

# Juridical Analysis of the Legal Relationship Between Doctors and Patients in Health Services

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**Abstract :** *The doctor and patient relationship is a pattern that is born among the doctor and the patient before continuing to the act of health care. And health services, is a concept used in providing health services to the community. Health services is a sub-system of health services whose main purpose is health services in terms of Preventive (preventive), Promotive (improving health,) Curative (healing health) and Rehabilitative (recovery) are all efforts mobilized by the government in improving the quality of health services prime and in accordance with standard operating procedures and health service standards. This study uses a method of approach to the community so that the public knows in more detail about the juridical analysis of the legal relationship among doctors and patients in health services. The results of this study are in terms of the legal aspects of health, the relationship among doctors and patients cannot decide what is called health services by doctors who have a direct role in improving tasks for the community in order to realize a good and quality society.*

**Keywords:** Doctor, Health Services, Patients

## Analisis Yuridis Hubungan Hukum antara Dokter dan Pasien dalam Layanan Kesehatan

**Abstrak :** Hubungan dokter dan pasien merupakan pola yang lahir antara dokter dan pasien sebelum berlanjut pada tindakan pelayanan kesehatan. Dan pelayanan kesehatan, merupakan sebuah konsep yang digunakan dalam memberikan layanan kesehatan kepada masyarakat. Pelayanan kesehatan adalah sebuah sub sistem pelayanan kesehatan yang bertujuan utamanya adalah pelayanan kesehatan dalam hal Preventif (pencegahan), Promotif (peningkatan kesehatan,) Kuratif (penyembuhan kesehatan) dan Rehabilitatif (pemulihan) merupakan segala upaya yang dikerahkan oleh pemerintah dalam peningkatan mutu pelayanan kesehatan yang prima dan sesuai dengan standar prosedur dan standar operasional prosedur pelayanan kesehatan. Penelitian ini menggunakan metode pendekatan kepada masyarakat sehingga masyarakat tahu lebih detail tentang analisis yuridis hubungan hukum antara dokter dan pasien dalam pelayanan kesehatan. Hasil penelitian ini yaitu Dalam hal aspek hukum kesehatan, hubungan antara dokter dan pasien tidak dapat memutuskan apa yang disebut layanan kesehatan oleh dokter yang memiliki peran langsung dalam tugas-tugas perbaikan untuk masyarakat dalam rangka mewujudkan masyarakat yang baik dan berkualitas.

**Kata Kunci:** Dokter, Pasien, Pelayanan Kesehatan.

## INTRODUCTION

Indonesia is a state of law that is explicitly stated in Article 1 paragraph 3 of (the Constitution 1945 of the Republic Indonesia), then it will be abbreviated as the 1945 Constitution, the concept of the rule of law means that state instruments use their power only to the extent that it is based on applicable law and in a manner that is determined in that law (legality).<sup>1</sup>

The right to health is contained in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) which states that every person has the right to live in prosperity inner, live, and get a good living environment and healthy and titled to obtain health services. As a stipulation its implement, contained in the explanation of the

<sup>1</sup> Ratman, Desriza. 2014. *Legal Aspects of Organizing Medical Practices and Medical Malpractice*. Bandung: Keni Media.p. 65

Health Act. Indonesia states that health is a human right because it is included in one of the elements of welfare that must be realized in accordance with the ideas of the Indonesian people as referred to in the Pancasila and the 1945 Constitution. Health care is an object of treatment and consent care. Efforts to improve the quality of human life in health sector is a business that is very broad and comprehensive, the business include improving public health both physical and non-physical.<sup>2</sup>

Likewise doctors as a state tool that acts in health sector as a representation of the government in implement community welfare manifested for the overall health of the people. Health as a human right must be realized in the form of providing various health efforts to the whole community through the implement of quality health development and affordable by the community.

A doctor is a noble profession but has great consequences and a very big responsibility for the health and healing of community, according to the big Indonesian dictionary implicitly that the doctor is a graduate of medical education who is an expert in terms of disease and its treatment. However, not everyone who cures a disease can be called a doctor.<sup>3</sup> Rather to be a doctor usually requires special education and training and has a degree in medicine and the profession of doctor in that field is divided into various fields again in accordance with their respective specializations by using the principles of effective and efficient service and upholding professional, legal, ethics and morals.<sup>4</sup> Health services will involve many parties, namely hospitals, health workers and patients. The direct relationship that will occur is among the doctor and the patient. The medical profession is a noble profession, which is related to human interests, so it is often expected that the profession in the medical field will always carry out moral and intellectual orders. Become a sick human doctor so that he can be cared for and serve healthy people so as not to get sick, by increasing and increasing the patient's health status. Thus, the spirit of service must always be in you a doctor. This attitude is very important in forming the most basic ethical attitudes.<sup>5</sup>

At present in the current reform era, "law plays an important role in various aspects of social and state life. To realize the optimal health degree for everyone, which is an integral part of welfare, legal support is needed for the implement of various activities in health sector." The logical consequence of accepting a healthy paradigm, so all activity must be oriented to health insights, continue to maintain and improve the quality of individuals, families and communities and the environment and continuously maintain and improve quality, equitable, and affordable health services and encourage community independence for healthy life. The legal relationship among doctors and patients has occurred since ancient times (*ancient Greek times*), doctors as a person who provides treatment to people who need it. This relationship is a very personal relationship because it is based on the patient's trust in the doctor called the therapeutic transaction. A therapeutic transaction is "an agreement among a doctor and a patient in the form of legal relations that foster rights and obligations of both parties".<sup>6</sup> The object of this agreement is an effort or therapy to cure the patient.

The legal relationship among doctors and patients begins with a pattern of vertical paternalistic relationships such as among fathers and children who depart from the principle of "father knows best" which fosters a paternalistic relationship. A legal relationship arises when a patient contacts a doctor because they feels something that they feels is dangerous. Psychobiological

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<sup>2</sup> Mannas. A. Yussie. 2017. *The Legal Relationship of Doctors and Patients and the Responsibilities of Doctors in Providing Health Services*. Journal of Legal Duties. Vol 6 No 2. PP. 163-182.

<sup>3</sup> Rinanto Suryadhimirtha, 2011. *Medical Malpractice Law*. Yogyakarta: Total Media.p. 15.

<sup>4</sup> <http://samelus.wordpress.com/2008/11/26/pengertian-dokter-dan-tugas-dokter> diunduh pada tanggal 20 september 2019

<sup>5</sup> Endang Kusuma Astuti, 2019. *Transaksi Terapeutik Dalam Upaya Pelayanan Medis di Rumah Sakit*, (Bandung: Citra Aditya Bakti, 2009), p. 24.

<sup>6</sup> Endang Kusumah Astuti, 2013. *Legal Relations Between Doctors and Patients*. Semarang: Diponegoro University.. p. 47

conditions give a warning that they feel sick, and in this case the doctor who is considered capable of helping and providing help. So, the position of the doctor is considered higher by the patient and doctor role is more important than the patient.<sup>7</sup> The relationship among doctors and patients in medical science generally takes place as an active-passive biomedical relationship. In this connection it seems that doctors only have superiority over patients in the field of biomedical science; there are only doctor's activities while the patient remains passive. This relationship is biased and imperfect, because it is an exercise of authority by the one against the other. Based on the socio-cultural situation and the patient's disease can be distinguished in three relationship patterns, namely:

1. Activity-passivity, This parent-child relationship pattern is a classic pattern since the medical profession began to recognize the code of ethics, 5th century S.M. Here the doctor seems to be able to fully implement his knowledge without patient intervention. Usually this relationship applies to patients whose life safety is threatened, or is unconscious, or suffers from severe mental disorders.
2. Guidance-Cooperation, Guiding-cooperation relationships, like parents with teenagers. This pattern is found when the patient's condition is not too severe for example a new infectious disease or other acute illness. Despite the illness, the patient remains conscious and has their own feelings and wishes. They tried to seek treatment and was willing to cooperate. Even though the doctor knows more, they is not solely due to exercising power, but expects patient collaboration to be realized by following doctor's advice.<sup>8</sup>
3. Mutual participation, This thinking is based on the idea that every human being has the same position and equal rights. This pattern occurs in those who want to maintain their health such as medical check-ups or in patients with chronic diseases. The patient consciously and actively plays a role in the treatment of their. This cannot be applied to patients with educational background and low social, also in children or patients with certain mental disorders.<sup>9</sup>

Based on the background previously described, the problem discussed in this study is: what causes a legal relationship among the doctor and the patient? How is the legal responsibility of doctors if there is a risk in the perspective of state administration?

## RESEARCH METHODS

This study used an empirical legal research approach since the normative approach will not be able to see the reality occurring in the community related to the rule of law.<sup>10</sup> This approach sees law as a phenomenon as well as real and functional social institutions in the system of social life occurring from the patterned behavior of the community members.

## RESULTS AND DISCUSSION

### A. The Legal Relationship between Doctors and Patients in Health Services and the Legal Basis of Doctors as Public Officials

#### 1. History, Terms and Legal Basis of Doctors As Public Officials In Health Services

Health law is the rule or legal regulation governing the rights and obligations of health workers, individuals and the community in the implementation of health efforts, aspects of health organization and aspects of health facilities. In addition, health law can also be defined as any legal provisions or regulations that relate directly to health care and services. In the General Provisions of Law Number 36 Year 2009 on Health stated that:

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<sup>7</sup> <http://www.slideshare.net/dollyjazmi12/hubungan-dokterpasien>

<sup>8</sup> *Ibid*

<sup>9</sup> *Ibid*

<sup>10</sup> Efendi, Junaedi. 2018, *Normative and Empirical Legal Research Methods*. Jakarta: Prenada Media.

"Health is a healthy condition, physically, mentally, spiritually that allows everyone to get a productive and harmonious social life".

Administrative intensity (AI) which describes the total resources spent on administrative support organizations and production services for people in need.<sup>11</sup> The role of health law is to work towards a balanced order in the implement of health carried out by the government and the community and to provide legal certainty in accordance with applicable health laws.<sup>12</sup> Since ancient Greece, law has touched almost every aspect of human life, except medicine. Health workers in those days managed their own way of work with a code of ethics and professional oaths that were firmly rooted in tradition and had a strong influence on society.<sup>13</sup> In line with the development of civilization in the world, medical science and technology have also developed rapidly. Health issues are no longer just a problem among doctors and patients, there are many other actors who have played a role in the world of health, such as health insurance, the medical and pharmaceutical equipment industry and many others.<sup>14</sup>

Health science is increasingly widespread. Doctors and health workers must also be specialized. Beside that, the development of education and public welfare in general also raises awareness that doctors or health workers or other names (different) can no longer be isolated from the law. All people must have an equal position before the law. The existence of these developments, so around the 1960s in European countries and America began to develop a new field of law namely: health law. Health law has a wider scope than medical law. Health law covers, medical law, nurse law, hospital law, environmental law and various other regulations relating to human health.<sup>15</sup> Provisions regarding health law which are currently popular as a material for discussion regarding health law are Law Number 36 Year 2009 on Health.

## 2. Legal Relationship of Doctors and Patients in Health Services

Philosophically, the constitutional task of the government is clearly stated that the Indonesia Republic adheres to the principle of a dynamic rule of law state or welfare state, because the state is obliged to guarantee social welfare. (community).<sup>16</sup> In this case the health service provider namely the doctor is a representation of the government in the field of health in its relevance to welfare. As we know there are two legal functions that are very prominent in our legal system and legal habits namely, legal certainty and legal protection, these functions apply in general, so they apply to medical and health law.<sup>17</sup> Reviewed from the sociological aspect, the legal relationship among the doctor and the patient is currently undergoing a change.<sup>18</sup> Initially the patient's position is considered unequal to the doctor, because the doctor is considered to know best about his patient, in this case the patient's position is very passive and very dependent on the doctor. But in its development the relationship among doctors and patients has changed patterns, where the patient is considered to be equal position with the doctor. All medical actions to be performed by the doctor on the patient must

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<sup>11</sup> Thomas Dixon, *The Effect of Shared Service Centers on Administrative Intensity in English Local Government: A Longitudinal Evaluation*, Journal of Public Administration Research, Volume 29, Issue 1, January 2019, Pages 113–129,

<sup>12</sup> Hukum Kesehatan. <http://hukumkes.wordpress.com/> diakses pada tanggal 19 November 2019 pukul 10.13Wib

<sup>13</sup> Riko Turangan. <http://rikoturanganblink.blogspot.com/2019/11/sejarah-perkembangan-hukum-kesehatan.html> diakses pada tanggal 19 November 2019 Pukul 15.00 Wib

<sup>14</sup> *Ibid*

<sup>15</sup> *Ibid*

<sup>16</sup> Yuswalina. 2019. *State Administrative Law*. Malang: Equivalent Press. p.52.

<sup>17</sup> Fred Ameln, 2017. *Capita Selekta Medical Law*. Bukittinggi: Graphic Publisher Jaya. . p. 13

<sup>18</sup> Agustina, Enny. 2018. *Legal Malfunctions And Efforts In Reconstructing The Legal System Service: A State Administrative Law Perspective*. Jurnal Dinamika hukum. Vol 18 No. 3 Pp. 357-364

get the consent of the patient, after the patient gets an explanation that is quite understanding about the disease and efforts for medical treatment.<sup>19</sup>

### **3. Parties Related to Health Services**

The parties involved in health services according to law 36 year 2009 on health namely in article 1 point 6 states that health workers are everyone who devotes themselves in health sector and has knowledge and / or skills through education in health sector for certain types which requires the authority to do health. However, in the past before the Health Law 36 Year 2009 had not yet been applied, there were two types of health workers, namely medical personnel and medical personnel, medical personnel namely medical personnel were medical experts with the primary function being to provide medical services to patients with the best quality using procedures and techniques based on medical science and ethics that apply and can be accounted for but along with the development of the era of regulation and definition and understanding of such things have experienced a shift.

### **4. Rights and Obligations of the Government and Health Workers in Health Services for the Community**

Law Number 17 Year 2007 on the National Long-Term Development Plan (RPJPN) of 2005-2025, mandates that health development is directed at increasing the awareness, willingness and ability to live a healthy life for everyone, so that the highest degree of public health improvement can be realized and also in the law has stipulated that health development is an investment in improving the quality of human resources. So it is important for its role in creating economic progress and reducing poverty and saving levels which are all hampered by the quality of health of each citizen.<sup>20</sup>

#### **1. Rights and Obligations of Medical Personnel**

In Law Number 29 Year 2004 on Medical Practices, Article 50 states the existence of doctor's rights, namely:

- a. Obtain legal protection as long as it is in accordance with standard professional and standard operating procedure;<sup>21</sup>
- b. Providing medical services according to standard professional and standard operating procedure;
- c. Obtain honest information and complete from the patient or patient's family;
- d. Receive service fees.

Article 52 of the same Law regulates the obligations of doctors, which include:

- a. Providing medical services according to SP and SOP, and patient's medical needs;
- b. Referring patients if unable;
- c. Ensure patient confidentiality;
- d. Emergency relief on the basis of humanity, except if there are certain other people on duty and capable;
- e. Add / follow the development of medical science and technology.

### **B. Types of Doctor's Responsibility According to the State Administration Perspective**

#### **1. Doctor's Responsibility as Public Officials in Health Services**

The principle of legality is one of the main principles which is used as a basis in every government administration and state in every rule of law, especially for the rule of law in the

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<sup>19</sup> Massa, Kartini. 2019. *Law and Ethics of Medical Practice*. Jakarta: Trans Info Media .p. 77

<sup>20</sup> Agustina, Enny. 2019. *Implementation of the Quality Public Services for the Community*. *Journal of Legal Literacy*. Vol 3 No. 2 Pp 10-17.

<sup>21</sup> Suarez, Benedict, *Municipal Government Form and Budget Outcomes: Political Responsiveness, Bureaucratic Insulation*, *Journal of Public Administration Research*, Volume 29, Issue 1, January 2019, PP 161-177

continental system.<sup>22</sup> Therefore, in every government and state administration in this country, it is no exception having to go through the instrument of legislation as a basis for acting in the application of the principle of legality to support the enactment of legal certainty and equality of treatment, it means that the equality of treatment occurs because everyone, whoever they are when in the circumstances like that determined in the provisions of the legislation is entitled and obliged to act in line with the existing regulatory provisions without exception the doctor as a health service.<sup>23</sup>

## 2. Doctor's Responsibility to Patients in Health Services

Doctors' responsibilities as an obligation to optimize services are divided into three groups, namely as follows: Obligations related to the social function of health care. In this group, the interests of the community are prominent and not only those of the patient. Therefore, in performing obligations here, a doctor must take into account the factors of community interest, for example:<sup>24</sup>

- a. In the facilities where they works, for example in hospitals, clinics, health centers, every doctor must be careful in distributing medicines that are in short supply;
  - b. In determining the patient's diagnosis, for example in a district, the doctor must calculate the number of beds in the hospital in the patient's illness;
  - c. Consider not writing a prescription for unnecessary medication;
  - d. Consider prescribing inexpensive drugs rather than drugs that are more expensive for healing patients.
- a. Obligations related to patients include the professional obligations of a doctor to always show and respect all patient rights. Some of the right of patient must be respected and upheld, among others, namely:<sup>25</sup>
- a. The right to information;
  - b. The right to give consent;
  - c. The right to choose a doctor;
  - d. The right to choose health facilities (RS);
  - e. The right to medical secrets;
  - f. The right to refuse treatment / care;
  - g. The right to refuse a certain medical action;
  - h. The right to stop treatment;
  - i. The right to a second opinion;
  - j. The right to see medical records.

Obligations related to standards of the medical profession and obligations arise from standards of the medical profession.<sup>26</sup>

## 3. Ethical Responsibility

Regulations governing the ethical responsibility of a doctor are the Indonesian Medical Code of Ethics and the Doctor's Oath Pledge. Code of Ethics is code of conduct. The Indonesian Medical Ethics Code is issued by Decree of the Minister of Health No. 434/Men.Kes/SK/X/1983. The Indonesian Medical Ethics Code is designed based on and considers the International Medical Ethics Code on the idiomatic foundation of the Pancasila and the structural basis of the 1945 Constitution. The Indonesian Code of Ethics regulates human relations, which includes the general obligations of a

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<sup>22</sup> Ridwan Hr. 2011. *Hukum Administrasi Negara*. Edisi Revisi. PT. Raja Grafindo Persada Jakarta. p.94

<sup>23</sup> Yunus, Nur Rohim, 2017. *Perpaduan Budaya Hukum Masyarakat Indonesia*, Bogor: Jurisprudence Press.

<sup>24</sup> Agustina, Enny. 2019. *Criminal Law Policy In Health Care*. International Journal Law of Research, Economic and Social Sciences. Vol 1 No 2. PP 74-80

<sup>25</sup> Isfandyarie, Any. 2016. *Legal Responsibility and Sanctions for Doctors*. Jakarta: Prestasi Pustaka. Hal.95

<sup>26</sup> *Ibid*

doctor, the relationship among doctors and patients, the obligations of doctors to their peers and the obligations of doctors to themselves.

#### **4. Professional Responsibility**

The responsibility of the doctor profession closely related to the professionalism of a doctor. This is related to:<sup>27</sup>

- a. Education, experience and other qualifications, In implement their professional duties, a doctor must have an education degree in accordance with the area of expertise practiced. Then, the basic knowledge gained during education in the medical faculty as well as specialization and experience to help sufferers.
- b. The degree of risk, Try to minimize the level of risk, so that the side effects of treatment can be minimized as little as possible. In addition, regarding the degree of risk must be notified to patients and their families, so patients can choose alternatives to treatments that are notified by the doctor. Based on physician respondent data, it is said that information regarding the degree of care arises due to obstacles to patients or their families with low levels of education, because they have been given information but they cannot capture it properly.<sup>28</sup>
- c. Maintenance Equipment, The need to use inspection using maintenance equipment, if from the results of external examinations are less accurate results are obtained, so it is necessary to check using the help of a tool. However, the respondent's answer that not all patients are willing to be examined using aids (sophisticated medical devices), this is closely related to the costs that must be incurred for patients with economically weak groups.

#### **5. Legal Liability**

At present, it can be agreed that the scope of the legal regulations for health service activities according to medical science covers aspects in the fields of criminal law, civil law, administrative law, and even entering aspects of state law. So that in order to realize the legal order of health law the pattern of responsibility with all aspects of law. This depends on the context of the problem and it's casuistic. All aspects of the law in the regulation of medical medicine become a legal instrument that specifically determines the behavior of regularity or mandatory orders or prohibitions on the conduct of something that applies to the parties related to health business as specified in the legislation.

#### **CONCLUSION**

In terms of health legal aspects, the relationship among doctors and patients is inseparable from what is called health services by a doctor who has a direct role in the task of healing efforts for the community in order to realize good and quality public services. The pattern of accountability for the government which has represented the task of public services, especially in health sector of medical personnel, so that they can implement activities in the medical field whole heartedly in order to achieve the fulfillment of health in the society as a whole for an agency or for representing private practice.

#### **SUGGESTION**

The government must be more active and serious in maintaining public health because health is one element of general welfare that must be achieved in physical and socio-economic life. The government is obliged to optimize health services for all levels of society which is basically the responsibility of the government which is focused on fostering, regulating and controlling for the

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<sup>27</sup> Safitri Hariyani. 2015. *Medical Disputes: Alternative Settlement Between Doctors and Patient*. Jakarta : Penerbit Diadit Media.

<sup>28</sup><http://maydwiurisantoso.wordpress.com/peranperawat-dalam-kesehatan-masyarakat> Diunduh pada tanggal 21 November 2019 pukul 22.22

attainment of harmonious and balanced conditions among health efforts pursued by the government and the public including the private sector.

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1945 Constitution of the Republic of Indonesia