

# The Protection for Private Rights of Hospital Patient in the Perspective of Indonesia Legal System

Dr Syafruddin

Lecturer at Postgraduate of School of Law of Tarakan Borneo University, North Borneo, Indonesia  
Address: Jl. Amal Lama No.1, Kel. Pantai Amal, Kec. Tarakan Timur, Tarakan, Kalimantan Utara, Indonesia

## Abstract

Relationship between patient and hospital in Indonesia, is a relationship based on health services. This context of relationship will impact on the emergence for rights and obligations in the relationship's patient and hospital. This research tries to analyze aspect of the protection for private rights of hospital patient in the perspective of Indonesia legal system. This research's analysis focuses on normative legal in both of conceptual and constitution approach. The result of research shows that Indonesia legal system today, it does provide regulation in form of constitution in order to ensure the protection of the rights of civil patients in the hospital. It is *Burgelijk Wetboek* or abbreviated BW. BW is a general legal containing private rights for Indonesian. Article of 1313 of, in my analysis, is the basis of the legal relationship between the patient and the hospital placed in a terapeutik relationship framework that is bound by the agreement. Based on Article 1313 BW, the civil rights of patients, is based on what is agreed between the hospital with the patient. Indonesia government has also enacted a constitution to specifically guarantee the protection for patient's private rights, among others, the act of Number of 29 of 2004 on practice of medicine and the Act of Number of 44 of 2009 on The Hospital. Both of the Acts, they regulate the civil rights of patients containing right for obtaining clear, accurate, and comprehensive information about what forms of treatment, medication, and medical action in the hospital. Right for information in the hospital, the Indonesia legal system, is informed consent. informed consent or IC is not only an agreement of the will of the patient, but also a commitment to the protection of the patient's rights from any medical action which is fatal for the patient or it can deprive the patient's life.

**Keywords:** Patient, the Hospital, Private Rights, and Informed Consent.

## 1. Introduction

Every human wants a healthy life. Health is the most valuable asset for every human being, because a health is one of the main factors supporting success for everyone to gain a better life in prosperity. Every human being, although always trying to get a healthy life, but in certain conditions it also has experienced ailing conditions. The level of pain conditions of every human being is diverse, ie there are those in mild to very severe pain conditions. For this reason, humans who are in a sick condition, would require treatment and treatment for healing illness. Various ways taken by humans to treat the disease, the most popular by humans, is a hospital treatment.

A person who is undergoing treatment at a hospital is called a patient. Patient is also human beings who should receive protection in the framework of care and better treatment provided by the hospital. The protection of this right, is to provide better health for patient in the hospital. In addition, the protection of the rights of patient in hospital is also to avoid various medical practices which can harm the patient itself<sup>1</sup>.

In the context of the rights protection of patient in the hospital, every country in the world has a model of protection law different from each other, which of course depends on the submission of the legal system of the country, whether embracing common law law system or civil law. Both of these legal systems, however, have different characteristics in determining the source of the law to formulate a legal postulate in the legal cases. The common law system places more emphasis on judges' decisions as the most important legal resource to guide the existing legal cases, while the civil law system emphasizes written law as its main source of law.

Indonesia as one of the countries which until now adheres to the civil law system, the protection of the rights of patients in the hospital, always refer to the written law. The following context of the discussion, regarding the legal protection of patient rights in hospital, the author focuses on the protection of the rights of civil patients in the hospital in the perspective of the Indonesia legal system.

## 2. Method of Research

This research uses normative legal research which is to examine basic norms in Indonesia's positive legal<sup>2</sup>. This research, also uses regulation and conceptual approach<sup>3</sup>. Regulation approach is useful for Indonesia regulation which concerned with legal issues of the legal protection of patient rights in hospital, while the conceptual

<sup>1</sup> Zahrah Mastaneh dan Lotfollah Mouselli. (2013). "Patient Awareness of Their Rights: Insight From a Developing Country". *International Journal of Health Policy and Management*. Volume 1, Issue 2, 2013, p. 143-146.

<sup>2</sup> Johnny Ibrahim. (2005). *Theory and Method for Normative Legal Research*, Bayumedia Publishing, Surabaya, Indonesia, p. 252.

<sup>3</sup> Peter Mahmud Marzuki. (2007). *The Legal Research*, Kencana Prenada Media Group, Jakarta, Indonesia, p. 95

approach is used to analyze The Legal Protection for patient rights in the hospital. Therefore, the conceptual approach is based on jurists' opinion and legal experts' view. This research uses written legal materials as analysis instrument, containing primer legal materials such as BW, the Act of Number of 29 of 2004 on practice of medicine, and the Act of Number of 44 of 2009 on The Hospital, also including secondary legal materials such as text books, law journal, law article, and scientific paper on law. Author analyses this topic research using interpretation of legal material substance based on legal theory and legal principle, in order to explain the nature of informed consent as a legal concept in the frame work of the Legal Protection for patient rights in the hospital. The analytical technique in this research, uses qualitative argumentative analysis with normative point of view.

### 3. Result and Discussion

#### 3.1. The Private Rights In The Indonesia Legal System

The Indonesia legal system adopting the civil law system, theoretically, has divided the legal acts of two, namely the act of public law and the act of private law. The act of public law relates to the interests of the state and the public interest, whereas the act of private law is associated with everything that is individual. It is not directly related to the interests of the state or the public.

The Indonesian legal system, provides that private rights are closely related to private law acts, so that private rights are the inherent rights of each individual Indonesian, which is individual in character. Private rights by referring to Van Apeldoorn<sup>1</sup>, namely a permit or power granted by law towards a particular legal subject, to perform certain legal acts, whether associated with the right to property or the right of an individual. This definition is the most widely used as a reference by legal experts in Indonesia.

Indonesia, which adheres to the civil law system, of course any regulation of certain legal acts, including acts of private law, is guided by the written law. The main reference to written law as a guideline for the regulation of civil rights is *Burgelijk Wetboek* or BW, which is the legacy of the former Dutch colonial product, which had colonized Indonesia for several centuries. BW containing four books, among others, Book I governing people; Book II regulates material rights; Book III regulates the Engagement; and Book IV deals on Expiration and Evidence.

Legal experts in Indonesia, classify private rights, by their nature consist of: the absolute private rights and the relative private rights. The Absolute Private Rights, are given by law to a person, for example: Right of honor, and Right of ability to act in law. Including absolute private rights, such as the Right of Kinship, for example: alimentation rights for wife or livelihood rights, rights of merit, and others.

The material rights included in the category of absolute private rights, namely property rights, namely rights which arise in the wealth (*vermogens recht*). Private rights Relative, comprising Relative family rights, which are mentioned in article of 103 and 104 BW, For example: husband and wife must be faithful and mutually helpful, or husband and wife bonded together in an agreement to educate and nurture their children, while the rights of material relative, is the right arising as a result of an engagement. This relative material right is called individual rights (*persoonlijke recht*), so the legal relationship between the rightful and the object raises material rights. Thus, the material right is the absolute power which is given law to the legal subject to directly control an object where or in whose hands the object is.

#### 3.2. Private Rights of Hospital Patient In The Indonesia Legal System

In Indonesia, Relationship of patient and the hospital, is the relationship in health services. The hospital as an institution which has obligation to provide care and treatment for patient, while the patient has the right to receive health service. The hospital provides medical personnel, such as doctors and nurses. Patient, however, has obligation to pay amount of money in health services.

Relationship of patient and the hospital in therapeutic, it provides right and obligation in which the hospital is obliged to provide health services professionally, for the sake of the patient's own healing. This is to avoid patients from medical actions that may lead to harm to the patient's body.

The basis of the legal relationship of the patient and the hospital placed within the framework of the relationship is therapeutic, the legal relationship is private between them. The hospital and patient do which in a binding agreement. Article 1313 BW as the main legal basis for the agreement between the parties in Indonesia provides that an agreement is an action in which one or more persons commit themselves to one or more persons. Subsequently, Article 1320 of the BW stipulates that the agreement, only valid if it meets four conditions, which include: (1). Their binding agreements; (2). Capacity of the parties; (3). Specific objects; (4). A cause which is not prohibited.

Article 1313 and 1320 BW, provides only the contractual relations between the parties which are common in all transactions in the jurisdiction of Indonesia. When using this provision, to describe the patient's private rights in the use of hospital services, the private rights are based on agreement between the hospital and the

<sup>1</sup> Komariah. (2002). *The Private Law*. UMM Press, Malang, Indonesia, p. 3.

patient. The agreement between the hospital and the patient himself, the framework of health services such as care and treatment, so that the patient's private rights arising out of the agreement, it causes to get the right in better medical care.

The current development of health services in Indonesia, as well as to protect patient from malpractice measures, must also be accompanied by adequate legal instruments to ensure the protection of private rights for patient in the hospital. The Government of Indonesia, has issued two the acts, as a special legal basis to guarantee the patient's private rights in the hospital, namely the Act of Number of 29 of 2004 on Medical Practice and the Act of Number of 44 of 2009 on the Hospital<sup>1</sup>.

The Act of Number of 29 of 2004 on Medical Practice does provide specifically for the protection of patient. Article 52 of this Act, provides:

- a) Patient is entitled to a full explanation of the medical measurement;
- b) Patient has the right to seek the opinion of a doctor or the other doctor;
- c) Patients is entitled to receive health service in accordance with medical needs;
- d) Patient has the right to refuse medical treatment;
- e) Patient is entitled to the contents of the medical record.

The protection of patients' rights is also contained in article 32 of Act of Number of 44 of 2009 on The Hospital, namely:

- a) Patient is entitled to obtain information on the rules and regulations applicable in the Hospital;
- b) Patient is entitled to information on the rights and duties of the patient;
- c) Patient is entitled to a humane, fair, honest, and non-discriminatory service in health care;
- d) Patient is entitled to receive quality health service in accordance with professional standards and operational procedures;
- e) Patient is entitled to receive effective and efficient service, so that patient avoids physical and material harm;
- f) Patient is entitled to file a complaint on the quality of service obtained;
- g) Patient is entitled to choose a doctor and treatment in accordance with its wishes which is applicable in the Hospital;
- h) Patient is entitled to seek consultation on its illness to another doctor who has a Practice License, both inside and outside the Hospital;
- i) Patient is entitled to privacy and confidentiality of the illness including medical data;
- j) Patient is entitled to information that includes the diagnosis and procedure of the medical action, the purpose of the medical action, the alternative actions, risks and possible complications, and the prognosis of the action taken as well as the estimated medical expenses;
- k) Patient is entitled to give consent or refuse towards the measurement by nurse in its illness;
- l) Patient has the right to ask for his family in critical condition;
- m) Patient is entitled to perform the worship according to the religion or belief which it embraces as long as it does not disturb the other patient;
- n) Patient is entitled to his or her safety and safety during hospitalization;
- o) Patient is entitled to give suggestions, improvements towards the treatment of the Hospital;
- p) Patient has the right to refuse the service of spiritual guidance which is inconsistent with his or her religion and belief;
- q) Patient has the right to sue the Hospital suspected of providing service which is inconsistent with health standard;
- r) Patients is entitled to complain on the hospital service which is not in accordance with the standard of service by press media.

Those acts which provide private rights of patient in the hospital, in my view, they are Informed Consent. Until now, the concept of IC has not been formulated explicitly in the written law, such as the act. It only formulates dogmatically in the Regulation of Minister of Indonesia Health of Number of 290/MENKES/PER/III/2008 on The Approval of Medical Measures, in article 2 says "...all medical actions to be taken against the patient must be approved. Approval in question is given in writing or orally after the necessary explanation of the need for medical action is taken".

Based on the article 2, it can conclude that IC is the agreement of the will of the patient who can be represented by the nearest family to get certain medical treatment after obtaining sufficient explanation from the doctor or the hospital on the need for doctor's action against the illness suffered by the patient. It means that IC arises as a result of a therapeutic relationship between the doctor or nurse and the patient. Each party has right and obligation which must be respected. The right to receive possessed by someone will intersect with the other party's obligation to give. Similarly, the interaction between doctor and patient raise legal relationships in the

<sup>1</sup> Takdir. (2015). "Legal Protection for The Poor in order to get Fair Health Services". *Journal of Law and Globalization*, Vol. 13, 2015, p. 78-82.

therapeutic transactions, namely the emergence of rights and obligations each others.

### 3.3. Informed Consent As A Legal Protection for Private Rights of Patient in The Hospital

IC is essentially a continuous process of communication. In this context, IC is the transfer of the decision-making paradigm, from being centered in the hands of the doctor or nurse to the patient. IC also requires disclosure, so doctor must obtain information as vividly as for example by tracking the family history or all involved with the patient's presence. That way, through IC, doctor will become more careful in diagnosing the patient, as well as the prudence of the doctor to perform certain medical actions professionally while maintaining the principles of medical ethics.

In performing of medical actions to the patient, as part of the informed consent, doctor should explain:

1. The ins and outs of the illness and the procedure of treatment to be given to the patient;
2. Risks to be faced, such as alleged complications will arise;
3. The prognosis of success or failure prognosis;
4. Alternative treatment method;
5. It can be happen if the patient refuses to give consent; and
6. The treatment procedure will be performed.

Doctor also needs to convey, albeit briefly, in performing such medical action. Information that must be given before a medical action is implemented<sup>1</sup>:

1. Disease Diagnosis Information;
2. The nature and extent of the action to be performed in care and treatment;
3. Benefit and urgency action in care and treatment;
4. Risks and complications which may occur due to medical action;
5. Consequently if treatment is not done
6. Another alternative treatment, and;
7. Medical expenses to be incurred.

Concerning the risks which must be informed to patient requested for approval of medical measures, that is 1). Risks attached to the act of medicine, and 2). Unanticipated risks. Related to the possible indication of the extension of medical action, doctor who will take action should also provide an explanation (see article 11 The Regulation of Minister of Indonesia Health of Number of 290/MENKES/PER/III/2008 on The Approval of Medical Measures). The explanation of the extension of the medical act referred to The Regulation of Minister of Indonesia Health, is the basis of the agreement. Exception to the necessity of providing information prior to the consent of medical action are: 1) In an emergency where doctor or nurse must act immediately to save lives; and 2). The emotional patient is so unstable, patient can not deal with its situation.

Theoretically, forms of informed consent can be categorized into three, including:

1. Written Approval, it is usually necessary for a large-risk medical action. This provision is stipulated in article 11 The Regulation of Minister of Indonesia Health of Number of 290/MENKES/PER/III/2008 on The Approval of Medical Measures, article 3 paragraph (1) and SK PB-IDI Number 319 / PB / A.4 / 88 point 3, says that any medical action in risk, it should provide a written consent, after the patient has received clear information on the need for medical action and the risks involved;
2. Oral Approval, it is usually required for medical action which is not high risk, provided by the patient;<sup>2</sup>
3. Approval With Cues, it will be done by patient with cues, such as patient who will be injected or checked for blood pressure.<sup>3</sup>

Based on the description of the three forms of IC, so IC always involves the element of willingness of the patient to what is a doctor's medical action. Therapeutic transactions of consent that occur between doctor or nurse and the patient not only in medicine but more broadly, including the diagnostic, preventive, rehabilitative or promotive<sup>4</sup>. Based on that, both doctor and patient, can provide each other necessary information for the implementation of good cooperation and achievement of health service goals.

In this context, based on article 1234 *Burgelijk Wetboek*, says: "every engagement is to give something, to do something or to not do something". Relationship which occurs in therapeutic transaction, the basis of health services, by putting forward the ethical principles adopted by doctors in order to provide help, do good and do not harm the patient. The ethical principle of giving help must be complete or until healed.

IC is not only an agreement of the will of the patient, but it is also a commitment to the protection of the

<sup>1</sup> Chirisdiono Achdiat. (2006). *Dynamics of Ethics & Medical Laws in the Challenges of the Age*. Jakarta, Indonesia, p. 28.

<sup>2</sup> Sarah Elizabeth Burke. (2008). "The Doctor-Patient Relationship: An Exploration of Trainee Doctors' Views (Dissertation)". School of Education The University of Birmingham, hlm. 109-110

<sup>3</sup> B.M. Stanley, D.J. Walters and G.J. Maddern. (1998). "Informed Consent: How Much Information is Enough?" *ANZ Journal of Surgery*, h. 788-91.

<sup>4</sup> M. Jusuf Hanafiah and Amri Amir. (1999). *Medical Ethics & Medical Law*. Penerbit Buku Kedokteran EGC, Jakarta, Indonesia, p. 39

patient's rights from any medical action which is likely to be fatal to the patient's self<sup>1</sup>. Because the position of the patient in the case of medical action, not just be the object of trial by the doctor, but the handling of patients must remain within the framework of ethical boundaries of medical professionalism. Doctor and patient is placed in equal equality as advocates of rights and duties. Doctor and patient is equal before the law in capacity as legal subjects. From this point of view, the idea of placing the position of IC as important to the protection of the patient's rights in taking medical action, is considered very urgent, because it concerns the body of every person. It should also be understood that the meaning of IC in the perspective of the protection of the patient's right, is to prevent the occurrence of malpractice in the medical action performed by doctor. That is, doctors should act in the correct procedures, in accordance with the provisions of operational standards determined by the medical.

In a broader context of meaning, IC fundamentally takes place the patient in equality under the law. So that, the patient should be protected from the danger which will threat the health sector. We need recognition of the protection of the right by the state. The role of the state (Indonesia) is very important to guarantee every interest that concerns the right to health. For that, it is necessary synergy of cooperation among institutions related to health, society and the state to meet the interests of every citizen in terms of health insurance. Patient as part of society, as one of the process of life together<sup>2</sup>.

In the context of physician accountability, the protection of patient rights can be accommodated through the concept of IC. The reason, a medical action performed by the practitioner of medical treatment (the doctor) without the consent of the user of the medical treatment (patient), while the patient is fully aware and able to give consent, the doctor as the executor of medical action can be blamed and sued has committing an act against the law (*onrechtmatige daad*) under Article 1365 BW. This is because the patient has the right to his body, so the doctor should respect him. The most important of the informed consent is the guarantee of the protection of the rights of the patient to obtain better health services.

#### 4. Closing

The private rights of the patient in the hospital according to the Indonesian legal system, are individual rights. The patient's private rights are described in the form of the rights of the patient to obtain better health services. Patients' private rights are protected based on the concept of Informed Consent (IC). Based on this concept, the patient has the right to his/her body, so that the hospital including the doctor must respect the rights of the patient. The concept of IC essentially imposes an obligation on the part of the hospital to inform the patient of his condition; diagnosis, differential diagnosis, investigation, therapy, risk, alternative, prognosis and expectation. The doctor should not reduce the information material or force the patient to make a decision immediately. The information provided is tailored to the patient's needs. The scope of information depends on the patient's medical knowledge. Unfortunately, the private rights of patient of hospital in the Indonesia legal system, until now, according to the author's observation has not been concretely accommodated in specific laws. I recommend that the patient's private rights which contained in IC are specifically regulated in a particular law/constitution. This is intended, private rights of patient in the hospital, can be protected concretely in the legal system of Indonesia.

#### REFERENCES

- Achdiat, Chirisdiono. (2006). *Dynamics of Ethics & Medical Laws in the Challenges of the Age*. Jakarta, Indonesia.
- Burke, Sarah Elizabeth. (2008). *"The Doctor-Patient Relationship: An Exploration of Trainee Doctors' Views (Dissertation)"*. School of Education The University of Birmingham.
- Hanafiah, M. Jusuf dan Amir, Amri. (1999). *Medical Ethics & Medical Law*. Penerbit Buku Kedokteran EGC, Jakarta, Indonesia
- Ibrahim, Johnny, (2005). *Theory and Method for Normative Legal Research*, Bayumedia Publishing, Surabaya, Indonesia.
- Komariah. (2002). *The Private Law*. UMM Press, Malang, Indonesia.
- Marzuki, Peter Mahmud. (2007). *The Legal Research*, Kencana Prenada Media Group, Jakarta, Indonesia.
- Mastaneh, and Mouselli, Lotfollah. (2013). "Patient Awareness of Their Rights: Insight From a Developing Country". *International Journal of Health Policy and Management*. Volume 1, Issue 2, 2013.
- Sudrajat, Diwa Agus, etc. (2008). "Fulfilling Patient Rights at a Hospital In Jakarta". *Journal of Nursing Indonesia*. Vol. 12 (2).
- Syafruddin and Anand, Ghansam. (2015). "Urgency of Informed Consent to the Protection of Patient Rights". *Hasanuddin Law Review*. Vol. 1 (2), August 2015.
- Takdir. (2015). "Legal Protection for The Poor in order to get Fair Health Services". *Journal of Law and Globalization*, Vol. 13, 2015.

<sup>1</sup> Diwa Agus Sudrajat, etc. (2008). "Fulfilling Patient Rights at a Hospital In Jakarta". *Journal of Nursing Indonesia*. Vol. 12 (2), p. 74-75.

<sup>2</sup> Syafruddin and Ghansam Anand. (2015). "Urgency of Informed Consent to the Protection of Patient Rights". *Hasanuddin Law Review*. Vol. 1 (2), August 2015, p. 174.

---

Walters, B.M. Stanley, D.J. and G.J. Maddern. (1998). “Informed Consent: How Much Information is Enough?”  
*ANZ Journal of Surgery*.