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THE ROLE OF INFORMED CONSENT IN PROVING MEDICAL MALPRACTICE CASES (REVIEW OF INDONESIAN SUPREME COURT'S DECISION No. 233 K/PID.SUS/2021)

Benny Wijaya[1] , Anggraeni Endah Kusumaningrum[2]
[1] Faculty of master of law, Universitas 17 Agustus Semarang Indonesia,
Magister Ilmu Hukum Universitas 17 Agustus 1945 Semarang, Indonesia
Email : dokterbenny@gmail.com

Abstract.

The State of Indonesia in providing protection for patients who receive medical services, doctors and dentists in carrying out medical practices are required to provide medical services according to professional standards and standard operating procedures in accordance with Indonesian law no. 29 of 2004 article 51 letter a,.Informed consent is one of the requirements that must be met before doctors perform medical procedures on their patients. However, even though there is Indonesian Law No. 29 of 2004, there are still doctors who commit negligence by providing services that are not in accordance with procedures by not asking for approval for medical actions that lead to malpractice claims from their patients.. The research conducted is classified as normative juridical research, using primary legal materials and secondary materials from laws and regulations, court decisions, legal theory, and existing journals as a basis.. The doctor's error by taking actions that are not in accordance with the procedure in the form of without asking for informed consent is an administrative violation so it is categorized as administrative malpractice. Indonesian Supreme Court Decision No. 233 K/PID.SUS/2021 which imposes a prison sentence in an administrative malpractice case on a legal basis that has been declared non-binding by the Indonesian Constitutional Court is an act of carelessness. However, the guilty verdict for the defendant was already correct, because the defendant did not give informed consent before carrying out a risky procedure for his patient.

Keywords: *Informed; Consent; Malpractice*

Abstrak.

Negara Indonesia dalam memberikan perlindungan bagi pasien yang mendapat pelayanan kedokteran, dokter dan dokter gigi dalam menjalankan praktik kedokteran wajib memberikan pelayanan kedokteran sesuai standar profesi dan standar prosedur operasional sesuai dengan undang-undang Indonesia no. 29 Tahun 2004 pasal 51 huruf a,. Informed consent merupakan salah satu persyaratan yang harus dipenuhi sebelum dokter melakukan tindakan medis terhadap pasiennya. Namun demikian, meskipun sudah ada Undang-undang Republik Indonesia No. 29 Tahun 2004, masih terdapat dokter yang melakukan kelalaian dengan memberikan pelayanan yang tidak sesuai prosedur dengan tidak meminta persetujuan atas tindakan medis yang menimbulkan tuntutan malpraktek dari pasiennya. penelitian yang dilakukan tergolong penelitian yuridis normatif, dengan menggunakan bahan hukum primer dan bahan sekunder dari peraturan perundang-undangan, putusan pengadilan, teori hukum, dan jurnal yang ada sebagai dasar. Kesalahan dokter dengan melakukan tindakan yang tidak sesuai prosedur

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Benny Wijaya, dokterbenny@gmail.com

dalam bentuk tanpa meminta informed consent merupakan pelanggaran administratif sehingga dikategorikan sebagai malpraktik administratif. Putusan Mahkamah Agung Republik Indonesia No. 233 K/PID.SUS/2021 yang menjatuhkan pidana penjara terhadap kasus malpraktik administratif dengan dasar hukum yang telah dinyatakan tidak mengikat oleh Mahkamah Konstitusi Republik Indonesia merupakan tindakan kecerobohan. Namun, vonis bersalah terdakwa sudah benar, karena terdakwa tidak memberikan persetujuan sebelum melakukan prosedur yang berisiko terhadap pasiennya.

Kata kunci: Diinformasikan; Izin; Malpraktik

A. PRELIMINARY

We as social beings in life are obliged to help each other. The profession of a doctor as a health worker also has an obligation to help each other, especially in the field of health services to the community. This is in accordance with the Indonesian Code of Medical Ethics (KODEKI) which requires doctors to take an oath to serve humanity.
Health is one of the Human Rights that we have started since we were still in the womb. Therefore, health services which are the obligation of doctors are the people's right to get them.

Fulfillment of the right to public health is the concern of the World Health Organization (WHO), which was established on April 7, 1948. In the Preamble the World Health Organization Constitution makes it clear that health is a basic human right regardless of race, religion, political beliefs, economic or social conditions..[1]
The state in carrying out its obligations to provide health services, medical practice is regulated and protected by the state through Indonesian law, namely Law no. 29 of 2004 concerning Medical Practice. In Law no. 29 of 2004 concerning Medical Practice, medical practice is regulated to provide protection to patients; maintain and improve the quality of medical services provided by doctors and dentists; and provide legal certainty to the public, doctors and dentists.[2]
The state, in order to provide protection for patients who receive the services of doctors, doctors and dentists in practicing medicine, is required to provide medical services according to professional standards and standard operating procedures in accordance with Law no. 29 of 2004 article 51 letter a.
However, even though there is Law no. 29 of 2004, there are still doctors who commit negligence which results in malpractice claims from their patients. One of them is the case against dr. Elisabeth Susana, M.Biomed who has caused blindness in her patients. Therefore, the Supreme Court of Indonesia has decided that through Decision Number 233 K/Pid.Sus/2021, doctors are guilty of deliberately carrying out medical practices without fulfilling their obligation to provide medical services in accordance with professional standards in the form of not seeking informed consent and being punished. with imprisonment for 2 (two) months.

This study aims so that in the future there will be no more doctors who practice

[1] Alfionita Giovani Masau. 2019. *Pemenuhan Hak Pelayanan Kesehatan Bagi Masyarakat Di Rumah Sakit Lakipadada Kabupaten Tana Toraja*. Jurnal Phinisi Integration Review Tahun 2019 (Vol. 2 No. 2), pg. 175.

[2] Jogloabang. 2021. *UU 29 tahun 2004 tentang Praktik Kedokteran*. https://www.jogloabang.com/pustaka/uu-29-2004-praktik-kedokteran, accessed on May 31, 2022

medicine negligent in carrying out their obligations to make informed consent so that no more patients are harmed due to negligence of doctors.

B. RESEARCH METHODS

The research to be carried out is classified as normative juridical research, where law is conceptualized as what is written in statutory regulations using primary legal materials and secondary materials from statutory regulations, court decisions, legal theory, and journals that have been published. there as a basis. This type of normative research uses qualitative analysis, namely by explaining existing data with words or statements, not with numbers.[3]

C. RESULTS AND DISCUSSION

Malpractice in Medical Practice

Malpractice according to the Big Indonesian Dictionary (KKBI) is medical practice that is wrong, inappropriate, violates the law or code of ethics,[4] meanwhile, according to Peter Salim in The Contemporary English Indonesia Dictionary, malpractice means wrong action, malpractice also means bad practice.[5]

Quoting Black's Law Dictionary, malpractice in medical practice can be interpreted as all wrong behavior, lack of skill in an unreasonable level of measurement. Failure to provide professional services according to a reasonable level of skill and intelligence among the medical profession, resulting in injury, loss or loss to recipients of health services. This includes any conduct of professional misconduct, lack of substandard skills or lack of due care or legal obligations, bad or illegal practices or immoral behavior.[6]

Sulaiman, SH, MH (2020) states that doctors commit civil malpractice when doctors default. What is called a default is if you don't do according to the agreement, do according to the agreement but it's too late, do according to the agreement but it's not perfect, and do what according to the agreement shouldn't be done.[7]

In the existing laws and regulations in Indonesia, there is no clear definition of malpractice. However, in the past, Indonesia had laws that discussed medical malpractice. Indonesian Law No. 6 of 1963 concerning Health Workers Article 11 paragraph (1) letter b, the essence of which is health workers can be subject to administrative action if they neglect their obligations, do something that should not be done by a health worker, both considering the oath of office and remembering the oath as a health worker. health, ignoring something that should be done by health workers, violating a provision according to or based on Law No. 6 of 1963.

But this does not reduce the provisions in the Criminal Code (KUHP) and other laws

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[3] Skripsi Tesis. 2013. *Pengertian Penelitian Hukum Normatif* , https://idtesis.com/pengertian-penelitian-hukum-normatif-adalah/, accessed on June 1, 2022

[4] Kamus Besar Bahasa Indonesia. *Malapraktek*, https://kbbi.web.id/malapraktik, accessed on June 1, 2022

[5] Ninik Mariyanti. 1988. *Malapraktek Kedokteran*. Jakarta: PT.Bina Aksara, pg. 37

[6] Dr. H. Syahrul Machmud, S.H., M.H. 2008. *Penegakan Hukum Dan Perlindungan Hukum Bagi Dokter Yang Diduga Melakukan Medikal Malpraktek*. Bandung: CV. Mandar Maju, pg. 23

[7] Sulaiman, SH, MH. 2020. *Aspek Hukum Perdata Dalam Kesehatan (Civil Malpraktik), Etika Profesi & Hukum Kesehatan*. Bandung: Widina Bhakti Persada, pg. 153

and regulations in the Republic of Indonesia.

Indonesian Law No. 6 of 1963 has been declared no longer valid and replaced by Indonesian Law No. 23 of 1992 concerning Health. However, according to Dr. H. Syahrul Machmud, S.H., M.H., the provisions of Article 11 paragraph (1) letter b of the Indonesian Law on Health Workers can be used as a reference for the meaning of malpractice.[8]

From this we can conclude that malpractice in the medical field can be defined as an act of negligence that is not in accordance with what it should be or an action that is not in accordance with existing procedures or legislation and ethics, errors or lack of competence of doctors in treating a patient, doing something that should be done but late or imperfect, doing something that shouldn't be done and not doing something that should be done, causing a bad outcome for the patient.

Medical malpractice is different from Medical Error. Bryan A. Liang defines medical error as an error, an event that is not expected to occur, and an unwanted event in the provision of medical services that may or may not result in injury to the patient. Medical errors can occur due to failure of therapy in surgery and failure in administering medication.

Failure / unsuccessful therapy in surgery can be caused by complications, accidents (surgical mishaps), anesthetic accidents. Unsuccess / failure in providing treatment can be due to complications from treatment, medical accidents, errors in determining the diagnosis, and errors in choosing drugs.[9]

Medical malpractice is also different from patient safety incidents. In Regulation of the Minister of Health of the Republic of Indonesia No. 1691/ MENKES/ PER/ VIII/ 2011 concerning Hospital Patient Safety, patient safety incidents are anything that happens intentionally or unintentionally and conditions result in or have the potential to cause injury to patients.[10]

Legal Aspects of Medical Malpractice Actions According to Legislation in Indonesia

There are several types of malpractice, namely Ethical Malpractice and Juridical Malpractice.[11] Ethical malpractice is health workers taking actions that are contrary to their professional ethics as health workers, in the medical profession it means violating the Indonesian Medical Code of Ethics (KODEKI), such as withdrawing unfair rewards, taking over patients without the approval of colleagues, praising oneself in front of patients, ignoring their own health, substandard doctor services, issuing false certificates, disclosing office secrets, not increasing knowledge and knowledge, abortions, immoral acts, and refusing to provide emergency assistance to people who are suffering.[12]

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[8] Ibid pg. 24

[9] Prasko. 2011. *Medical Error Dalam Pelayanan Medis*, http://prasko17.blogspot.com/2011/07/medical-error-dalam-pelayanan-medis.html, accessed on June 2, 2022

[10] Merita Arini. 2020. *Keselamatan Pasien (Patient Safety Incident) dan Klasifikasinya*, http://merita.staff.umy.ac.id/2020/01/02/keselamatan-pasien-patient-safety-incident-dan-klasifikasinya/, accessed on June 2, 2022

[11] Riska Andi Fitriono. 2016. *Penegakan Hukum Malpraktik Melalui Pendekatan Mediasi Penal*. Jurnal Yustisia Tahun 2016 (Vol.5 No.1), pg. 89

[12] Ibid

Juridical malpractice consists of civil malpractice, criminal malpractice and administrative malpractice. Civil malpractice occurs when there are things that cause non-fulfillment of the contents of the agreement (default) in therapeutic transactions by health workers, or the occurrence of unlawful acts, causing harm to patients.[13]
Criminal malpractice occurs when a patient dies or is disabled due to the carelessness of health workers. Or not careful in making efforts to care for patients who cause death or disability.[14] Administrative malpractice occurs when a doctor or other health worker violates applicable state administrative law, for example practicing a doctor without a license practice, perform actions that are not in accordance with the permit, practice with an expired license, and carry out practice without making medical records.[15]

Reviewing the contents of Indonesian Law No. 29 of 2004 we will find criminal aspects in medical practice. Provisions containing criminal aspects are contained in Chapter X of the Criminal Provisions articles 75 to 80. However, several articles have been annulled by the Indonesian Constitutional Court. Those articles are: Article 75 paragraph (1), Article 76, Article 79 and Article 79 letter c through the Indonesian Constitutional Court Decision No. 4/PUU-V/2007.
However, if we look at the decisions of the Indonesian Constitutional Court, only those related to imprisonment and confinement are annulled, while the others still have binding legal force. Therefore the rules of article 75 paragraph (1) if a doctor or dentist practices without having a permanent registration certificate can be subject to a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah). Likewise article 76 which stipulates that every doctor or dentist who practices without a license to practice can still be punished with a maximum fine of Rp. 100,000,000.00 (one hundred million rupiah). Judging from Article 79, a doctor or dentist who deliberately does not put up a nameplate and makes medical records can still be punished with a maximum fine of Rp. 50,000,000.00 (fifty million rupiah).[16]
Likewise, doctors and dentists who do not provide medical services in accordance with professional standards and standard operating procedures and according to the patient's medical needs, do not refer to other doctors/dentists who have better expertise or abilities, if they are unable to carry out an examination or treatment. , does not keep everything he knows about the patient a secret, including after the patient dies, does not carry out emergency assistance on a humanitarian basis, unless he is sure that someone else is on duty and is capable, and does not increase knowledge and keep abreast of scientific developments in accordance with Article 51 letters a to e, doctors and dentists can still be fined a maximum of Rp. 50,000,000.00 (fifty million rupiah) in accordance with article 79 letter c of Indonesian Law no. 29 of 2004.
In the Criminal Code (KUHP) we can also find several articles that can be used to prosecute perpetrators of medical malpractice, such as article 378 which discusses fraud. Articles 285, 286 and 290 if they are related to acts of fornication and rape. Articles 299, 348 and 349 if they relate to abortion. Articles 344 and 345 when it relates

[13] Ibid pg. 90
[14] Ibid
[15] Soedjatmiko. 2001. *Masalah Medik dalam Malpraktek Yuridik*. Malang: Citra Aditya Bakti, pg. 36
[16] Panel of Judges of the Constitutional Court of the Republic of Indonesia. 2007. *Decision of the Constitutional Court of the Republic of Indonesia No. 4/PUU-V/2007*. Jakarta: Constitutional Court of the Republic of Indonesia, pg. 120

to recommending and helping patients carry out euthanasia. Article 322 if it relates to divulging a patient's medical secrets that are obliged to be kept by a doctor. Articles 359, 360 and 361 if they relate to negligence which causes the patient to suffer serious injury or death. Article 386 when it relates to giving counterfeit drugs to patients. Articles 263 and 267 if they relate to providing fake letters and fake certificates related to the patient's condition.

In law we recognize the existence of the principle of Lex specialis derogat lex generalis, namely a legal principle in which special regulations can overrule general regulations, therefore the articles contained in the Criminal Code (KUHP) and regulated also with Indonesian Law no. 29 of 2004, the legal regulations used are Indonesian Law no. 29 of 2004.

The civil law aspect of medical malpractice is in the form of default by health workers in therapeutic transactions or acts against the law, causing harm to patients. Therapeutic transactions that occur between doctors and patients in accordance with legal ties in the provisions of the Civil Code (KUHPerdata) 1313 jo 1234 are bonds between two or more legal subjects to do or not do something or give something. Health workers are considered in default if they do not do what they are capable of doing, do what they are capable of but not as promised, do what they can but do it too late, and do something that according to the contract they are not allowed to do.[17]

The default referred to in the civil liability of a doctor is a default for doing what he is capable of but not according to what was promised or below standard, which means that a doctor lacks or does not fulfill the conditions stated in an agreement he has made with his patient. The lawsuit based on default uses the provisions in Article 1371 of the Civil Code (KUH Perdata) which states: "Causing injury or disfigurement of a person's limbs on purpose or because of carelessness, entitles the victim not only to claim reimbursement for medical expenses, but also to claim compensation for losses caused by said injury or disfigurement. Also compensation for this loss is assessed according to the position and ability of both parties and according to circumstances. This last provision generally applies in terms of assessing the loss caused by a crime against a person."[18]

In accordance with the provisions of this article, a lawsuit based on this default must have evidence that the doctor really entered into an agreement, and carried out intentional actions or actions that were not careful, or a crime, as well as evidence of injuries or defects in the patient's limbs.

In line with the above statement, article 1365 of the Civil Code (KUHPerdata) stipulates that all unlawful acts that cause harm to other people, in this case the patient, the doctor who caused the loss is obliged to compensate for the loss. If the patient's loss is caused

[17] I Ketut Gde Juliawan Saputra, Anak Agung Sri Utari. 2015. *Perbedaan Wanprestasi Dengan Penipuan Dalam Perjanjian Hutang Piutang*. Jurnal Kertha Wicara Tahun 2015 (Vol. 03 No. 03), http://ojs.unud.ac.id/index.php/kerthawicara/article/view/15363/10204, accessed on June 3, 2022, pg. 4

[18] Ninik Mariyanti. 1988. *Malpraktek Kedokteran dari Segi Hukum Pidana dan Perdata*. Jakarta: Bina Aksara, pg. 6.

by the doctor's negligence or lack of caution, according to Article 1366 of the Civil Code (KUHPerdata), a doctor must be responsible for the losses he has caused.
We can also get civil aspects in Indonesian Law Number 36 of 2009 concerning Health. Article 58 paragraph (1) which states that patients can claim compensation from doctors or health facilities that cause losses due to errors or negligence in the health services they receive.
From the description above it is clear that the opinion of Dr. Anggraeni E.K, SH, M.Hum that in practice, health laws overlap with ethical norms of health. This is because health law deals with individual values and social values, especially with regard to fundamental principles.[19]

Analysis of the Indonesian Supreme Court Decision on the Case of dr. Elisabeth Susana, M.Biomed

Case of dr. Elisabeth Susana, M.Biomed happened when Agita Diana Fitri came to dr. Elisabeth Susana, M.Biomed for an aesthetic procedure on September 15 2017. The defendant injected hyaluronic acid filler into Agita Diana Fitri's nose 2 (two) times. After the injection, the patient stated that he could not see in his left eye and fainted. The suspect was given an injection of hyaluronidase as an antidote for the drug that had been previously injected, but the patient's left eye was still unable to see. Because there was no change in Agita Diana Fitri, Agita Diana Fitri was taken to Siloam Hospital but after one week there was no change she was transferred to Wahidin Hospital, still no change.[20]
Blindness is one of the risks involved in filler injection, but the ratio is very small, namely 1.9/100,000 actions and this is known to the defendant. Blindness after injecting hyaluronic acid filler into the nose means it is a complication of the procedure, so that blindness does not occur as a result of an error. This can be categorized as a medical error, not as malpractice.

Patients who experience blindness after carrying out this procedure indicate that there is a suspicion of negligence, because the defendant deliberately did not fulfill the obligation to provide medical services in accordance with professional standards and standard operating procedures as well as the patient's medical needs and because of his mistake (negligence) caused other people to receive heavy injuries.[21]
The Defendant is a general practitioner who does not have a special competency certificate as a beauty and aesthetic doctor, but the Defendant has attended more than 20 (twenty) certified seminars and workshops.

Based on a letter from the Makassar Branch of the Indonesian Doctors Association (IDI) Number 489/IDI-CAB/MKS/5/2019, dated May 8 2019, regarding Notification of reports of alleged malpractice by dr. Elisabeth Susana, addressed to the Director of Special Criminal Investigation of the South Sulawesi Regional Police regarding the

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[19] Anggraeni Endah Kusumaningrum. 2020. *Sejarah, Asas Dan Permasalahan Moral, Etika dan Hukum Dalam Pelayanan Kesehatan, Etika Profesi & Hukum Kesehatan*. Bandung: Widina Bhakti Persada, pg. 66
[20] Panel of Judges of The Supreme Court of the Republic of Indonesia. 2021. *Decision of the Supreme Court of the Republic of Indonesia, Nomor 233 K/Pid.Sus/2021*. Jakarta: Directory of the Supreme Court of the Republic of Indonesia, pg. 8
[21] Ibid pg. 1

results of the IDI Makassar Branch Medical Ethics Honorary Council (MKEK) meeting which basically concluded that the Defendant should be suspected of committing negligence in the form of not making written informed consent (submission of procedures and approval of medical action) to patient and subsequently the MKEK IDI Makassar Branch Letter was used as the basis for the Makassar City Health Office as in its letter Number 4407889/DKK/VII/2019 dated July 29 2019 which essentially revoked the Defendant's Practice License (SIP).

In its decision MKEK IDI did not state that the defendant violated the competence of a doctor even though the defendant was only a general practitioner, not a skin and genital specialist. However, in our opinion, this does not mean that MKEK IDI admits that with the 20 certificates and workshops that the defendant has undergone, he has been able to provide competence to practice beauty like a specialist. In Indonesia, until now, medical aesthetics has not been specifically regulated through laws and regulations, so there is no clear division of competence between general practitioners and specialist doctors. Competency standards for general practitioners and specialist doctors who will practice medical aesthetics also do not yet exist.[22] Here MKEK IDI upholds the principle of legality so that it does not state that the defendant does not have competence for the medical action he is carrying out.

Informed consent based on the Regulation of the Minister of Health (Permenkes) of the Republic of Indonesia number 290/Menkes/PER/III/2008, informed consent is an agreement given by a patient or family who has received a complete and detailed explanation of the medical procedure to be performed or conducted. The Medical Code of Ethics contains aspects related to the principles of autonomy and informed consent. In article 5 of the Indonesian Code of Ethics, it is stated that "any action or doctor's advice that may weaken psychological and physical endurance, must obtain the consent of the patient/family and is only given for the benefit and good of the patient".[23]

In our opinion, the doctor's mistake by taking an action that is not in accordance with the procedure in the form of without asking for informed consent is an administrative violation so it is categorized as administrative malpractice.

The Public Prosecutor's Criminal Indictment at the Makassar District Attorney's Office on April 8 2020 stated that the defendant had been legally and convincingly proven guilty of committing the crime "The crime of practicing medicine and because of his negligence caused other people to receive serious injuries" as stipulated and punishable by crime in Article 79 letter c in conjunction with Article 51 letter a Law Number 29 of 2004, and Article 360 Paragraph (1) of the Criminal Code (KUHP) which stipulates that causing a person to be seriously injured is punishable by imprisonment for a maximum of five years, or imprisonment for -one year in duration.

The prosecutor therefore demanded that the defendant be imprisoned for 4 (four) years and fined Rp. 30,000,000.00 (thirty million rupiahs) with the stipulation that if the fine is not paid then it will be replaced with imprisonment for 3 (three) months.

Makassar District Court Decision Number 1441/Pid.Sus/2019/PN Mks., dated July 1, 2020, found the defendant not legally and convincingly proven guilty of committing a crime. Therefore the public prosecutor filed an appeal on July 6 2020. Considering that

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[22] Erni Yati. 2020. *Urgensi Pengaturan Praktek Estetika Medis Yang Dilakukan Dokter Umum Di Indonesia*, Jurnal Aktualita Tahun 2020 (Vol. 3 No. 1), pg. 32-33

[23]dr. Jocelyn Prima Utami. *Informed Consent Bukanlah Sekadar Lembar Persetujuan Medis*, https://www.alomedika.com/informed-consent-bukanlah-sekedar-lembar-persetujuan-medis, accessed June 4 2022

Article 244 of the Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Code and with the decision of the Indonesian Constitutional Court Number 114/PUU-X/2012 dated March 28 2013 which states the phrase "except for acquittals" in Article 244 of the Indonesian Law Number 8 of 1981 concerning the Criminal Procedure Code does not have binding legal force, the Indonesian Supreme Court has the authority to examine the cassation request against the acquittal decision.
In the Supreme Court decision, it granted the cassation request and stated that it was found that the defendant was legally and convincingly proven guilty of committing the crime "Deliberately in carrying out medical practice he did not fulfill the obligation to provide medical services in accordance with professional standards" so that he was sentenced to imprisonment for 2 (two) months, because the defendant's actions have fulfilled the criminal elements in Article 79 letter c in conjunction with Article 51 letter a of the Indonesian Law Number 29 of 2004 concerning Medical Practice as charged.
In our opinion, the demands of the public prosecutor were not accurate because they used criminal charges which had been declared non-binding and legally binding by the Indonesian Constitutional Court. Likewise, the Indonesian Supreme Court Judge was not careful in giving a 2 (two) month prison sentence to the defendant because the Indonesian Constitutional Court's decision had stated in 2007 that relating to imprisonment and confinement in Article 79 letter c of the Indonesian Law Number 29 of 2004 not legally binding. In our opinion, what is more appropriate is a fine for the defendant because he failed to provide informed consent, which is administrative malpractice. However, the decision of the guilty defendant taken by the Indonesian Supreme Court Judge was correct, but a more appropriate sentence is a maximum fine of Rp. 50,000,000.00 (fifty million rupiah) in accordance with Article 79 letter c Law No. 29 of 2004.

D. CLOSING

Malpractice in the field of medicine can be defined as an act of negligence that is not in accordance with what it should be or an action that is not in accordance with existing procedures or legislation and ethics, errors or lack of competence of doctors in treating a patient, doing something that should be done but late or imperfect. doing something that shouldn't be done and not doing something that should be done causing a bad outcome for the patient. We can classify malpractice into ethical malpractice and juridical malpractice. Juridical malpractice itself can be divided into administrative malpractice, criminal malpractice and civil malpractice.
In Indonesian legislation, ethical malpractice can be found in the Indonesian Code of Medical Ethics (KODEKI). Meanwhile, we can find arrangements regarding administrative malpractice in Indonesian Law no. 29 of 2009. As for arrangements regarding criminal malpractice, apart from the Criminal Code (KUHP), we can also find it in Article 79 of Indonesian Law No. 29 of 2004. For civil malpractice we can use the provisions contained in the Civil Code (KUHPerdata).
Indonesia does not yet have regulations that specifically regulate medical aesthetics with a clear division of competence between general practitioners and specialists. Competency standards for general practitioners and specialist doctors who will practice medical aesthetics also do not yet exist.
In the Decision of the Indonesian Supreme Court Number 233 K/Pid.Sus/2021, the Indonesian Supreme Court Judges have been careless in imposing criminal sentences with crimes that have been declared non-binding.

In the malpractice case committed by dr. Elisabeth Susana, M.Biomed, patients can use the Indonesian Supreme Court decision which states that dr. Elisabeth Susana, M.Biomed has carried out medical practices that do not fulfill obligations in providing medical services according to professional standards, to get justice due to the injuries they have experienced, patients can continue lawsuits in civil courts because they fulfill the provisions in Article 1371 juncto article 1365 and article 1366 The Civil Code (KUHPerdata) and Indonesian Law Number 36 of 2009 concerning Health. article 58 paragraph (1). So that in the future the Supreme Court Judges will study more carefully the laws and regulations that apply to medical practice so that there is no longer any punishment using provisions that have been declared non-binding by the Constitutional Court.

LIBRARIES

Libraries in the form of book titles:

Ninik Mariyanti. 1988. Malapraktek Kedokteran (p. 37). Jakarta: PT.Bina Aksara.

Dr. H. Syahrul Machmud, S.H., M.H. 2008. Penegakan Hukum Dan Perlindungan Hukum Bagi Dokter Yang Diduga Melakukan Medikal Malpraktek (p. 23). Bandung: CV. Mandar Maju.

Soedjatmiko. 2001. Masalah Medik dalam Malpraktek Yuridik (p. 36). Malang: Citra Aditya Bakti.

Ninik Mariyanti. 1988. Malpraktek Kedokteran dari Segi Hukum Pidana dan Perdata (p. 6). Jakarta: Bina Aksara.

Dr. Anggraeni Endah Kusumaningrum, SH,MHum. 2020. Sejarah, Asas Dan Permasalahan Moral, Etika dan Hukum Dalam Pelayanan Kesehatan Dalam Buku Etika Profesi & Hukum Kesehatan (p. 66). Bandung: Widina Bhakti Persada.

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Libraries in the form of scientific magazines/journals:

Alfionita Giovani Masau. 2019. Pemenuhan Hak Pelayanan Kesehatan Bagi Masyarakat Di Rumah Sakit Lakipadada Kabupaten Tana Toraja. Jurnal Phinisi Integration Review Tahun 2019, 2 (2), 175.

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Indonesian government. The Criminal Code

Indonesian government. Code of Civil law

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