The Analysis of Civil Law Relating to *Misbruik Van Omstandigheden* on the Issue of Hospital Rejection to Poor Patients

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Abstract
Hospitals are health institutions mandated by the state to organize health services that are emitted through the role of hospitals in providing excellent medical services for all Indonesian people without exception. This includes the poor, in fact there are many rejections of poor patients by hospitals, this is an act against the mandate of health law policy, including in terms of committing acts of abuse in medical service agreements for patients who want health services for the poor based on the principle of balance agreement. This article, which used doctrinal research method, sees the issue of rejection of poor patients by hospitals as a form of Misbruik van Omstandigheden in therapeutic agreements resulted as agreements from the principles of civil law and medical service agreement law. The ignorance of poor patients regarding the existence of their rights in every therapeutic agreement made by hospitals made poor patients often helpless when they experience rejection from hospitals with illogical reasons. Based on the study of this article, it is found that in terms of medical services for the poor, the position of therapeutic agreements and agreements concerning informed consent as a commitment to health services for the poor is not clear, resulting in a one-sided situation or misbruik van omstandigheden committed by hospitals to poor patients.

I. Introduction

The life of the nation and state can basically be realized with efforts to recognize and guarantee the implementation of social welfare. One of the social welfares that is a fundamental basis in human life is the guarantee of access to health for all groups of Indonesian society. This is expressly implied and expressed in the Fourth Paragraph of the Preamble of the 1945 Constitution of the Republic of

Indonesia which is the translation of the mandate of Pancasila.[1] The mandate to fulfill health insurance as a human right mandated by Pancasila and the 1945 Constitution of the Republic of Indonesia also includes the right to access health by the poor. This mandate can be explicitly found in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that "every resident has the right to health services".[2]

This mandate provides an obligation for the government as a state instrument in realizing health services for the poor in an available, comprehensive, continuous, integrated, appropriate, acceptable, quality, accessible, and affordable condition.[3] The political objectives of health law are then translated into social security law policy. This is clearly found in Article 34 paragraph (2) of the 1945 Constitution of the Republic of Indonesia which states that "the state develops a social security system for all people and empowers the weak and incapable in accordance with human dignity". The existence of Article 34(2) of the 1945 Constitution of the Unitary State of the Republic of Indonesia clearly shows that constitutionally, the Indonesian state is a welfare state in the health sector (Health Oriented-Value). The mandate for equitable distribution of health insurance for the community, which is mandated to the government as the executor of state power in the health sector, in reality is still not in line with expectations. This can be seen in the case of the neglect of a 60-year-old patient at Dadi Tjokrodipo Hospital in Lampung by some unscrupulous health workers because he was deemed unable to pay medical fees. Suparman, a 60-year-old patient was secretly "dumped" using an ambulance by Dadi Tjokrodipo Hospital personnel to a hut because he was declared unable to pay medical fees.[4]

The neglect of poor patients at Dadi Tjokrodipo Hospital is very heartbreaking in the world of health, especially regarding access to health services, the perpetrators not only violated the law, far from that, the perpetrators have violated Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia. This constitutional violation automatically also violates the preamble and principles of the Law of the Republic of Indonesia Number 36 of 2009 concerning Health. Points a and b of the preamble of Law of the Republic of Indonesia Number 36 of 2009 on health state that:

[1]Suhardy Hetharia, "Aspek Tanggung Jawab Hukum Rumah Sakit Terhadap Pelayanan Medis", *Lex et Societatis*, Vol. I, No. 5, 2013, p. 111.

[2]Puji Restiyani, Fitriyah, and Lusia Astrika, "Aksesibilitas Masyarakat Miskin dalam Memperoleh Pelayanan Kesehatan (Studi Kasus di Kawasan Kampung Tambak Mulyo Kelurahan Tanjung Mas Semarang", *Jurnal Ilmu, Pemerintahan*, 2013, p. 1.

[3]Abdul Bari Saifudin, Dkk, *Buku Acuan Nasional Pelayanan Kesehatan Maternal dan Neonatal*, PT Bina Pustaka Sarwono Prawirohardjo, Jakarta, 2009, Ed. 1, Print 5, p. 18.

[4]Republika, Kasus Pembuangan Pasien Merupakan Kejahatan Kemanusiaan, accessed via https://news.republika.co.id/berita/n0xakw/kasus-pembuangan-pasien-merupakan-kejahatan-kemanusiaan, on May 12, 2023.

a. Health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation as referred to in Pancasila and the 1945 Constitution of the Republic of Indonesia;
b. that every activity in an effort to maintain and improve the highest degree of public health is carried out based on the principles of non-discrimination, participation, and sustainability in the context of the formation of Indonesian human resources, as well as increasing the resilience and competitiveness of the nation for national development.

Article 2 of Indonesian Law Number 36 of 2009 Concerning Health then states that:

> *Health development is organized based on humanity, balance, benefits, protection, respect for rights and obligations, justice, gender and nondiscrimination and religious norms.*

The case of neglect of poor patients is clearly far from the mandate of the 1945 Constitution of the Republic of Indonesia as well as the mandate of the Law of the Republic of Indonesia Number 36 of 2009 concerning Health, with another meaning that neglect of poor patients is a form of violation of the protection of the dignity of the poor. The neglect of poor patients basically not only violates the legal principles of human rights protection and the state Constitution, basically both patients from the well-off and the poor are civil consumers of health services managed by a container called a hospital. Patients in using the services of health workers are not only based on aspects of public servants within the scope of administration regulated by the government constitutionally, in its operation the patient as a user of health services is also based on a medical civil agreement whose implementation standards are determined by health workers and hospitals. The existence of Article 1338 paragraph 1 of the Civil Code relating to freedom of contract and the existence of Article 1234 of the Civil Code are the strong basis for the existence of therapeutic agreements and agreements regarding informed consent. The therapeutic agreement relationship in its development is the same agreement relationship as other civil agreements, this is because the therapeutic agreement gives birth to achievements for the parties, it is just that through these relationship patterns it provides a wider opportunity for legal subjects to enter into agreements.[5]

Therapeutic agreements and agreements concerning informed consent between medical personnel and patients are in fact represented by the hospital, based on its implementation, the agreement between medical personnel represented by the hospital and the patient according to Satjipto Rahardjo is an active-passive agreement. Active-passive agreements in this case are medical agreements where doctors or health workers actively carry out medical treatment for patients while patients passively accept medical actions carried out by doctors or health

[5] Cecep Tribowo, *Etika Hukum Dan Kesehatan,* Nuha Medika, Yogyakarta, 2014, p. 64.

workers against them.[6] The existence of this agreement has the opportunity to create *Misbruik van Omstandigheden* for patients, especially poor or underprivileged patients. Both the therapeutic agreement and the agreement regarding informed consent are only oriented towards the interests of the hospital or medical personnel, this is because the patient does not understand the information on medical rights and medical treatment rights that he should get, so that the hospital and medical personnel can freely take advantage in every supposed therapeutic agreement and agreement regarding informed consent. The weak position of patients in therapeutic agreements and informed consent agreements can be seen in the case of neglect by Dadi Tjokrodipo Hospital in Lampung experienced by Suparman as described above. This is clearly a form of *Misbruik van Omstandigheden* committed by the hospital.

The issue of hospital neglect of poor patients is not only discussed in this paper, there are several writings relating to civil studies on the rejection of hospitals to treat poor patients. The following are some research articles that discuss these issues:

1. An article written by Hanifah Romadhoni and Arief Suryono entitled "Civil Liability of Hospitals in the Case of rejection of Poor Patients in Emergency Situations". This article was published in the Journal of Private Law Volume 9 Number 1 in 2021. The results of the study from this journal explain that the actions of hospital health workers who reject poor patients in emergencies are unlawful acts due to negligence. Therefore, the hospital is held civilly liable for the negligent actions of health workers in the hospital who refuse poor patients in emergencies that cause harm to a person/patient based on Article 46 of Law Number 44 concerning Hospitals, the doctrine of *respondeat* superior, and the principle of vicarious liability. The form of the hospital's civil liability is to compensate the losses suffered by the patient.[7]
2. An article by Ahmad Arif Widianto entitled "Bridging the Accessibility of the Poor to Health Services through Local Institutions". This article was published in the Reflective Sociology journal, Volume 8, Number 1, 2013. The results of the study from this journal explain that the problem of poor people's low access to health services is caused by systemic and structural factors, namely the dominance of the technocratic government policy model (top down) in health development so as to ignore the local potential of the community. The community is not given the opportunity to voice their aspirations regarding the form of health services that are good for them. On the other hand, communities are also not involved in the formulation, implementation, monitoring and evaluation of government health policies. As a result, the implementation of health development at the grassroots level

[6] Satjipto Rahardjo, *Pendidikan Hukum Sebagai Pendidikan Manusia*, Genta Publishing, Yogyakrta, 2009, p. 89.

[7] Hanifah Romadhoni and Arief Suryono, "Pertanggungjawaban Perdata Rumah Sakit Dalam Hal Penolakan Pasien Miskin Pada Keadaan Gawat Darurat". *Privat Law*, Vol. 9, No. 1, p. 107-108.

experiences many obstacles and unpredictable problems, including the poor's low accessibility to health services. Thus, the poor become powerless to access health services.

The article made by this author has different aspects of discussion with the two articles above, this article aims to analyze and describe the issue of opportunities for abuse of circumstances or *Misbruik van Omstandigheden* committed against poor patients who are users of health services in health service agreements, it can be understood together that therapeutic agreements and agreements regarding informed consent often provide ample space for hospitals as managers of medical services, this is due to the absence of clear arrangements in the Health Law regarding sanctions against hospitals that commit *Misbruik van Omstandigheden* in the form of rejection of medical services for poor patients so far.

2. Research Method

The method used in this article was doctrinal method. Doctrinal method is a method of legal study based on legal views or doctrines that develop and are relevant to the legal issues studied. Doctrinal studies are mostly oriented towards the studies of legal experts who depart from studies relating to legal issues as *ius constitutum* issues or as positive legal issues that apply and are formally recognized by the state. So that in this study the main data used is legal material in the form of legislation in the form of the 1945 Constitution of the Republic of Indonesia, Indonesia Law Number 36 of 2009 on Health, and the Civil Code. This normative data is then supported by empirical data in the form of case study data relating to the issue of *Misbruik van Omstandigheden* in the form of rejection of medical services for poor patients by hospitals.[8]

3. Results and Discussion

1. Understanding the Meaning of *Misbruik van Omstandigheden*

The definition of abuse of circumstances in Indonesian law is the equivalent of the term of *misbruik van omstandigheden* and *undue influence*.[9] The abuse of circumstances in the common law system is known as undue influence, also known as unconscionability, these two terms basically have differences, the similarity of these two terms is that both are based on the imbalance of the bargaining position of the parties. If a contract is formed on the basis of an unreasonable or unfair relationship between the parties, then it is called undue influence, but if the unfairness occurs in a situation, then it is called

[8]Laurensius Arliman S, *Peranan Metodologi Penelitian Hukum di dalam Perkembangan Ilmu Hukum di Indonesia*, *Soumatera Law Review*, Vol. 1, No. 1, 2018. p. 112.

[9] N.E. Algra et.al, *Kamus Istilah Hukum Fockema Andreae BelandaIndonesia*, Binacipta, Bandung, 1983, p. 301.

unconscionability.[10] The formation of the doctrine of abuse of circumstances is due to the absence (at that time) of the provisions of the *Burgerlijk Wetboek* (Dutch) which regulates it. As for the abuse of circumstances, it can be translated as a defect of will which is regulated in Article 1321 of the Civil Code, namely:[11]

a. Misguidance (*dwaling*);
b. Coercion (*dwang*); and
c. Fraud (*bedrog*).

2. Understanding Therapeutic Agreements and Informed Consent Agreements

Therapeutic Agreement, is an agreement made between doctors and health workers and patients, in the form of legal relationships that give birth to rights and obligations for both parties. Therapeutic Agreements must be made by capable persons. The party receiving medical services is the patient, while the party providing medical services is doctors and health workers.[12] Therapeutic Agreement has an object, namely medical services or healing efforts. The lawful cause contained in the Therapeutic Agreement is where the purpose of the healing effort is the maintenance and improvement of family-oriented health, including activities to improve the quality of health (promotive), disease prevention (preventive), cure disease (curative), and restore health (rehabilitative).[13] Informed consent agreement is the approval of medical action which means that the patient gives consent to the plan of medical action that will be carried out to him after the patient receives information about the medical action he will receive.[14]

3. *Misbruik van Omstandigheden* in a Case of Rejection of Poor Patients by a Hospital

One of the social welfare guarantees is shown by the realization of the fulfillment of proper medical services for the poor, this idea is clearly translated through Article 34 paragraph (2) of the 1945 Constitution of the Republic of Indonesia regarding the system of implementing social security, this is then operationalized through Law Number 40 of 2004 concerning the National Social Security System which was later amended by Law Number 11 of 2022 concerning Job Creation. The narrative relating to the correlation between the *staat fundamental norm* and the *formeel gesetz* in a series of political analogies of health insurance for the poor shows how the position of the poor

[10]Hardjan Rusli, *Hukum Perjanjian Indonesia Dan Common Law*, Sinar Harapan, Jakarta, 1993, p.113-115.
[11] *Loc, cit.*
[12]Cecep Tribowo, *op, cit.*
[13]*Loc, cit.*
[14]*Loc, cit.*

is also protected by the state and the constitution and the politics of health law in terms of the right to obtain good medical services.

This constitutional position has become unclear due to the fact that the implementation of agreements on the use of medical services is no longer based on the mandate of the constitution and Pancasila. This is evidenced by the fact that therapeutic agreements and agreements regarding informed consent are only based on Article 1338 paragraph 1 of the Civil Code relating to freedom of contract, in its development it is known that patients do not have sufficient understanding regarding the medical service facilities they should have, medical actions and facilities are actions that can only be understood by medical personnel and hospitals, poor patients who do not have knowledge of medical science in fact do not understand their rights in a medical service agreement. This can clearly be said to be undue influence or *misbruik van omstandighede*n or abuse of circumstances or one-sidedness in an agreement. The issue of *misbruik van omstandigheden* can be seen in the cases below:[15]

Table: Cases of Rejection of Poor Patients by Hospitals

No	Cases	Case Chronology
1	Bambang Sutrisno Case	Bambang Sutrisno was a 50-year-old poor citizen who was rejected by Ibnu Sina Gresik Hospital, as a result of the rejection Bambang died. This case occurred on May 13, 2009.
2	Suryani Case	Suryani, a 44-year-old lymph cancer patient, was rejected by Dharmais Hospital, West Jakarta. The hospital argued that Suryani only had a Certificate of Incapacity (SKTM). This case occurred on October 15, 2011.
3	Dera Nur Anggraini Case	Dera was a person who suffered from pain in her throat, due to her illness Dera was taken by her parents to get medical action because her condition was getting worse, but the 10 hospitals where Dera was taken to get medical services refused her, and in the end due to this rejection Dera died because she did not get medical treatment. This case occurred on February 13, 2013.

Taken from various sources.

[15]Kasus-Kasus Penolakan Pasien Miskin oleh Rumah Sakit, https://news.okezone.com/read/2013/02/19/500/764146/ini-deretan-kasus-penolakan-warga-miskin-oleh-rumah-sakit, accessed on June 12, 2023. See also: https://nasional.kompas.com/read/2009/06/11/16483247/ditolak.rumah.sakit.pasien.miskin.akhirnya.meninggal?page=all, accessed on June 20, 2023.

The various cases above clearly show how the hospital is only oriented towards economic profit, medical services for poor patients are only oriented towards the commercialization of health, this results in loss of access to medical services for the poor. A research article written by Ratna Dwi Wulandari, Agung Dwi Laksono, Rofngatul Mubasyiroh, Rika Rachmalina, Mara Ipa, and Nikmatur Rohmah with the title "Hospital utilization among urban poor in Indonesia in 2018: is government-run insurance effective?" explains the correlation between economic ability and the level of public health services. The article, published in the BMC Public Health journal, explains that the poor have fundamental problems in obtaining their right to life, one of these fundamental problems is access to good medical services. Expensive medical services have made poor people unreachable with adequate health services, this makes poor people in Indonesia live with poor health and malnutrition, this is exacerbated by access to food, air, and clean water that is difficult to reach due to lack of financial capacity.[16]

This clearly shows how the hospital as a health institution in this country has committed misdirection and fraud, because it eliminates the right to medical services for the poor properly protected by Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia which is then operationalized in therapeutic agreements and agreements regarding informed consent. This situation is clearly a *misbruik van omstandigheden.* This can be analyzed from the aspect of the principle of agreement, in civil law the rejection of poor patients has made a therapeutic agreement and agreement regarding informed consent made by the hospital contrary to the principle of balance in the agreement.

The principle of balance is a principle in Indonesian Agreement Law which is a continuation of the principle of equality which requires a balance of rights and obligations between the parties to the agreement, in the medical service agreement between the hospital and poor patients should not be determined unilaterally by the hospital so that the agreement tends to benefit the hospital, the rejection of poor patients shows how the medical service agreement for poor patients who should have fair access to medical services is defective, this results in medical services becoming an unlawful act because it is in a state of discrimination for poor patients, such circumstances are clearly far from the principle of balance in the medical service agreement. In medical service agreements, hospitals and poor patients should be equal considering that poor patients are financed by health insurance institutions as mandated by Article 34 paragraph (2) of the 1945 Constitution of the Republic of Indonesia. In reality, the principle of civil equality cannot be reflected when looking at the civil position

[16]Ratna Dwi Wulandari, Agung Dwi Laksono, Rofngatul Mubasyiroh, Rika Rachmalina, Mara Ipa, and Nikmatur Rohmah, *"Hospital utilization among urban poor in Indonesia in 2018: is government-run insurance effective?" BMC Public Health,* Vol, 23, No. 92, 2023, p. 2-3.

of poor patients in terms of health service agreements today. This situation is also clearly contrary to the terms of the validity of the agreement as stipulated in Article 1320 of the Civil Code, especially the requirements relating to a halal cause or *geoorloofde oorzaak*.

Article 1337 of the Civil Code states that a cause is prohibited, if the law prohibits it or if it is contrary to public order or good morals, therefore, what is meant by a valid cause is a cause that the law does not prohibit, public order or morality. The intertwined relationship between the patient and the doctor regarding medical services is used as a promised object, both parties, both parties who receive medical services or doctors, want a halal thing, because the doctor in curing and helping the party who gets the medical service uses insight and also the knowledge that has been obtained, the patient must also act halal, namely by expecting health, thus the conditions in Article 1320 of the Civil Code can be fulfilled. Therapeutic transaction is defined as an activity in which there is an effort to carry out the implementation of a doctor's practice in the form of providing health services based on the skills and expertise of the doctor. The fact that the rejection of poor patients, which is an act of *misbruik van omstandigheden* by the hospital, clearly shows that the therapeutic agreement and the agreement regarding informed consent as a commitment to health services for the poor have harmed *geoorloofde oorzaak* as one of the conditions for the validity of a civil agreement.

4. Conclusion

The right to obtain medical services is a basic right of life of every person that is recognized and protected in the country of Indonesia, this right is mandated by the state to the hospital as a medical service institution. In reality, this has not been realized fairly due to the rejection of poor patients by the hospital, which is largely due to the ability of the hospital to pay. This fact indicates that in terms of medical services for the poor, the position of therapeutic agreements and agreements regarding informed consent as a commitment to health services for the poor is unclear, resulting in a one-sided situation or *misbruik van omstandigheden* committed by hospitals to poor patients.

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