

Doctor's Legal Relationship with Patients and Pharmacy

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Abstract

The medical profession is a profession accompanied by high morality, where every doctor must be ready at any time to provide assistance to anyone, anytime and anywhere in accordance with professional standards. Public unrest is directed at the medical profession who provides drugs that exceed the quality that should be given to patients or only gives certain drugs directly to patients, so the patient must buy the drug in question at the pharmacy. Of course, there is an interest behind the doctor's habit, namely getting a commission from a pharmaceutical company. This habit is carried out continuously, and the number of doctors involved in the conspiracy is also increasing, even though the doctor is aware that his actions have violated the positive law and harmed his patients. Normative juridical research method, with descriptive analytical specifications. Normative legal research is research that only uses secondary data sources, namely legislation and legal theories. Health issues are no longer only between doctors and their patients, but also involve health workers, financing and so on, including pharmacy. An agreement between a doctor and a patient can be classified as an agreement to do or do something. The agreement occurs when the patient calls the doctor or goes to the doctor, and the doctor fulfills the patient's request to treat him. When doctors perform health services when prescribing to patients, it is a breach of ethics committed by doctors and dentists. Meanwhile, patients who are consumers, wherever they are, all have basic social rights. In one therapeutic class there are many drugs that have the same indication/efficacy under various brand names and generic names produced by various pharmaceutical companies. Of course, the patient hopes that the selection of drugs made by the doctor is the best for the patient's health and is affordable by his financial capabilities. the high number of competitions in the promotion of its drugs so that each company approaches doctors with compensation in the form of rewards.

Keywords

doctors; patients; pharmacy.



I. Introduction

Health is a natural right that is a necessity for all living beings, as well as humans, who require efforts to improve not only in the economic, social but also health fields. One of the National Goals of the Indonesian Nation as included in the Preamble. the 1945 Constitution, which is to promote the general welfare. The economic condition of the population is a condition that describes human life that has economic score (Shah et al, 2020). Economic growth is still an important goal in a country's economy, especially for developing countries like Indonesia (Magdalena and Suhatman, 2020). This shows that since independence, the Unitary State of the Republic of Indonesia has firmly established the concept of a Welfare State. The welfare state is the responsibility and obligation of the

state in providing welfare to its people which includes the fulfillment of the basic needs of citizens. Welfare state is the responsibility of the state in terms of fulfilling basic needs which are the rights of citizens and if the government cannot implement it then citizens can sue in accordance with the rule of law.

Article 28 H paragraph (1) of the 1945 Constitution of the Unitary State of the Republic of Indonesia affirms that everyone has the right to obtain health services. Then in Chapter XIV Article 33 paragraph (1) confirms that the economy is structured as a joint effort based on the principle of kinship. The State, paragraph (2) emphasizes that the State develops a social security system for all people and empowers the weak and underprivileged with human dignity, paragraph (3) states that the State is responsible for providing adequate health services and public facilities.

The system of health services and medical services run by the medical profession, deals with medical ethics and the problems that arise in medical ethics. In this regard, that the Unitary State of the Republic of Indonesia is a state based on law (*rechtsstaat*) and not a state on power (*machtsstaat*), then the legal position must be placed above all else. Every act must comply with the rule of law without exception, including the medical profession. The medical profession is different from the business profession, where the medical profession is a profession accompanied by high morality, where every doctor must be ready at any time to provide assistance to anyone, anytime and anywhere in accordance with professional standards. The medical profession must be carried out in accordance with the medical code of ethics.

Regarding the rights and obligations of doctors, Amri Aming said that there are seven (7) rights owned by doctors, one of which is the right to work according to professional standards and also the right to remuneration (*honorarium*). On the other hand, one of the doctor's obligations is the doctor's obligation related to the social function of health care. This doctor's obligation relates to the interests of the community, which include:

1. Every doctor must be careful in distributing drugs that are in short supply.
2. Determination/order of patients to be hospitalized must take into account the number of available beds.
3. Do not write down prescriptions for drugs that are not really needed by the patient,
4. Considering cheap or expensive prescription drugs (*generic/overseas drugs*).

Public unrest is directed at the medical profession who provides drugs that exceed the quality that should be given to patients or only gives certain drugs directly to patients, so the patient must buy the drug in question at the pharmacy. Of course, there is an interest behind the doctor's habit, namely getting a commission from a pharmaceutical company. This habit is carried out continuously, and the number of doctors involved in the conspiracy is also increasing, even though the doctor is aware that his actions have violated the positive law and harmed his patients.

This is also related to the pharmaceutical company's gratification of the medical profession, where the pharmaceutical company in promoting drugs uses collusion in the form of cooperation with doctors by providing commissions or incentives to doctors for every drug prescription writing to patients where this is an agreement made. between pharmaceutical companies and doctors on prescriptions written by doctors. Pharmaceutical companies calculate it as a promotional cost that is included in the cost of production. This results in high production costs and high drug prices. The high price of drugs is entirely the responsibility of the consumer. The drug promotion system carried out by pharmaceutical companies is contrary to Article 13 paragraph (2) of Law Number 8 of 1999 concerning

Consumer Protection, that "business actors are prohibited from offering, promoting, or advertising drugs, traditional medicines, food supplements, medical devices, and also health services by promising to give gifts in the form of goods or other services."

What about pharmacy? technological advances in the health sector and along with the increasing need for medicines in life, this has resulted in the emergence of pharmaceutical companies in Indonesia which creates competition in terms of distribution of medicines in various health agencies. In terms of the business world, competition is a natural thing where every company is competing to improve the quality and selling value of their respective products, as well as in the pharmaceutical sector. Often this business competition causes losses for consumers where if business actors take various ways to gain profits without paying attention to the losses experienced by third parties, in this case the patient as a consumer.

II. Research Method

This writing applies a normative juridical research method, with a descriptive analytical specification. Normative legal research is research that only uses secondary data sources, namely legislation and legal theories. The approach used by the author is an analytical approach. The author conducts an inventory of secondary data consisting of primary, secondary and tertiary legal materials that have a correlation with the topic of the problem to be tested.

III. Result and Discussion

3.1 Doctor-Patient Relationship

Health issues are no longer only between doctors and their patients, but also involve health workers, financing and so on, including pharmacy. Currently Health science is getting wider, Doctors or other health workers have also been specialized. On the other hand, the development of education and public welfare in general has also created awareness that doctors or other health workers are no longer isolated by law. This means that all people have to be equal before the law.

Doctors are health workers who play a big role in public health efforts. Through his education, training and expertise, doctors become a noble profession because they fulfill basic human rights in the health sector. The implementation of medical practice which is the core of health services in its implementation must be carried out by doctors and dentists who have high ethics and morals, expertise and authority whose quality is continuously improved. So that when carrying out medical actions, doctors have guidelines in carrying out services,

In the relationship between doctors and patients, even though patients are from parties who do not understand health problems, doctors and hospitals should be able to fulfill their obligations to provide health services in accordance with service standards, professional standards, and standard operating procedures to patients, whether requested or not. requested. Legislation regarding health in Indonesia has regulated all parties in health efforts, be it patients, doctors, as well as health service facilities or hospitals. The establishment of Law no. 36 of 2009 concerning Health, Law no. 44 of 2009 concerning Hospitals, and Law no. 29 of 2004 concerning Medical Practice is a form of legal protection in health. The rights and obligations of patients, doctors, and hospitals are regulated in such a way that no parties are harmed. But in real life that violations still happen.

One of them is when doctors provide health services when giving prescriptions to patients, there is a gap in ethical violations committed by doctors and dentists. Meanwhile, patients who are consumers, wherever they are, all have basic social rights. What is meant by these basic rights are the right to obtain correct, clear and honest information, the right to obtain comfort, security and safety, the right to vote, the right to be heard, the right to obtain compensation, the right to obtain basic human needs. sufficient food and shelter), the right to obtain a good and clean environment and the obligation to protect that environment, and the right to receive guidance and consumer education. Patients or sick people are individuals who are experiencing certain things regarding their health and use the services of health workers to be able to restore their health, so that in obtaining health services they have rights that must be fulfilled by health workers.

The doctor-patient relationship is a professional relationship with the client. Doctors are needed not only when sick but more needed when healthy to prevent disease, treat and improve the patient's physical and psychological health. The doctor-patient relationship is a relationship of trust, without trust between the two, treatment cannot be carried out effectively. This relationship underlies all aspects of medical practice in an effort to determine the diagnosis and management of patients. So that when the patient has decided to choose a doctor to treat his medical problem, it indicates that the patient completely surrenders the management of his disease and believes the doctor is acting without his consent. The trust given by the patient is a trust, so that in the management of the patient, doctors carry out according to their best knowledge and abilities, and in accordance with the medical code of ethics, morals and applicable law.

The doctor-patient relationship has developed into a relationship called a partnership. Doctors and Dentists are parties in the field of health services who have the expertise to take medical action, while patients are parties who are sick who need the services of a doctor to be cured. This makes doctors and patients have a relationship that is not only in the aspect of health but also has a legal relationship known as a therapeutic relationship, where the relationship between patients and doctors should have a balanced position, this is influenced by the development of science and technology in the field of medicine which demands a fulfillment of patient rights.

The doctor-patient relationship arises because of an agreement to do something for the doctor to be willing to try according to his ability (to the maximum extent possible) to fulfill the agreement, namely to treat and try according to the standards of the medical profession, while the patient is obliged to provide compensation. Strictly speaking, the doctor-patient relationship is needed because the agreement results in the achievement of a binding agreement that gives rise to reciprocal rights and obligations, so that the agreement has binding force, meaning that it has legal force that is obeyed by both parties. Keywords: Patient, Medical Personnel (doctor), Legal relationship.

An agreement between a doctor and a patient can be classified as an agreement to do or do something. The agreement occurs when the patient calls the doctor or goes to the doctor, and the doctor fulfills the patient's request to treat him. In this case the patient will pay some money. While doctors actually have to perform the feat of curing patients from their illness. But the cure is not always possible so a doctor just binds himself. to provide assistance wherever possible, in accordance with the knowledge and skills they master. That is, he promised to do his best to cure the patient.

The legal relationship between a doctor and patient is in accordance with Article 1320 of the Civil Code which regulates the conditions for the validity of an agreement or legal engagement.

1. Contractors must be able to act as legal subjects.

2. Agreements between legal subjects must be on a voluntary basis and without coercion.
3. The agreement promises something in the field of health services.
4. The agreement must be for a lawful reason and not against the law.

This regulation was made after the emergence of Law no. 36 of 2009. This regulation has the following objectives as described in Article 4 of Government Regulation No. 51 of 2009 as follows:

1. Provide protection to patients and the public in obtaining and/or determining pharmaceutical preparations and their services.
2. Maintain and improve the quality of the implementation of pharmaceutical work in accordance with the development of science.
3. Provide legal certainty for patients and the community as well as pharmaceutical staff as technical implementers.

3.2 Doctor's Relationship with Pharmaceutical Company

The pharmaceutical industry produces so many drugs, both ethical and over-the-counter (OTC) drugs. In one therapeutic class there are many drugs that have the same indications/efficacy with various trade names (brand names) and generic names produced by various pharmaceutical companies, producing tens of thousands of medicinal items. The drugs produced by Indonesian pharmaceutical manufacturers are then distributed by pharmaceutical wholesalers (PBF) / distributors to pharmacies, hospitals and drug stores (for OTC) throughout Indonesia, reaching consumers on a very wide scale reaching hundreds of millions of Indonesians. Besides being marketed domestically, these drugs are also exported to various countries.

The main determinant of drug demand (ethical) is the doctor, because the doctor determines what drug is used by the patient, in what amount (dose) and how long to use by prescribing it. In this case, the doctor actually acts as an "agent of the patient" because the patient fully entrusts the doctor to the drugs that must be purchased and used. Of course, the patient hopes that the selection of drugs made by the doctor is the best for the patient's health and is affordable by his financial capabilities. Unlike in Indonesia, in developed countries such as the United States there is a third party that plays an important role, namely health insurance. Due to intense competition, health insurance will try to reduce drug prices (discounts) because of their strong bargaining position in health financing. by the manage xare organization whose reality can limit recipe writing options.

So this is where the role of pharmaceutical companies, where there is a high level of competition in the promotion of their drugs, so that each company approaches doctors with compensation in the form of rewards. With the provision of such compensation, the doctor must meet certain conditions set by the pharmaceutical company which actually results in the patient's interests being often sacrificed. Doctors must try as much as possible or even have determined the value or price of drugs used by their patients through prescribing. In fact, it often happens that the drugs prescribed by the doctor are of greater risk than the benefits, resulting in irrational use of drugs. The irrational use of drugs has long been known, and is a serious problem in health services, because the possible impact is very wide. Various studies at various levels of health care in various countries, show that drug use is far from optimal and rational.

Meanwhile, according to UN resolution No. 39/248 of 1985 concerning consumer protection (guidelines for consumer protection) in point 2, that one of the protections is promotion and socio-economic protection of consumers. Patients as consumers get a form of protection from all kinds of social and economic patients (consumers). This means that the patient as a consumer is not harmed socially or economically. Furthermore, in point 3,

the availability of adequate information for consumers to provide their ability to make the right choices according to their personal wishes and needs, means that in this case the policy is completely left to the consumers themselves.

If it is related to the resolution above, then the patient as a consumer can only make his choice on the services of a doctor or hospital and over-the-counter/limited drug products if the information about the doctor or hospital is adequate. The choice of using prescription drugs is not a purely patient choice but is made by the doctor. Meanwhile, in the consumer protection law, it is determined by someone else, even though it concerns the most basic consumer rights, namely the right to safety and security. When a consumer receives a drug prescription from a doctor, the patient is not given a choice at all by the doctor to choose or make a choice of drugs, meaning that the choice is in the hands of the doctors. Patients should get clear information about drugs from doctors so they can choose what drugs to use. The position of the patient who becomes a consumer is weak compared to the position of the producer who does the process until it becomes a product, causing consumer ignorance of the product so that consumer rights must be protected.

It should be reaffirmed that consumers in this case are patients who have rights like consumers in general, but not infrequently their rights are violated by doctors, either intentionally or unintentionally. In the view of the law, patients are independent subjects who are considered to be able to make decisions for their own sake. Legally, the patient is also entitled to make decisions on the health services that will be carried out on him, because this is closely related to his human rights.

That a doctor does not seek profit in carrying out his profession. In addition, the medical profession must not refuse or carry out treatment procedures that are not appropriate in health services because the doctor's profession has taken the oath of the doctor's profession to carry out health services properly.

Looking at the description above, it is clear that in promoting drugs by large pharmaceutical companies there are rules that bind them. The promotion is done by visiting the doctor regularly with the term detailing. Large pharmaceutical companies in this case are represented by medical representatives. So that with this visit, a form of Cooperation or contract is born. Types or forms of cooperation carried out in drug promotion are in the form of giving medical events or symposiums in the form of giving registration fees to take part in symposiums of medical scientific activities, accommodation costs for participating in medical scientific activities in the form of tickets, vouchers hotels, rental vehicles, and others. The cooperation does not take the form of incentives or all forms of souvenirs. This is in accordance with Law Number 8 of 1999 concerning Consumer Protection, which stipulates that:

1. Business actors are prohibited from offering, promoting, or advertising an item and/or service by promising to give gifts in the form of other goods and/or services free of charge with the intention of not giving it or giving it not as promised.
2. Business actors are prohibited from offering, promoting or advertising drugs, traditional medicines, dietary supplements, medical devices, and health services by promising to give gifts in the form of other goods and/or services.

IV. Conclusion

The doctor-patient relationship is a paternalistic relationship where the relationship is a trust relationship, because with this trust relationship, the treatment is carried out properly. then the relationship between doctors and pharmacists is a mutualistic relationship. Between doctors and pharmacists where the third party is the patient. As

discussed above, that patients as consumers have the right to receive treatment in accordance with quality standards and also information about the services received. The interest in administering this drug is what causes doctors to associate with pharmaceutical companies. Patients are independent subjects who are considered to be able to make decisions for their own sake. Legally, the patient is also entitled to make decisions on the health services that will be carried out on him, because this is closely related to his human rights. The medical profession may not refuse or carry out inappropriate treatment procedures in health services because the medical profession has taken an oath of a doctor's profession to carry out health services properly. Because doctors determine what drugs are used by patients, how many (dose) and how long to use by prescribing them, this is where pharmaceutical companies appear. This means that with the various interests of the company, finally the provision of drugs to patients is determined by doctors with the support and even domination of pharmaceutical companies.

References

- Amri Amir (1997), Bunga Rampai Hukum Kesehatan, Penerbit Widya Medika, Jakarta
- Arikunto, Suharsimi (2014). "Prosedur Penelitian Suatu Pendekatan Praktek". Jakarta: Rineka Cipta.
- Bahder John, (2005), Hukum Perlindungan Konsumen di Indonesia (Pertanggungjawaban Dokter), PT. Rhineka Cipta, Jakarta
- Desriza Ratman, (2012) Mediasi Non Litigasi Terhadap Sengketa Medik Dengan Konsep Win-Win Solution, Elex Media Komputindo, Jakarta
- Djauhari, (2008), Politik Hukum Negara Kesejahteraan Indonesia, Semarang, Indonesia.
- Hasrul Buamona, (2015), Tanggung Jawab Pidana Dokter Dalam Kesalahan Medis, Parama, Yogyakarta
- <http://rikoturanganblink.blogspot.com/2010/06/sejarah-perkembangan-hukum-kesehatan.html>
- <https://jurnal.unimus.ac.id/index.php/APKKM/article/view/3282/3102>
- <https://jurnal.unimus.ac.id/index.php/APKKM/article/view/3282/3102>
- Indra yudha Koswara, (2020) Malpraktik Kedokteran Perspektif Dokter dan Pasien, Kajian Hukum dan Kode etik Kedokteran Indonesia (KODEKI), Deepublish, Sleman
- Jimly Asshiddiqie, (2006), Konstitusi dan Konstitusionalisme Indonesia, sekretaris Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, Jakarta
- Kitab Undang-undang Hukum Perdata
- Magdalena, S., Suhatman, R. (2020). The Effect of Government Expenditures, Domestic Investment, Foreign Investment to the Economic Growth of Primary Sector in Central Kalimantan. Budapest International Research and Critics Institute-Journal (BIRCI-Journal). Volume 3, No 3, Page: 1692-1703.
- Pembukaan Undang-undang Dasar 1945
- Ramesh Mishra, (1984), Welfare State in Crisis, Social Thought and social Change, Wheatsheaf Books Ltd, Harvester Press, London
- Sampurno, Manajemen Pemasaran Farmasi, (2011) Gajah Mada University Press, Jogjakarta
- Shah, M. M., et al. (2020). The Development Impact of PT. Medco E & P Malaka on Economic Aspects in East Aceh Regency. Budapest International Research and Critics Institute-Journal (BIRCI-Journal). Volume 3, No 1, Page: 276-286
- Sri Pujiastoeti, Neni Sri Imaniyati dan Sri Ratna Suminar, "Kerjasama Pemasaran Obat Antara Dokter Dengan Pedagang Besar Farmasi Di Kota Bandung Dihubungkan

Dengan Kode Etik Kedokteran Dan KEPMENKES NO.3987/A/K/1973”
Undang-Undang Dasar Negara Republik Indonesia 1945
Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen