

Therapeutic Agreement Between Doctor and Patient: Juridical Analysis in Civil Law

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Abstract: *The relationship between doctor and patient is not only ethical and professional, but also has a strong legal dimension, particularly in the form of therapeutic agreements. This agreement forms the basis for initiating medical proceedings and creates a binding legal relationship based on the principles of civil law. This study aims to analyze juridically the existence and validity of therapeutic agreements within the framework of civil law, examine the forms of legal liability arising from violations, and evaluate evidentiary instruments in medical disputes. The method used is normative legal research with a legislative approach, supported by an analysis of legal literature and jurisprudence studies. The results of the study show that although therapeutic agreements are often not stated in writing, their existence is still valid and binding if they meet the legal requirements of the agreement as stipulated in Article 1320 of the Civil Code. Informed consent serves as proof of the implementation of the agreement and as the basis for legal defense in disputes. Civil liability can be imposed both on doctors personally and hospitals as institutions through the doctrine of vicarious liability, and forms of compensation include material and immaterial losses. Dispute resolution through non-litigation channels such as mediation and the role of the Indonesian Medical Discipline Honorary Council (MKDKI) also have an important contribution in maintaining a balance between patient protection and medical professional accountability.*

Keywords: *Therapeutic Agreement, Physician Liability, Civil Law.*

INTRODUCTION

The relationship between doctor and patient is an interaction that is not only based on ethical and professional considerations, but also touches on deep legal aspects, especially in the form of therapeutic agreements. This agreement is the initial basis for any medical action taken by health workers on patients, which must be based on mutual agreement and legal awareness from both parties. In this context, a therapeutic agreement not only contains an agreement on a specific medical procedure, but also reflects a recognition of the rights and obligations of each party, so it is important to ensure clarity of responsibility and legal protection, both for patients receiving medical services and for doctors who provide those services.¹ Juridically, therapeutic agreements can be studied in the framework of civil law, because

¹ Septarina, M., & Salamiah, S. (2015). Perlindungan Hukum Bagi Pasien Dalam Perjanjian Terapeutik Ditinjau Dari Hukum Kesehatan. *Al-Adl: Jurnal Hukum*, 7(14).

substantively this agreement fulfills the contractual elements as stipulated in the Civil Code (KUHPerdata). Civil law recognizes the principle of consensualism, which is that an agreement has been legally formed only based on the agreement of the parties, without the need for a specific written form.² In the practice of medical services, this principle is the basis for the formation of a legal relationship between doctors and patients since the agreement is reached regarding the medical actions to be carried out. In addition, the principle of freedom of contract provides space for the parties to determine the content of the agreement as long as it does not conflict with law, decency, and public order, which is also very relevant in the context of health which is full of moral and social values.

However, in reality, the legal relationship between doctors and patients often raises legal problems, especially if losses or dissatisfaction arise due to the results of medical actions taken. In this situation, the concept of default (negligence or violation of the content of the agreement) and unlawful acts become very important to analyze. Whether a doctor can be considered to have committed a default because the results of the medical procedure are not according to the patient's expectations, or whether it is a pre-agreed medical risk, is a legal debate that requires in-depth study. Therefore, a civil law approach can help identify the scope of a physician's liability objectively and proportionately, without ignoring the accompanying medical complexities.

A practical problem that often arises in the doctor-patient relationship is the absence of a therapeutic agreement that is written out, even though medical procedures are still carried out based on verbal or implied consent. In this situation, legal consequences remain attached to the relationship, and it will be a crucial issue in the event of a dispute, such as allegations of malpractice, medical negligence, or violation of the patient's rights.³ When such a case reaches the realm of law, the court will require clear proof of whether a valid agreement has occurred and whether the doctor's actions have violated the content of the agreement. The lack of agreement documentation is an obstacle in the evidentiary process, so that the legal position of each party becomes vulnerable to debate.

Based on the above background and problems, this article aims to conduct a juridical analysis of the therapeutic agreement between doctors and patients from a civil law perspective. The focus of the study is directed at the identification of the contractual elements inherent in the relationship, as well as how civil law principles can be used to assess the validity of agreements and forms of liability in the event of a breach. The urgency of this study is increasing as public awareness of their rights in receiving safe, quality, and responsible health services grows. In addition to providing a strong academic foundation, this discussion is also expected to contribute to strengthening regulations and improving the professionalism of medical personnel, so as to create fair and transparent legal relationships in health service practices

² Irayadi, M. (2021). Asas Keseimbangan Dalam Hukum Perjanjian. *HERMENEUTIKA: Jurnal Ilmu Hukum*, 5(1).

³ Yunanto, A., & Helmi, S. H. (2024). *Hukum Pidana Malpraktik Medik, Tinjauan dan Perspektif Medikolegal*. Penerbit Andi. hlm. 34

METHOD

The research method used in this article is normative legal research, which focuses on the study of legal norms or literature studies. In this case, it regulates the therapeutic agreement between the doctor and the patient in the perspective of civil law. This study analyzes the basic principles of civil law such as the principle of consensualism, the principle of freedom of contract, default, and unlawful acts in the context of contractual relations of medical services. The approach used is a statutory approach by examining various regulations such as the Civil Code, the Medical Practice Law, the Health Law, and the Hospital Law.

Data sources consist of primary legal materials (regulations and court decisions), secondary legal materials (scientific literature, journals, expert opinions), and tertiary legal materials (legal dictionaries and encyclopedias). The data collection technique is carried out through library research, and is supported by descriptive qualitative analysis to interpret legal data systematically. This study examines case studies of medical disputes as an illustration of the application of legal norms in practice, in order to produce an understanding and recommendation of legal protection in the relationship between doctors and patients.

DISCUSSION

The Form and Validity of the Therapeutic Agreement Between Doctor and Patient Reviewed from a Civil Law Perspective

A therapeutic agreement is a form of legal relationship between a doctor and a patient that is based on an agreement to perform certain medical procedures. In this context, a therapeutic agreement is an unwritten contract that arises from a professional interaction between the medical personnel as the party offering the services, and the patient as the party receiving the services. This agreement not only marks the beginning of medical treatment, but also the basis for the emergence of legal rights and obligations for each party. Thus, therapeutic agreements place medical measures within a clear legal framework, not only based on professional ethics, but also subject to civil law norms.

As a form of legal engagement, therapeutic agreements have characteristics similar to agreements in civil law in general, such as the existence of consent, agreed objects, and legally competent parties. However, this agreement also has its own characteristics, which are closely related to the aspects of trust and the medical risks that come with it.⁴ In practice, therapeutic agreements are often not made in writing, but simply through verbal consent or implied consent, as long as the patient shows consent to the medical procedure after obtaining adequate explanation (*informed consent*). This shows that the form and formality of the agreement does not diminish its legal force, as long as the essential elements of the agreement are met.

⁴ Sriatmi, A. (2023). Aspek Hukum Perjanjian Terapeutik. hlm. 32

The main elements of a therapeutic agreement include the subject of the law, the object of the agreement, and the agreement. The legal subjects in this agreement are doctors as the party who provides health services, and the patient as the party who receives the services.⁵ The object of the agreement is a medical procedure, which includes a diagnosis, therapy, or other procedure agreed to be performed in the interest of the patient's health. Meanwhile, the element of agreement is manifested in the free will of both parties who express consent consciously, without any pressure or coercion. This is what distinguishes therapeutic treaties from ordinary treaties: although they are subject to the principles of civil law, they also touch on the high dimensions of ethics and social responsibility, given that the stakes are human health and safety. The rules in the Indonesian civil law book, the validity of an agreement are regulated in Article 1320 of the Civil Code which stipulates four main conditions: agreement of the parties, legal competence, a certain matter, and halal cause.⁶ In the context of a therapeutic agreement between the doctor and the patient, the element of agreement refers to the patient's consent to the medical procedure to be carried out after receiving an adequate explanation from the doctor. Legal proficiency refers to the ability of both parties to make an agreement, which means the patient must be conscious, of sufficient age, and not under pressure or coercion. The object of the agreement is an explicit medical action, such as a specific diagnosis, therapy, or procedure that has been described beforehand. As for the halal cause, it is necessary that the agreement does not contradict the law, morality, or public order, for example, medical actions that are prohibited by law cannot be used as the object of a valid agreement.

Although therapeutic agreements are often made orally in medical practice, such agreements still have legal force as long as they meet the legal requirements as stipulated in Article 1320 of the Civil Code. Civil law does not require all agreements to be made in writing, unless otherwise specified by law, so oral agreements can still be considered valid. However, in legal and medical practice, *informed consent* documents are important evidence as a form of written consent from the patient to certain medical actions.⁷ This document contains not only the consent, but also the details of the medical information that has been submitted by the doctor. According to Prof. dr. Guslihan Dasatjipta, Sp.A (K),

*"Informed consent is the foundation of trust in the doctor-patient relationship. Without a clear understanding and consent from the patient, medical actions risk becoming a source of lawsuits, even if done in good faith."*⁸

The absence of written documentation can cause evidentiary problems in the future if a dispute occurs, because there is no official record of the agreement that has been reached between the doctor and the patient.

⁵ Sitohang, O. E. (2017). Kajian Hukum Mengenai Persetujuan Tindakan Medis (Informed Consent) Dalam Pelayanan Kesehatan Ditinjau Dari Aspek Hukum Perjanjian. *Lex Crimen*, 6(9).

⁶ Romli, M. (2021). Konsep Syarat Sah Akad Dalam Hukum Islam Dan Syarat Sah Perjanjian Dalam Pasal 1320 KUH Perdata. *Jurnal Tahkim*, 17(2), 173-188.

⁷ Matippana, A. (2019). *Pentingnya Memahami Informed Consent dan Rahasia Medis dalam Praktek Kedokteran*. uwais inspirasi indonesia. hlm. 46

⁸ Wawancara dengan dr. Guslihan Dasatjipta, Sp.A (K), Hari Kamis Tanggal 12 Juni 2025.

Informed consent is a concrete embodiment of a therapeutic agreement that combines legal and ethical aspects of medicine. From the point of view of civil law, *informed consent* can be considered a form of legal agreement, as long as it fulfills the elements of agreement, competence, certain objects, and halal causes.⁹ Informed consent itself can be explicit (expressed firmly, written or oral), or implicit (inferred from the patient's actions, such as submitting himself for examination). In modern medical practice, the written form is preferred as a legal protection for both parties. Thus, the existence of *informed consent* is not only an ethical obligation of doctors, but also a strong contractual basis in enforcing rights and obligations in the legal relationship between doctors and patients.

Therapeutic agreements have the same binding power as agreements in general in civil law, which are based on the principle of *pacta sunt servanda*, that is, every valid agreement is valid as a law for the parties who make it (Article 1338 of the Civil Code).¹⁰ In this context, doctors are obliged to carry out medical services in accordance with the content of the agreement and applicable professional standards, while patients have the right to obtain agreed medical treatments, including the right to clear information and safe services. If one of the parties fails to fulfill the obligations as stated in the agreement, it can be considered to have committed a default, which opens up the possibility of civil prosecution.

It is necessary to distinguish between default in therapeutic agreements and unlawful acts (PMH). Default arises when the doctor fails to fulfill the obligations that have been agreed in the agreement, for example failing to perform the promised procedure without a valid reason. Meanwhile, PMH occurs if the doctor's actions are detrimental to the patient without any agreement being directly violated, for example due to gross negligence or violation of professional ethics. This difference affects the burden of proof in legal disputes; in the case of default, the patient must prove the existence of an agreement and a breach against him, while in PMH, the patient must prove the existence of wrongdoing, loss, and causal relationship between the two.

Forms of civil liability that can be imposed on doctors or health care institutions in the event of a violation of the therapeutic agreement

A breach of a therapeutic agreement in the context of civil law occurs when one of the parties, in particular a doctor or a healthcare institution, does not fulfill the obligations that have been agreed upon in the medical relationship. This violation can be in the form of default, such as not carrying out medical procedures as approved, or unlawful acts (PMH), such as performing medical procedures without consent or violating professional standards that cause harm to patients.¹¹ In practice, often the line between default and PMH becomes blurred, especially when medical measures are performed but incur adverse repercussions due to

⁹ Widyana Beta Arthanti, M. H., Rusdi, M. S., MM, M. S., Yuliwulandari, R., KKLP, S., & FOMC, S. (2024). *Etika Kedokteran dengan Hukum Kesehatan*. Thalibul Ilmi Publishing & Education. hlm. 50

¹⁰ Ramadhan, M. S. (2021). Implementasi Asas Hukum Perjanjian Terapeutik Dalam Informed Consent. *Istinbath: Jurnal Hukum*, 18(1), 32-49.

¹¹ Yakub, Y. (2024). 3.2. Tanggung Jawab Hukum Tenaga Kesehatan terhadap Pasien. *Hukum Kesehatan*, 33.

negligence or professional error. Therefore, it is important to identify the form of violation that occurred in order to determine the exact basis for the lawsuit.

In civil law, there are several forms of liability that can be imposed for violations of therapeutic agreements. First, liability for default as stipulated in Article 1239 of the Civil Code, which applies when the party who made the agreement does not carry out what was promised.¹² Second, liability for unlawful acts (*onrechtmatige daad*) based on Article 1365 of the Civil Code, which arises if the actions of doctors or institutions cause losses that are not based on the agreement, but are still unlawful.¹³ Third, in certain contexts such as modern hospital services, strict liability can be applied, especially when systemic negligence or institutional administrative errors are the main cause of patient losses.

Subjects that can be held accountable are not limited to doctors as individuals, but can also include healthcare institutions such as hospitals or clinics where medical procedures are performed. Doctors can be held personally liable, especially if their actions or omissions directly cause harm. However, hospitals can also be held accountable as employers or service providers, especially if the failure of the service system also contributes. In some cases, it is possible to apply joint *liability* or even joint and *several liability*, where doctors and hospitals are equally legally liable for the losses suffered by patients. This approach reflects the principles of justice and balanced legal protection for patients as vulnerable parties.

In civil law, compensation is a form of recovery for losses suffered due to violations of therapeutic agreements. Compensation can be material damages, such as the cost of advanced medical expenses, loss of income due to inability to work, as well as additional medical expenses incurred due to medical errors or negligence.¹⁴ In addition, there are also immaterial losses, namely psychological suffering, trauma, physical pain, or disruption of quality of life due to medical procedures that are not in accordance with standards. In judicial practice, the award of damages also refers to several jurisprudence that strengthens the right of patients to compensation for medical negligence, for example in cases decided by the Supreme Court regarding misdiagnosis or surgical actions without *informed consent*.

In civil disputes in the medical field, proof is a central aspect to determine whether a violation occurred and who is responsible. The main evidence that is often submitted includes medical records, *informed consent forms*, and expert witness statements in the health sector. Based on the general principle of civil law, the proof is in the hands of the plaintiff, in this case the injured patient. However, in certain cases, such as when a patient is in a position of weakness in information or access to evidence, a reversal of the burden of proof

¹² Ujianto, M. B., & Wijaya, W. (2020). Tanggung Jawab Hukum Dokter Terhadap Gugatan Pasien Dalam Pelayanan Kesehatan di Rumah Sakit. *Jurnal Juristic*, 1(01), 52-66.

¹³ Salam, S. (2018). Perkembangan doktrin perbuatan melawan hukum penguasa. *Nurani Hukum*, 1(1), 33-44.

¹⁴ Khanifa, N. K. (2016). Ganti Rugi Akibat Mal-Praktek Kelalaian Medik: Komparasi Hukum Islam dan Hukum Perdata. *Syariati: Jurnal Studi Al-Qur'an dan Hukum*, 2(01), 137-156.

may be imposed, where the doctor or hospital is required to prove that they have acted in accordance with the standards of the profession and the applicable legal procedures.

Hospitals as health service providers can also be held accountable if medical personnel working under their auspices make mistakes. In Indonesian civil law, this is in line with the doctrine of vicarious liability, which is the responsibility of superiors for the actions of their subordinates while in the scope of employment.¹⁵ Hospitals are liable not only for direct faults, but also for negligence in supervision, management, or service systems, such as poor operational standards or lack of adequate medical equipment. In addition, if the hospital is proven to be administratively negligent, such as not completing *informed consent* documents or not meeting licensing requirements, then the negligence can have an impact on institutional civil liability.

In the context of medical dispute resolution, insurance plays an important role as a form of legal and financial protection for doctors and healthcare institutions. Physician insurance may bear the burden of compensation in the event of a lawsuit due to negligence in medical practice, while hospital insurance protects institutions from the risk of lawsuits due to systemic errors or medical staff under their responsibility. On the other hand, to avoid a long and complex litigation process, non-litigation dispute resolution through mediation or conciliation is increasingly put forward. Institutions such as the Indonesian Medical Discipline Honorary Council (MKDKI) also play an important role in handling the ethical and disciplinary aspects of the profession, which, although not civil, are often the basis or consideration in lawsuits to civil courts because they concern the professional feasibility of the medical actions performed.

CONCLUSIONS

A therapeutic agreement between a doctor and a patient is a form of contractual relationship that has binding force based on the principles of civil law, especially the principle of *pacta sunt servanda* as stipulated in Article 1320 of the Civil Code. Although often unwritten, this agreement still has legal consequences, including liability in the event of a default or unlawful act. The elements of the agreement such as agreement, legal prowess, clear object, and halal cause are the basis for the validity of the therapeutic agreement. In practice, evidence such as informed consent, medical records, and expert witness testimony is very important in the process of proving a dispute. Liability can be imposed both on doctors personally and on health institutions through the doctrine of vicarious liability, and damages can be material or immaterial. Outside the litigation route, dispute resolution through mediation and the role of MKDKI are important alternatives, while jurisprudence provides guidance for judges in assessing legal responsibility and the amount of compensation. Thus, a juridical understanding of therapeutic agreements is not only important to guarantee legal certainty, but also to protect patients' rights and increase the accountability of the medical profession.

¹⁵ Mambrasar, Y. O., Watofa, Y., & Sassan, J. (2024). Dissecting Patterns of Hospital Civil Liability in Medical Disputes: Between Vicarious Liability and Central: Membedah Pola Pertanggungjawaban Perdata Rumah Sakit dalam Sengketa Medis: Antara Vicarious Liability dan Central. *Al-Mahkamah: Jurnal Hukum, Politik dan Pemerintahan*, 1(2), 61-85.

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