

# Legal Protection For Patient Rights In Therapeutic Transactions At Hospitals: A Literature Review

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## Abstract

Therapeutic transactions can be understood as a legal relationship involving doctors and patients through a series of processes such as interaction, information disclosure, communication, and consent, thereby creating rights and obligations. Based on the current legal framework, provides a basis for a legal agreement between doctors and patients to assert the principles of civil law that govern the rights and responsibilities of both parties. Additionally, ethical principles, particularly in the form of patient autonomy, are upheld through an informed consent approach based on sufficient information and encouraging open communication. A harmonious balance between legal and ethical aspects is crucial in the implementation of therapeutic transactions, highlighting the importance of continuous monitoring and evaluation processes to ensure the refinement of these transactional processes in healthcare delivery. In this context, a holistic understanding proves to be a crucial component in strengthening the relationship between doctors and patients, as well as safeguarding patient rights, positively contributing to the comprehensive provision of healthcare services. This approach aligns with the fundamental goals of the laws regulating rights, obligations, and responsibilities in healthcare provision, including therapeutic transactions, such as Health Law No. 36 of 2009 and the Indonesian Medical Code of Ethics (KODEKI), ensuring their adherence to predetermined objectives.

**Key words:** Therapeutic Transactions, Doctors, Patient, The Indonesian Medical Code of Ethics

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Date of Submission: 07-01-2024

Date of Acceptance: 17-01-2024

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## I. Introduction

The safeguarding of human well-being as a fundamental right reflects the dimensions of well-being involving physical, mental, and social aspects<sup>1</sup>. The human right to a healthy life is acknowledged in various legal documents, such as the Declaration of Human Rights by the United Nations in 1948, Article 3 of which states that "everyone has the right to life and security of person", specifically addressing an individual's right to live and feel secure<sup>2</sup>. Similarly, the legal basis of the 1945 Constitution in Article 28H Paragraph 1 specifically regulates the individual's right to access health services, stating that "Every person has the right to live prosperously in body and mind, reside in a good and healthy environment, and has the right to access health services". The foundation for fulfilling this right lies in the interaction between doctors and patients, subsequently regulated by therapeutic transactions as a binding agreement, aligning with the legal provisions of the Civil Code (KUHP) Article 1313.

Legal questions arise concerning the extent of legal protection for patient rights in therapeutic transactions in Indonesia. Clarity on human rights, particularly the right to a healthy life, within the context of therapeutic transactions, becomes the central focus. The ethical and legal responsibilities of each party in the agreement form the core of the discussion, involving complex dynamics that regulate the relationship between doctors and patients.

From a legal perspective, therapeutic transactions, as agreements between doctors and patients, form the basis of the legal relationship in medicine<sup>3</sup>. Consideration of human rights in the context of the right to a healthy life becomes crucial, emphasizing the need for clear legal regulations and a profound understanding of rights and obligations in therapeutic transactions<sup>4</sup>. Through an analysis of positive law in Indonesia, this literature review delineates the extent to which patient safety regulations govern therapeutic transactions. The correlation between human rights and the dynamics of the doctor-patient relationship takes center stage, considering the legal role in protecting patient rights and ensuring healthcare practitioners' compliance with patient safety regulations.

Substantial focus on emerging legal issues deepens the understanding of how legal interpretations can influence the doctor-patient relationship in the context of therapeutic transactions. By systematically outlining and analyzing the legal framework involved, this valuable contribution is expected to formulate regulatory improvements and enrich the understanding of legal dynamics in medical practice in Indonesia. This study employs a normative juridical approach based on the examination of legal events, particularly therapeutic agreements in hospitals, using the current legal framework and conducting a review of literature based on inclusion and exclusion criteria.

## **II. Discussions**

### **Overview of Therapeutic Transactions in Hospitals**

In the context of the special relationship between doctors and patients, a contractual relation known as therapeutic transactions emerges. This therapeutic transaction is an agreement between doctors and patients, where doctors have the authority to perform medical actions for the patient's recovery<sup>5</sup>. In the legal realm of healthcare, therapeutic transactions in hospitals constitute a complex agreement between doctors and patients, representing the legal relationship in medicine involving various aspects of healthcare services<sup>2</sup>. The primary legal basis governing therapeutic transactions in Indonesia is Law No. 36 of 2009 on Health. This law serves as a legal umbrella outlining the rights, obligations, and responsibilities in the provision of health services, including therapeutic transactions in hospitals.

This agreement involves rights and obligations for both parties, namely the doctor and the patient. These rights and obligations must be fulfilled by each party involved in accordance with Article 1319 of the Civil Code, stating that "for all agreements, whether with specific names or not known by a specific name, are subject to general rules regarding agreements in general". The basis for the validity of therapeutic transactions is in Article 1320 of the Civil Code, which establishes four conditions for the validity of an agreement: the existence of an agreement between the parties involved, legal capacity to make an agreement, the presence of a specific object of the agreement, and the existence of a lawful cause as the basis of the agreement. By meeting these four conditions, therapeutic transactions are considered valid and in accordance with legal provisions. The legal basis regulating patient rights, such as Articles 52 to 56 of the Health Law, establishes patient rights, including the right to clear information about diagnosis, prognosis, and available treatment options. Therefore, the doctor-patient relationship in the context of therapeutic transactions is an agreement based on applicable principles of civil law, aligning with the spirit to provide legal certainty for patients in making decisions regarding their treatment. Additionally, the legal aspects of therapeutic transactions are also encompassed in the Medical Code of Ethics, providing ethical guidance and professional norms for doctors in their medical practice.

From a medical ethics perspective, therapeutic transactions guide doctors to prioritize the principle of patient autonomy, where patients have the right to be involved in decisions about their own treatment. This ethical principle ensures that information given to patients is as clear as possible, laying the foundation for informed consent, in accordance with internationally recognized ethical principles. Reviewing literature, clinical research, and scientific articles show that the subjects and objects of therapeutic transactions in hospitals involve the central roles of doctors and patients. Doctors have the responsibility to provide medical services according to standards, and patients have the right to receive clear information about their health conditions and recommended treatment procedures<sup>6,7</sup>. The involvement of family and social environmental factors is also significant in the context of therapeutic transactions. Families often serve as emotional supporters for patients, and social environmental factors can influence patient recovery<sup>8</sup>. Through this understanding, hospitals can improve the therapeutic transaction process by involving families as part of the care team and considering environmental factors that may affect recovery.

### **Implementation of Therapeutic Transactions between Doctors and Patients in Hospitals**

The process of implementing therapeutic transactions also involves effective communication between doctors and patients. Literature suggests that good communication enhances patient trust and can help minimize uncertainty and anxiety. Informed consent, as part of this process, is not only an ethical obligation but also laden with legal implications. This aligns with the principle that every patient has the right to know the risks and benefits of medical procedures to be undertaken<sup>9,10</sup>. Continuous evaluation of therapeutic transactions is strongly emphasized in the literature. This evaluation involves monitoring compliance with medical and ethical standards, as well as assessing patient satisfaction. A profound understanding of the success of therapeutic transactions can serve as the foundation for system improvement, involving policy changes, enhanced communication, and improved service quality<sup>2</sup>.

The implementation process of therapeutic agreements in hospitals cannot be separated from several essential components that form the basis for understanding patient rights and responsibilities, as well as the doctor's role as a key component in the execution of therapeutic agreements, the doctor-patient relationship, the doctor's professional responsibility to the patient, and the procedural flow of therapeutic transactions.

### **Patient Rights and Responsibilities**

A patient can be defined as an individual under medical care by a doctor or dentist, receiving services at a specific healthcare unit. In line with the legal basis, Article 1, Number 10, of the Republic of Indonesia Law Number 29 of 2004 concerning Medical Practice defines a patient as someone seeking consultation about their health issues with the aim of obtaining healthcare services, either directly or indirectly, from a doctor or dentist. Legally, a patient is considered an independent legal subject with the capacity to make decisions in their own interest. Despite being unwell, a patient retains the right to make decisions related to the healthcare they will receive. This right is acknowledged as a fundamental right derived from individual and social rights<sup>11</sup>. Health law, particularly in the context of medicine, is based on two main legal principles: the right to healthcare and the right to determine one's fate<sup>12</sup>.

Law Number 29 of 2004, specifically Article 52, stipulates patient rights, including the right to receive complete explanations about medical procedures, seek opinions from other doctors, receive services according to medical needs, refuse medical procedures, and access medical records. These rights reflect the fundamental principles of patient rights, including the right to informed consent, medical confidentiality, and access to medical records. Article 4 of Health Law Number 36 of 2009 emphasizes everyone's right to health. This includes the right to obtain healthcare, determine needed services, and receive information about one's health. The concept of the right to health forms the basis for other rights, such as the right to determine one's needed healthcare services and the right to information about one's health.

Alongside their rights, patients also have responsibilities, both morally and legally. Ethically, patients have the obligation to care for their health and adhere to treatment instructions provided by their attending physician<sup>13,14</sup>. There are several patient responsibilities in the context of healthcare services, including providing necessary information, following advice from doctors or healthcare professionals, being candid when issues arise with the doctor or healthcare professional, providing compensation for services, and providing compensation if their actions harm the doctor or healthcare professional<sup>15</sup>. Article 53 of the Medical Practice Law stipulates patient responsibilities when receiving services in medical practice, such as providing complete and honest information about health issues, following the advice and guidance of doctors or dentists, adhering to the regulations of healthcare facilities, and compensating for the received services. The most fundamental obligation for patients is providing honest information about their health issues, as this has significant relevance to a doctor's ability to diagnose their condition. Moreover, patients are required to follow the advice of their doctor. In situations where a patient provides dishonest information or fails to follow the doctor's advice, leading to material or physical harm, the doctor cannot be held accountable. This emphasizes the importance of openness and collaboration between doctors and patients to achieve optimal treatment outcomes<sup>16</sup>. Therefore, patient responsibilities are not only ethical but also have significant legal implications, ensuring a healthy and mutually supportive relationship between patients and healthcare providers.

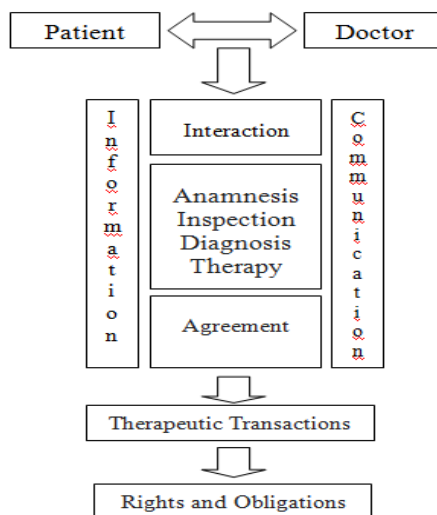
### **Doctor's Rights and Responsibilities as Healthcare Professionals**

As part of the healthcare profession, doctors have rights and responsibilities regulated by legislation. The rights and obligations of doctors are outlined in Article 50 and Article 51 of Law Number 29 of 2004 concerning Medical Practice (Medical Practice Law), as well as Article 57 and Article 58 of Law Number 36 of 2014 concerning Healthcare Workers (Healthcare Workers Law). Doctors have rights involving legal protection while performing their duties according to professional standards and operational procedures. Other rights include the right to remuneration for medical services, the right to receive complete and accurate information from patients, and the right to safety and occupational health protection. Doctors also have the right to refuse requests that do not comply with professional standards, ethical codes, and applicable regulations.

Doctor's obligations include working according to professional standards, providing the best services by referring patients when necessary, providing medical information, obtaining informed consent, maintaining the confidentiality of medical information, referring patients when unable to perform examinations or treatments, providing emergency assistance, and continuously improving knowledge in line with medical advancements. These obligations are further elaborated in Article 51 of the Medical Practice Law and Article 58 of the Healthcare Workers Law. The obligations include providing medical services according to professional standards and patient needs, obtaining consent (informed consent) from patients or their families, maintaining medical records, keeping patient information confidential, referring patients when unable to conduct examinations or treatments, providing emergency assistance, and continually enhancing knowledge in line with medical or dental developments. This highlights that doctors, as healthcare providers, have significant moral and legal responsibilities, covering aspects of medical services, professional ethics, and the ongoing obligation to enhance their knowledge and skills in line with medical advancements.

### Procedure of Implementing Therapeutic Transactions in Hospitals

The implementation process of therapeutic transactions in hospitals begins when a patient seeks medical consultation from a doctor. The main legal basis for this is Law Number 29 of 2004 concerning Medical Practice in Indonesia. Patients have rights guaranteed by the law, such as the right to receive a complete explanation of medical procedures, seek opinions from other doctors, and the right to refuse medical procedures. The schematic representation of the therapeutic transaction process is presented in Fig 1 below.



**Fig 1.** Implementation Flow of Therapeutic Transactions in Hospitals

The fundamental principle in the implementation of therapeutic transactions begins with the patient coming to a healthcare facility or hospital and interacting with doctors and other healthcare professionals. In the interaction process, further examinations are conducted, involving stages such as anamnesis, physical examinations, diagnostic tests, and therapy. In these four basic processes of patient management, doctors and medical personnel can communicate directly and provide information through counseling, information dissemination, and education to the patient. To design further management stages, approval from the patient, in the form of informed consent, is required as the basic requirement for the implementation of a therapeutic transaction<sup>3</sup>. In the definition, informed consent, also known as medical procedure consent, is an agreement or notification originating from the patient, family, or the party responsible for the patient before a medical procedure is carried out. In its application, there are several principles that must be met when providing informed consent to the patient: it must not be deceptive or misleading, there should be no pressure from any party, and it must not create fear in the patient<sup>10,17</sup>.

To obtain consent in the therapeutic process, it can be done orally or in writing according to Article 45 paragraph (4) of Law No. 29 of 2004 concerning Medical Practice. The oral approach is used when medical procedures have a low risk, such as drug therapy or medical diagnostic examinations. Conversely, written consent is required for high-risk medical procedures, such as surgery, and must be signed by the party authorized to give consent according to Article 45 paragraph (5) of the law. Informed consent, a valid requirement for therapeutic transactions, includes consent filled out by the patient or their family after receiving complete information about the disease, risks, and medical treatment to be performed. Patient rights in therapeutic transactions, as regulated in Article 52 of Law No. 29 of 2004 concerning Medical Practice, include complete explanations about medical procedures, the right to seek a second opinion from another doctor, the right to refuse medical procedures, and the right to access medical records.

Based on a study conducted at Bali Royal Hospital, therapeutic transactions occur from the moment a patient first arrives at the hospital until the completion of treatment. This agreement occurs when the patient expresses their health complaints, and the doctor is willing to provide assistance and healing. Before further medical procedures are carried out, the doctor provides information through informed consent, which is an integral part of the therapeutic transaction. Initial education is given to the patient regarding their condition, the actions to be taken, the healing process, treatment, and potential risks. Patient safety is maintained through standard procedures, including informed consent, and every medical procedure is evaluated, considering the patient's explanations and hospital accreditation as evaluation material. Internal education is also emphasized to enhance the knowledge and skills of medical staff<sup>18</sup>.

Alongside their rights, patients also have moral and legal obligations. The moral obligations of patients include maintaining personal health and openness to the doctor about their health history<sup>11</sup>. Meanwhile, doctors,

as providers of medical services, have rights and obligations regulated by the law. Doctors and patients engage in a medical dialogue involving the patient's information delivery, diagnosis and treatment plan by the doctor, and agreement on necessary medical actions. Patient consent (informed consent) is a critical step in this flow, ensuring that the patient fully understands the actions to be taken and provides voluntary consent<sup>4</sup>. Additionally, the implementation flow of therapeutic transactions includes legal safeguards, such as accurate documentation in the patient's medical records, maintaining the confidentiality of medical information, and adhering to the ethics of the medical profession. All these stages must comply with professional standards, medical ethics, and applicable legal regulations. By maintaining a balance between rights and obligations and ensuring compliance with legal and ethical aspects, the implementation flow of therapeutic transactions in hospitals not only creates a trusting relationship between doctors and patients but also ensures optimal healthcare services in line with the principles of public health. Thus, this flow not only illustrates a medical process but also ensures comprehensive legal and ethical protection for all parties involved.

### **Legal Protection for Patient Rights in Therapeutic Transactions at Hospitals**

Legal protection is essentially an effort to safeguard individual fundamental rights caused by losses from another party. Its goal is to ensure that everyone can benefit from the legal rights they have acquired. In the context of the patient-doctor relationship, patients have the right to legal protection during and after the conclusion of that relationship<sup>3</sup>.

One form of legal protection for patient rights is the enactment of Health Law No. 36 of 2009. Article 5 specifies that every individual is entitled to receive quality, safe, and affordable health services. Furthermore, Article 9 paragraph (1) states that patients have the right to receive good healthcare from the professionals treating them. Therefore, doctors and healthcare personnel have an obligation to ensure and enhance public health. The role of healthcare professionals can be a key factor in achieving the goals mentioned in the article. One form of effort from healthcare professionals is providing therapy to patients. In the interaction between patients and doctors, a binding agreement between the doctor or the hospital and the patient is crucial. This is to ensure that every action taken by the doctor or the hospital is always for the benefit of the patient's health<sup>19</sup>.

A therapeutic agreement begins when a doctor, either verbally or implied, expresses willingness through specific actions, such as accepting registration, assigning a patient number, or recording medical records. In an agreement, consensus is required (consensual principle), and in the context of a therapeutic agreement, the key is the agreement on actions or informed consent. Informed consent is the patient's agreement to the medical actions performed for the treatment of their illness. For high-risk medical procedures, consent from the patient or their family is mandatory<sup>9</sup>.

Article 45 of Law No. 29 of 2004 concerning Medical Practice states that every doctor's action must be based on informed consent, which includes the diagnosis, medical procedures to be performed, the purpose of those procedures, alternative options, possible risks and complications, and estimated outcomes. This regulation provides legal protection to patients because every medical action must be approved by the patient, providing a clear understanding of the actions to be taken by the doctor to avoid fraud, pressure, or actions beyond the doctor's authority. Patient consent does not always have to be in writing or authentic, as it is considered impractical due to the time required and the patient's need for prompt treatment. Additionally, Article 1338 of the Civil Code states, "all agreements made legally apply as laws for those who make them." If the doctor and the patient have agreed as agreed, they are bound to fulfill the goals of the therapeutic transaction that have been made. Furthermore, Article 56 paragraph (2) of the Health Law also regulates the patient's right to refuse assistance or help in specific situations limited by the following conditions: (i) if the patient is suffering from a contagious disease that can be transmitted to the wider community; (ii) when the patient is unconscious; and (iii) if there is a mental disturbance in the patient.

Patients have the right to demand compensation if they suffer losses due to errors or negligence in the healthcare they receive, according to Article 58 of the Health Law. In this context, informed consent can be the basis for a lawsuit if the patient experiences adverse effects. Losses resulting from a violation of a therapeutic transaction include actions not in line with the agreement between the doctor and the patient. If the patient suffers losses because the doctor does not fulfill their obligations according to the therapeutic transaction, the patient has the right to demand legal protection and compensation according to applicable law. Losses in this context can be material or immaterial. Material losses occur when the patient tangibly feels the negative impact of the doctor in the therapeutic transaction, such as disruptions or issues in treatment. For example, a patient has incurred significant medical expenses but did not receive adequate treatment from the doctor, leading to non-recovery or worsening of the patient's condition. The doctor has a responsibility to be accountable for their actions. On the other hand, immaterial losses include moral, ideal, and non-economic aspects that are challenging to measure financially<sup>20</sup>.

Several factors can cause losses in a therapeutic agreement, including: (1) compensation for breach of contract: Compensation related to a breach of contract occurs when one party fails to fulfill its obligations,

causing losses to the other party. Rules related to compensation for a breach of contract are regulated in Book III of the Civil Code, from Article 1243 to 1252. In this context, doctors have a responsibility to pay compensation if they do not fulfill their obligations in a therapeutic transaction or do not achieve the agreed-upon goals in the agreement with the patient and (2) Compensation due to unlawful acts: article 1365 of the Civil Code regulates compensation for wrongful acts that result in losses to another party. This compensation is a form of compensation for negligence or mistakes that cause losses to another party, as in the context of a therapeutic transaction where the patient feels aggrieved due to the doctor's negligence or mistakes. Patients have the right to demand compensation from doctors who have caused losses by proving that there has been a wrongful act, including negligence or mistakes committed by the doctor. To prove wrongful acts, there must be a violation of the elements of wrongful acts, such as a violation of the patient's subjective rights, actions contrary to the doctor's legal obligations, and behavior that neglects vigilance and reasonableness.

In resolving issues or disputes related to healthcare services or negligence, several efforts can be made, such as conducting family discussions between the patient and the hospital before involving the court. If a patient feels aggrieved due to healthcare services or negligence in the hospital, compensation will be provided to the patient. This compensation includes material compensation, such as payment discounts or hospital fee waivers if the patient is dissatisfied with the provided services<sup>21</sup>. Furthermore, if the hospital is negligent and this results in the patient's condition or health deteriorating due to unmet rights, the hospital must provide compensation to restore the patient's condition. This is in accordance with Article 48 of Law No. 44 of 2009 concerning Hospitals, which states that hospitals are legally responsible for losses arising from the negligence of healthcare personnel in the hospital.

### **III. Conclusion**

In summary, this study illustrates the complex dynamics between legal, ethical, and medical dimensions in the context of therapeutic transactions in Indonesian hospitals. The applicable legal foundation provides the basis for a legal agreement between doctors and patients, emphasizing the civil law principles that govern the rights and responsibilities of both parties. Additionally, ethical principles, especially in the form of patient autonomy, are maintained through an informed consent approach based on sufficient information and promoting open communication. A harmonious balance between legal and ethical aspects is crucial in the implementation of therapeutic transactions, indicating the need for continuous evaluation to ensure the improvement of this process. In this context, a holistic understanding proves to be crucial, strengthening the relationship between doctors and patients while protecting patient rights, contributing positively to the overall provision of excellent healthcare services.

### **Acknowledgments**

I would like to thank to the Master of Health Law at Udayana University, Denpasar Indonesia who has given me the opportunity so that I finished this journal.

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