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RESEARCH ARTICLE

A NEW PARADIGM OF DOCTOR-PATIENT RELATIONSHIP, DIGNIFIED JUSTICE PERSPECTIVE

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Abstract

The relationship between doctor and patients is highly personal, based on the patients' trust in the doctor. However, , it is not uncommon for this doctor-patient relationship to give rise to conflicts, disputes, and even legal claims and demands against doctors. Throughout history, the doctor-patient relationship has evolved through three models: thethe Activity-Passivity Relation, Guidance-Cooperation, and Mutual Participation. From the perspective of Dignified Justice, both the Activity-Passivity (Paternalistic) and Guidance-Cooperation models are not aligned with the Principles of Equality, the Principle of Balance between Rights and Responsibilities. They are contrary to the goal of humanizing individuals (ngewongkewong). The model of Mutual Participation is considered the optimal phase of the relationship, where doctors and patients are on an equal footing and bound by the principles of contract law, known as the Therapeutic Contract. However, this model falls short of the Principles of Moral Justice, the Principles of Spiritual Justice, and the fundamental principles of Dignified Justice that elevate intellect, creativity, and empathy as the highest drivers of the doctor-patient. We propose a new paradigm for this relationship, emphasizing humanity, justice, respect for moral and ethical norms, a familial bond, virtue, and spirituality. This model embodies the Dignified Justice of a Relationship.

Introduction:-

Knowledge of the relationship between doctors and patients has been known since ancient Greece, 18 centuries before the Common Era (BCE), with the discovery of a document known as The Code of Hammurabi or Kitab UndangUndang Hammurabi.[1] In the context of the doctor-patient relationship, The Code of Hamm Zurabi, an ancient Mesopotamian legal code, not only establishes a framework for compensating doctors (referred to as "tabib" or "dukun") for their medical services but also outlines specific consequences for doctors who engage in malpractice. This historic document demonstrates an early recognition of the importance of regulating the economic aspects of healthcare, ensuring fair payment for medical care, and holding medical practitioners accountable when their actions lead to harm or the loss of a patient's life, laying a foundational precedent for ethical and professional standards in medicine that have evolved over millennia. According to this legal code, a doctor can be punished if

[1]Sjahdeni, *Hukum Kesehatan Tentang Hukum Malapraktik Tenaga Medis*, 151.

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their provision of medical services results in harm or death to the patient.[2] Regarding compensation, The Code of Hammurabi states: 'A doctor whose patient dies during an operation shall be sentenced to lose his hand by cutting it off.[3]

The relationship between doctors and patients is highly personal, as it is founded on patients' trust in their doctors. As Wilson describes it, this intensely personal connection resembles the relationship between a priest and their congregation when the congregation is pouring out their feelings or the contents of their heart.[4] Nonetheless, it is frequently observed that the doctor-patient relationship becomes a source of conflicts, disagreements, and, in some cases, even legal actions and requests for compensation due to suspected medical malpractice. In such situations, patients may contend that they have received substandard or negligent medical care, leading to adverse outcomes, and they seek legal remedies or compensation for the harm they believe they have suffered. These disputes and claims often center on questions of medical competence, informed consent, and whether the care provided met established standards, thus highlighting the complex and multifaceted nature of the doctor-patient relationship within the healthcare system.[5]

The issue is how the doctor-patient relationship, which has endured throughout history, has genuinely unfolded. Has this enduring doctor-patient relationship adhered to the principles of justice, equality, and respect for the dignity and honor of humanity over time? The objective of this research is to examine and analyze the various models of the doctor-patient relationship and propose a new paradigm in the doctor-patient relationship based on the perspective of Dignified Justice.

Methodology:-

The type of research employed in this study is normative juridical research, a research approach grounded in legal norms and data obtained through a literature review.[6] This study's research methodology includes both descriptive and prescriptive analyses.[7]In this research, data collection involves systematically gathering, examining, and processing materials from literature sources and relevant documents and may also include materials obtained from the internet. This process is essential for studying and analyzing the legal and normative aspects of the doctor-patient relationship from a theoretical and practical standpoint.[8]

Literature Review:-

Doctor-Patient Relationship

Szas, Hollender, and Solisundertook a comprehensive examination of the progression of the doctor-patient relationship. Their analysis delineated three discernible phases, each characterized by a specific model: the Activity-Passivity Relation model, the Guidance-Cooperation model, and the Mutual Participation model. We shall now offer an overview of these phases and the corresponding models they entail.

Activity-Passivity Relation Model

Historically, the Active-Passive or Paternalistic model is a classic framework that has been recognized in the medical profession since the introduction of ethical codes, dating back to the era of Hippocrates several centuries ago. The Paternalistic doctor-patient relationship model primarily focuses on the physician's actions toward the patient, with the patient playing a passive role. In this model, the patient's ability to actively contribute is limited, resulting in minimal interaction.[9]

In his work on Legal Medicine, Solis notes, "There is no interaction between physician and patient because the patient is unable to contribute activity. This is the characteristic pattern in emergencies when the patient is unconscious."[10] In the Paternalistic model, proper interaction between the doctor and the patient is virtually absent

[2]Sjahdeni, 153.
[3]"Medical Malpractice Law: Ancient History to Recent Controversies."
[4]Komalawati, *Peranan Informed Consent Dalam Transaksi Terapeutik*.
[5]Sjahdeni, *Hukum Kesehatan Tentang Hukum Malapraktik Tenaga Medis*.
[6]Iskaq, *Metode Penelitian Hukum, Penulisan Skripsi, Tesis Serta Disertasi*, 18–26.
[7]*Buku Pedoman Penulisan Tesis Dan Ketentuan Ujian Komprehensif*, 14.
[8]Iskaq, *Metode Penelitian Hukum, Penulisan Skripsi, Tesis Serta Disertasi*, 134–36.
[9]Lumenta, *Citra Dan Perilaku*.
[10]*Legal Medicine*, 44.

because the patient cannot make meaningful contributions. This pattern is akin to emergencies where the patient is unconscious and merely receives medical care without offering responses or taking an active role.

The prototype of the Active-Passive relationship can be likened to the relationship between a parent and a very young child. In this context, the child is a recipient of all actions carried out by the parent, with the entire dynamic relying on the parent's perception of what is best for the child, akin to the "Father Knows Best" notion.[11]

The fundamental structure of the Paternalistic relationship places the doctor in a position of complete authority. According to Jones and Marmor,[12] this relationship fosters a sense of superiority in the doctor and results in the doctor exercising control over all aspects of the situation. Their research found that doctors no longer viewed their patients as conscious, sentient beings but as biomedical entities devoid of awareness and will.

For this reason, it is not an exaggeration when Jones refers to doctors as having a "God Complex"[13] since they bear sole responsibility for all potential risks arising from their actions. In this model, the primary focus of the doctor-patient relationship revolves solely around the medical aspects and does not extend into the legal realm.

Guidance-Cooperation Model[14]

In the Guidance-Cooperation model, doctors take on the role of providing advice and guidance to their patients. Meanwhile, the patient's part involves cooperation, following the doctor's recommendations. In this model, doctors no longer view their patients as mere biomedical entities but as individuals who can actively participate in their healing process.

This model of the doctor-patient relationship can be likened to the relationship between a parent and their adolescent child. In this analogy, parents offer advice and guidance, while the teenage child cooperates by following their parents' counsel. Parents begin to open up a dialogue with their adolescent child, even though the ultimate decision-making authority still rests with the parents. This model reflects a more collaborative and consultative approach where patient involvement and engagement are encouraged, leading to a more balanced dynamic in the doctor-patient relationship.

In his work on Legal Medicine, Solis stated: "Although the patient is ill, he is conscious and has the feeling and aspiration of his own. Since he suffers from pain, anxiety, and other distressing symptoms, he seeks help and is ready and willing to cooperate. The physician considers himself in a position of trust [15]."

In the context of the doctor-patient relationship, a sick patient is conscious and in need of a doctor's assistance, and they are willing to cooperate. In this phase, the patient begins to dialogue with their doctor. However, the patient is primarily provided with explanations about their illness, treatment, or medical procedures to be conducted by the doctor because the ultimate decision-making authority still resides with the doctor. The doctor perceives themselves as being in a position of trust.

Mutual Participation Model[16]

The Mutual Participation model, or the model of a Reciprocal Doctor-Patient Relationship, is the contemporary framework for doctor-patient interactions [17]. This model is grounded in the increasingly democratic sociological structure of today's society, reflecting a shift in values concerning the doctor-patient relationship. It arises from the awareness that all individuals possess equal rights, status, and dignity under the law.

Once characterized by a paternalistic phase (superior versus inferior), the doctor-patient relationship has transitioned towards a semi-paternalistic degree. It now stands in the degree of equality, where legal considerations have aligned themselves with the medical aspect. The doctor-patient relationship is now bound by a legal contract based on mutual agreement.

[11]Guwandi, *Rahasia Medis*, 26.
[12]*Essays in Applied Psycho-Analysis*.
[13]Lumenta, *Penyakit, Citra, Alam Dan Budaya*, 75.
[14]Guwandi, *Rahasia Medis*, 26.
[15]*Legal Medicine*, 33.
[16]Lumenta, *Citra Dan Perilaku*, 73.
[17]Astuti, *Transaksi Terapeutik Dalam Upaya Pelayanan Medis Di Rumah Sakit*, 104.

As we know, the doctor-patient relationship begins when a patient seeks the doctor's practice, presenting health concerns and seeking the doctor's assistance. This relationship formalizes a contract or agreement between the doctor and the patient, commonly referred to as the Therapeutic Contract, Therapeutic Agreement, Therapeutic Transaction, or Therapeutic Covenant, translated from the English term "Therapeutic Contract [18]." This contemporary model emphasizes equality, legal compliance, and shared responsibility in healthcare decisions, reflecting the evolving societal values and democratic principles today.

The Therapeutic Contract is an agreement between a doctor and a patient that establishes a legal relationship, creating rights and responsibilities for both parties. It is not necessarily a written agreement, but its fundamentals are based on national contract law principles, encompassing general provisions regarding agreements or contracts as stipulated in Book III of the Civil Code, which deals with contracts (Van Verbintennisen). For instance, it includes Article 1313 regarding the definition of a contract, Article 1320 specifying the essential conditions for a valid agreement or contract, and various other relevant articles.

However, it's crucial to note that the Therapeutic Contract fundamentally differs from typical contracts. The key distinction lies in the object of the agreement. In the Therapeutic Contract, the primary focus is not on the result, which is the patient's recovery (resultaatverbintenis), but on the maximum effort and process undertaken to achieve the patient's healing (inspaningverbintenis).[19]

After outlining the three phases or models of the doctor-patient relationship above, we will analyze these patterns using the Dignified Justice Theory. This theory will provide a framework for assessing the ethical and moral dimensions of these relationships in the context of healthcare.

Dignified Justice

KeadilanBermartabat/Dignified Justice is a legal theory pioneered by Professor Dr. TeguhPrasetyo, SH, MSi, a Professor of Law at the Universitas Pelita Harapan and the School of Military Law (Sekolah Tinggi Hukum Militer) in Jakarta. Professor Teguh has authored over 50 books related to the law field and its various aspects. Specifically, in his book "KeadilanBermartabat, Perspektif Teori Hukum," published in June 2021, he elaborates on the concept, core principles, and fundamental tenets of the Dignified Justice Theory. In other words, Pancasila reflects our very essence as individuals and as members of a sovereign and independent nation.

What is meant by the Dignified Justice Theory?

Dignified Justice, also known as The Dignified Justice, is the name of a legal theory, or, as known in English-language literature, a concept within Legal Theory, Jurisprudence, or Philosophy of Law. This theory delves into the principles and ethics that underlie justice and how it is applied in law. It serves as a framework for assessing fairness, equality, and ethical values within the legal system, and it is deeply rooted in the national spirit of Indonesia, as exemplified by Pancasila, the nation's foundational philosophy and way of life. The Dignified Justice Theory reflects these values and serves as a guide for evaluating legal and ethical matters in Indonesian society.[20]

Like any theory, the Dignified Justice Theory, besides serving as a tool to comprehend and explain laws and events, also holds significant value for individuals and society.[21] Its primary objective is to bring about justice that humanizes people or that respects individuals' dignity (keadilan yang ngewongkewong).[22]

However, as a result of a disciplined thought process, it can also be referred to as a philosophical or philosophical reflection.[23] In this context, the Dignified Justice Theory takes a philosophical approach to the law, which means understanding the law with a reverence for wisdom, in line with the essence of philosophy itself. Philosophical thinking leads to comprehension, and comprehension leads to ethical, virtuous, and right actions.

[18]Ratman, *Aspek Hukum Informed Consent Dan Rekam Medis Dalam Transaksi Terapeutik*, 17.
[19]Nasrun, *Etika Dan Hukum Kesehatan*, 24.
[20]Prasetyo and Barakatullah, *Filsafat, Teori & Ilmu Hukum, Pemikiran Menuju Masyarakat Yang Berkeadilan Dan Bermartabat*, 1.
[21]Prasetyo, *Pengantar Ilmu Hukum*, 211–12.
[22]Prasetyo, *Keadilan Bermartabat Perspektif Teori Hukum*, 2.
[23]Prasetyo, 7.

Philosophical thinking leads to understanding, and understanding leads to just, reasonable, and right actions. From a philosophical standpoint, we can identify several distinctive characteristics of the Dignified Justice Theory:[24]

First, the Dignified Justice Theory is an endeavor to comprehend or approach the thoughts of the Divine.[25] Secondly, it invites us to think radically but not dogmatically or skeptically. Thinking radically implies a mindset that encourages profound, innovative, and revolutionary thinking about an issue or concept. Those who think radically seek solutions beyond the norm or conventional thinking.

Third, according to the Dignified Justice Theory, humans are accountable to their God-given conscience in fundamental thinking.[26] For this reason, referring to the third characteristic, the Dignified Justice Theory views defense, will, and feeling as the highest authorities (imperium) for individuals to govern their lives. Consequently, the principle of the Dignified Justice Theory in humanizing individuals (ngewongkewong) can also be seen as an effort to utilize the opportunity given by God to assist fellow beings through thoughtful contemplation [27]

Examining justice from the standpoint of the Dignified Justice Theory, it's essential to reexamine Pancasila. Pancasila, as the guiding philosophy of the nation, holds a pivotal role in shaping the understanding of justice within the legal framework.[28]

In the context of Pancasila, legal justice finds its grounding in the second principle, "A Just and Civilized Humanity."[29] This principle serves as the bedrock for asserting that the legal justice embraced by Indonesian society humanizes individuals, placing the dignity and welfare of people at its core.

The core principles embraced by the Dignified Justice Theory are as follows:

1. Equality: Everyone is treated equally and equitably under the law, without discrimination (**Principle of Equality**).
2. Balance of Rights and Responsibilities [30]
   Justice must balance rights and obligations (**Principle of the Balance of Rights and Duties**).
3. Justice and Law: Justice is always inherent in the law. Without justice, there is no law. Moral strength is believed to be the force that upholds the principle of justice [31] (**Moral Justice Principle).**

Spiritual Justice: The legal system must provide justice with a spiritual dimension in the depth of the concept of freedom (**Principle of Spiritual Justice)** [32]

Result and Discussions:-

Expanding on the preceding discussion, we will now analyze the three phases or models characterizing the doctor-patient relationship. To achieve this, we will employ the Dignified Justice Theory as follows:

Activity-Passivity Model (Paternalistic) – In our view, this model is not in harmony with the principles and Equality Principle of the Dignified Justice Theory. In this relationship, the doctor and the patient are not in equal positions, and the lack of clarity on their rights and obligations fails to fulfill the Balance of Rights and Duties Principle.
Furthermore, in the Paternalistic pattern, the patient is treated merely as a biomedical object, which contradicts the principles and essence of the Dignified Justice Theory, which aims to humanize individuals (ngewongkewong).

Guidance-Cooperation Model (Membimbing dan Bekerjasama)

The doctor-patient relationship in this model shows some improvement compared to the first model.On the one hand, the patient is granted the opportunity for dialogue to express their opinions and actively cooperate regarding the medical services or procedures provided by the doctor. Here, the doctor offers advice, guidance, and

[24]Prasetyo and Barakatullah, *Ilmu Hukum Dan Filsafat Hukum, Studi Pemikiran Ahli Hukum Sepanjang Zaman*, 5–6.
[25]Prasetyo, *Keadilan Bermartabat Perspektif Teori Hukum*, 25.
[26]Prasetyo, 20.
[27]Prasetyo, 22.
[28]Prasetyo and Barakatullah, *Filsafat, Teori & Ilmu Hukum, Pemikiran Menuju Masyarakat Yang Berkeadilan Dan Bermartabat*, 367–70.
[29]Prasetyo, *Keadilan Bermartabat Perspektif Teori Hukum*, 87.
[30]Prasetyo, 109.
[31]Prasetyo, 110–13.
[32]Prasetyo, 106–7.

explanations about the medical procedures to be performed on the patient.However, on the other hand, the decision regarding which medical procedures to undertake remains in the hands of the doctor. The patient cannot choose the best course of action for themselves.

In our opinion, such a situation still does not fully align with the Equality Principle, the Balance of Rights and Duties Principle, and the effort to provide medical care that is Just and Dignified. However, there is some progress compared to the Paternalistic model.

The Mutual Participation Model (Saling BerperanSerta) is considered the ideal and best phase in the current context of the doctor-patient relationship compared to the two previous models or stages.

In the Mutual Participation relationship, doctors and patients have nearly equal power and mutually depend on each other. The patient's rights are ensured, and the doctor must fulfill their duties. This phase represents a contractual relationship that follows national legal standards in agreements and obligations.

When the doctor-patient relationship does not progress well, it can result in an imbalance between the rights and obligations of both parties, leading to legal implications. Typically, patients often feel disadvantaged and, as a result, may demand accountability from the doctor for healthcare procedures and medical actions.

In further developments, the doctor-patient relationship in the Mutual Participation phase tends to focus primarily on contractual aspects, discussing the doctor's responsibilities and the rights and obligations of both parties, especially when conflicts, disputes, or patient lawsuits against the doctor are at play.

From the perspective of the Dignified Justice Theory, even though the doctor-patient relationship already satisfies the Equality Principle and the Balance of Rights and Duties Principle, it, in our opinion, falls short of the Moral Justice Principle, the Spiritual Justice Principle, and the fundamental principles of Dignified Justice that humanize individuals and place conscience, reason, will, and emotion as the highest authorities in the doctor-patient relationship. Here, the doctor-patient relationship is reduced to a rigid, soulless contract devoid of any sense of nobility.

In our opinion, several factors contribute to this situation. These factors include:

1. A pure legalistic understanding of the doctor-patient relationship that solely examines 'law as it is written in the books,' following a positivist, doctrinal, or dogmatic orientation. Such a perspective is rooted in the belief that law is just positive norms within the legislative system.
2. The process of applying health law tends to adhere to positivist views, neglecting moral, ethical, nobility, compassion, and spiritual aspects, thereby blinding the conscience and consciousness of the involved parties in the doctor-patient relationship.
3. The shift, like medical services, initially characterized by humaneness, has become more practical and materialistic, oriented towards business and economic gain. This transformation is also fueled by the rapid growth and development of the healthcare service industry, accompanied by significant financial investments

Conclusion:-

Based on the above analysis, we conclude that the three phases of the doctor-patient relationship within these three models are not the desired (ideal) models in the present era. They have not been able to meet the principles, foundations, and fundamental goals of Dignified Justice. They do not fully align with the regulations and values emphasizing human dignity, equality, respect for moral and ethical norms, compassion, and spirituality. Instead, they often reduce the doctor-patient relationship to mere contractual arrangements, a significant departure from the more humane and patient-centered approach that should be at the core of healthcare. In essence, these models fail to elevate the doctor-patient relationship's intellectual, creative, and empathetic aspects, thus rendering it more business-oriented and materialistic. As a result, a fundamental shift is needed to redefine this relationship, emphasizing values and principles that embody Dignified Justice.

New Paradigm On Doctor-Patient Relationship

Building on this conclusion, we propose a new paradigm or theory for the doctor-patient relationship deeply rooted in humanity, embodying the thoughts and will of a higher power and prioritizing principles of justice, moral and ethical norms, familial bonds, virtue, and spirituality.

We refer to this new model of the doctor-patient relationship as the "Dignified Justice of Relationship." This paradigm aims to introduce a fourth phase in the doctor-patient relationship, complementing the existing models that have existed for some time. It aspires to redefine the nature of this relationship and align it with the principles of Dignified Justice, thus promoting a more humanistic, compassionate, and ethical approach to healthcare.

Finally, we would like to quote what Prof. Dr. SamsuridjalDjauzi, Sp.PD said about the doctor-patient relationship:

The era that positioned doctors as superior has passed. Doctors and patients are now on an equal footing. It would be better if their relationship leans towards friendship. We should avoid doctor-patient relationships that are heavily business-oriented. All actions are considered from a business perspective. Medical services are humanitarian services and should always uphold human values [33]

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[33]Djauzi, "Asa Bagi Perempuan Positiv HIV."