

## ORIGINAL ARTICLE

## Transparency Principle To Realize Justice In Health Service

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## ABSTRACT

**Introduction:** The relationship between doctors and patients in health services is currently changing from a vertical pattern based on paternalism to a horizontal pattern. Patient has right to health care, which cannot be separated from the right to obtain information and the right to self-determination. Openness in the form of transparency is one of the efforts to realize rights and obligations of doctors and patients. The purpose of transparency is for the sake of patients' safety and also the health care professionals' safety. **Methods:** The type of research in this paper is normative juridical by using the legislation approach, the concept approach, and the comparative approach. **Results:** Transparency in doctor-patient relationship consist of openness about the diseases and it's management, including also related to complications and unexpected events. Proportional justice together with other principle of justice can be applied in doctor-patient relationship. There is still a lack of norms governing transparency and communication in the doctor-patient relationship. The lack of transparency is often a source of conflict in the form of medical disputes. Proportional justice. **Conclusions:** Transparency in the doctor-patient relationship cannot be contradicted with confidentiality. Transparency is prioritized to realize patients' safety but in its implementation must still pay attention to medical ethics. Effective communication that starts from trust will lead to transparency to create justice for both doctors and patients, also to reduce the risk of conflict in the doctor-patient relationship.

**Keywords:** Transparency, Doctor-patient relationship, Patient safety, Justice

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## INTRODUCTION

The right for Indonesian citizens to obtain medical care service has been written in Article 28H of the Constitution of the Republic of Indonesia Year 1945, "Every person shall have the right to live in physical and spiritual prosperity, to have a home and to enjoy a good and healthy environment, and shall have the right to obtain medical care." The right to get proper health services cannot be separated from the participation of the government, and it must be carried out actively by the government regardless of ethnicity, religion, gender, age, or one's social status (1). This is emphasized in Article 14 point 1 of Law Number 36 of 2009 concerning Health, "The government is responsible for planning, regulating, organizing, fostering, and supervising the implementation of health efforts that are evenly

distributed and affordable by the community."

In health services, there is a relationship between doctors as providers of health services and patients as recipients of health services. The relationship between doctor and patient was initially a vertical relationship with a paternalistic pattern, where the doctor was in a higher position because of his knowledge and skills factor compared to the patient. Doctors are responsible for using all their knowledge and abilities in serving patients, for the welfare of patients, and for the benefit of patients in achieving their goals or life plans. Nowadays, the relationship between doctors and patients is heading towards a horizontal relationship. One of the causes is the change of paradigm of health service, which was initially social, now it is increasingly leading to commercial or consumerism. In this horizontal relationship, of course, the patients' right to make decisions for themselves (right to self-determination) becomes more in coloring the doctor-patient relationship.

A doctor-patient relationship certainly requires better and

open communication between the two parties. One of the purposes of this communication is to emphasize that the doctor-patient relationship is an effort of engagement, or what is known as *inspanning verbintenis*, in which both parties agree to make maximum efforts to achieve what has been agreed upon and it is not an outcome engagement or *resultaat verbintenis* (2). The lack of implementation of the process of equal information exchange in medical services between doctors and patients is often caused by patients feeling that doctors are not open in providing information, or using medical language that is difficult to understand, while doctors feel that patients will not understand even though they have been explained the disease and the actions to be taken.

Conflicts that may occur between patients or patients' families and health workers, especially in health care facilities, are often caused by communication that is less open and unclear, causing misunderstandings that lead to conflicts. An example of a medical dispute caused by a lack of transparency of information is seen in the decision of the Supreme Court Number 1815 K/Pdt/2021, where a patient felt that he did not receive an explanation of the risks of surgery from an ophthalmologist and he felt that he didn't have an opportunity to seek a second opinion when unexpected event happen. As well as examples of cases of unclear informed consent can be seen from Bandung High Court decision Number 96/PDT/2017/PT.BDG when a patient felt that her orthopedic surgeon didn't give clear information about her condition and also the treatment, so that a medical risk is considered as a medical malpractice.

Transparency and openness are often defined as the same thing. Nevertheless, these two things have a fundamental difference. According to a Vietnamese dictionary as quoted by Vu Chong Giao in his journal, openness which in Indonesian is translated as *keterbukaan* is defined as "not hiding and keeping secrets, disclosing to everyone". Meanwhile, transparency is defined as "self-evident and specific". It was also stated that "openness is not only disclosure of information, but also a public participation in governance, transparency is not only openness but also requires responsibility and honesty in the implementation of openness" (3).

Transparency seems to be the opposite of secrecy, but it is not seen as two things that mean good and bad. There are some activities whose confidentiality is still acceptable and even required (4). Likewise in the health sector, openness is not absolute or unlimited openness because there are still limits on patient confidentiality as stated in the Regulation of the Minister of Health Number 36 of 2012 concerning Medical Secrets. In addition, the patient's interest related to medical ethics is non-maleficence; doctors must sometimes keep the patient's health condition confidential if the explanation potentially harms the patient psychologically and

physically. Here it can be seen that veracity should not have a non-maleficence impact on the patients. Doctors have more knowledge and skill than patients, therefore doctors can determine which information is considered necessary or dangerous to the patients and potentially harms the patient. Thus certainly doesn't have a definite standard because medical science is an art.

The emergence of conflicts between doctors and patients is generally based on allegations of malpractice, although the term malpractice itself is not explained in the Indonesian laws and regulations. The term malpractice was first introduced by Hammurabi, the king of Babylon in the late 18th century BC and included in The Code of Hammurabi. Malpractice is generally referred to as professional misconduct or an act caused by a lack of skills that causes harm to the patients. Malpractice occurs when there is unprofessional behavior and does not meet professional standards to endanger other people or patients. Meanwhile, professional behavior is based on the standard of care, which is defined as an acceptable minimum standard (5). Thus, the standard of care is not the optimum standard and not the service quality, but it emphasizes services in general or ordinary care that must be carried out by health service providers with the same level of ability and under the same conditions related to the environment and resources available (6).

Patients come to see a doctor because they need help deal with their disease problems. Therefore, it can be said that doctors are often in a superior position given their knowledge and expertise. Decision-making by patients and their families is manifested in the informed consent or approval of medical action. Provision of clear information to patients is stated in Article 52 letter an of Law Number 29 of 2004 concerning Medical Practice, which reads, "Patients, in receiving services in medical practice, have the right to obtain a complete explanation of medical actions as referred to in Article 45 paragraph 3." Informed consent or approval of medical action itself can be considered as a form of medical contract as stated in Article 39 of Law Number 29 of 2004 concerning Medical Practice which reads, "Medical practice is carried out based on an agreement between a doctor or dentist and a patient to maintain health, prevention of disease, promotion of health, treatment of disease, and restoration of health."

The patient's main right is the right to health care, which cannot be separated from other rights, such as the right to obtain open information about their disease, the right to obtain a second opinion, and the right to keep their disease secret (7). Transparency cannot be separated from the elements of clear, simple, and plain, and when it is described in the transparency triangle, it consists of clarity, information efficiency, and honesty (8). When associated with the informed consent process, transparency will facilitate the decision-making process. Doctor must provide an explanation transparently so that

the patient understands in an understandable language and he can make a decision according to his choice based on the explanation. This is where autonomy or application of the patient's right of self determination. Doctors in providing health services to patients are also bound by medical ethics. One of the principles in ethics is patient autonomy. There is no denying that doctors and patients are not on the same level. However, in this relationship, it is still possible to exchange ideas freely which in the end both parties will reach a mutual agreement, which reflects the autonomy of doctors and patients. The doctor-patient relationship is appropriate if it is based on proportional justice which is interpreted as "the principle that underlies the exchange of rights and obligations of the parties according to the proportion or part thereof", which is very oriented to the interests of the parties so that a conducive relationship takes place (9).

The nature of the doctor-patient relationship as a form of contract cannot be separated from the principle of justice, namely the principle of fair exchange of interests like contracts in general. The increasing number of medical disputes that occur today are mainly caused by the lack of open or less transparent communication between doctors and patients. In Indonesia itself, so far, no legislation regulates the openness of communication in general and openness of communication in the world of health in particular related to the provision of information. The principle of transparency is one of the principles that need to be analyzed more deeply to realize a proportional doctor-patient relationship in medical services.

Transparency must exist from the pre-contract stage, the contract implementation stage, and the post-contract stage in the therapeutic agreement so that professional justice can be realized at every stage. Currently, there is still a legal vacuum that defines the line between medical malpractice and medical risk in medical services. Transparency in the therapeutic agreement is expected to clarify the boundaries of the two things. Internal arrangements in health care facilities such as hospitals are also still unclear, for example, hospital bylaws, which can protect medical personnel and patients.

## **MATERIALS AND METHODS**

The research design in this study is normative juridical, a research that is focused on examining norms or rules in positive law. Normative research aims to analyze and solve existing legal issues by using primary and secondary legal materials so that the conclusions and suggestions found have a legal basis and true and strong arguments. The approaches used are statutory approach, conceptual approach, and comparative approach, by comparing the principle of transparency, the concept of a just doctor-patient relationship in a country that has a legal system similar to Indonesia, the Netherlands,

because the doctor-patient relationship is related to a medical contract has been regulated in Nieuw Burgerlijk Wetboek (NBW) (10). Another comparison is made with the United States because these countries have the Freedom of Information Act (FOIA), one of which covers disclosure in terms of medical data. In addition, in the United States, there have been openness and transparency standards for the work of a doctor (physician performance) (11).

## **RESULTS**

### **Justice Theory in Health Services**

According to Black's Law Dictionary, justice is defined as "the fair treatment of people, the quality of being fair or reasonable, the legal system by which people and their causes are judged, the fair and proper administration of laws" (12)". Justice does not mean equality. Equality is the most important element of justice. Equality should not always be considered equal but adjusted to the conditions and qualifications of each party. This situation is known as proportionate (13). Proportionately, it means that someone will get services proportionally according to his rights (14). In other words, "justice is described as treating the equals equally and the unequal unequally, in proportion to their inequality" (9).

John Rawls is known for his concept, justice as fairness, which in Indonesian can be said to be justice as equality. Rawls uses the concept of the social contract as an interpretation of Kant's concept of autonomy as the basis of ethics and the principle of justice which is the result of rational choice. Rawls prioritizes justice not on the results but rather on the system that includes the procedures. A group or society that understands justice as fairness can fulfill the principles where free and equal people can agree with a fair situation, with the members of the group being autonomous. Each party is considered rational and neutral and has no mutual interest in the interests of the other (15). It is undeniable that new justice issues arise when there is a conflict of interest.

In the health sector, this fairness assessment includes at least four elements, which are no different from other fields, namely (16):

1. Distributive justice, perception of fairness based on the results received by the patient, for example, an agreement to meet a doctor, treatment, access when a referral is made
2. Procedural justice, assessed from the decision-making process, starting from giving a diagnosis to providing recommendations for making decisions
3. Interpersonal justice, judged by whether the health service providers serve the patients by respecting the patients' dignity and concern
4. Informational justice, assessed from the explanation and communication of doctors regarding diagnosis and therapy.

In the process of agreement between doctors and patients, which can be said to be a form of contract, although it cannot be equated with contracts in the field of trade in general, it cannot be separated from a form of agreement that is manifested in the form of informed consent. According to medical ethics, informed consent is a form of autonomy. Likewise, if it is associated with Rawls's concept of justice that everyone has the same right to freedom in making rational choices. Agreement in a therapeutic engagement when it is associated with justice as fairness is defined as a mutually cooperative state for mutual benefit (15). However, there are still nuances of paternalism in the doctor-patient relationship, so this freedom may not be absolute for the patient.

The theory of justice is currently growing, often referred to as a modern theory of justice; many criticize the existing theory of justice even though it does not mean that they are against it. An example of a modern theory of justice is the one proposed by Amartya Sen and Martha Nussbaum. The theory of justice according to Sen is known as the "capability approach". If Rawls prioritizes the fulfillment of rights and property, Sen also considers the freedom to own and use things and their rights so that they are useful. Someone also has the right to get information about the available options, so in this case respect for the person is prioritized. Rawls's view that freedom is the foremost important is too extreme according to Sen's view because this freedom should still have priority (18). Martha Nussbaum adds another element in the concept of justice, which is more appropriate in the doctor-patient relationship which has its specialty, not only as a form of the contractual relationship. A fair relationship does not only think about "mutual advantage", but the relationship between humans is still related to the elements of love and pity, for example, justice in terms of respect for persons with disabilities (19).

Ronald Dworkin, in his book *Justice for Hedgehogs*, mentions that ethics and morals are interrelated. Dworkin also put forward the principle of double effect, which is often found in doctor-patient relationships. This dual effect principle is also often found in discussions of ethics, which is defined as when and under what conditions we are allowed to harm others to protect and for the benefit of others as well (20). The doctor-patient relationship is based on ethics, so for the good of the patient, the doctor must consider certain conditions, if the disclosure of information will have a negative effect on the patient's psychology, the doctor should not explain it to the patient (21).

Patient autonomy is often seen as conflicting with beneficence. These two things should not be contradicted as long as patients have sufficient and transparent information so that they can make rational decisions. However, concerning proportional circumstances, doctors also have autonomy which includes three things

(22):

- a. Autonomy as a human being related to morals
- b. Autonomy as a professional
- c. Autonomy as a member of a professional community

### **Transparency Principles in Health Services**

According to Iustinianus, as quoted by Peter Mahmud Marzuki, there are three main principles in civil relations, namely honest life (*honeste vivere*), not to harm others (*alterum non laedere*), and giving people their right (*sum cuique tribuere*). These three principles can be said to be the principles that underlie transparency and justice in the doctor-patient relationship in the field of medical services. Transparency in Black's Law Dictionary is defined as openness, clarity, unobstructed access; lack of guile, and any attempt to hide damaging information (12). Transparency in the health sector or referred to as global health transparency has six foundations, namely (22):

1. Quality of healthcare
2. Patient experience
3. Finance
4. Governance
5. Personal healthcare data
6. Communication of healthcare data

Transparency is useful for building trust; the lack of transparency creates distrust as well as insecurity. There are several reasons why transparency related to trust often experiences obstacles in its implementation, including even though in a society with a high degree of education and high technology, there are still limitations for the community to obtain as much information as possible to meet their needs in making decisions. For example, in the doctor-patient relationship, although it is directed at information disclosure, there are still limitations for patients to be able to access their medical records.

The development of transparency in the health sector in Australia bears some resemblance to the USA, that both have the principle of protecting the community by ensuring that only doctors who are registered and have certain qualifications provide health services. The doctor must display information about himself on his website, including practice license status and educational history (23). If transparency in the health sector is regulated explicitly in regulation, for example employing periodic certification or by reviewing competencies, it will increase public trust. One example is transparency in the form of the publication of professional records. However, from the doctor's point of view, this kind of transparency can raise concerns of its own, so they may resort to defensive practice. This will make doctors feel more secure in their practice, but on the other hand, it will reduce the effectiveness and efficiency of health services, and it is also feared that it will erode the doctor-patient relationship (24).

Transparency will improve the quality and safety of patient care (patient safety). There are four main reasons why transparency is needed and even has to become a culture in patient-doctor relationships, especially in terms of informed consent, namely (25):

1. To promote accountability
2. To catalyze improvements in quality and safety
3. To promote trust and ethical behavior
4. To facilitate patient choice

The lack of transparency, especially in terms of disclosure of information to patients from both doctors and hospitals will risk endangering patients. In the health sector, transparency is contained in several laws and regulations, namely in Article 56 of Law Number: 36 of 2009 concerning Health regarding patient protection in the first point it is stated, "Everyone has the right to accept or reject part or all of the aid measures that will be given to him after receiving and fully understanding the information regarding the act." In Article 45 points 1, 2, and 3 of Law Number: 29 of 2004 concerning Medical Practices concerning Approval of Medical and Dental Actions, it is stated:

1. Every medical or dental action to be performed by a doctor or dentist on a patient must obtain approval.
2. The approval as referred to in paragraph 1 is given after the patient has received a complete explanation.
3. The explanation as referred to in paragraph 2 shall at least include:
  - a. Medical diagnosis and procedures.
  - b. The purpose of the medical action performed.
  - c. Alternative actions and their risks.
  - d. Risks and complications that may occur.
  - e. Prognosis of the action taken.

In Article 9 of the Regulation of the Minister of Health Number 290 of 2018 concerning Approval of Medical Actions (hereinafter referred to as Permenkes of Approval of Medical Actions) it is stated that "the explanation as referred to in article 8 must be given in full in easy-to-understand language or in other ways that aim to facilitate understanding." Likewise in Article 9 of the Code of Medical Ethics (KODEKI) in 2012, it is stated that "a doctor is obliged to be honest in dealing with patients and their colleagues, and strives to remind his colleagues when dealing with patients he knows he has a deficiency in character or competence, or who commits a crime. fraud or embezzlement."

### **Doctor-Patient Relationship in Health Services**

Medical law is based on human rights, namely the right to health care and the right to self-determination which is related to the right to information. Likewise, the right to health, which is defined as the right of everyone, in this case, the patient's right to health care and treatment, stems from the basic relationship between doctors and patients. Of course, it arises based on the right to health services and the right to self-determination as a form of personal freedom (26).

The relationship between doctors and patients in Indonesia is known as the therapeutic relationship. The relationship between doctors and patients includes many things, starting from the prevention of disease, the diagnostic process until the action itself is carried out. Article 1 of Law Number 36 of 2009 on Health states, "Health efforts are every activity and/or a series of activities carried out in an integrated, integrated and sustainable manner to maintain and improve the degree of public health in the form of disease prevention, health improvement, disease treatment, and restoration of health by the government and/or the community."

It is undeniable that doctors and patients are not in the same position, but this position should not be used by the dominant party to impose their will. In the process, it is still possible to exchange ideas freely which in the end both parties will reach a mutual agreement so that a conducive relationship can take place (9). The trust factor that underlies the doctor-patient relationship in a therapeutic relationship cannot be separated from the process of providing information in informed consent which can also have implications for the process of building patient trust. The two are closely related, that patients can give consent if they have confidence in the doctor who will treat them, including, in this case, the patient has the confidence to honestly tell his condition (27). Doctors as the more dominant party, in addition to having to act in good faith and loyal, must also protect and put the interests of patients above their personal interests (28).

Openness in the doctor-patient relationship has been emphasized by the Joint Commission of Accreditation of Healthcare Organization and the American Medical Association, especially in terms of providing information to patients in the event of complications. Hospitals must make regulations in the event of things that endanger patients gradually, openly, and completely, regarding the causes of these unexpected events, with a good/ loving attitude conveyed by responsible health care providers. If the incident is caused by a system error or malfunction, the response must include an apology and compensation (29). On the other hand, if the patient does not carry out their obligations in providing the clear and correct information about his condition and medical history, it will certainly make it difficult for the doctor to provide a therapy plan for the patient so that the process of providing information on a reciprocal basis cannot run in a balanced manner. And in the end, it will affect the doctor's judgment in giving appropriate therapy and influence the patient's decision on medical action for him.

The basis of the formation of trust and respect between doctors and patients is communication. Reader, Gillespie, & Roberts's research in 2014, obtained the results of 59 studies which reported that 88,069 of patient complaints were mainly due to communication

and patient management problems themselves (30). Currently, technological advances and increasingly sophisticated medical support devices are suspected as one of the reasons for the decline in the quality and quantity of communication between doctors and patients. Whereas, good communication will support the patients' recovery and improve the quality of health services, as well as improve good relations between doctors and patients. Interpersonal communication has the following dimensions:

1. Openness
2. Empathy
3. Supportive attitude
4. Positive attitude
5. Equalities

Unfortunately, currently, there are no laws and regulations governing communication in general and communication between doctors and patients in particular. The existing regulations regarding honesty in providing information still cannot meet the demands of the current conditions.

#### Health Services in Indonesia Related to Transparency

The Consolidated Report on Indonesia Health Sector Review 2018 is a compilation of reviews and analyses of current health achievements, future challenges and key issues, and policy options with strategies for achieving them has given critical inputs for the Background Study of Indonesia's 2020-2024 National Medium-Term Development Plan (RPJMN). Consolidated Report with the theme of "Strengthening National Health Systems" has ten topics: Demographic and epidemiological transitions and their implications for the demand for health services, public health functions including health security issues, strengthening the implementation of reproductive, maternal, neonatal, child and adolescent health, nutrition development in Indonesia, human resources for health, provision of drugs, vaccines and medical equipment, drug and food control, health financing, strengthening the health services delivery including referral system, strengthening health governance and health information system (31). Health services and also human resources for health is important, because good health service is depend on quality of human resources. By 2018, the Indonesia Medical Council and the Indonesia Health Professional Council reported that 1,530,696 health workers have been registered (medical doctors, dentist, nurses, midwives, public health officers, nutritionists, and environmental health officers). This data provides an estimated composite ratio of registered health workers (doctors, nurses, and midwives) at 5.25 per 1000 population by 2018. Imbalance distribution remains one of key issues across regions in Indonesia, especially between urban and rural areas (32).

Lack of health workers usually give some negative effects while giving health services to patients. Excessive working hours will make lack of good

communication between doctor and patient. Without good communication, doctor and patient will not have a good relationship. Without good relationship, there will be no trust form patient to doctor. If the patients didn't tell to the doctor transparently about their diseases, doctor can't make a good decision them. It will be a source of medical dispute between doctor or hospital and patient. Medical conflicts arise due to a lack of understanding of medical malpractice and risks. The two terms have different meanings with varied implications in the doctor-patient relationship. Unfortunately there is no exact data about medical malpractice in Indonesia. But we can learn from some cases in court, that some of medical dispute come from misunderstanding because of lack of transparency in doctor-patient relationship. More problems are arising in the medical world related to legal issues in relationships originally based on trust. Cases that often occur due to communication between the doctor and the patient or their family are not right. Effective communication between doctors and patients is vital in the trust-building process that eases the decision-making process.

#### DISCUSSION

Transparency in the doctor-patient relationship cannot be contradicted with confidentiality; instead, transparency is prioritized to realize patients' safety. Transparency in its implementation must still pay attention to medical ethics, non-maleficence, and beneficence so that transparency does not mean unlimited freedom even though this is a manifestation of the patients' right to self-determination. Equality in the relationship between doctors and patients is unlikely to be perfectly realized. Yet, this equality is realized in a proportional position because, of course, doctors have more abilities in providing health services to patients by doing the best for them. Health services must be carried out based on the standard of care, which does not mean the highest standard. Transparency must be evident in the informed consent process as a manifestation of the patients' right to obtain information.

Justice in the doctor-patient relationship is certainly an effort to provide legal protection for doctors and patients because the absence of balanced legal protection for both parties will also risk creating defensive medicine that will harm patients. It should be remembered that the engagement between the doctors and patients is an effort engagement (*inspanning verbintenis*) and not a result engagement (*resultaat verbintenis*), so this will minimize the risk of medical disputes arising. According to John Rawls, Amartya Sen, Martha Nussbaum, and Ronald Dworkin, there are several concepts of justice that are appropriate to be used in the doctor-patient relationship. Currently, in the Netherlands, the relationship between doctor and patient has been specifically regulated in the Nieuw Burgerlijk Wetboek. Meanwhile, in the United States, transparency

concerning the performance of a doctor and hospital has been carried out in the community. Nevertheless, in Indonesia, there is still a need for clearer laws and regulations governing transparency in the doctor-patient relationship, especially concerning the communication process because effective communication that starts from trust will lead to transparency to create justice for both doctors and patients.

## CONCLUSION

Transparency in the doctor-patient relationship cannot be contradicted with confidentiality. Transparency is prioritized to realize patients' safety but in its implementation must still pay attention to medical ethics especially non-maleficence principle. Effective communication that starts from trust will lead to transparency to create justice for both doctors and patients. Transparency in doctor-patient relationship consist of openness about the diseases and it's management, including also related to complications and unexpected events. Proportional justice together with other principle of justice can be applied in doctor-patient relationship. Transparency in information must be come from doctor and also from patients. Without transparency there is no trust in doctor-patient relationship and it will make the doctor can't make a good diagnose and treatment for their patients. This condition usually as a source of medical dispute between doctor or hospital and patient. Lack of health workers and excessive work hours sometime make a bad communication.

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