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Informed Consent Position in Doctor and Patient Relationship

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Abstract

Awareness of risks may be interpreted as a patient's approval in the context of submitting the doctor's schedule with the necessary details for making an appointment or an informed refuse. Prior to signing the consent document, the agreement, the prospective student already confirmed that she understood the terms and conditions. to let the patient understand anything before doing it, and when making the judgment, the patient should make the most of any of an exhaustive information (informed decision). The kinds of studies found in this paper are what lawyers refer to as "normative" studies. The nature of this analysis is informative, and is research that outlines, discusses, illustrates, and analyzes legal rules pertaining to the role of consent in the doctor and patient's relationship. Patients are given the right to know regarding the medical activities, outlined in Regulation Minister of Health (Per) No. 290 on Approval of Medical Actions, prior to accessing treatment. As seen from the standpoint of the idea of unauthorized consent (considered given), the patient-doctor partnership becomes complicated. This issue revolves around the concept of informed consent, which is essentially an assumption that the patient has already agreed to carry out medical procedures with the doctor prior to seeking medical treatment.

Introduction

Health is the most important part of human life. Sumarlie (2020). The productivity and activities of a person are influenced by the health condition of that person. With health, people can think well and can do activities optimally. When someone's health is disturbed, they will do various ways to get healthy again. One of them is by getting treatment and getting medical action at available health service facilities such as health center, clinics, and hospitals.

Doctor and patient are two legal subjects that are related to medical law, both of which form both a medical relationship and a legal relationship. The medical and legal relations between doctors and patients are those whose object is the maintenance of health in general and health services in particular. In carrying out the relationship between doctor and patient, the implementation between the two is always regulated by certain rules so that there is harmony in its implementation.

Patients as parties who need health services fully surrender their pets and health care to a doctor on the other side (Fadli et al., 2020). When a patient comes to the doctor and states his complaint, and the doctor is willing to listen to the patient's complaint, there is already an engagement relationship between the two parties. The arrival of a patient to a doctor's office, hospital, or other health facilities can be interpreted as an attempt to make an offer to the doctor for help in overcoming the complaint he or she is suffering from. Vice versa, doctors will also perform medical services in the form of a series of actions which include medical diagnosis and treatment. This legal relationship is hereinafter referred to as a transaction, which in civil

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law is called an agreement, and in health services, it is called a "therapeutic agreement" or a therapeutic transaction.

The legal relationship between doctors and patients which is carried out with the patient's trust in the doctor is called a therapeutic transaction. In the law of engagement, there are 2 (two) kinds of agreements, namely: (1) In *spanningverbintenis*, namely an effort agreement, meaning that both parties promise or agree to make maximum efforts to realize what was promised. (2) *Resultaatverbintenis*, namely an agreement that will provide tangible results by what was promised.

On top of this, treatment arrangements, the psychiatrist can not guarantee a remedy to the patient unless he or she is committed to making a substantial attempt. Through participating in this endeavor, physicians should approach it from any possible angle and using all of their talents and expertise, they should strive to do so sincerely. Unlike ordinary contracts, there are extra obligations and terms of a therapy contract that must be met. Here the patient is asking for assistance such that he can seem to be less threatening to the doctor than he is. The freedom to give permission has been reinstated, which is an individual's ability to understand information about medical interventions.

effects and outcomes, and consequences, patients must only grant permission if they know that they have understood the treatments well enough to make an informed decision (Wahyuni et al., 2020; Leino-Kilpi, 2000; Schneider & Schneider, 1998; Hafemeister & Spinos, 2008). Through approving treatment on the part of the practitioner, it is seen as a kind of promise and as well as implications resulting from the act of providing health to the patient. being concerned with patient well-being serves the medical/is justified in providing an attempt to maintain wellbeing in the face of medical emergencies

states of emergency, but often cited in others that will enable doctors to have some leeway in doing so, specified in the guidelines but infrequently used, these acts whether it can be assumed, specified by the guidelines but rarely employed (Meisel, 1979; King & Moulton, 2006; Berg et al., 2001). Many doctors are unaware of the existence of an expanded guidelines, up-free version of the guidelines, which are out of their reach because of the difficulty in acquiring the necessary information on a specific medical specialty or due to a lack of time required medical reading materials, it is still believed. There are two major themes of informed consent: the people's ability to make decisions and their willingness to do so. To add to this will be an interesting point: not just doctors, but also patients and their families are affected by mental illness.

As explained above, informed consent is a way of communicating between physicians and patients about medical behavior that is required in order for the doctor to perform their job. In contrast to giving permission, signing a formal-agreements represents only an acknowledgment of something being already decided upon. To have full understanding, it is important that the patient has the ability to make his own decisions. As it is an established medical principle that patients must retain the freedom to choose medical care, they are therefore given the ability to reject prescribed treatment. To best of their expectations, patients have the freedom to inquire for second opinions from other physicians (more accurately, their expectations of second opinions)

Methods

This type of research is normative legal research. Normative research can also be said with legal systematic research so that it aims to identify the main/basic definitions in the law regarding the position of informed consent on the relationship between doctors and patients. The normative legal research method is to find out or recognize whether and how the positive

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law is about a particular problem. This research can also explain and explain to others and how the law is about certain events or problems.

The nature of this research is the descriptive analysis which is a study that describes, examines, explains, and analyzes a legal rule. This study will test, examine the provisions of the application related to the problems in this study. This type of research uses a normative juridical method, with a qualitative approach. Normative juridical research is research by searching for documents or mostly done on secondary data in the library.

Results and Discussion

Understanding Informed Consent

Medical service is one of the service elements which plays an important role in providing health services to patients. In this medical service, there is medical personnel as medical providers and patients as medical receivers. Each party has rights and obligations that must be respected. In carrying out their profession, medical personnel must be honest and keep the patient from being harmed by it, besides that medical personnel must also know matters related to informed consent as a basis or consent (consent) for medical personnel in providing medical treatment to patients.

In essence, Informed Consent is a process of communication between a doctor and a patient regarding an agreement on medical action to be carried out by the doctor against the patient (there is a detailed explanation by the doctor), so that even an oral agreement is actually sufficient. The signing of the written informed consent form is only an affirmation of what has been previously agreed upon. Informed consent consists of two words, namely "informed" which means information or statement, and "consent" which means consent or giving permission. So the meaning of informed consent is an agreement given after receiving information. Thus, informed consent can be defined as a patient's statement or legally representing it, which contains the approval of a medical action plan submitted by a doctor after receiving sufficient information to be able to make an approval or rejection. Approval of the action to be taken by the Doctor must be carried out without any coercive element.

The Indonesian term informed consent is translated as consent for medical action which consists of two English syllables, namely inform which means Information and consent means consent. So that in general informed consent can be interpreted as consent given by a patient to a doctor for a medical action that will be performed, after obtaining clear information about the action. Informed Consent according to Permenkes No.585 / Menkes / Per / IX / 1989, Approval of Medical Action is the approval given by a patient or family based on an explanation of the medical action to be performed on the patient.

Informed consent as per the experts, on the subject, (Guwand, 2005) gives patients a way to keep the medical profession honest in the process of medical care and avoid undesired surprises. Protecting patients from undesired medical interventions, especially from those carried out without their awareness and positive or negative effects, is provided, such as preventing treatment and protecting doctors from unfortunate incidents (inevitable)is often thought to be (conscious or unintended), are examples.

The absence of informed consent can lead to malpractice by doctors, especially when there is harm or intervention in the patient's body. Common law in many countries states that the consequences of not having informed consent are equivalent to negligence. However, in some cases, the absence of such informed consent.

the same degree of negligence on the part of the doctor who really did the operation was as much as she could have expected in the past, Doctors have been known to be negligent because

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they have done unnecessary procedures and surgeries, as well as when they have given treatments that were insufficient. The patient previously objected to the doctor's conduct, but the doctor insisted. Patients must be aware of surgical treatments that vary in significant ways from those undertaken by doctors to grant valid consent.

Patient's Right to Information

The patient's right is actually a human right that comes from the basic rights of individuals in the field of health, (the right of self-determination), although, in fact, it is the same as fundamental, the right to health care is often considered more basic, in the doctor-patient relationship, the patient is relatively in a weak position, the patient's inability to defend his / her interests in health care situations creates the need to challenge patients' rights in dealing with health professionals.

The right to obtain information is the most important human right of patients, even in special measures, informed consent is required (consent to medical action). The relationship between informed consent and medical action to be carried out by doctors can be said that informed consent is the main component that supports the existence of this medical action.

The patient has the right to know everything related to the state of the disease, namely about the diagnosis, the medical action to be performed, the risk of doing or not doing the medical action. Medical information that the patient has the right to know, including the identity of the treating doctor and the rules that apply at the hospital where he is being treated (for example, regarding the rates and payment methods at the hospital) The doctor can withhold medical information if this will weaken endurance patient.

Since the enactment of the Minister of Health Regulation (Permenkes) Number 290 of 2008 concerning the Approval of Medical Treatment, before taking a medical action, the patient has the right to obtain information on medical actions to be performed on him, in this Permenkes also protects the patient's right to refuse treatment. Medical because before a medical action is carried out, the doctor must obtain the consent of the patient or the person entitled to permit the action to be performed on the patient.

The information that must be given to the patient or immediate family is set out in Article 7, paragraph 3, namely at least includes: (a) Diagnosis and procedures for medical action; (b) The purpose of the medical action being performed; (c) Other alternative measures, and their risks; (d) Risks and complications that may occur; and (e) Prognosis of the action taken (f) Estimated financing.

A description of the patient's diagnosis and health condition can include clinical findings from the results of the medical examination up to that time, the diagnosis of the disease or in the case that it cannot be confirmed, at least the working and differential diagnosis, indications or the clinical condition of the patient requiring medical action (the possible outcome of treatment) if action is taken and if action is not taken. This is regulated in Article 8 paragraph 1 Permenkes Number 290 of 2008.

The description of the medical action that is carried out includes the objectives of medical action which can be in the form of preventive, diagnostic, therapeutic, or rehabilitative goals. The procedure for implementing what actions the patient experiences during and after the procedure, as well as side effects or comfort that may occur, other alternative actions and their advantages and disadvantages compared to planned actions, risks and complications that may occur in each alternative action, expansion of action which may be done to overcome emergencies due to these risks and complications or other unforeseen circumstances, this is

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regulated in Article 8 paragraph 2 Permenkes Number 290 of 2008 concerning Approval of Medical Action.

The explanation of the risks and complications of medical action is all the risks and complications that can occur following the medical procedure, except for risks and complications that have become common knowledge, risks and complications that are very rare or the impact is very mild, risks and complications that cannot be imagined. Previous (unforeseeable). This is regulated in Article 8 paragraph 3 Number 290 of 2008 concerning Approval of Medical Action. The description of the prognosis includes prognosis about life and death (ad Vitam), prognosis about its function (ad functinam), prognosis (the possible outcome of treatment) about recovery (ad sanationam). This is regulated in Article 8 paragraph 4 Permenkes Number 290 of 2008 concerning Approval of Medical Action.

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Shape / Type Informed Consent

Medical service is one of the service elements which plays an important role in providing health services to patients. In this medical service, there is medical personnel as medical providers and patients as medical receivers. Each party has rights and obligations that must be respected. In carrying out their profession, medical personnel must act honestly and keep patients from being harmed by it, besides that medical personnel must also know matters related to informed consent as a basis or consent (consent) for medical personnel in providing medical treatment to patients.

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Informed consent gave birth to a therapeutic agreement. A therapeutic agreement is an agreement between a doctor and a patient that authorizes the doctor to carry out activities to provide health services to patients based on the doctor's expertise and skills. In the Preamble of the Indonesian Medical Code of Ethics which is attached to the Decree of the Minister of Health of the Republic of Indonesia Number 434 /Menkes / X / 1983 concerning the Enactment of the Indonesian Medical Code of Ethics for Doctors in Indonesia, states about therapeutic transactions as follows "The meaning of therapeutic transactions is the relationship between doctors. With the patient and the sufferer which is carried out in an atmosphere of mutual trust (confidential) and is always overwhelmed by all the emotions, hopes and worries of the human being".

The legal relationship in the therapeutic transaction arises the rights and obligations of each party, both for the patient and the doctor. An agreement is said to be valid if it meets the requirements as stipulated in Article 1321

The Civil Code reads "There is no valid agreement if the agreement was given because of an error or was obtained by coercion or fraud".

By the article above, it can be concluded that juridically, the validity of an agreement is determined by the agreement of the parties that bind itself, without any mistake, coercion, or fraud. This agreement is an agreement made by both parties where both parties have an agreement of will in the therapeutic transaction as the patient agrees to be treated by the doctor, and the doctor agrees to treat the patient. For this agreement to be valid according to law, then in this agreement the parties must be aware (there is no mistake) of the agreement made, there must be no coercion from either party and not there may be a fraud in it. For this reason, it is necessary to have informed consent or what is also known as Medical Action Consent.

There are 2 forms of Medical Action Approval, namely: Implied consent (presumed given). Generally, implied consent is given in normal circumstances, meaning that the doctor can capture the consent of the medical action from the signals given/done by the patient. Likewise, in cases of emergency where the doctor requires immediate action while the patient is unable to give consent and his family is not available, the doctor can make the best medical action according to the doctor. For another, there is used in medical research is the voluntary agreement of a person to be included in an experiment or medical treatment, regardless of whether he or she feels it would benefit the researcher or is gained through deception (stated) Sometimes may be mentioned as well as both orally and in prose. According to the institutional protocols, a license to operate is a surgical operations that necessitates receiving signed consent, as they carry the possibility of substantial and personal harm to the patient. From the 2010's Law Number 44, patients have the right to complete, informed consent with details about medical diagnosis, treatments, risk factors, and expenses, interventions, and possible side effects, therapies, and their choice of actions, including the need for the same, including what it is going to cost, as well as the results, the patient's costs, and what measures are to be taken, and the possibility of complications. a health practitioner should approve or refuse whatever plan to modify the activities or behavior they plan to do due to the existence of their current or future illness

Ineffective delivery of information can cause problems. It may be that the doctor has provided sufficient information to the patient. However, due to the patient's lack of understanding or not understanding the language used by the doctor, the informed question is questionable. The patient did sign the consent letter, but the patient admitted that the patient was not informed and the patient did not understand what he agreed to. Maybe what the doctor thinks has been given enough information, according to the patient is not enough because the patient does not

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understand that what the doctor has said is information for himself. Often the patient just nods his head as if he understands, without a statement because he just doesn't know what to ask. The doctor who considers the patient's nod as a sign of understanding will submit a medical treatment consent form and the patient will sign his / her signature. This is often the case when the patient's knowledge is minimal.

Basic Medical Action against Patients

Approval of medical action has been regulated in Article 45 of Law Number 29 of 2004 concerning Medical Practice. As stated, every medical or dental action to be performed by a doctor or dentist on a patient must be approved. Approval, as intended, is given after the patient has received a complete explanation, at least including diagnosis and procedure of medical action, the purpose of the medical action taken, other alternative measures and risks, risks and complications that may occur, and prognosis of the action taken. It states that every medical or dental action that contains a high risk must be given with a written consent signed by the person entitled to give consent.

Establishing a relationship between medical personnel and patients that has a legal basis, can be started with article 1313 of the Civil Code "An agreement is an act whereby one or more people bind themselves to one or more people". Thus the position of patients and medical personnel in health services should be balanced. On the one hand, patients need medical personnel to overcome their health problems, while on the other hand, medical personnel needs patients to earn income as well as to practice the medical knowledge they have learned in education.

Each party, in this case, medical personnel who are in the position of medical providers and patients as medical receivers have rights and obligations that must be respected. It is in this bond that the issue of informed consent or medical/medical action consent arises. Where, a patient or his family must be given information or an explanation as clearly as possible from the medical personnel regarding the medical action to be carried out on the patient, to give consent or permission to the medical personnel. Thus, as a result of the agreement, there will be an "agreement" between the two parties. Both parties agreed and promised to do something in the field of medicine or health. As a result of this agreement, there will be an "agreement" between the two parties, namely the patient and the medical personnel.

It is common knowledge that medical personnel rarely ask for consent from patients if they want to carry out a series of patient healing efforts, except in the case of surgeries and procedures that have a very high medical risk. The medical staff also asked for this consent without any explanation as clearly as possible and sometimes it seemed that they were being forced, especially if the patient was treated using a Poor Community Health Insurance card or the like. In practice, it can be seen that the relationship between medical personnel and patients is still very unequal, where medical personnel still have a dominant position, while patients are only passive in waiting and seem submissive to what medical personnel will do to them.

By the provisions on informed consent, it is clear that in determining the treatment of a patient, medical personnel must seek verbal or written consent, depending on the severity of the risks the patient and medical personnel will face in carrying out treatment measures. Because in article 52 letters a and d of the Medical Practice Law it is explained that patients, in receiving services in medical practice, have the right to receive a complete explanation of medical actions as intended in Article 45 paragraph (3) and in addition to that the patient has the right to refuse medical action. Therefore, informed consent or medical/medical action consent is a must for medical personnel in planning treatment efforts for patients.

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Regulation of the Minister of Health of the Republic of Indonesia Number 290 / Menkes / Per / III / 2008 concerning approval for medical action is stated in Articles 1, 2, and 3, namely: Article 1: Approval of medical action is the consent given by a patient or his / her closest family after receiving a complete explanation of the medical or dental action to be performed on the patient. The immediate family is the husband or wife, biological father or mother, biological children, siblings, or guardians.

If the Informed Consent regulation is implemented properly, the doctor and patient will be both legally protected. But if there is an act outside the rules that have been made, it is certainly considered to be breaking the law. In violation of the Informed Consent, it has been regulated in Article 19 of the Minister of Health Regulation Number 290 of 2008 concerning Approval of Medical Action, it is stated that a doctor who takes action without Informed Consent may be subject to sanctions in the form of an oral warning, a written warning to the revocation of the Practice License.

Informed consent in Indonesia is also regulated in the following regulations: (1) Law of the Republic of Indonesia Number 23 of 1992 concerning Health in conjunction with Law Number 36 of 2009 concerning Health, (2) Indonesian Hospital Code of Ethics (KODERSI) (3) Regulation of the Minister of Health of the Republic of Indonesia Number 585 / Menkes / Per / IX / 1989 concerning Approval of Medical Action. (4) Regulation of the Minister of Health RI Number 1419 / Menkes / Per / X / 2005 (5) concerning Administration of Medical Practice. (6) Decree of PB IDI (Indonesian Doctors Association) No.319 / PB / A4 / 88If the Informed Consent regulation is implemented properly, the doctor and patient will be both legally protected. But if there is an act outside the rules that have been made, it is certainly considered to be breaking the law. In violation of the Informed Consent, it has been regulated in Article 19 of the Minister of Health Regulation Number 290 of 2008 concerning Approval of Medical Action, it is stated that a doctor who takes action without Informed Consent may be subject to sanctions in the form of an oral warning, a written warning to the revocation of the Practice License. Informed consent in Indonesia is also regulated in the following regulations: (a) Law of the Republic of Indonesia Number 23 of 1992 concerning Health in conjunction with Law Number 36 of 2009 concerning Health (b) Indonesian Hospital Code of Ethics (KODERSI). (c) Regulation of the Minister of Health of the Republic of Indonesia Number 585 / Menkes / Per / IX / 1989 concerning Approval of Medical Action. (d) Regulation of the Minister of Health RI Number 1419 / Menkes / Per / X / 2005. (e) concerning Administration of Medical Practice. (f) Decree of PB IDI (Indonesian Doctors Association) No.319 / PB / A4 / 88.

Nowadays, Informed consent is not just for the benefit of the patients, but also protectin the doctors if there are something bad happen. Informed consent is a must before a doctor took a medical action on a patient.

Conclusion

the acceptance of a doctor's plan can be described as having been given when the patient has received adequate details. Patients should be given enough information before getting medical treatment, and this includes implied consent and explicit consent is essential to provide in their relationship with physicians (which is mentioned in the Regulation of the Minister of Health No. 290 of 2008).

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