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Proof of Default in Medical Service Contract Dispute

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Abstract

Key words:
Default; medical services contract; medical dispute.

In medical services, the legal connection between doctor and patient is always contractual. The doctor agrees to give medical services to the patient, and the patient agrees to compensate the doctor for those services. However, agreements between doctors and patients are frequently formed orally rather than in writing in medicine. As a result, when a contract is breached and a dispute arises in court, the parties have difficulty demonstrating. The purpose of this study is to examine evidence of contract default in the medical service industry. This study is based on the literature and employs a normative legal research methodology. The analysis was conducted utilizing a conceptual framework, a statutory framework, and a comparative framework. This study suggests that proof of default in a medical service contract dispute can rely on witness statements, admissions, suspicions, and oaths without written evidence. Meanwhile, in terms of the contract's content relating to the doctor's and patient's rights and obligations, it can refer to the relevant provisions of the law, the prevailing customs in the field of medical service, as well as the propriety that must be observed in the execution of the medical service contract.

Introduction

In general, lawsuits involving medical service disputes are brought based on an unlawful act, despite the legal relationship between doctor and patient being contractual. Even issues including informed consent are regarded as criminal acts. Thus, a physician who performs medical treatment without obtaining informed permission has broken the law. *Schloendorff v. Society of Marshall and Dowdall* (1982) established that a surgeon who performs medical action without the patient's consent had broken the rule (Richards, nd). Due to the doctor's unlawful act, the doctor is obligated to reimburse the patient for all losses (Guwandi, 2005).

Because the idea of criminal activities is frequently used as the foundation for a lawsuit involving a medical service, the court adopts the same attitude to avoid making a ruling that exceeds the demand (*ultra petita*). On the other hand, judges frequently adhere to the concept of violating the law, even when the plaintiff asserts default. In *Heneberry v. Berger* (2021), the plaintiff asserts a claim based on default. The plaintiff alleges that the doctor violated the agreed-upon medical service contract terms. However, the judge determined that the doctor's failure to take medical action was a violation of the law, not a breach of contract. According to the judgement, as long as there is no supplemental contract specifying the requirements that must be met by the doctor when doing medical treatment, the doctor cannot be sued for breach of contract (Berger (2021)).

The judge's opinion in *Heneberry v. The Pharaon* may be applicable in nations where the rights and obligations of doctors and patients are not clearly defined, necessitating the use of a particular contract that details the doctor's and patient's rights and responsibilities. However, in countries where the

right and obligations of doctor and patient are governed by law, the judge's opinion in *Heneberry v. Pharaon* is no longer applicable. Because, while the parties do not enter into further contracts, the law has specified the doctor's and patient's rights and obligations. As is well known, countries adhering to the continental European legal system, such as the Netherlands and Indonesia, control practically every aspect of life in detail, including medical services. The doctor's and patient's rights and obligations have been detailed that the parties lack sufficient discretion in establishing the contract's terms.

According to Article 39 of the Medical Practice Law (hereafter referred to as the Medical Practice Law), medical practice is based on the agreement between doctor and patient. The contents of this article underline the importance of a contract containing all legal ramifications governing the legal relationship between a doctor and a patient. Thus, if a contract is breached, it should be based on default. However, the doctor's agreement with the patient is often not written but is reached orally. As a result, when a contract is breached, and a disagreement arises in the court, the parties have difficulties establishing it. Additionally, if the judge believes that an extra agreement must be drafted that precisely states the parties' obligations, naturally, a lawsuit brought due to default will be difficult to accept. According to the preceding, it is required to research establishing default in a medical service contract dispute.

Research Method

This research employs a normative legal method. At the same time, a conceptual approach, a statutory approach, and a comparative approach are all used (Dutch Civil Law). This research is centered on library or library research ([Mertokusumo, 2009b](#)), which is accomplished by collecting legal resources from traditional and digital libraries. Legal materials are then inventoried and critically identified from a variety of sources. The identification result was then investigated using a research methodology and organized methodical and argumentative to conclude.

The Doctor's Legal Relationship with the Patient is a Contractual Relationship

Almas Shaikh asserts that the legal connection between physician and patient has three distinct dimensions. The first dimension is the contractual one; in this case, both doctor and patient must adhere to contract law standards. The second type is a consensual relationship, in which the doctor is required to get the patient's approval before performing any medical procedure. And the third is concerned with the standard of medical care. When physicians provide medical services, they must adhere to service standards and standard operating guidelines. (Shaikh, unknown)

According to Article 39 of the Medical Practice Law, medical practice is governed by an agreement between a doctor and a patient. The term "agreement between doctor and patient" in the article's wording indicates that the legal connection between doctor and patient is contractual in nature.

A similar formulation is found in Article 7:446 of the Dutch Civil Code, which defines a medical service contract as one in which a person or legal entity, a medical service provider who operates a medical business or profession, agrees to take medical action directly against another person, a client. In the following paragraphs, the individual linked with the medical process is referred to as the patient (Overheid Netherlands, nd).

A doctor's legal connection with a patient is contractual in nature and cannot be terminated unilaterally. According to Ewoud Hondius and Annet van Hooft, once a contract for medical services is signed, a doctor cannot unilaterally terminate the relationship unless compelling reasons. (Hondius & van Hooft, 1996). Laurance Jerrold voiced a similar sentiment. According to him, the legal connection between a doctor and a patient might cease in five ways: when the patient has recovered, when the patient dies, when both parties agree, when the patient decides unilaterally, or when the doctor decides unilaterally. However, the doctor may end the contract for any legally permissible cause. For instance, the patient does not follow the doctor's directions or is not forthcoming with clinical information (Jerrold, nd).

Laurance Jerrod's position is consistent with the norms of Dutch Civil Law Article 7:460, which says that a medical service provider may not terminate a medical service contract except for grave circumstances. (Nederlands Overheid, nd). Meanwhile, significant reasons for a doctor to unilaterally terminate a medical care contract include the following: (Vos, 2021)

- a. The nature and scope of medical services has changed significantly and is now beyond the doctor's knowledge or ability.
- a. The patient is extremely impolite or belligerent.
- b. The doctor and the patient are in a major conflict, and the patient is unwilling to participate in care.
- c. The patient is unable or unwilling to pay the amount.
- d. physician has a vested interest in terminating a contract for medical services.

Characteristic of Medical Services Contract

In general, medical service contracts are similar to other types of service contracts, which are centred on service activities. However, medical service contracts have some distinguishing qualities, including the following: a. The contract is persistent.

- a. The contract's objective is the best effort.
- b. The outcome is indeterminate.
- c. There is a possibility of medical complications.

The medical service contract is persistent, which means that the doctor's agreement with the patient is perpetual. This continuous nature is the primary characteristic of a medical service contract, as the contract is always dynamic in nature, evolving in response to the patient's condition or illness

progression, which cannot be predicted at the contract's inception. When something happens to the patient during the contract's execution or certain medical needs arise, the doctor and patient will enter into new agreements that may or may not be identical to the previous deal.

The contract's object in the form of best efforts (*inspanningsverbintennis*) is confirmed in Article 61 of Law No. 36 of 2014 concerning Health Workers (from now on referred to as the Health Manpower Law), which states that doctors providing medical services to patients must make their best effort in the absence of a guarantee of success. This means that doctors are only required to do their best when providing medical services to patients, and the outcome is not a barometer of the doctor's success.

Uncertain outcomes are also expressly stated in Article 61 of the Health Manpower Law, prohibiting doctors from promising developments. The prohibition of good results is predicated on a lack of clarity regarding the outcomes of medical activities. The results obtained only through medical efforts can differ. There may be alleviation or a reduction in suffering; there may be no change; there may be complications, a disability, or death. Due to the ambiguity surrounding the outcome of these medical endeavours, physicians are banned from promising a positive effect on a patient.

Medical endeavour is inextricably linked to the possibility of medical risk. Medical hazards, like the outcome of medical effort, are uncertain. Medical risks can occur due to illness progression or from medical intervention. The Constitutional Court stated in its April 20, 2015 decision No. 14/PUU-XII/2014 that medical danger can develop due to a doctor's negligence or as a result of the doctor's intentional action.

Default Criteria in the Implementation of Medical Services Contract

Neither Indonesian nor Dutch civil law contain the term default. In the formulation of Article 1243 of the Indonesian Civil Code, this is referred to as the expression does not meet the engagement. At the same time, Article 6:74 of the Dutch Civil Code describes it as a breach of engagement. Default, according to JH Nieuwenhuis, is a breach of an engagement (Nieuwenhuis, 1985). Meanwhile, Yahya Harahap defines default as the failure to fulfil a duty on time or in an inadvertent manner (Harahap, 1986). According to C. Asser, default criteria fall into three categories: (Asser, 1991; Tillema, 1995).

- a. Does not perform the engagement in any way.
- b. Did not adhere to the terms of the engagement.
- c. Did not adequately perform the engagement.

The default criteria proposed by C. Asser appear to be incomplete, as they do not include the phrase "only partially satisfying achievement." Indeed, it is

entirely conceivable for a debtor to meet such standards. As a result, it is more reasonable to express the first condition as "does not meet all achievements." Because it also includes default requirements in the form of "not meeting the achievement and meeting only some of the accomplishments.

Thus, default criteria can be categorized into three categories, namely:

- a. Does not achieve all objectives.
- b. Unsatisfactory completion.
- c. Does not perform as expected.

If the debtor fails to complete all of his responsibilities or just fulfils a portion of his agreed obligations, he is declared not to have fulfilled his obligations. Meanwhile, he is termed late if the debtor completes his duties after the agreed-upon implementation deadline expires. Meanwhile, if the debtor performs his commitments but does not adhere to the agreement, he is judged not to have acted properly. For instance, while it has been acknowledged that dental prostheses are constructed of zirconium, what is implanted are porcelain dental prostheses. In this instance, the dentist may be regarded to have defaulted by failing to conduct the procedure properly.

According to Article 1339 of Indonesian Civil Law, the agreement is obligatory not only on the matters specifically stated by the parties in the contract but also on matters required by propriety, custom, and law due to the nature of the agreement. (1985, Nieuwenhuis, p. 38). This means that doctors and patients are bound by the terms of the medical service contract and the propriety, customary, and legal standards applicable to medical services. (2010) (R. Subekti, p. 39).

Although Indonesian Civil Law does not define propriety precisely, it is frequently used in conjunction with good faith in its implementation (Hernoko, 2008). According to Ridwan Khairandy, good faith in contract implementation refers to objective standards, that is, measures that exist and evolve in society—called objective norms because they are not dependent on the parties' own beliefs (subjective) but general assumptions (objective) (Khairandy, 2003).

Propriety and propriety are based in Dutch Civil Law on commonly acknowledged legal concepts, society values, and the parties' interests. In other words, appropriateness is determined by legal principles, evolving ethical standards within society, and the mutual interests of both parties (vide Article 3:12 Dutch Civil Law). Propriety can be defined in the context of a medical service contract in terms of the Doctor's Professional Code of Ethics and the ethical standards that exist and evolve in society.

A habit is a pattern of conduct that is frequently observed when carrying out a particular sort of agreement in a specific field of business, which is carried out as a legal duty (Nieuwenhuis, 1985). Within the context of medical services, habits refer to the behavioural techniques that doctors frequently

employ when delivering medical care to patients in similar situations and conditions. For instance, how a patient is examined, diagnosed, and treated falls under the purview of the medical field. Casuistic parameters govern these same scenarios and environments. When a physician provides medical services to a patient, the situation and condition must be evaluated on an individual basis. The comparison must be apples to apples, both in terms of the patient's status and disorder and the situation and condition of the facility where medical services are provided. Physicians performing medical procedures in public health centres, for example, cannot be compared to physicians performing medical operations in hospitals.

Meanwhile, the term "law" refers to all statutes and rules governing the field of medical services. Among these are the Medical Practice Law, the Health Workers Law, and Law No. 29 of 2009 on Health (referred to as the health Law). In comparison to other service sectors, the law specifies the obligations of physicians and patients in medical service contracts. Thus, even though it is not defined in the medical service contract, the doctor and patient are obligated to carry it out.

Article 51 of the Medical Practice Law regulates the duties of doctors to provide medical services to patients. Article 58 of the Health Worker's Law and Health Law Article 24. Among the responsibilities that doctors must fulfil are the following:

- a. Provide medical care following professional standards, service standards, standard operating procedures, and the patient's medical needs.
- b. Refer patients to another physician with greater skill if they believe they cannot offer medical care.
- c. Obtain the patient's consent for the medical intervention to be performed.
- d. Maintain and create medical records.
- e. Maintain patient confidentiality following the patient's death.

A professional standard is a set of minimum capabilities in the form of knowledge, skills, and professional behaviour that an individual must master and possess to carry out professional activities in society independently. These standards are established by professional organizations in the health sector (vide Article 1 number 12 of the Health Manpower Law). Meanwhile, a professional service standard is a guideline that Health Workers must follow when providing health care (vide Article 1 number 13 of the Health Manpower Law).

A standard operating procedure is a collection of standardized instructions/steps used to complete certain routine work processes by providing the appropriate and best efforts based on a mutual agreement to carry out various activities and service functions created by a Health Service Facility following Professional Standards (vide Article 1 number 14 of the Health Manpower Act).

The Dutch Civil Law is also extremely comprehensive in doctors' obligations, albeit not as complete as the Indonesian Civil Law. Article 7:453 of the Dutch Civil Code stipulates that medical service providers (including doctors) are required to offer medical services following applicable professional standards. Additionally, medical service providers must safeguard patient anonymity at all times (see Article 7:457 Dutch Civil Law).

Article 53 of the Medical Practice Law and Article 31 of Law No. 44 of 2009 regulating hospitals explain the patient's obligations under the medical service contract (referred to as the Hospital Law). The patient must fulfil the following responsibilities:

- a. Provide accurate and thorough information regarding their medical condition.
- b. Adhere to the doctor's advice and instructions.
- c. Reimburse for medical services received.

When seen through the lens of contract implementation, the medical service contract incorporates two perspectives: the patient and the physician. The contract is the outcome from the patient's standpoint (*resultaatsverbintenis*). That is, patient success is judged in terms of products. If the patient provides complete and accurate information to the doctor, follows all of the doctor's recommendations and instructions, and compensates for the medical services obtained, the patient might be said to have accomplished something. On the other side, if the patient fails to submit complete and accurate information to the doctor, fails to follow all of the doctors' advice and instructions, or fails to compensate for medical services obtained, the patient is said to have defaulted.

Meanwhile, the contract is an attempt from the doctor's perspective (*inspanningsverbintenis*). That is, doctors' accomplishments are evaluated based on their efforts in providing medical services to patients (Nieuwenhuis, 1985, p. 92). This endeavour is not merely an attempt; it must be the best effort possible for the patient's benefit (see Article 61 of the Health Personnel Law). According to Article 1339 of the Indonesian Civil Code and Article 51 of the Medical Practice Law, doctors are additionally obliged by the following rules when executing a medical service contract:

1. The terms of the contract reached with the patient.
2. Legislation governs a physician's commitment to providing medical services to a patient.
3. Professional Code of Ethics for Physicians
4. How a physician frequently behaves when giving medical services to a patient in a similar scenario and condition.

The four items listed above constitute the criterion for a physician's best effort when implementing a medical care contract. If the doctor has accomplished achievement by putting up his best efforts following the four points described previously, the doctor has achieved. On the other hand, if the doctor fails to make his best effort following the four items listed above, or if he does his best attempt following the four items listed above but is late for the appointment, it might be claimed that at the doctor is in default.

Proof of Violation of the Medical Services Contract

In the event of a breach of the medical service contract, the aggrieved party may bring a case in court on the grounds of default. If the patient is shown to have defaulted and caused harm to the doctor – for example, by failing to compensate the doctor for services rendered - the patient can be sued in court for compensation. Similarly, if the doctor has breached the contract, resulting in harm to the patient — for example, by failing to provide medical services according to the patient's medical needs – the doctor can be sued in court for compensation. Naturally, the plaintiff must establish the existence of a default on the defendant's part.

The proof is a trial procedure designed to reassure the judge that the lawsuit's grounds are true (Loebis, nd, p. 44). The proof is typically required when a dispute is brought to court (Subekti, 1982, p. 5). In court, evidence is used to reassure judges regarding the veracity of a legal event. A judge reaches a judgement about a case based on this certainty ([Mertokusumo, 2009b](#)). The ultimate purpose of proof in court is for the judge to make a ruling on a matter of law. Meanwhile, the disputing parties are the ones who must show it ([Khoidin, 2020](#)).

The principle of audi et alteram partem and actori incumbit probatio are two evidentiary principles frequently applied in court practice. The principle of audi et alteram partem compels judges to be fair to disputing parties by providing them with an equal opportunity to prove their cases and considering all evidence offered by the parties. At the same time, the notion of actori incumbit probatio is a burden of the proof premise. According to the actori incumbit probatio concept, the judge may shift the burden of proof to the litigants based on the judge's considerations. ([Poesoko, 2018](#)).

According to Article 1865 of the Indonesian Civil Code, who asserts a right or designates an event to confirm his rights or to deny the rights of others is required to establish the right or event. This means that both the patient as the plaintiff arguing for the right to compensation and the doctor as the defendant arguing against the plaintiff's case have the burden of proof before a judge. The patient, as the plaintiff, is required to prove his lawsuit's arguments, and the doctor, as the defendant, is required to justify his denial arguments through the submission of valid evidence.

According to civil law, there are five types of legal evidence: written evidence, witness testimony, presumption evidence, confession evidence, and oath

evidence. 2021) (Ambarita). Written evidence and witness statements are considered direct evidence if they are categorized. It is called direct because it is physically submitted before the trial by interested parties. Meanwhile, allegations, confessions, and oaths are all considered indirect evidence because they are not physically filed but rather provided by interested parties and rely on the judge's conviction. 2020 (Hardinal).

According to Law No. 11 of 2008, as amended by Law No. 19 of 2016, Electronic Information and Transactions, electronic information or electronic documents, including printed results, are accepted as admissible evidence in court. This evidence may be utilized if it satisfies all formal and material standards. Electronic documents and information evidence are included in written evidence and instructions (Rizka, 2021). Electronic evidence can shape electronic information, electronic documents, or other computer outputs. Electronic evidence may be admissible in court if its integrity can be assured, if it can be accounted for if it can be accessible and exhibited to explain a situation, and if it originates from a trusted electronic system. (12–25) (Fakhriah, 2015). In Indonesia, the regulation governing electronic documents is fairly comprehensive, which means that doctors and patients can enter into medical service contracts electronically, just as they do with other electronic transactions (Zamroni and Andika Persada Putera, 2018).

In the doctor-patient interaction, written evidence is a medical service contract. Typically, the medical service contract is not notarized but is made between the doctor and the patient, making it an unofficial deed. According to Efa Laela Fakhriah, for written evidence to be valuable as an underhand deed, it must meet several criteria, including the following: it must be signed by the parties, the contents must involve legal actions or legal relationships, and the contents must be purposefully constructed to serve as evidence of legal activities or legal relationships. (2017) (Fakhriah, p. 17). Written evidence must also include the original, as evidence that is just a photocopy is deemed invalid (see Supreme Court opinion No. 701 K/Sip/1974 dated April 1, 1976).

Witness testimony must be related to events or incidents that the witness personally witnessed, saw, or heard. Additionally, witness statements must be filed in court under oath. Thus, the information presented under oath is treated as an assumption to supplement the testimony of under oath witnesses (see Supreme Court Jurisprudence No. 90 K/Sip/1973, dated May 29, 1975). Presumptive evidence cannot be used in isolation; other evidence must support it. An allegation is required when the available evidence is insufficient, such as when there is only preliminary evidence (Soeparmono., 2005). According to Article 1915 of the Indonesian Civil Code, an allegation is a judgement reached by a court from one clearly defined occurrence to another that is not yet clear. That is, claims are made to bolster other evidence, particularly preliminary evidence still unclear. The judge is responsible for evaluating the evidence of suspicion. According to jurisprudence No. 308 K/Sip/1959, dated November 11 1959, a court may make an educated guess based on the testimony of a witness who has not personally witnessed the event (*testimonium de auditu*).

Confessional evidence is a one-sided statement that vindicates the opposing party's rights or legal connection. Confessions may be made in front of or outside of the court. Because the opposing party's acknowledgment constitutes flawless evidence, the proof is no longer required ([Fakhriah, 2015](#)). Meanwhile, evidence of an oath is necessary to establish the existence of a right or an event. The parties to the dispute take this oath. There are two types of oath evidence: severing and complementing. A severance oath is an oath imposed on one party at the request of the other. At the same time, the supplemental oath is an oath administered by the judge to one of the parties to complete any evidence that is still unclear as to the foundation for the judgement ([Soeparmono., 2005](#)). According to jurisprudence No. 316 K/Sip/1974 issued March 25, 1976, prior evidence is required before enforcing a supplemental oath.

The Netherlands' Code of Civil Procedure regulates evidence. Written evidence, witness statements, expert testimony, suspicions, and electronic evidence are all examples of evidence referenced in the Code of Civil Procedure. There are three sorts of written evidence: ordinary written evidence, private deeds (*onderhandse akten*), and authentic acts (*authentieke akten*). Written evidence is frequently regarded as not a deed, lacking a certain evidentiary significance. According to the party proposing to prove it, the judge determines whether common written material can be used as proof. Written evidence is frequently used as the initial evidence, which means that the party submitting it must substantiate it with other evidence ([Rhee, 2020](#)).

If the doctor's agreement with the patient in the medical service contract is not in writing, no written evidence can be submitted. Thus, further evidence may be introduced in this case, particularly the testimony of witnesses who are aware of a legal relationship between the doctor and the patient. Additionally, you may utilize medical records, physician prescriptions, laboratory results, and proof of payment for medical services as preliminary evidence or suspicions. ([Rokhim, 2020](#)). The original evidence can be bolstered with witness testimony or additional oaths, establishing the credibility of the suspicion.

Generally, medical service contracts between doctors and patients do not include information about the parties' rights and obligations, especially if the contract is not in writing. However, based on the provisions of Article 1339 of the Indonesian Civil Law, the statutory standards, prevalent customs in the field of medical services, and propriety that must be observed in the execution of a medical service contract can be used as a reference for the rights and obligations of doctors and patients in medical service contracts.

Conclusion

The physician's legal connection with the patient is contractual in nature. The medical service contract establishes a legal relationship between the doctor

and the patient, with all its legal ramifications. In the event of a breach of the contract's performance, the parties may sue the other party in court for breach of contract. If the medical service contract is made orally and no written evidence exists, the proof of default in a medical service contract dispute might be based on a witness statement, confession, suspicion, and oath. Meanwhile, in terms of the contents of the medical service contract relating to the doctor's and patient's rights and obligations, it can refer to the relevant provisions of the law, prevalent custom in the field of medical services, as well as propriety that must be observed in the medical service contract's implementation.

The Study's Implications

This study has substantial consequences for both the theoretical and practical fields of medicine, ensuring that such crises between doctors and patients are not treated lightly. In this regard, this study explores the topic of alternate arrangements in the absence of a written contract between patients and physicians. To begin, patients may sue the doctor for abuse or activities that violate the oral and moral agreement. Similarly, this study demonstrates that issues about a breach of contract between doctor and patient can be resolved by using medical law that is accountable to both doctors and patients. In this sense, this study emphasizes that the patient's primary responsibility is to have a witness present while entering into any agreement with the doctors. Additionally, the study's implementation would assist the patient in being happy during oral contact with the doctor and dealing effectively with all of the obstacles and reasons for contract breach. This study will help medical practices ensure that the relationship between patients and physicians is suitable and that the contract between them is robust to achieve a win-win situation.

Future Directions

This study addressed the critical role of medical services, witnesses, and confessions in defending the doctor-patient relationship. However, future research should focus on the patient's behaviour, the doctor's behaviour, and the interaction atmosphere to determine how much contact affects. Additionally, future studies should utilize the data from this study to strengthen the interaction between doctors and patients by making relevant and meaningful recommendations.

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