

The Implementation of Honesty Principles in Therapeutic Agreements based on the Health Law Perspective in Indonesia

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Abstract

Covid-19 is a virus that has become an epidemic in almost all countries, including Indonesia. One of the reasons for the massive spread of Covid-19 is the patient's dishonesty in providing information related to their medical history and symptoms to doctors and health workers, causing patients not to be treated according to their complaints. The formulation of the problems in the research, namely: the legal basis for the application of The Honesty Principle in the therapeutic agreement and the legal consequences don't fulfill the honesty principle. The research method used is normative juridical research. The legal basis for applying The Honesty Principle refers to the general rules of contract law in the Civil Code and regulations in the field of health law in particular. The absence of The Honesty Principle in a therapeutic agreement includes an agreement that is defective and can be canceled and compensated for. Especially for an infectious disease outbreak such as Covid-19, a dishonest patient can be subject to a maximum imprisonment of 1 year and/or a maximum fine of Rp.1,000,000.

Keywords: Covid-19, Honesty Principle, Therapeutic Agreement

Introduction

Corona Virus Infection (Covid-19) is a virus that has now become an epidemic in almost all countries, including Indonesia. A total of 216 countries have confirmed 17,660,523 positive cases of Covid-19 and 680,894 people have died.¹ In Indonesia, 210,940 positive cases of Covid-19 have been confirmed and 8,544 people have died.¹ The factors that cause the Covid-19 virus to spread so rapidly are high community mobility, increased capacity for tests conducted on the community, and the application of health protocols that are not strict.² Besides, sometimes people do not provide true/honest information regarding their symptoms or history of illness to health workers. This is the case in several regions in Indonesia. There are lots of medical personnel at the Hospital who contracted from patients who seek treatment without wearing masks, are not

honest about their travel history and symptoms of Covid-19 that have been felt.^{3,4}

The above case, contradicts the patient's obligation to provide complete and honest information about his health problem.⁵ The patient's dishonesty can lead to an incorrect diagnosis given by the doctor. In the end, the doctor's diagnosis will bring harm to the patient himself. Moreover, during the Covid-19 period, this patient's dishonesty could also harm doctors, as was the case above. In essence, the relationship between patient and doctor in health care is a partnership relationship that together establishes the right diagnosis. Therefore, this honesty principle does not only apply to doctors but also applies to patients to get the right diagnosis and protect medical personnel (in this paper it will be focused on a doctor) from disease transmission.

Based on the description above, this study will identify and analyze the application of the honesty principle in the Therapeutic Agreement based on health law in Indonesia with several problem formulations as follows especially about the regulation and legal consequence of the honesty principle in the therapeutic

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agreement. In connection with the idea of this study, it is known that previous studies discussed the following: analysis of legal protection for patients in therapeutic transactions⁶; the perspective of legal protection for patients, and liability for violations of therapeutic agreements based on civil law⁷; the legal relationship between doctors and patients as well as doctors' responsibilities in providing health services⁸; and legal protection for doctors in providing medical services⁹.

Methods

The research method uses normative juridical research. Normative Juridical Research is research that examines legal products.¹⁰ Legal materials include laws and regulations, books, journals, and other legal documents.¹¹ The approach method used includes: statute-approach, namely the approach method using analysis of statutory regulations.¹²; conceptual approach, which is an approach method by examining and understanding legal concepts related to the problem.¹³

Results and Discussion

Legal Basis for Implementation of Honesty Principles in Therapeutic Agreements Based on Health Law in Indonesia

Therapeutic agreements are agreements that arise because of an agreement in the field of health services between doctors and health workers and patients. Patient consent in administering medical action by a doctor can be done in writing or orally. Therapeutic Agreement is closely related to Informed Consent. Informed Consent is the consent given by the patient or the closest family after receiving a complete explanation of the medical or dental action to be performed on the patient.¹⁴ The first stage in the informed consent process is a discussion between the doctor and the patient to convey medical information regarding a medical procedure/research.

A therapeutic agreement is an agreement made between a patient and a doctor which creates an obligation for the doctor to try to make maximum efforts to cure the patient following the agreement made between the two and the obligation for the patient to pay for the cost of healing.^{15,16} Doctors will certainly pay attention to the health information submitted by the patient so that the diagnosis is correct. With honest communication between doctors and patients, it will lead to mutual

trust. Therefore, in a therapeutic agreement, patients and doctors must be able to provide honest information to each other to create good cooperation and achieve the goals of health services. Juridically, the application of The Honesty Principle in an agreement is part of one's good faith in agreeing. In essence, good faith must cover all stages of the agreement, which begins with honesty when agreeing.¹⁷ This is as regulated in Article 1338(3) of the Civil Code which states that the agreement must be carried out in good faith.

Although the term therapeutic agreement is not known in the Civil Code, the Therapeutic Agreement cannot be separated from the provisions of the Civil Code (Agreement Law). Article 1319 of the Civil Code states that all agreements that have a special name or are not known by a certain name, then the agreement is subject to general regulations regarding the engagement in general. Besides, this therapeutic agreement was also born because of the principle of freedom of contract as stated in Article 1338 of the Civil Code. Therefore, the validity of the Therapeutic agreement also depends on the fulfillment of the conditions stated in Article 1320 of the Indonesian Criminal Code which requires 4 things, namely: 1) Agreement; 2) Proficiency; 3) certain objects; and 4) Causa Halal. The Honesty Principle is part of the legality of an agreement as stated in Article 1321 of the Civil Code which states that a legal agreement must be free from error, coercion, or fraud. Besides that, Therapeutic Agreements which have a more specific nature (in the field of Health) of course have their own more specific and detailed rules in the realm of Health Law.

Some of the legal principles underlying the therapeutic agreement, namely: the principle of legality, the principle of balance, the principle of punctuality, the principle of good faith, the principle of honesty, the principle of prudence, and the principle of openness.¹⁸ Legal principles are meta-norms / rules which in essence are also rules of behavior. However, it is hoped that these principles can be implemented in the laws and regulations so that they can be directly applied by the community.

The honesty principle is the principle underlying the delivery of correct information, both by patients and doctors and health workers in communicating so that

it can help the patient's healing process. Obtaining the correctness of this information is a human right. The doctor and patient relationship in a therapeutic agreement is based on two kinds of human rights, namely the right to self-determination and the right to information.¹⁹ Therefore, The Honesty Principle is very important to achieve a prosperous life for the parties, both patients and doctors. Especially during the Covid-19 period, everyone, both patients and doctors and health workers, both have the same human right to life as stated in Article 3 of the Declaration of Human Rights by the United Nations, namely "one has the right to life and security of person".²⁰ Several rules that implement The Honesty Principle in the Therapeutic Agreement, both explicitly and implicitly, are:

1. Law Number 36 of 2009 concerning Health

This law shows that everyone has the right to balanced and responsible health information (Article 7). This information also means that everyone has the right to obtain information about their health data, including the actions and treatments they have or will receive (Article 8). Article 56 stipulates that every person has the right to accept or reject help actions after receiving information and understanding information about the action completely. What is of concern is Article 56 which allows people not to have the right to refuse medical assistance, that is, for people with diseases whose diseases are quickly transmitted to the wider community.

2. Law Number 29 of 2004 concerning Medical Practice

This law states that actions that doctors take against patients must obtain the consent of the patient (Article 45). This consent is given after the patient has received a complete explanation from the doctor. Of course, in this case, the doctor has the right to obtain complete and honest information from the patient or his family (Article 50(c)). This is balanced with the provision of Article 53(a) which stipulates that Patients also must provide complete and honest information about their health problems. Furthermore, patients receiving services in medical practice have the right to receive a complete explanation of medical procedures (Article 52(a)).

3. Regulation of the Minister of Health of the

Republic of Indonesia Number 4 of 2018 concerning Hospital Obligations and Patient Obligations.

The Honesty Principle in the Therapeutic agreement is also stated in Article 26 which states that patients are obliged to provide honest, complete and accurate information following their abilities and knowledge.

4. Regulation of the Minister of Health Number:290/Menkes/Per/III/2008 concerning Approval of Medical Actions

This regulation is an implementation of Article 45 of the Medical Practice Law. However, in this regulation, there are no the honesty principle in the approval of medical action. However, all medical procedures must have the patient's consent after the patient is adequately informed.

5. Circular of the Director-General of Medical Services Number: YM.02.04.3.5.2504

This Circular Letter states that doctors have the right to complete and honest information from patients or their families. Vice versa, doctors also have the obligation to provide sufficient information about the need for medical action and the risks that may occur.

6. Law Number 4 of 1984 concerning Outbreaks of Infectious Diseases

This law discusses infectious disease outbreaks as is currently happening. The Covid-19 case is an outbreak of infectious disease as referred to in Article 1 letter a. This is because Covid-19 is a contagious disease where the number of sufferers has significantly increased beyond the usual conditions at certain times and regions. Ministerial Regulation Number 40 of 1991 is an implementing rule of this Law that regulates that everyone participates in the implementation of epidemic prevention efforts (Article 21). This participation can be carried out in one way, namely by providing information on the existence of sufferers or suspected sufferers of plague (Article 22) which of course this information must be conveyed honestly for the benefit of the wider community

Based on some of the rules and descriptions above, it is clear that the application of The Honesty Principle in the world of health is highly respected. Although there is

no clear provision that applies The Honesty Principle in a therapeutic agreement has been stipulated as the rights and obligations of each party when making a therapeutic agreement. The Honesty Principle is used as the initial foundation for enforcing the correct diagnosis so that the objectives of the Therapeutic agreement are achieved, namely maximum health services and patient healing and the safety of health workers in providing health services.

Legal Consequences of Fulfillment of Honesty Principles in Therapeutic Agreements

The Honesty Principle is the basis for conveying correct information from patients or doctors and health workers in communicating so that the expected recovery of patients can be realized. The Honesty Principle in the therapeutic agreement will be more inclined towards the subjective terms of the agreement stipulated in Article 1320(1,2) of the Civil Code, meaning that the agreement has a defect of will. This is because The Honesty Principle in a therapeutic agreement is information provided by patients to doctors or health workers, or vice versa. When from the beginning there has been no honesty conveyed by the parties in the therapeutic agreement, the subjective conditions have been violated and can cause the agreement to be canceled. Providing information that is not following the existing facts can be considered as fraud or an act of deception. Article 1328 of the Civil Code has stated that fraud is the reason for the cancellation of the agreement.

In the case of fraud in the making of an agreement, it means the party who states according to his will, but the will that is conveyed is something that is not honest and is deliberately directed to something contrary to the actual situation. The element of deception is not just a statement that is lying, but there is a series of lies, a series of untrue stories, and every act/attitude that is deceptive. The fraudulent activity is the name of the party listed in the therapeutic agreement.

The result of the cancellation of the agreement is the return to its original position as it was before the agreement.²¹ In a therapeutic agreement, a cancellation can only be done before medical action is taken and the legal consequences that arise will be the responsibility of the party canceling. As with agreements in general, when there is a cancellation of the agreement, the party

that has already received achievements from the other party is obliged to return it. The return can be in the form of compensation which is the right of the injured party. The compensation regulated in Article 1239 of the Civil Code consists of compensation for expenses, losses, and interest

The absence of The Honesty Principle in the conditions of the Covid-19 pandemic is included in actions that prevent the implementation of the outbreak response. When there is a patient who is dishonest in providing information to doctors and health workers regarding his travel history, he has fulfilled Article 14(1) of Law Number 4 of 1984 concerning Communicable Disease Outbreaks, for which he can be subject to a maximum imprisonment of 1 year and/or a maximum fine of IDR 1,000,000. Based on this explanation, it can be seen that the granting of approval for medical action or a therapeutic agreement does not eliminate legal liability if there is evidence of negligence in taking medical action which causes the patient to feel disadvantaged.

Conclusion

The legal basis for applying The Honesty Principle in therapeutic agreements generally refers to the general rules of contract law in the Civil Code and several further provisions which regulate in detail the matters that underlie the therapeutic agreement. The absence of The Honesty Principle in a therapeutic agreement is included in an agreement with a defect of will that can be civically canceled and compensation is requested. During an outbreak such as Covid-19, a dishonest patient can be subject to a maximum imprisonment of 1 year and/or a maximum fine of Rp.1,000,000, -.

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