

Forensic Examinations and Therapeutic Agreement in Indonesia

Osgar Sahim Matompo

Associate Professor, Muhammadiyah University of Palu

Abstract

This research describes the type of legal protection for doctors and patients in forensic examinations. The therapeutic agreement is an agreement between doctors and patients which gives doctors the power to give forensic examination services. In the legal aspect of the therapeutical agreement, there appears the rights and responsibilities of each party. This means that both patients and practitioners have their own rights and responsibilities. The method used in this research is the doctrinal method with deductive and inductive approaches. Meanwhile, before the forensic examinations, the doctor needs therapeutical agreements to fulfill rights and responsibilities. Without this agreement, the doctor's work may not reach a maximum positive effect. Thus, there must be a balance. The doctors need the therapeutic agreement to fulfill their responsibilities in the forensic examinations.

Keywords: *Quality, Legal Protection, Doctors, Patients, Therapeutic, Agreement*

Introduction

The Constitution No. 36 year 2009 is an implementing regulation of health services. This regulation is a means to create harmony between the doctors' rights and responsibilities and the patients' interests to achieve success in forensic examinations. The law of health is an implementation of the health law and state's governance apparatus. The society views doctors as legal subjects which are interrelated, which creates both medical and legal relations.¹

A problem happens when someone or some institutions need forensic examinations. Anyhow, in undergoing forensic examinations, the doctors are required to have an agreement from the patient or the family, or an order from authorized institutions such as the police department or the court. This is what is called as the therapeutic agreement or therapeutic order.²

Without having the therapeutic agreement or therapeutic order, the doctors do not have the right to undergo any forensic examinations. Problems arise as

the patients have limited knowledge on the forensic examination techniques and also because the information given by the doctors are not satisfying enough for the patients and the family.³ This is the main reason why the doctors need it. It is called an agreement, as the relation between the patients or family and the doctors have reached the elements of a valid agreement to undergo forensic examination as written in Article 132.⁴

The problem of forensic examinations has long happened. Patients (those who will be forensically examined or who will undergo visum et repertum) or the patient's family (if the forensic examinations will be done to a body) do not understand the process. They might also feel that such procedures are against their religious beliefs. In the forensic examination of bodies, there is sometimes the need to carry out surgery or the process of cutting open some body parts. This may happen in post mortem examination, for example. According to some of the Indonesian people's religious beliefs however, this is against the belief of honoring the dead body. The second problem is that the doctors must convince the family to understand that this is an important process, that the forensic examination is needed to find out some things such as why the victim was hurt or dead, the types of wounds or disease and other things which can only be found through the forensic examination.⁵ The problem happens also when the patient's family actively inquires

Corresponding author:

Osgar Sahim Matompo

E-mail: doktor.osgar@gmail.com

Address: Jl. Hang Tuah 114, Palu, Indonesia

or objects the authority's decision to undergo forensic examination. The doctors may be trapped between disputes. They may also be targeted by the family in the lobby. They may even be hurt.

Forensic test efforts which are beforehand aimed to know whether the patient or their body were affected by something. The doctors need legal protection which is integrated and sustainable. Therapeutic agreement with the right mechanism is the legal agreement for the doctor rights and responsibilities in forensic test or forensic agreement.

Research Method

The method used is the doctrinal method, with interacting deductive and inductive approaches. The problem above is analyzed based on the data which become the target of a deductive-method research. Then, based on the real condition, conclusions are made regarding the legal protection of the doctors' and patients' rights and responsibilities in the perspective of therapeutical agreement.

Findings and Discussion

The existence of forensic examinations always involves the interests of all members of the society. The society may experience some events and become a victim. They may also be suspicious that someone has become a victim. There are also people who are against these things. Sometimes the people are suspicious that the one who reject is the perpetrator. The arrangement of legal protection for doctors to undergo forensic examination is said to be real when a legal subject is given rights and responsibilities. Legal protection is defined as giving guarantee or protection, provisions, licences and so that they cannot be persecuted if there are mistakes in the diagnosis of the examination results which are unintended from the authority those protected from all dangers or risks which may arise.⁶

The therapeutic agreements or the therapeutic orders for doctors are based on the problem of legal protection for the doctors regarding forensic test service and the treatments given by doctors.⁷ Informed consent is an agreement between doctors and patients or the family to undergo forensic examination and it is known as the therapeutic agreement. From the authorized institution in the case of criminality, it is known as the therapeutic orders.⁸ In the medical world, it is called the therapeutic agreement or informed consent, which is an agreement

for doctors to undergo examination or therapeutic effort a patient after the patient or family or the authority has obtained information.⁹

Therapeutic agreement in Indonesia is a crucial thing in the forensic examination. The therapeutical agreement contains two essential elements, which are the information given by the doctor and the agreement given by the patient or the authority.¹⁰ The therapeutical agreement will create interacting rights and responsibilities for doctors. The therapeutic agreement gives an excellent quality of legal protection for doctor in the case of forensic examination.

The therapeutic agreement gives a trust to the doctors in giving the forensic test or forensic examinations. It can be used as a legal protection if the any wrong results were given by the doctors. It is because in the therapeutic there are provisions. It is said that if the doctors fail to perform their obligations in the forensic examinations, the patients or their family or the authority will not sue that mistake.¹¹

Even so, the patients juridically have the right to sue them if the health workers did not undergo their professional standards well. The two essential elements in the basis of the therapeutic are the information from the doctors and the approval of the patient or their families or authority. The Republic of Indonesia's Ministry of Health Decree Article 1 No. 290/MENKES/PER/III/2008 regarding Agreement of the Medical Treatment. Regarding the forensic examinations, the doctors have the obligation to obtain the correct, clear, and honest information from their examination results.

Approval will be given for the doctor. That agreement is in the form of clear approval, which is done in a written form by patient, families and the authority. The doctors will give an explanation and medical records. The patients must obtain clear information regarding the forensic examinations which will be given by the doctor. Obtaining information is an obligation for doctors.

The Constitution of Health Article 8 states that each person has the right to obtain information regarding one's data of health, including the treatments and the medications which have or which will be obtained from the doctors. There are the rights of the doctors as a form of legal protection which must be taken consideration of, which are the rights to obtain forensic examination service, the rightsto give information, and the rights to be protected.

The therapeutic agreement between the doctors and the patients are based on Article 1320 B.W (Burgerlijk Wetboek/Indonesians Law Codifications). It does not only create rights of patients, yet there are also consequences if the doctors purposely fake the examination results. They may be imprisoned or their licenses may be annulled.

Regarding the points above, the rights of the doctors include working according to the standard. They may refuse to carry out procedures which cannot be professionally taken responsibility of. They may also refuse undergoing forensic examinations, except through the right process.¹²

These responsibilities are binding. If the doctors do not undergo their responsibility to carry out forensic test or if they undergo maltreatments which are not according to the procedures, thus there are other responsibilities which must be taken by the doctor. The said 'other responsibility' is in the perspective of legal protection, where there are two kinds: legal responsibility in the aspect of civil law and that of criminal law. If the doctors do not undergo their responsibilities, thus, the authority may sue them to pay for compensation or they may be punished as written in the Civil Law (KUH Perdata) Article 1365. It is said that if there is any action which violates the law, which brings loss to others, thus the perpetrator must pay compensation or they may be jailed if they undergo crime in the forensic examination process.

Meanwhile, the elements which must be fulfilled in Article 1365 of the Civil Law (KUHPerdata) is that there are actions which violate the law. There must be wrongdoingness by perpetrators, there are losses experienced by the victim, and there is a casualty effect, which is the relation between the perpetrator's (the doctor's) wrongdoingness and the losses experienced by the victim.¹³

Thus, in this relation, there exists rights and responsibilities which are interrelated.¹⁴ In practicing their responsibilities in the forensic examinations, doctors may have mistakes and errors which may bring a negative impact. Such cases may grow into various things, such as: how a doctor is considered to be doing malpractice or how they fake eports, or how a doctor underwent a default.¹⁵ There are three elements of a doctor's error which may result to imprisonment in undergoing forensic examinations, which are: (1) the

doctor underwent a medical profession error, (2) such actions are done carelessly, (3) they undergo fatal actions such as faking reports, purposely undergoing errors for certain motives. Thus, the doctors who underwent professional errors may be imprisoned, and his/her practice license may be revoked by the Ministry of Health.

Thus, to protect the doctors, they need to obtain the therapeutical agreement before forensic examination. it is better if therapeutic is stated in a written form, so as to become an authentic proof if things were to happen. This may avoid the accusation of undergoing wrongdoingness if the doctors' forensic examination are based on the procedures, and have been explained correctly.

Conclusion

Doctors cannot undergo forensic examination without orders from the authority in the case of forensic examination to open up criminal cases. The doctors may also undergo forensic examination based on the agreement of the patients or the family in necessary conditions, for example if someone feels that he/she is a victim and therefore needs that process. The therapeutic agreement is a mechanism which ensures that the doctors will receive legal protection after undergoing forensic examination.

Source of Funding- author

Conflict of Interest-no

Ethical Clearance-yes

References

1. Machmud S. Law Enforcement and Legal Protection for Doctors Allegedly Conducting Medical Malpractice. Bandung: Karya Putra Darwati Foundation; 2012.
2. Wiradharma D. Ethical and Juridical Aspects of Medical Action. Jakarta: Trisakti University; 2003.
3. Malaspina E, et al. Violence Healthcare: Management for an Emerging Issue Sector with Several Occupational Risk. Quality Access to Success Journal. 2019;20(172):153-157.
4. Supriadi C. Health Law. Bandung: Mandar Maju Publisher; 2001.
5. Aldiano R. Therapeutic Agreement as a Form of Legal Protection for Patients in Terms of Malpractice. UB Student Journals. 2017;3(2):206-

- 218.
6. Tutik, Triwulan T. *Legal Protection for Patients*. Jakarta: Prestasi Pustaka; 2010.
7. Hendrojono. *Limits of Medical Malpractice Legal Liability in Therapeutic Transactions*. Surabaya: Srikandi; 2007.
8. Satjipto HS, Nurbani ES. *Contract Law Innominaat in Indonesia (2nd Editions)*. Jakarta: Sinar Grafika; 2014.
9. Ariwibowo BN, Nurhayati BR, Dahlan S. Patients' Perceptions about the Legal Aspect of Engagement Efforts (Ispanning Verbintennis) in Therapeutic Transactions between Doctors and Patients at Salatiga District Hospital. *Soepa J.* 2017;3(1):52-59.
10. Komalawati V. *The Role of Informed Consent in Therapeutic Transactions (Consent in the doctor-patient relationship) A juridical review*. Bandung: Citra Adytia Bhakti Publisher; 2002.
11. Hariyani S. *Sengketa Medik Alternative Dispute Resolution Between Doctor and Patient*. Jakarta: Diadit Media; 2005.
12. Nugroho HA, Aryati S. Relationship Between Nurse Therapeutic Communication and Patient Satisfaction at Kendal Islamic Hospital. *Jurnal Keperawatan.* 2009;2(2):36-41.
13. Wijanarko B, Sari MP. Juridical Review of the Validity of the Therapeutic Agreement and Legal Protection for Patients. *Privat Law Journal.* 2014;4(3):1-14.
14. Correa A, et al. Therapeutic Collaboration and Significant Events to the Client's change: A Systematic Review. *International Journal of Psychology and Psychological Therapy.* 2016;16(1):49-60.
15. Paulson BL, Truscot D, Stuart J. Client's Perceptions of Helpful Experiences in Counseling. *Journal of Counseling Psychology.* 1999;46(2):317-324.