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Enforcement of Therapeutic Transaction Arrangements as an Instrument of Legal Protection for Patients with Mental Disorders

Anggraeni Endah Kusumaningrum [1], Siti Farahiyah Ab Rahim [2], Mahesa Paranadipa Maikel [3]

[1] Faculty of Law, Universitas 17 Agustus 1945 Semarang, Indonesia
[2] Faculty of Law, Universiti Kebangsaan Malaysia, Malaysia
[3] Faculty of Medicine, Universitas Islam Negeri Syarif Hidayatullah Jakarta, Indonesia

Corresponding email: *anggraeni@untagsmg.ac.id*

Abstract

Mental health services face unique challenges because they involve vulnerable patients, requiring strong legal protections. Therapeutic transactions, based on trust, rights, and obligations between patients and health professionals, play a key role in ensuring effective care. However, in Indonesia, challenges remain, including weak implementation of informed consent, limited awareness of patient rights, and inadequate oversight of ethical and legal violations. These issues can lead to malpractice, privacy violations, and inequities in mental health care. This study explores the importance of strengthening Law No. 17 of 2023 as a new and previously unstudied health law that regulates therapeutic transactions to protect the rights of patients with mental disorders. Using a

normative legal method, this study analyzes laws, case studies, and academic literature to identify areas for improvement. This study recommends harmonizing regulations with Law No. 17 of 2023 on health, improving informed consent procedures tailored to mental health patients, and enforcing strict sanctions for ethical and legal violations. Additionally, enhancing the capacity of healthcare workers through training, certification, and regular supervision is crucial to maintaining service quality and accountability. Strengthened regulations can create a more fair and transparent relationship between patients and healthcare workers, while also increasing public trust in mental health services. These measures are not only legal protective tools but also steps toward ensuring humane, professional, and fair mental health services. In conclusion, strengthening therapeutic transaction regulations is essential for protecting patient rights, enhancing accountability, and promoting high-quality mental health services that respect human dignity.

KEYWORDS *Therapeutic Transactions, Legal Protection, Mental Health, Informed Consent, Regulation.*

Introduction

One of the basic human needs is health. Although some argue that health is not everything, without health everything becomes meaningless.[1] Therefore, Indonesia as a country of law also places its regulation in the field of health as stated in Pancasila and the 1945 Constitution of the Republic of Indonesia, health is considered a human right and is an integral part of welfare.[2] Health not only includes a perfect state of the body, but also involves mental and social aspects, and does not suffer from any disease or disorder.[3] This definition provides a more holistic perspective on health, reminding that well-being is not only limited to a disease-free physical condition, but also involves mental balance and quality social interaction.

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1 Indra Perwira, *Memahami Kesehatan Sebagai Hak Asasi Manusia,* Jakarta: eLSAM, 2014.

2 Rif'atul Hidayat, "Hak Atas Derajat Pelayanan Kesehatan Yang Optimal," *Syariah Jurnal Hukum dan Pemikiran* 16, no. 2 (October 16, 2017): 127, https://doi.org/10.18592/sy.v16i2.1035.

3 Umi Sartika, "Pengaruh Inflasi, Tingkat Suku Bunga, Kurs, Harga Minyak Dunia Dan Harga Emas Dunia Terhadap IHSG dan JII di Bursa Efek Indonesia," *BALANCE Jurnal Akuntansi dan Bisnis* 2, no. 2 (November 1, 2017): 285, https://doi.org/10.32502/jab.v2i2.1180.

Quality and adequate health services are part of Human Rights (HAM) that must be protected by the state.[4] Article 1 number 3 of Law No. 17 of 2023 concerning Health emphasizes that health services are all forms of activities provided directly to individuals or the community to maintain and improve the degree of public health in the form of promotive, preventive, curative, rehabilitative, and palliative. The community has the right to the highest degree of health because health is a human right. Medical services are the object of approval of treatment and care. Therefore, efforts to improve people's living standards in the health sector are very important, as well as improving public health, both physical and mental.[5] WHO emphasizes that the balance between physical, mental, and social aspects of an individual's life is very important. If one of these aspects is disturbed, the welfare of the individual in general will be affected.[6] This is the basis for the state to ensure justice in health services, without exception in mental health services that require special attention.

Mental health is an integral part of overall health as regulated in Article 74 of Law No. 17 of 2023 concerning health which is reaffirmed in Article 145 of Government Regulation No. 28 of 2024 concerning the Implementing Regulations of Law No. 17 of 2023 concerning Health, which regulates that mental health is a condition in which an individual can develop physically and mentally, spiritually and socially so that the individual is aware of his or her own abilities, can cope with pressure, can work productively and is able to contribute to his or her community. This is done as an effort to ensure that everyone can achieve a good quality of life, enjoy a healthy psychiatric life, be free from fear and other disorders that can interfere with mental health. Based on the 2018 Basic Health Research, the prevalence of depression, emotional disorders, and severe mental disorders in Indonesia is at an alarming level.[7] Mental disorders account for 16% of the global burden of disease and injury in

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[4] Muhammad Japar et al., "Hukum Kesehatan Ditinjau Dari Perlindungan Hak Asasi Manusia," *Jurnal Interpretasi Hukum* 5, no. 1 (April 20, 2024): 952–61, https://doi.org/10.22225/juinhum.5.1.9290.952-961.

[5] Silviana Damayanti Maradona, Maradona, "Perlindungan Hukum Terhadap Hak Pasien Dalam Pelayanan Kesehatan Di Kota Batu," *UNES Law Review* 6, no. 2 (2023): 7406–17, https://doi.org/10.31933/unesrev.v6i2.1627.

[6] Luísa Campos et al., "Is It Possible to 'Find Space for Mental Health' in Young People? Effectiveness of a School-Based Mental Health Literacy Promotion Program," *International Journal of Environmental Research and Public Health* 15, no. 7 (July 6, 2018): 1426, https://doi.org/10.3390/ijerph15071426.

[7] Sulis Winurini, "Penanganan kesehatan mental di Indonesia." *Info Singkat* 15, no. 20 (2023): 2014-2017.

people aged 10-19. A significant amount of the global disease burden is also shown through mental illness.[8] Even though everyone is guaranteed to develop various potential intelligences and psychological potentials. This mental health effort is provided in a proactive, integrated, comprehensive and sustainable manner throughout the human life cycle, especially for people at risk, people with mental disorders and society. Article 149 of Government Regulation No. 28 of 2024 stipulates that people at risk and people with mental disorders (ODGJ) have the same rights as citizens in accordance with the provisions of laws and regulations. The same right here is certainly assumed as the right to obtain health services as a citizen. The right to receive health services arises in the relationship between doctors and patients in therapeutic transactions that occur in mental health services. Therapeutic transactions as a legal relationship between doctors and patients with mental disorders are carried out with a sense of trust from the patient to the doctor, from the legal relationship in the therapeutic transaction gives rise to rights and obligations to each party. The legal relationship between doctors and patients with mental disorders that occurs will result in a medical service or medical action, below are some previous studies related to the relationship between doctors and patients as a result of therapeutic transactions in health services for patients with mental disorders.

Table 1. Research Gap on Legal Relationship between Doctors and Patients with Mental Disorders

Researcher	Legal Issues	Research result
Nurhayati, Sofyan Dahlan (2017)[9]	Patients' perceptions of the legal aspects of engagement effort (inspanning verbintennis) in therapeutic transactions between doctors and patients	Patients' perceptions of derivative legal aspects in therapeutic transactions include the validity of contractual relationships in therapeutic transactions, the nature of engagement in therapeutic transactions; and the rights and obligations of doctors and patients in

[8] Harvey A. Whiteford et al., "The Global Burden of Mental, Neurological and Substance Use Disorders: An Analysis from the Global Burden of Disease Study 2010," ed. Gianluigi Forloni, *PLOS ONE* 10, no. 2 (February 6, 2015): e0116820, https://doi.org/10.1371/journal.pone.0116820.

[9] Bonifasius Nadya Aribowo, B. Resti Nurhayati, and Sofyan Dahlan, "Persepsi Pasien Tentang Aspek Hukum Perikatan Upaya (Inspanning Verbintenis) Dalam Transaksi Terapeutik Antara Dokter Dengan Pasien Di Rsud Kota Salatiga," *SOEPRA* 3, no. 1 (January 6, 2018): 52, https://doi.org/10.24167/shk.v3i1.696.

Researcher	Legal Issues	Research result
		contractual relationships in therapeutic transactions have a correlation with the patient's educational background
Trisni Handayani (2020)[10]	The relationship between mental health literacy and the use of mental health services.	People with high mental health literacy tend to utilize mental health services compared to those with low literacy.
Achmad Rizaldi Umam (2022)[11]	The absence of an explanation of the criteria for assessing patient competence, so it is feared that it will give rise to subjective assessments and actually make the implementation of the patient's right to autonomy no longer autonomous.	The 2006 Medical Action Consent Manual created by the Indonesian Medical Council, states that the benchmarks for assessing patient competence are the patient's age and ability to communicate. Improper implementation of informed consent, if the doctor is in doubt about the assessment of the patient's competence, can result in the agreement being canceled by the judge through a court ruling at the request of the party requesting the cancellation.
Rosdiana Oktaviani Pasaribu H (2023)[12]	Factors influencing mental health services in community health centers.	Factors that can affect mental health services at Community Health Centers include the lack of adequate health resources, insufficient mental health budget, inadequate supporting infrastructure for mental health services, lack of support from policy makers, and lack of advocacy.

[10] Trisni Handayani, Dian Ayubi, and Dien Anshari, "Literasi Kesehatan Mental Orang Dewasa Dan Penggunaan Pelayanan Kesehatan Mental," *Perilaku Dan Promosi Kesehatan: Indonesian Journal of Health Promotion and Behavior* 2, no. 1 (July 1, 2020): 9, https://doi.org/10.47034/ppk.v2i1.3905.

[11] Achmad Rizaldi Umam, "Hak Otonomi Pasien Dalam Menentukan Persetujuan Tindakan Kedokteran Berdasarkan Transaksi Terapeutik," *Jurist-Diction* 5, no. 5 (September 29, 2022): 1625–50, https://doi.org/10.20473/jd.v5i5.38428.

[12] Rosdiana Oktaviani Pasaribu Habeahan, Zahroh Shaluhiyah, and Dwi Sutiningsih, "Pelayanan Kesehatan Jiwa Dan Faktor Yang Mempengaruhinya Di Pusat Kesehatan Masyarakat : Literature Review," *Media Publikasi Promosi Kesehatan Indonesia (MPPKI)* 6, no. 6 (June 8, 2023): 1047–56, https://doi.org/10.56338/mppki.v6i6.3507.

Researcher	Legal Issues	Research result

Source: Secondary data source, analyzed by Authors

If you pay attention to some previous studies, there have actually been many studies related to therapeutic transactions in health services in Indonesia, especially those that discuss patient perception of the involvement of engagement efforts (*inspaning verbintenis*) in therapeutic transactions between doctors and patients and related to patient competence in decision-making for the therapy provided.

However, the practice of therapeutic transactions in mental health services in Indonesia are important and worthy of further study because they still faces various obstacles that threaten patient rights and accountability of health workers, such as the weak implementation of informed consent because patients with mental disorders are often considered incapable of making their own decisions and are subject to discriminatory treatment.[13] They need mental health care that can be accessed through public health services and community mental health services.[14] Due to the lack of understanding of their rights, patients with mental disorders often do not have the power to understand or refuse the therapy provided, making them vulnerable to rights violations such as forced therapy or excessive isolation which has the potential to give rise to deviations in medical practice, including the use of therapy methods that do not comply with standard procedures or are contrary to ethical principles . This condition can lead to patient dissatisfaction with the services provided and can even cause malpractice, privacy violations, and injustice in mental health services, so that therapeutic transactions that occur in mental health services need to be strengthened so that patients with mental disorders get justice and welfare. Based on this background, this study aims to examine the importance of strengthening the regulation of therapeutic transactions as an effort to protect the legal of patients with mental disorders.

Research requires appropriate methods in order to obtain truths that are considered valid and in line with the objectives to be achieved. Careful

[13] Rahmiyati Rahmiyati et al., "The Rights to Informed Consent to Mental Disorder Patient in The Action of Premedication Electro Convulsif Therapy (ECT) at Regional Mental Hospital of Dr. Amino Gondohutomo of Central Java Province," *SOEPRA* 6, no. 1 (April 30, 2020), https://doi.org/10.24167/shk.v6i1.1990.

[14] Z. Sadock, B. J. Sadock, V. A. Levin, *Kaplan and Sadock's Study Guide and Self-Examination Review in Psychiatry* (Wolters Kluwer Health / Lippincott Williams & Wilkins, 2007), https://books.google.co.id/books?id=ldvu3enj91oC.

consideration in determining the methods used in research is necessary to ensure that the methods used are accurate and clear, thereby obtaining truths that can be accounted for. Scientifically, this method refers to a way of seeking the truth. The research method used in this study is the normative legal method, with a legal, comparative, and conceptual approach. In the normative concept, law is a norm that is synonymous with justice that must be realized (ius constitutum), because every norm, whether in the form of principles of justice, is always part of a doctrinal system or teaching, namely the teaching on how law should be discovered or created to resolve a case. Therefore, any legal research based on law as a norm is referred to as normative doctrinal research, and its method is called the doctrinal method. This study analyzes Law No. 17 of 2023 on Health, case studies, and academic literature on the factors that cause therapeutic transactions to not yet provide legal protection for patients with mental disorders, so that efforts are needed to strengthen the regulation of therapeutic transactions in mental health services to realize legal protection for patients with mental disorders.

The sources and types of data used in this study are secondary data and primary data through data collection techniques in the form of library research and interviews. Data collection through interviews was conducted with informants who provided information about the relationship between doctors and patients in mental health services, as well as cases that occurred in the relationship between doctors and patients. The data collected, both from primary and secondary sources, was analyzed qualitatively using an inductive-deductive method, describing the findings analytically and prescriptively.

The Concept and Legal Framework of Therapeutic Transactions

Therapeutic transactions give rise to a legal relationship that occurs between doctors and patients, this therapeutic transaction is an agreement between doctors and patients.[15] The word "*transaction*" means payment settlement (in trade) or "*agreement.*" While therapeutic is a translation of therapeutic means the science of examination and treatment, this term is not the same as therapy or therapy which means treatment. Therapeutic transactions arise from a contractual horizontal relationship, between the doctor

[15] Anny Isfandyarie, *Tanggung Jawab Hukum Dan Sanksi Bagi Dokter* (Prestasi Pustaka, 2006), http://digilib.uki.ac.id/index.php?p=show_detail&id=219&keywords=.

and the patient as legal subjects.[16] Juridically, therapeutic transactions are defined as legal relationships between doctors and patients in professional medical services based on competencies that are in accordance with certain expertise and skills in the health sector.[17] Hermien Hadiati Koeswadji stated that the relationship between doctors and patients in therapeutic transactions (medical agreements) rests on two types of human rights which are basic human rights, namely: (a). the right to self-determinations, (b). The right to information. The right to self-determination is a human right that has been determined by God Almighty over a person. The right to information is the right to obtain information related to health.

The legal relationship that occurs in this therapeutic transaction does not promise anything (the patient's recovery or non-recovery), because the object of this legal relationship is in the form of the doctor's maximum efforts that are carried out carefully and meticulously based on his knowledge and experience (*met zorg en inspaninng*) for the patient's recovery. Therefore, therapeutic transactions are an agreement of effort (*inspanning verbintenis*), not as an agreement of results (*resultaat verbintenis*) that gives definite results.[18] The object of this therapeutic transaction is the healing effort carried out by the doctor, the doctor should not promise that healing.[19] Therapeutic transactions arise from this agreement between doctors and patients as part of private law so that they are subject to the rules specified in the Civil Code, even though their implementation is regulated by law.[20] Therapeutic transactions in general are as an agreement to perform certain services as stipulated in article 1601 BW/Civil Code, so of course, in order for the therapeutic transaction to be declared valid,

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[16] Veronica Komalawati, "Kompetensi dan Kewenangan Praktik Kedokteran: Perspektif Hukum Di Indonesia," *Jurnal Ilmiah Hukum DE'JURE: Kajian Ilmiah Hukum* 3, no. 1 (2018): 147–66, https://doi.org/10.35706/dejure.v3i1.1891.

[17] Vini H. R. Gosal, Aaltje E. Manampiring, and Caecilia Waha, "Perilaku Profesional Tenaga Medis Terhadap Tanggung Jawab Etik Dan Transaksi Terapeutik Dalam Menjalankan Kewenangan Klinis," *Medical Scope Journal* 4, no. 1 (September 27, 2022): 1, https://doi.org/10.35790/msj.v4i1.41689.

[18] Christiana Jullia Makasenggehe, "ASPEK HUKUM TRANSAKSI TERAPEUTIK ANTARA TENAGA MEDIS DENGAN PASIEN," *LEX PRIVATUM* 12, no. 1 (2023), https://ejournal.unsrat.ac.id/v3/index.php/lexprivatum/article/view/49315.

[19] Sagung Putri M. E. Asvatham, Ni Komang Hyang Permata Danu Purwani, "PERTANGGUNGJAWABAN PERDATA TENAGA MEDIS APABILA MELAKUKAN MALAPRAKTIK MEDIS," *Kertha Semaya: Journal Ilmu Hukum* 8, no. 4 (2020): 510–19.

[20] Y. A. Triana Ohoiwutun, *Bunga Rampai Hukum Kedokteran: Tinjauan Dari Berbagai Peraturan Perundangan Dan UU Praktik Kedokteran* (Malang: Bayumedia Pub, 2007).

it must also be guided by Article 1320 of the Civil Code regarding the conditions for the validity of an agreement, namely:

a) Agree those who bind themselves
   In the relationship between doctor and patient, the terms regarding this agreement are easy to understand, because if one of them disagrees (agrees), then there will be no therapeutic transaction. The patient agrees with the doctor he chooses, and the doctor is able to overcome the health problems of the patient who comes to him.
b) Ability to make an agreement
   This skill must exist on both sides, namely those who provide services and those who need services. The patient is a person who is capable of making an engagement, that is, an adult who is able to perform legal acts. If the patient is unable to perform legal acts, of course there must be someone to escort the patient as a companion. Likewise, from doctors and other health workers. Doctors must also have professional skills either as general practitioners or specialist doctors as evidenced by diplomas and certificates recognized by the government and professional organizations.
c) A certain thing
   Certain things in agreement between doctors and patients are diseases or illnesses that need to be addressed by doctors.
d) A lawful cause
   The condition of a cause that is halal is not related to belief or religion. Because what is meant by halal here is that the relationship that occurs between the doctor and the patient is a relationship that does not violate the law.

If the four conditions have been met and the therapeutic transaction that occurs is known to contain no defects of will such as negligence, fraud, coercion or abuse of circumstances, then the therapeutic transaction made is valid and each party is responsible for its implementation.

Other legal implications after the therapeutic transaction are declared valid, each party is bound by the provisions contained in article 1338 BW/Civil Code and article 1339 BW/Civil Code. Article 1338 of the Civil Code reads as follows: all agreements that have been legally concluded are valid as law for those who make them. Meanwhile, the provisions of article 1339 of the Civil Code read as follows: an agreement is not only binding for things expressly stated in it, but also for everything that, according to the nature of the agreement, is required by propriety, custom or law.

Relationship between Therapeutic Transactions and Informed Consent

The essence of human relationships cannot occur without communication, as well as in the relationship between doctors and patients in medical services. Therefore, the relationship between doctors and patients is an interpersonal relationship, so the existence of communication or better known as the term medical interview is very important, because the essence of the relationship between doctor and patient lies in the medical interview.[21] This is necessary because the language of medicine uses a lot of foreign terms that are sometimes not understood by ordinary people in the field of medicine, so that the information provided by doctors is conveyed in a simple and easy-to-understand language by the patient followed by the patient's consent.[22] Patients have the full right to accept or refuse treatment for themselves, this is a human right of the patient which includes the right to self-determination and the right to information.

Informed consent is the result of a therapeutic transaction.[23] Informed consent arises based on the relationship between doctors and patients established in therapeutic transactions.[24] Each party, both those who provide services and those who receive services, have rights and obligations that must be respected. This means that on the one hand, doctors have the obligation to make the best diagnosis, treatment and medical action according to their way of mind and consideration, but the patient or his family has the right to determine what treatment, or medical action will be carried out on him.[25]

Informed Consent or consent for medical procedures in Indonesia is regulated in several regulations, namely:

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[21] Febri Endra Budi Setyawan, "Komunikasi Medis: Hubungan Dokter-Pasien," *MAGNA MEDICA: Berkala Ilmiah Kedokteran Dan Kesehatan* 1, no. 4 (February 6, 2018): 51, https://doi.org/10.26714/magnamed.1.4.2017.51-57.

[22] Suzanne Graham and John Brookey, "Do Patients Understand?," *The Permanente Journal* 12, no. 3 (September 2008): 67–69, https://doi.org/10.7812/TPP/07-144.

[23] Anggun Rezki Pebrina, Johni Najwan, and Evalina Alissa, "Fungsi Penerapan Informed Consent Sebagai Persetujuan Pada Perjanjian Terapeutik," *Zaaken: Journal of Civil and Business Law* 3, no. 3 (November 26, 2022), https://doi.org/10.22437/zaaken.v3i3.18966.

[24] Aris Priyadi, "KONTRAK TERAPEUTIK/ PERJANJIAN ANTARA DOKTER DENGAN PASIEN," *Jurnal Media Komunikasi Pendidikan Pancasila Dan Kewarganegaraan* 2, no. 1 (April 14, 2020): 183–92, https://doi.org/10.23887/jmpppkn.v2i1.134.

[25] M. Jusuf Hanafiah, *Etika Kedokteran Dan Hukum Kesehatan* (Jakarta: Penerbit Buku Kedokteran EGC, 2017), https://lib.ui.ac.id.

1) Law No. 17 of 2023 concerning Health, in Article 293 which stipulates that every individual health service action carried out by Medical Personnel and Health Workers must be approved. Consent is given after the patient has received an adequate explanation. The explanation includes a. diagnosis; b. indications; c. the actions of the Health Services carried out and their objectives; d. risks and complications that may occur; e. alternative actions and their risks; f. risk if action is not taken; and g. prognosis after obtaining action. Such consent can be given in writing or orally. Especially for written consent must be obtained before the implementation of invasive and/or high-risk actions, which are carried out by the patient himself and if the patient concerned is incompetent, it can be carried out by the representative. The written consent to perform the Health Service action is signed by the Patient or who represents and witnessed by one of the Medical Personnel or Health Personnel. If the patient is incapacitated and requires Emergency Treatment, but no party can be asked for consent, then Action approval is not required. This is done based on the best interests of the Patient which is decided by the Medical Personnel or Health Personnel who provide services to the Patient and then will be informed to the Patient after the Patient is capable or the representative has been present.
2) Regulation of the Minister of Health of the Republic of Indonesia No. 290/MENKES/PER/III/2008 concerning Consent for Medical Actions, in Article 1 defines Informed Consent , which is consent given by the patient or his or her immediate family after receiving a complete explanation of the medical or dental action to be performed on the patient.
3) The 2022 Indonesian Hospital Code of Ethics, in Article 20 concerning Approval of Medical Actions, states that hospitals are obliged to ask for the approval or rejection of patients before performing medical procedures. Patient consent is only given after the patient has received and understood information that includes the diagnosis and procedures of the medical procedure, the purpose of the medical procedure, alternative actions, risks, and complications that may occur, and the prognosis of the procedure performed and the estimated cost of treatment.

The existence of regulations related to informed consent shows the legality and importance of the existence of informed consent in health law in Indonesia. Informed consent is important as a fulfillment of patient rights and legal protection for doctors. Patients' rights are regulated in Law No. 17 of 2023 in Article 276 which states that patients have the right to obtain information about their health, get adequate explanations about the health services they receive, ask for the opinion of medical personnel or other health workers, and have the right to refuse or approve medical actions, except for medical actions necessary in the context of preventing infectious

diseases and dealing with KLB or outbreaks. In practice, consent to medical treatment can be given by the patient in the following ways:[26]

a) Implied Constructive Consent (*Normal Conditions*)
   This consent is given by the patient implicitly without express representation. This cue can be seen by the doctor from the patient's attitude and actions.
b) Implied Emergency Consent
   Patients who are in an emergency condition so doctors need to take immediate action to save the patient's life, while the patient and his family cannot make consent because they are not in place at that time, then the doctor can take the best medical action. This type of consent is also referred to as presumed consent in the sense that if the patient is conscious, then the patient is considered to agree to the actions taken by the doctor.[27]
c) Expressed Consent (*Can be verbal/written and of a special nature*)
   In medical procedures that are invasive and contain risks, doctors should obtain written approval, or what is commonly known in hospitals as a surgical license. However, before it is given, it is better to first convey information to the patient about what action will be taken so that there is no misunderstanding.

The transaction format in the consent for medical actions (informed consent) if you look closely uses the standard format in the agreement, because the form of consent for medical actions in general has been arranged in such a way that the doctor and the hospital only need to fill in the column provided after explaining to the patient and the patient's family.

The purpose of Informed Consent between doctors and patients in health services is,[28]

a) Legally protect users of medical procedures (patients) from all medical actions carried out without their knowledge, as well as arbitrary actions of medical procedure services, malpractice acts that are contrary to patients' human rights and medical professional standards, as well as abuse of sophisticated tools that require high costs.
b) Providing legal protection for the implementation of medical measures from unreasonable demands on the part of patients, as well as due to unexpected medical actions, for example against risks of treatment that are impossible to avoid even though the doctor has acted in accordance with the standards of the medical profession.

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[26] Veronica Komalawati, *Peranan Informed Consent Dalam Transaksi Terapeutik: Persetujuan Dalam Hubungan Dokter Dan Pasien: Suatu Tinjauan Yuridis* (Bandung: Citra Aditya Bakti, 1999).

[27] M. Jusuf Hanafiah, *Etika Kedokteran Dan Hukum Kesehatan*, n.d.

[28] Yohanes Widjaja, Gunawan Firmansyah, "INFORMED CONSENT," *Cross-Border* 4, no. 1 (n.d.): 539–52.

According to the law, the provision of medical aid must guarantee proper authorization or authority before performing a diagnostic or therapeutic procedure on a patient. In most circumstances, explicit consent, usually in writing, or tacit consent from the patient or the patient's representative, constitutes the patient's right to seek diagnosis or therapy. However, in some limited circumstances, the law overrides the patient's consent and grants the right to undergo treatment against the patient's will (emergency condition). Some of the functions of informed consent in health services are:[29]

a) Respect for the dignity and prestige of patients as human beings;
b) Promotion of the right to determine one's own destiny;
c) To encourage doctors to exercise caution in treating patients;
d) Avoiding fraud and misleading by doctors;
e) Encourage more rational decisions;
f) Encourage public involvement in medical and health issues;
g) As a process of public education in the field of medicine and health

Based on the above, informed consent for doctors can provide a sense of security in carrying out medical actions on patients and can also be used as a tool for self-defense against the possibility of demands or lawsuits from patients or their families if the results of medical actions cause undesirable consequences. Meanwhile, on the patient's side, informed consent is a manifestation of the patient's right to receive information about the disease he suffers from, what medical action will be taken, the worst possible result of the medical action taken, other treatment alternatives, and the prognosis. Informed consent also gives the patient the freedom to act and for himself/as the patient also has the right to refuse any medical treatment.

The Concept of Legal Protection in Doctor-Patient Relationships

One of the functions of law is to provide protection for human interests.[30] Legal protection is to provide protection for human rights (HAM) that are harmed by others, and that protection is given to the community so that they can enjoy all the rights provided by the law.[31] Human rights are the formation of society, the result of cultural construction. Human rights exist because of human rights. Human rights are part of human rights.

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[29] Henny Saida Flora, "FUNGSI INFORMED CONSENT BAGI DOKTER DAN PASIEN DALAM TINDAKAN MEDIS," *Fiat Iustitia: Jurnal Hukum*, 2024, 101–12.

[30] "Karakteristik Penalaran Hukum Dalam Konteks Keindonesiaan," Perpustakaan Universitas Wiraraja, accessed January 13, 2025, http://perpus.wiraraja.ac.id/opac/index.php?p=show_detail&id=1113&keywords=.

[31] Satjipto Rahardjo, *Ilmu Hukum* (Bandung: PT Citra Aditya Bakti, 2014).

Philipus M. Hadjon stated that: Legal protection is the protection of the dignity and prestige and recognition of human rights owned by legal subjects in a legal country based on the provisions of the law applicable in the country in order to prevent arbitrariness. Legal protection is generally in the form of a written regulation, so it is more binding and will result in sanctions that must be imposed on the party who violates it.[32] Based on this, legal protection is distinguished between:[33] preventive legal protection which aims to prevent problems or disputes from occurring and repressive legal protection which aims to resolve problems or disputes that arise. Conceptually, the legal protection given to the Indonesian people is the implementation of the principle of recognition and protection of human dignity and prestige.[34] This understanding that the law is preventive and repressive gives substance to the ideal concept of legal protection. Preventive to prevent the occurrence of violations of the law due to advances (for example, technological advances) that promise benefits, while repressive in terms of providing certainty for violations of the law. Legal protection is also used to realize a protection that is not only adaptive and flexible but also predictive and anticipatory.[35] Legal protection is adaptive to the development of society, including technological development Law is needed because law grows and develops in society. Furthermore, it is said that the law must be flexible, legal flexibility is needed when it comes to interpreting the law not on what is written in existing laws or regulations but must also consider the values that grow and develop in the social order. The basis of an action on the basis of the values of the social order (ethics). The relationship between ethics (morals) and law is like a map and finality Legal protection should also be predictive, so the laws that are made will certainly proceed from an understanding of interdisciplinary fields.

Then to formulate the concept of legal protection, the theory of natural law is used. This model of reasoning does not only stop at empirical and normative conformity, with legal norms accommodated in legislation, but goes further by testing the degree of conformity with the principle of universal truth to find justice.[36] Law cannot be separated from ethics, although not all ethical issues are legal problems, but

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[32] Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Indonesia* (Surabaya: Bina Ilmu, 1987).

[33] Mochammad Najib Almaida, Zennia Imanullah, "PERLINDUNGAN HUKUM PREVENTIF DAN REPRESIF BAGI PENGGUNA UANG ELEKTRONIK DALAM MELAKUKAN TRANSAKSI TOL NONTUNAI," *Jurnal Privat Law* 9, no. 1 (2021): 218–26, https://doi.org/10.20961/privat.v9i1.28858.

[34] Philipus, *Perlindungan Hukum Bagi Rakyat Indonesia*, n.d.

[35] I. B. Wyasa Rasjidi, Lili Putra, *Hukum Sebagai Suatu Sistem*, 2nd ed. (Bandung: Mandar Maju, 2003).

[36] Khudzaifah Dimyati, *Pemikiran Hukum: Konstruksi Epistemologis Berbasis Budaya Hukum Indonesia*, 1st ed. (Yogyakarta: Genta Publishing, 2014).

all legal problems are ethical problems.[37] This ethical foundation proceeds from human nature, so that human nature becomes the final cause (*causa finalis*) of human actions. Law, with its function as an instrument of protection of human interests, leads society to goodness. In carrying out its function as a public guide, the law has the goal of achieving justice, usefulness and certainty.[38] These three things provide goodness in society.

Laws are coercive regulations, which determine human behavior in the community, made by the competent authorities, and if there is a violation against them, it results in the taking of action, in the form of certain punishments. So, the law is a system, namely a system of regulations in which there are norms and sanctions that aim to control human behavior, maintain order and justice, and prevent chaos. Law is a system consisting of elements that interact with each other to achieve certain goals. The components contained in the law include structure, substance and tradition or culture. The structural component is an institution created by the legal system to support the work of the legal system. The substance component is the regulations and decisions used by law enforcement and regulated parties. The components of legal culture consist of ideas, attitudes, expectations and opinions about the law.[39] Furthermore, talking about legal issues, it will come to a discussion of legal science where Health Law is one of the parts. Health law as a special field in legal science, includes all rules that are directly related to maintenance and health care. The discussion in health law also includes the application of general civil law, general criminal law and administrative law related to legal relations in health services. In this health service, there is a legal relationship between doctors and patients. Where in the relationship there are rights and obligations. These rights and obligations must of course be carried out in harmony so as to provide protection and justice for doctors and patients, especially for patients with mental disorders, as discussed in this writing, namely the regulation of therapeutic transactions as an instrument of legal protection in health services for patients with mental disorders.

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[37] Syafruddin Muhtamar and Muhammad Ashri, "Dikotomi Moral Dan Hukum Sebagai Problem Epistemologis Dalam Konstitusi Modern," *Jurnal Filsafat* 30, no. 1 (February 29, 2020): 123, https://doi.org/10.22146/jf.42562.

[38] Antonius Sudirman, "Merelevansikan Hukum Dengan Perubahan Sosial," *Jurnal Kopertis Wilayah IX Sulawesi: Prospek*, no. 27 (2003).

[39] P. Soeparto, *Etik Dan Hukum Di Bidang Kesehatan*, 2nd ed. (Airlangga University Press, 2006), https://books.google.co.id/books?id=c2J1oAEACAAJ.

Causes of Therapeutic Transactions Have Not Provided Legal Protection for Patients with Mental Disorders

Therapeutic transactions that have positioned doctors and patients in an equal relationship in Indonesia today are supported by various laws and regulations, ranging from laws (Law No. 17 of 2023, Government Regulation No. 28 of 2024) to regulations in the form of technical regulations regulated in the Regulations/Decrees of the Minister of Health (Permenkes No. 24 of 2022 concerning Electronic Medical Records, Permenkes Number. 290 of 2008 concerning the Approval of Medical Acts, PermenKes Number 2052/MENKES/PER/X/2011 concerning Practice Permits and Implementation of Medical Practice). So many norms regulate therapeutic transactions in the hope that they will be able to provide legal protection for the parties, but in reality, these norms have not been able to provide legal protection, especially for patients with mental disorders. This happens because there is no regulation for the implementation of therapeutic transactions consistently in the sense that the parties are aware and know their respective positions and positions, there are still many doctors who do not understand that therapeutic transactions in health services for patients with mental disorders give rise to a legal relationship between doctors and their patients so that as a result doctors consider that the patient is an object, not a subject in medical services for patients with mental disorders. In addition, currently there is no two-way communication between doctors and patients, to provide each other with the information needed and needed in order to provide treatment and get the expected treatment.

If further detailed, the factors that affect the regulation of therapeutic transactions in health services for patients with mental disorders are currently unable to provide legal protection. Regarding the substance of the law which includes rules and norms related to therapeutic transactions, especially the provisions in article 76 paragraph 1 of Law No. 17 of 2023 concerning Health which stipulates that everyone has the right to access safe, quality and affordable mental health services, The definition of access to safe, quality and affordable health services turns out that there is no further explanation in Law No. 17 of 2023 concerning Health. Likewise, the provisions in Government Regulation No. 24 of 2024 concerning the Implementing Regulation of Law No. 17 of 2023 concerning Health, especially in the article that regulates the rights for people with mental disorders, namely article 148 paragraph 1 does not regulate access to safe, quality health services but only regulates getting mental health services at health service facilities that are easily accessible and in accordance with mental health service standards, while what is meant by mental health service standards is not explained further. Based on this, of course, in its implementation, it will cause legal ambiguity and result in legal uncertainty.

Regarding the legal structure in therapeutic transactions in health services for people with mental disorders, where the components of the legal structure here are institutions created by the legal system to support the work of the legal system, namely health resources, meaning that resources in the health sector are all that contribute to maintaining and improving health, including human resources, medical equipment, and health infrastructure.[40] Article 78 paragraph 1 of Law No. 17 of 2023 concerning Health stipulates that mental health efforts are carried out by medical personnel and health workers who have competence and authority in the field of mental health, other professionals and other personnel trained in the field of mental health while still respecting the human rights of patients. Meanwhile, data on mental health conditions in Indonesia recorded that more than 19 million people experience mental and emotional disorders, more than 12 million people experience depression, and suicide data per year is around 1,800 people. On the other hand, the number of psychiatrists is 1,053 people and clinical psychologists are 2,917 people, which is very far from the ideal number recommended by WHO.[41] Likewise, the Central Statistics Agency (BPS) noted in Statistics Indonesia 2024, that in Indonesia there are currently 2,636 general hospitals, namely hospitals that provide health services in all fields and types of diseases and 519 special hospitals are hospitals that provide main services in one field or one specific type of disease.[42] However, the distribution of hospitals, both general hospitals and special hospitals, is not evenly distributed, it is even suspected that more than half or precisely 50.27 percent of the total hospitals in Indonesia are accumulated in Java and the remaining 49.3 percent are spread across various regions ranging from Sumatra, Kalimantan, Sulawesi, Nusa Tenggara, to Papua. Based on the existence of the number of hospitals and the number of health workers who have competence in mental health services in Indonesia, it turns out to be insufficient. This is in line with the research of Bartels, et al., one of the factors that affect the provision of mental health services in primary health care centers, namely the lack of adequate resources in supporting mental health services for the community, such as minimal human resources and the availability of inadequate supporting facilities and

[40] Dwi Habeahan, Pasaribu Shaluhiyah, Zahroh Sutiningsih, "Pelayanan Kesehatan Jiwa Dan Faktor Yang Mempengaruhinya Di Pusat Kesehatan Masyarakat," n.d.

[41] "Konferensi Ilmiah Tahunan Kesehatan Jiwa Indonesia: Saatnya Bicara Kesehatan Jiwa – Fakultas Ilmu Sosial Dan Ilmu Politik – Universitas Indonesia," FISIP UI, accessed January 13, 2025, https://fisip.ui.ac.id/konferensi-ilmiah-tahunan-kesehatan-jiwa-indonesia-saatnya-bicara-kesehatan-jiwa/.

[42] Danur Lambang Pristiandaru, "Jumlah Rumah Sakit Di Indonesia Meningkat, Tapi Masih Belum Merata," *KOMPAS.Com*, 2024, https://lestari.kompas.com/read/2024/03/18/140000686/jumlah-rumah-sakit-di-indonesia-meningkat-tapi-masih-belum-merata.

infrastructure.[43] Similarly, getting information and education about mental health, it turns out that not all patients with mental disorders get this access. Therefore, it can be ascertained that the right to access health services for patients with mental disorders as the implementation of therapeutic transactions in the legal relationship between doctors and patients has not provided legal protection.

Furthermore, it is related to the components of legal culture in the form of ideas, attitudes, expectations and opinions about the law towards the implementation of therapeutic transactions in health services for people with mental disorders. So far, the management in the distribution of health services only refers to the pattern of subject-object relationships, such as Retno Harjanti Hartiningsih's research which shows that the relationship between doctors and patients is an unbalanced relationship.[44] Although juridically formal, the relationship between doctors and patients is a relationship between legal subjects who are in equal position, where in an equal relationship will have a positive side, that the doctor will help patients who may be unfamiliar with their diseases. This can be seen in the provision of informed consent, which in practice is given in a standard or standard model, not based on a careful and detailed dialogue between the doctor and the patient that allows the doctor to be truly aware of the type and characteristics of the patient's disease and the logical and medical consequences of the therapist's actions that he will give. Another important thing, which also affects this therapeutic transaction, is the value or awareness of the community in controlling the quality of health services. Weak community control in distributing good health quality is one of the factors that cause negligence or lack of caution from health workers.

Strengthening of Therapeutic Transaction RegulationAs an Instrument of Legal Protection for Patients with Mental Disorders

In the previous discussion, it was stated that mental health services have special challenges because they involve mentally vulnerable patients, so they require strong legal protection. In order to provide strong legal protection, the regulation of therapeutic transactions in health services for people with mental disorders must also be strengthened. In substance, the legal structure and culture of therapeutic

[43] Sophia M. Bartels et al., "Barriers and Facilitators to the Diagnosis and Treatment of Depression in Primary Care in Colombia: Perspectives of Providers, Healthcare Administrators, Patients and Community Representatives," *Revista Colombiana de Psiquiatría (English Ed.)* 50 (July 2021): 64–72, https://doi.org/10.1016/j.rcpeng.2021.01.001.

[44] "POLA HUBUNGAN HUKUM ANTARA DOKTER DAN PASIEN," *Maksigama*, n.d., https://maksigama.wisnuwardhana.ac.id/index.php/maksigama/article/view/88.

transactions that occur between doctors and patients that give rise to rights and obligations, especially the right to access health services such as the provisions in article 76 paragraph 1 of Law No. 2023 concerning Health, need to be improved with the addition of health facilities that can provide services and accommodate patients with mental disorders, as well as the addition of competent health resources in handling mental health. Therapeutic transactions that occur between doctors and patients require agreement on the treatment efforts to be administered. The agreement between the doctor and the patient must be a free agreement, meaning that the agreement is really on the voluntary will of the parties who enter into the agreement without any defects in the will (wilsgebreken). Matters related to this will defect are regulated in Articles 1321-1328 of the Civil Code. Defects in the will occur when a person has committed a legal act, even though the will is formed imperfectly from coercion (dwang), negligence (dwaling), or fraud (bedrog), abuse of circumstances (misbruikvanomstandigheden). Patients with mental disorders are often not free of their will, because the patient is in a condition of not being able to control and control himself independently, so that there is the potential to give rise to violations of rights both by the family and by health resources. This certainly requires supervision in its implementation from the state as a form of state protection, because as stipulated in article 76 paragraph 3 of Law No. 17 of 2023 concerning Health, it is stipulated that people at risk and people with mental disorders have the same rights as citizens.

Regarding the regulation of proficiency in therapeutic transactions based on Article 1329 of the Civil Code: "Everyone is capable of entering into engagements, unless it is not declared incompetent by law. Meanwhile, people who are considered incompetent as regulated in article 1330 of the Civil Code are immature people, under the custody and women. This skill is related to the patient's ability to give consent for medical procedures. Article 293 paragraphs (6) and (7) of Law No. 17 of 2023 concerning Health, stipulates that the consent for medical action is given by the patient concerned and if the patient concerned is not capable of giving consent, the consent for action can be given by the representative. This means that if the patient is in a state of ineligibility to make an agreement, he or she can be represented by his/her guardian, husband or wife, father or mother, adult brother or sister, adult child or the party who has been given a power of attorney. Meanwhile, doctors and health workers must have the skills required by patients, which can be proven by relevant certificates or letters. However, often patients with mental disorders are about to get health services at health service facilities without being accompanied by their guardians. Therefore, health service facilities need to make SOP for services for patients who do not have a guardian as a companion. This is necessary so that health services for patients with mental disorders can be carried out and health service facilities and health workers get legal protection.

Another equally important effort in strengthening the regulation of therapeutic transactions for patients with mental disorders is related to the right to information

and education about mental health as regulated in article 76 paragraph 3 of Law No. 17 of 2023 concerning legality. This needs to increase public awareness through public education and the opening of access to community-based services as well as the readiness of the implementing apparatus, which is well planned so that the policies implemented can be implemented effectively. In the future, through accurate mapping, the challenges of health services for patients with mental disorders will be solved. The government is expected to encourage the implementation of further research to formulate strategic measures for mental health services, through a data-based and responsive approach to the needs of the community in order to realize the physical and psycho-social well-being of citizens, as well as support the development of superior human resources.

Conclusion

This study finally concluded that the regulation of therapeutic transactions in patients with mental disorders in Indonesia has not provided legal protection which is studied using the theory of the legal system because: first, in substance there are unclear or vague laws and regulations so that the implementation of these rules cannot be maximized and can even cause confusion and uncertainty, as regulated in Article 76 paragraph 1 of Law No. 17 of 2023 concerning Health is related to quality and safe health services, which apparently has no further explanation. Government Regulation No. 24 of 2024 as the Implementing Regulation of Law No. 17 of 2023 where Article 148 paragraph 1 which regulates the rights of people with mental disorders only regulates getting mental health services at health service facilities that are easily accessible and in accordance with mental health service standards. Second, in terms of the legal structure, health workers who have the competence to handle patients with mental disorders are not balanced with the number of patients, so it can be ensured that the provision of health services is not optimal. Third: in practice, informed consent uses a standard model, so that there is no careful and detailed dialogue between doctors and patients which has an impact on the provision of suboptimal therapy. Another important thing is that the value or awareness of the community in controlling the quality of health services has not been implemented properly. Weak community control in distributing good health quality is one of the factors that cause negligence or lack of caution from health workers.

Furthermore, strengthening the regulation of therapeutic transactions as an instrument of legal protection for patients with mental disorders is studied using legal protection theory and legal system theory which includes aspects of legal culture, legal structure and legal substance. Improvement or change of legal culture must first of course be carried out among health service providers, in this case health workers and the community as users of health services themselves. The improvement includes changes in mindsets, attitudes and legal behaviors that lead to or in accordance with

the applicable legal provisions. Furthermore, related to the improvement of the legal structure, it is necessary to harmonize institutional tasks related to health services so that the relationship between institutions in health services can run in harmony and balance, it can be carried out if there is coordination between institutions related to health services. Then related to the improvement of legal substance in legal protection for patients with mental disorders, an equal relationship between doctors and patients is needed through effective communication. The existence of this effective communication is expected to foster mutual trust and openness between the two parties.

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