctors and their patients can be legally included in the class of contracts. The First party commits itself to provide the service, while the second party accepts the provision of the service. The patient comes to ask the doctor to be given treatment services, while the doctor accepts to give it, thus the nature of the relationship has 2 (two) characteristics, namely : 1). "There is an agreement (consensual, agreement), on the basis of mutual consent on the part of doctors and patients about the provision of Health Services. 2). The existence of a trust (fiduciary), because the contractual relationship is based on mutual trust to each other.

Because it is a contractual relationship between doctors and patients, it must meet the requirements : 1). There must be an agreement (consent) from the contracting parties: the agreement is tangible in the meeting of the offer and the recipient of the provision of services that is the cause of a contract. The agreement is between the doctor and the patient about the nature of the provision of treatment services offered by the doctor and that have been well received by the patient. then the

agreement between the parties must be voluntary. Consent obtained by mistake, pressure or violence, intimidation, under influence, or fraud, will render the contract null and void by law. 2). There must be an object that is the substance of the contract : The object or substance of the contract of the physician's relationship with the patient is the provision of medical services that the patient desires and is provided to him by the physician. The object of the contract must be certain, legal and not outside the profession. 3). There must be a cause or consideration : That cause or consideration is the factor that moves the doctor to provide treatment services to his patients. If the patient turns out to be unable to pay, it will not affect the existence of the contract or reduce the doctor's responsibility for negligence charges".

If between the two parties it has been agreed that optimal efforts will be made by carrying out medical actions by health personnel towards the patient, but these efforts are not achieved because the health care provider is not careful or does not carefully inform the risks that may occur before stepping on certain medical actions, then the patient can sue for compensation in accordance with applicable legal protection.

In addition to the main obligation, the doctor has other obligations based on the contract, for example in fulfilling the rights of his patients. But otherwise the patient has no juridical responsibility to the doctor because : 1). The patient himself is responsible for his health towards himself and not towards the doctor. 2). The cooperative relationship is at the initiative of the patient and concerns the patient's personal self, that is, his health.

The granting of the right to compensation is an effort to provide legal protection for everyone for an effect that arises, both physical and non-physical, due to errors or omissions that have been committed by health workers. This protection is very important because the result of an error or omission may result in death or permanent disability. What is meant by physical harm is the loss or malfunction of all or part of the organs of the body, while nonphysical harm is that which relates to the dignity of a person.

The principle underlying this horizontal relationship pattern, thus essentially a sale and purchase of services between sellers of health care services with recipients or users of health care services in the legal agreement according to The Book of Civil Law between producers (services) with consumers of services. Consumeristic elements appear because patients feel as consumers of health services, while doctors as business actors of Health Services.Until

recently, in the relationship of doctors with patients, patients were not allowed to file protests, both in the determination of the magnitude of the low remuneration for the services of doctors and in the demand for health services. This situation can not be changed if there is no third party who is able to mediate, who can be fair and understanding in health problems.

## CONCLUSION

The relationship between doctors and patients is still perceived as paterlistic. In the relationship of the patient (consumer) most (especially in traditional communities including in urban areas) are still of the view that, doctors or other health workers are more aware of the condition of the disease, so they give up completely handling (treatment) of the disease by the doctor (the healer), and if the treatment is done by the healer has a failure that can harm him, accepted as fate or even as Destiny. Although in its development the paternalistic relationship has developed into a contractual relationship, based on this relationship, the laws and legislation in force still adhere to the principle of responsibility by mistake, so that proof is needed.

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