

Analysis of Mental Health Patient in Providing Medical Approval

Análisis del Paciente de Salud Mental Para Proporcionar Aprobación Médica

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ABSTRACT

Mental health problem in Indonesia is currently one of the trending topics associated with forced-treatment of patients due to doctor's inability to obtain their valid consent. The appearance of Law Number 18 Year 2014 is a new legal solution to mental health services in Indonesia. Therefore, this research focuses on the law and principle of doctor-patient mental health-related with obligation and responsibility. It analyzes discussions on forced treatment related to human and patient autonomy rights in accordance with doctor's paternalism on the legal protection of both subjects.

Keywords: Mental Health, Patient, Otonomy Right, Legal Protection.

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RESUMEN

El problema de salud mental en Indonesia es actualmente uno de los temas de tendencia asociados con el tratamiento forzado de pacientes debido a la incapacidad de los médicos para obtener su consentimiento válido. La aparición de la Ley número 18 del año 2014 es una nueva solución legal sobre los servicios de salud mental en Indonesia. Por lo tanto, esta investigación se centra en la ley y el principio de la salud mental médico-paciente relacionada con la obligación y la responsabilidad. Analiza las discusiones sobre el tratamiento forzado relacionado con los derechos de otología humana y del paciente de acuerdo con el paternalismo del médico sobre la protección legal de ambos sujetos.

Palabras clave: Salud Mental, Paciente, Derecho de Otología, Protección Legal.

INTRODUCTION

Mental health problem is a serious concern in Indonesia, with inadequate government policy. However, the proposed Mental Health Law by the House of Representatives, Commission IX in Indonesia, guarantees that people with this disease obtain humane treatment in hospitals (Warr: 1987).

This law focuses on People with Mental Disorders (PWMD), and discusses its importance for healthy living (Mathias et al.: 2015, p.446; Siregar et al.: 2019, pp.1-12). In addition, families and communities are also involved in creating conducive conditions. According to Law Number 18 of 2014 on the Mental Health Act, Article 70 paragraph 1d, "PWMD has the right to give consent for medical actions committed against patients". Studies prove that PWMD sufferers are often brought by relatives in unstable conditions, without psychiatric help and refusing medical treatment. However, this prolonged non-treatment tends to endanger their surrounding environment, which makes medical personnel and

related agencies obliged to take immediate action in order to provide medical treatment while ignoring administrative rules (Diver: 1983, p.65; Atarzadeh & Seyed: 2018, pp.1-10).

This research, therefore, analyzes the Law in accordance with PWMD unable to take responsibility for their actions. It arises due to the difficulties associated with understanding the relationship between Law and Medical science (Alexander: 1949, pp.39-47; Mduma et al.: 2019).

RESULTS

1. The Doctor-Patient relationship on Informed consent

The doctor-patient relationship in medical science is an active-passive biomedical medication. Initially, doctors carried out paternalistic treatment analysis, however, this changed to a complementing and sharing relationship between the two parties marked by an activity which influences their decisions. This creates a doctor-patient relationship which enables adequate analysis and treatment.

The basic pattern of the doctor-patient relationship, based on the socio-cultural situation and disease is distinguished in three patterns, namely (Szasz & Hollender: 1956, pp.585-592; Szasz et al.: 1958, pp.522-528, Szasz & Hollender: 1952, pp.278-286):

1- Activity-Passivity, 2- Guidance-Cooperation, 3- Mutual Participation

2. Criteria to Give Medical Approval

In terms of the validity of an agreement, quoted from the Civil Code, Articles 1320, 1329, 1330 reads as follows:

According to Article 1320,

"The validity of an agreement requires four conditions, namely:

1) Agreement to the committed patients (McNiel et al.: 1988, p.965);

- 2) Ability to make an engagement;
- 3) A certain thing;
- 4) A lawful cause.

According to Article 1329,

"Every person is authorized to make an agreement unless he is declared incompetent for that matter.

According to Article 1330, the following are not competent to make an agreement.

1. Immature children
2. People governed under the forgiveness
3. Married women in matters prescribed by law, and in general all those prohibited from making certain treaties.

The capability (*bekwaamheid*) referred to in Article 1320 BW Requirement 2 is the ability to carry out legal actions, which is defined as the possibility to conduct independent legal actions which are binding on oneself without being interrupted. This is generally measured by the following standards:

The person with respect to the age of maturity (*meerderjarig*);

- a. *Rechtspersoon* (legal entity), measured from the aspect of authority (*bevoegheid*).

Similarly, Susilo stated the following as reasons why a reason cannot be assigned responsibility (Susilo: 2019):

Less perfect sense. This is related to the power of the mind, though, and intelligence such as idiots, imbecile, deaf, blind, and dumb people from birth. These categories of patients are actually not sick, but because of their birth defects, their minds are less developed.

- a. Changes in mind. This is related to toothache, hysterics, epilepsy, and various other diseases.

Therefore, persons do not only refer to age but also aspects of one's mental health and severe disorders. A person is considered incompetent to enter into a contract by law below 21 years old unless they are married before that age. Conversely, every person aged 21 years and above is considered competent, asides drunken lunatic, or unconscious people, then approval is required from their agent. Therefore, in civil law, a person is declared an adult at the age of 21 years or when married (Menzies: 2001, pp.123-156).

However, there are many examples that indicate that people are not yet mature. It is called breakthrough in the legal adult age. For example:

- Marriage: 18-year-old man, a 15-year-old woman (Civil Code)
- Marriage: 19-year-old man, 16-year-old woman (Marriage Law)
- Age of making testament 18 years (KUPerdata)
- 18-year labor agreement.

Looking at the age ranges, 18 years was picked as the maturity limit according to the various laws. Therefore, the criteria for someone to be able to approve is legally competent, which means that guidelines are taken by those married or above 18 years, and psychologically healthy.

3. Legal and Medical Determination of PWMD Skills

Before discussing PWMD Skills, the Structure of Mental Disorders Classification is reviewed according to **PPDGJ-III** as follows:

1) **Organic Mental Disorders** (Dementia, Amnestic Syndrome, Mental & Behavior Disorders due to alcohol/opioid/cannabinoid/cocaine/sedative use, hypnotics/tobacco & other psychotropic substances (Perry: 1990, pp.696-710)).

2) **Psychotic Mental Disorders** (Schizophrenia, Acute and transient psychotics, Repetitive/induced, Schizoaffective, Other Non-Organic Psychoactive, Manic Episodes, Bipolar Affective, Depressive Episodes, Repeated Depressive, Mood/Affective/Permanent Disorders (Howard et al.: 2014, pp.1775-1788)).

3) **Neurotic disorders and personality disorders** (phobic anxiety, obsessive-compulsive, somatoform, dissociative, personality, habits & impulses, sexual identity disorders (Tyrrer & Gall: 1983, pp.404-408)).

4) **Childhood, adolescent, and developmental disorders** (Mental Retardation, Psychological Developmental, Hyperkinetic, Behavioral, Emotional, "Tic" or Other Behavioral & Emotional Disorders (Hollander et al.: 2006, pp.541-548)).

However, not all the descriptions above listed are categorized as severe/dangerous mental disorders. According to the Decree of the Minister of Health No. 1627 of 2010 concerning Psychiatric Emergency Services, those included in the behavior of violence and violence includes:

- 1) Psychotic Disorders
 - a. Acute psychotic disorders
 - b. Organic mental disorders
 - c. Schizophrenia
 - d. Bipolar disorder with psychotic features
 - e. Delusional disorders
 - f. Mental and behavioral disorders due to substance usage.
- 2) Non-Psychotic
 - a. Anxiety: panic
 - b. Depression
 - c. Post-traumatic stress disorder
 - d. Antisocial personality disorder

PPDGJ-III does not consider every mental disorder as a firm unity with clear boundaries. According to a false assumption, mental disorders are classified as people suffering from various psychiatric diseases.

Therefore, every psychiatric disorder with a scale from mild to severe is a single or accompanying disorder, with the potential to worsen or become more severe. This is dependent on the various factors which accompany it, such as genetic, the onset of age and disorder, the magnitude of the problem (stressor), personality, as well as the type of mental disorder.

4. PWMD Skills in Relation to Obligations and Responsibilities

Humans and their actions are a unity, when described in the context of social life in accordance with their behavior towards others and the environments. Human

freedom is actually how far the intensity of the relationship with the actions conducted, while responsibility is the result or consequences of freedom of their actions (Notoadmodjo: 2010; Chamberlin: 2011, pp.134-156).

Some sources defined accountability as the civil claim (compensation), and responsibility as responds to a criminal demand.

Responsibility always contains the notion of "causes" of actions. However, it is not always directed by the person as the perpetrator (cause) because the person responsible is free-willed. One of the characteristics of PWMD is that the patient concerned does not have the zeal to influence their mental disorders, which often cannot be controlled.

Existential is a form of freedom of one's actions as a human being, which is not limited to one aspect but the universe. This implies that:

a) Freedom to realize all of its existence as human beings.

b) The highest freedom of human beings, to control and own themselves.

c) Freedom without being influenced or controlled by others.

PWMD do not have absolute control of themselves; therefore, they are not held accountable for their actions.

5. Responsible Ability

Toerekenbaarheid is the ability to be responsible, and it should be concluded from the behavior of the individual as a whole in perspective of the outside and inner world. The presence or absence of certain symptoms is not held accountable due to the symptoms which are absolutely a mental illness despite being severe. A mental disorder does not necessarily exclude toerekenbaarheid in special cases. The biggest challenge in our judgment does not lie in finding certain symptoms, but in determining one's toerekenbaarheid. Therefore, it is concluded that the determination of a person's ability to be responsible is not determined from the accompanying psychiatric illness but based on observations of the evaluation of the mental condition. This is analyzed right from the time of action to determine patients' state of consciousness or in a state of mental disturbance. However, this is not separated because the psychiatric illness is always "up and down" or disappear ("insight"); therefore, observation is required for a deep and continuous assessment to really determine the patient burden and responsibility in carrying out an act.

Mental Capacity Act 2005 explained several conditions of people with limited personal capacity, as follows:

- 1) People were unable to make a decision for themselves due to damage or interference with the mind.
- 2) It doesn't matter in cases that the damage is permanent/temporary.
- 3) Not affected only by the patient's age, appearance, or personality to create negative assumptions.
- 4) The limitations of the patient's abilities need to be balanced with the attitude shown to prove their capabilities.
- 5) No one may violate these guidelines.

Furthermore, it also describes the inability to make decisions, as follows:

1. People are unable to make decisions for themselves when there are conditions incapable of achieving the following:

a) Understand information relevant to the decision.

b) Withholding information

c) Using the information obtained to make decisions

d) Communicate their decision, through signs or signals.

2. People are not placed under arrest when they are unable to understand the information obtained and use it to make relevant decisions.

3. The fact that a person has the ability to withhold information for a brief period does not necessarily set them free from the possibility of making a decision.

4. Information relevant to decisions by considering the consequences of unilateral decisions by other parties, or failing to create any.

Psychiatrists are allowed to regulate and present their opinions making it easier for authorized institutions to determine the degree of responsibility, which is seen as something that is united in humanity (men-zijn) and freedom. Toerekenbaarheid is a judgment on the level of humanity and freedom.

As previously explained, when a doctor carries out treatment without the permission of the patient, then they perform an Act Against the Law (civil).

"Consent is a precondition of autonomous decision-making with lawful medical treatment. Anyone that intentionally or recklessly touches another without the person's consent is guilty of a tort and crime."

This is included in Article 1365 of the Civil Code, which regulates that:

"Every act that violates the law and brings harm to others obliges the person to replace the loss."

Whereas criminally, it is regulated in **KUHP Article 44**, paragraphs 1, which stated that:

"Whoever commits an act that cannot be accounted for due to illness in growth cannot be convicted."

Mental disorder is a disease with the ability to assess limited reality, especially psychosis.

In connection with this article, it is important to realize that it is not the task of the Psychiatrist (who makes VeR Psychiatricum) to determine the responsibility of being questioned because its understanding does not constitute in the discipline of health sciences.

According to criminal law, an unlawful act is not the only standard of surprise, which is conducted voluntarily with the culprit having evil intentions on the consequences of their actions. Although it violates the law, there are no ill on a person, assuming their mental state is lacking, with the inability to think rationally. The law also is also applied to someone that has carried out a crime. The concept of legal responsibility starts with the MnNaughten Rule of 1843, which says that a defendant is innocent when actions are performed under the influence of a mental disorder, without understanding the nature, quality, and consequences of their actions. This regulation is known as the Right-wrong Test which was regulated in 1922 with the concept of irresistible impulses. This states that those accused of crime are not responsible for their actions assuming it is committed

under the influence or impulses related to psychiatric disorders.

This regulation developed in 1954 with the emergence of the Durham Rule stated that the McNaughten rule is inadequate because it cannot be applied to a variety of circumstances. This rule simply stated that a defendant is not criminally liable of a criminal act due to mental illness or defect. This regulation is widely applied in the world of psychiatric medicine.

The criteria in the field of health and law used to describe continuity (continuum) and levels (gradations) include:

- 1) Behavioral Gradation in Health.
 - a. Dangerous to harmless behaviors
 - b. Conscious of unconscious behaviors
 - c. Understood behavior to those that are not understood
 - d. Planned to unplanned behavior
- 2) Gradation of Behavior in the field of Law.
 - a. Responsible behavior
 - b. Behavior is partially responsible
 - c. Behavior is not responsible

In general, each punishment considers and pays attention to the idea of correction:

- a. Criminal usability toward the convicted as a modifier of behavior
- b. Criminal usability toward convicts and the public in an attempt to frighten and prevent criminal acts deterrent efficiency in accordance with one of the objectives of the law.

Therefore, based on the description, it is concluded that the right of an PWMD remains attached to them under certain conditions such as based on the ability to be responsible (Toerekenbaarheid), which is caused by many actions. The most difficult act in determining the skills of PWMD, which is conducted by Psychiatrists based on the science of psychiatry, which is clearly stated in the Health and the Mental Health Act.

The weakness in the field of psychiatry is in the VeR Psychiatric regulations/guidelines, which are not legally organized. According to the 1986 VeR Psychiatric guideline, which was revised in 2007, PWMD tends to cause legal confusion.

The rights of PWMD patients in giving medical consent are considered non-existent, due to their legal inability to make the agreement in accordance with Civil Code Article 1320, with these skills determined by competent doctors (Mental Health Law). Determination of this ability does not lie in classifying the patient's severity or diagnosis, but a psychiatrist analysis in accordance with their knowledge.

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