CONCEPT TO COMPLETION OF LEGAL ERROR IN PRACTICE MEDICINE

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Abstract: *This study aims to provide an overview of the concept of a legal settlement to errors in medical practice. This research was conducted by using research methods Normative, by abstracting of legal materials both primary, secondary and tertiary qualitative approach. Results of this study concluded that the concept of a legal settlement to errors in medical practice subject to all positive law justice system in both criminal law, civil law, the law of the State administration, consumer protection, code of conduct and discipline of medicine, thus potentially cause legal uncertainty for the medical profession as well as optimizing the impact on inhibition of improving the quality of public health services in general.*

Keywords*: the concept of the legal settlement, the error, the practice of medicine*

1. INTRODUCTION

Health services in Indonesia serves as a health care system for all Indonesian citizens without exception. This is very important because the right to health (right to health) is the norm of human rights are explicitly guaranteed in Article 12 of the International Covenant on Economic, Social and Cultural Muhtaj, ME 2008), which was ratified by Law No. 11 of 2005, which essentially recognize the right of everyone to the enjoyment of the highest attainable standards in terms of physical and mental health. Thus also have become constitutional rights of citizens. In addition, it is also stipulated in Article 28H paragraph (1) NRI Constitution in 1945. As such, the Government assumed the obligation to ensure the realization of the right to health for all citizens of Indonesia (Nasution, AB 2010)[1].

The world of medicine who once seemed unattainable by law, with the growing public awareness of the needs of legal protection, makes the world of medicine not only as a civil relationship, often develop into criminal matters. Many malpractice issues, on the legal consciousness of the patient, raised an issue of crime as an example the case of dr. Setianingrum in Pati. Likewise, cases of eye surgery patients in RSU named Muhidin Sukabumi in 1986 also had a lively discussion. (Isfandyarie, A. 2005.)[2].

Similarly, public statements to the Indonesian Doctors Association (IDI) from 1998 to 2004 there were 306 cases of complaints of alleged malpractice. (Macmud, S. 2008.)[3] Even death Sukma Ayu, Small soap opera starring the artist Small-So Manten also associated with the possibility of malpractice committed by the doctor in charge. The last case is a case of alleged malpractice that resulted in a caesarean section Siska Makatey patients died due to alleged mishandling conducted Ayu Sasiary Prawani Doctors, Physicians and Physician Hendy Hendry Simanjuntak Siagian. According Maryanti, examples of such cases suggestive of public awareness of the rights of health.

Based on the above, we need a thinking and prudent steps, so that each party, physicians and patients to obtain legal protection fairest. Let this issue drag on will be able to have a negative impact on medical care, which in turn will be able to harm society as a whole. It was realized by all parties, that the doctor is just an ordinary person who one day could be negligent and wrong, so that violations of the code of conduct can take place, perhaps even until the violation of legal norms. Soerjono Soekanto and Kartono Mohammad was quoted as saying Isfandyarie (Isfandyarie, 2005)[2] argues, that there is no strict parameters on boundary violations of the code of ethics and legal violations.

The absence of strict parameters between violations of the code of ethics and law violations in the actions of the doctor to the patient, indicating the need for a law that truly can be applied in solving medical problems, which can only be gained by trying to understand the phenomenon that is in the medical profession. According (Asshiddiqie, J. 2009)[4], the norm of law is difficult to enforce if ethics are not enforced.

Even patients and their families know that the quality of service it receives inadequate, often the patient or his family prefers silent because if they express dissatisfaction to the doctor, they worry that doctors will refuse to help themselves, which in turn could inhibit the recovery of the patient.

However, not all patients choose to remain silent when the doctor's services did not satisfy himself and his family, especially when one family member is no disability or death after medical procedures performed by a physician. Changing the phenomenon occurs because of changes in viewpoint on the pattern of the relationship between doctor and patient. Positions patients who initially just as the party depends on the physician in determining how to cure (therapy), now turned into equal with the doctor. Thus doctors no longer ignore the judgment and opinion of the patient in choosing the way of treatment, including those of the patient to determine which treatment with surgery or not. Consequently, if the patient feels aggrieved in the service of a doctor, the patient will file a lawsuit against the physician to provide compensation to treatment that is considered detrimental to him.

Doctors also reacted, the actions of the prosecution in the court, they perceive as a threat. Application of the law in the field of medicine is considered as a legal intervention .They argued that the Code of Ethics Indonesia (KODEKI) is sufficient to regulate and supervise doctors in the work, eliminating the need for legal intervention. Further than that, the most important concern is the medical profession would lose dignity when regulated by law. Doctors feel restless and not feel treated fairly. so that they demanded legal protection in order to carry out their profession in a peaceful atmosphere.

Until now they are arguing is the protection of the law and not on the issue of legal responsibility and legal consciousness profession. Case doctor in running this shows a lack of understanding of the Ethics and Law in the doctor (Isfandyarie, 2005)[2]. Likewise, there is confusion over the understanding of the problem of medical malpractice (medical professional error), still often regarded as a violation of the ethical norms of the profession are not supposed to be given the threat of criminal sanctions.

The fact is, that technological progress is able to improve the quality and range of diagnosis (determining the type of disease) and therapeutic (healing) up to the limit that was never imagined before. However, not always able to resolve medical problems a patient, sometimes even new problems emerging in which to perform the diagnosis doctors rely heavily on diagnostic tools.

Medical science is not an exact science as well as mathematics. Making the diagnosis is an art in itself, because it requires imagination after listening to the complaints of patients and make a detailed investigation against him. Hippocrates said that medicine is a combination of science and art (science and art), which must be mixed so as to produce a diagnosis that is closer to the truth.

As the profession in general, health care is a profession that is based confidentiality and trust as well as the profession of lawyers. According to Vander Mijn (D. Veronika Komalawati, 1989)[5], the principal characteristics of the health service are as follows:

First, everyone who seek professional help, in general, is in a position of dependence, meaning that he had to ask for some kind of specific help in order to achieve a specific goal. For example, for the purpose of increasing a person's health will ask for help to the medical profession, if someone has the purpose of doing a lawsuit comes to professional lawyers, was to declare the purpose of his will (make a will) ask for help to the profession of notary. **Secondly**, every person who asks for help from people who have a profession that is confidential, generally can not assess the professional expertise. **Third**, the relationship between people who ask for help and those who give aid confidential in the sense that the first party is willing to give particulars which he would not reveal to others, and the profession must be able to maintain such confidentiality. **Fourth**, Everyone who runs a profession which is confidential, is almost always holds a position that does not depend (free), also when he practiced privately. Even in such cases, there is autonomy profession and only a few possible only for the employer to carry out corrective measures. **Fifth**, the nature of this work also brings consequences that result can not always be guaranteed, but there is only an obligation to do their best. That obligation is not easy to test.

The characteristics of the basic health services that we can conclude that with trust, surrender to the doctor with the patient's belief that his knowledge of the physician, will be used to help him so that regardless of the misery. Therefore, the main condition for obtaining good results in treating patients is to trust the patient to the doctor. The medical profession is a profession that is filled with risk of permanent disability and even until his dying patient as a result of the actions of doctors. This risk is sometimes interpreted by people outside the medical profession as Medical malpractice as in the actual case examples as follows: (Isfandyarie, 2005)[2].

On Thursday, the 4th of January 1979 at 18:00 pm, a patient named Rusmini, come for treatment to a practice in the village and sub-district Setianingrum Wedarijaksa, Pati regency. After receiving an injection from a doctor Setianingrum Shock patients experience irreversible, at 18:15 pm, the patient was brought to RSU AA. Soewondo Starch in a state of unconsciousness, respiratory standstill, small irregular pulse, content and less stress. Because of this incident, the doctor Setianingrum filed as a defendant in Pati District Court on charges of: Doctor Setianingrum has violated Article 359 of the Criminal Code as a result of actions that have been giving injections to patients Rusmini, Rusmini death caused by the body's reaction is not resistant to the drug received. On the charges, Attorney / Prosecutor filed criminal principally as follows: a Assign the defendant guilty of violating article 359 jo 361 of the Criminal Code; b. In order Pati District Court sentenced the accused to imprisonment for 1 year; c. Pay all court fees Pati, Central Java District Court in its decision No. 8/1980 /Pid.B /PN.PT. declare that the doctors Setianingrum bint Siswoko, aged 38 years old at the time of running a practice as a doctor, due to negligence or less carefully when treating a patient / female named Rusmini, by not carefully conducted research prior to the patient. And the patient has been given an injection of as much as 3 times in a row, the first form of Streptomycin 1 gram injected through the buttocks limbs left, then after the state of the patient (patient) visible signs of vomiting subsequent second injection is given in the form of cortisone 2 cc, the third time after it was given an injection of 0.5 cc delladryl in front of the left thigh.

As a result of successive injections before, because the patient can not tolerate these injections, finally died after it was brought to RSU Pati. Because of his guilt, the accused doctor Setianingrum bint Siswoko convicted of a felony: "due to negligence causing other people died" and Pati District Court to punish the defendant for three months in jail and weigh on the defendant to pay for this case. And the defendant stipulated guilty of violating Article 359 of the Criminal Code 361 jo.Where verdict upheld by the High Court in Semarang with its decision on January 19, 1982 no. 203/1981 / Pid / PT.Smg. Based on the above mentioned decision, the defendant then filed the appeal on the grounds inter alia that the application of Article 359 of the Criminal Code in this case is not true, especially regarding the interpretation of omission (Schuld) in the aforementioned article and cause of death. That the District Court in its consideration of determining negligence and less carefully defendant based that before injecting the defendant was not examined by asking the patient's history related to allergies, the defendant also did not check the patient's blood pressure, do not perform skin tests, and does not try to do venesection for pharmaceuticals as drug delivery Another replication and cardiac massage to stimulate the motion.

According to the defendant, the notion of negligence here must be associated with professional negligence doctor. Definition (Schuld) in article 359 of the Criminal Code contains an element of inevitability result (vermijd baar Heid), can heckled

the creator (ver wijtbaar Heid). These elements did not get the spotlight in interpreting the term negligence (Schuld) by the District Court in Pati.

That in addition to establish the person's negligence must be determined normatively, that is to be set from the outside how should he do with taking the size of the inner attitude of people in general, if there are in the same situation as the creator of it. That in the trial turns out the work done by the defendant in order to help patients' lives is justified by witnesses Moch. Prihadi doctor and physician Luke Firdaus, and only blamed by Imam Parsudi expert witness doctor, so it can not be used to determine the defendant's negligence.

Pati District Court less attention to the standard of treatment by requiring venous section to provide per-infusion fluids, administration of oxygen (O2) and the provision of other drugs as a repeat cardiac massage to stimulate motion, whereas veins equipment section to provide infusion and administration of oxygen does not exist, if there is not adequate so it is not fair to demand too much on the defendant as a pioneer in combating diseases of the people. That causa of the death of the patient (Rusmini) can not be determined with certainty because of a post mortem are made by doctors Goesmoro Soeparno, dated 25 external examination without holding an autopsy, so the cause of death could not be determined if it is only based on the testimony of witnesses who stated because it does not hold up drugs.

On these objections, the Supreme Court argued among other things: That all the elements of negligence on the interpretation of this objection is justifiable, therefore judex facti less precise in setting benchmarks for determining whether there is an element of negligence in the actions of the defendant in terms of the extent to which the defendant seeks to maximum to save the lives of patients, according to the ability that is actually owned and facilities available.

That from the testimony of the six doctors, unless the witness testimony of Imam Parsudi doctor, the Supreme Court concluded that the actions of the defendant asks the patient if it is ever received injections of streptomycin, then successively give cortisone injections, delladryl, and adrenaline, having seen no sign -sign sufferers are allergic to streptomycin which is injected is an indication, that the defendant has made a reasonable effort can be prosecuted thereof as a doctor with experience working for 4 (four) years, and are performing their duties in health centers with very limited means.

That of the very limited means, it is not possible to hopefully be able to do things as a witness a doctor Imam Parsudi desired, eg to injections of adrenaline straight to the heart or intravenous fluids, administration of acidic substances and other actions that require a complete and elaborate facilities. Whereas, therefore, one of the elements desired negligence Article 359 of the Criminal Code is not evident in the actions of the defendant, so therefore the defendant must be acquitted of the charges against him. Free decision given by the Supreme Court is the right decision for the doctor Setianingrum, because as noted physician R. Darmanto Djojodibroto, streptomycin injections did can cause risk as experienced by the patient (Rusmini) of physicians Setianingrum. In addition, the handling of shock as a result of the reaction is not resistant to the drugs that the doctor performed, in accordance with the procedures of treatment that should be done, as presented by the doctor Bambang Wahjuprajitno in Shock Treatment Issues Symposium held in Surabaya on February 10, 1990.

The number of deaths that occurred after the treatment procedure that is often reported by various media and electronic media as alleged malpractice as expressed in a few cases above, the doctors felt quite alarming that could haunt them in carrying out his services to help the patient. Basically no one doctor who has the intention to murder intentionally to patients. In treating patients, doctors always remember ever uttered oath when he will begin to devote himself to his profession: "I will always put the health of patients". In fact, not infrequently, even though the doctors themselves in an unhealthy state, the condition of the body is tired, still have to go serve patients who need his help, because its mission. On the other hand, there may be a small part doctors in performing their duties or provide treatment to the patient, do not pay attention to signs of professional ethics and do not understand about the standard of care as determined by expertise. In such case, the right of people of course must also be considered.

With the understanding of the risks and medical malpractice law in terms of perspective, then the doctor will be able to provide health services better. Besides, if the doctor will understand the legal responsibility of the patient, the doctor will be quieter and a maximum of doing his job. Of all cases of suspected malpractice were reported, most likely not all of them actually malpractice. There is a risk of them as experienced medical doctor Setianingrum, if we can learn the status of these patients carefully one by one.

Based on the phenomena that occur as described above, then the issue has raised among doctors that today predicted a lot of action to criminalize the medical service, and on the other side of a relationship that can not be circumvented between doctor and patient in the context of health services to the community. Doctors as professionals in their field are obliged suggest to patients to choose medical treatment will be carried out against him, because of the decision (judgment) concerning medical action to be performed on the patient is the patient's right to self-determination, then the legal issue to be examined is of the essence accountable professional judgment of doctors in the legal perspective. Doctors are a law-abiding member of society in the countries priority rule of law and a part of the community of people who are educated and professional in carrying out the work of service to the public in the Republic of Indonesia (NKRI).

2. RESEARCH METHOD

This study uses a type of normative legal research, while in terms of the nature of the report is a descriptive study. Descriptive meaning through research results are expected to give a comprehensive picture of the qualifications accountable professional judgment and analytical because doctors will then do an analysis of it. This study uses two data, that is primary data obtained through interviews with respondents and speakers, as well as secondary data obtained by conducting library research by collecting and reviewing study materials document in the form of law to be primary, secondary and tertiary. The data were

obtained and analyzed qualitatively. The analysis technique used in this research is qualitative (normative) through reasoning and legal arguments for all materials.

3. RESULTS AND DISCUSSION

Dispute settlement concept Medicine

Operation of personal health services at the hospital involving physicians, patients and the hospital itself. All three are legal subjects involved in the field of health care and childbirth relation to medical and legal relations. (Wila Chandrawila Supriya, 200)[6].

The relationship between doctor and patient is a relationship that has a special status. Namely Doctor or Hospital serves as the party providing health services (Health Care Provider) and patients as those who receive health care (Health Care Receiver). The relationship between doctor and patient is basically a contractual relationship. Contractual relationship between doctors and patients is called therapeutic contract. (Sofwan Dahlan, 2000)[7]

Basically position between doctors / hospitals with patients is a balanced position (horizontal), but in its development position began to shift towards vertical contractual position. Often the shifts that result in medical Disputes where Generally Patients are always disadvantaged. Medical disputes generally known as Medical malpractice. Doctors with its scientific devices have distinctive characteristics. This peculiar look of the justification provided by the law items, namely medical allowed to act on the human body in an effort to maintain and improve health.. Medical action is carried out on the human body rather than by a physician or a felony (Hendrojono Soewono, 2006)[8]. Basically medical action performed by doctors always lead to two possibilities, namely successful and unsuccessful (failed). Failure doctors in medical action can occur because it is caused by, among others:

a. Because of intent (dolus);
b. Due to negligence (Culva)
c. Because of coercion (force majeure);
d. Because Noodweer (emergency);
e. because it does not conform with the standards of the medical profession (unprocedural).

This can lead to conflict between doctor and patient, so as to cause disputes. But actually many factors that can lead to disputes other than those mentioned above, including changes in the pattern of relationship between doctor and patient. Initially the relationship between doctor and patient paternalistic, in this connection the patient's participation is allowed only implicitly obedient to the healers. Patients were considered to have no idea and do not need to know about the causes of the disease because the disease is the manifestation of God's curse. (Veronica Komalawati. D, 1989)[5].

Pattern paternal relationship between doctor and patient gradually been transformed into a partner relationship patterns between doctor and patient. Legal relationships that occur are contractual and transactional relationship, so that doctors no longer have a higher position than the patient, but parallel to the rights and obligations of each are balanced and are subject to and comply with health care standards set by the government.

Various triggers a dispute between the doctor and patient are: the problem of communication between doctor and patient, with the differences in the level of knowledge among doctors and patients, as well as the time required for the communication. In addition, the problem of ignorance of patients regarding the object of the agreement he made with the doctor and the interpretation of the agreement between doctors and patients.

Commitments arising from transactions therapeutic (healing) was called inspanningsverbintenis namely an engagement should be done with caution and effort (meth zorg en inspanning) (Veronica Komalawati. D, 1989)[5]. Because of his achievements in the form of an attempt, the results clearly uncertain. Consequently, if the attempt failed in the sense that the patient does not become cured or died, it was a risk that should be borne by both physicians and patients. (Veronica Komalawati. D, 1989)[5].

Disputes between doctor and patient is the most prevalent of late this is a case of alleged medical malpractice. This is demonstrated by the many complaints of malpractice cases filed society in the medical profession. The increasing number of complaints is evidenced by the increasing number of people who use the services of a lawyer to sue the doctors accused of malpractice. Such conditions triggered by the increasing level of education and public awareness of the right care and health care (the right to health care) and the right to self-determination (the right of self determination) which they can use the services of a lawyer to obtain justice. (Hendrojono Soewono, 2006)[8].

To resolve medical malpractice disputes in Indonesia, can be reached via two paths, ie the path of litigation (judicial) and non-litigation or line (outside of court), but usually the case-the case of medical malpractice claims through litigation is always foundered middle of the road because the problem is the proof which is difficult given by the patient / lawyer. Therefore, the majority of medical malpractice cases settled amicably conducted outside the path of litigation because the doctor does not want his reputation damaged when posted negative.

a. Litigation

Settlement of disputes between doctors and patients, basically subject to the provisions of the legislation in force, both criminal provisions, civil and state administration. Therefore, the doctor-patient dispute is resolved through litigation either criminal prosecution through the criminal justice system, civil action through the civil courts, as well as the demands of the justice administration of the State through the State Administration.

Disputes between doctor and patient is a typical type of dispute because the transaction therapeutic and informed consent between the doctor and patient are marked with patient consent for the actions of doctors and an explanation of the actions and consequences of a doctor, in essence a legal relationship engagement on the one hand, but on the other hand the recovery efforts for the health of the patient is a human responsibility of doctors who require the physician must treat, whereas patients are the ones who are expecting a cure so that the approval given can be categorized as approval because of compulsion. Law enforcement in the field of health, especially if associated with the typical medical disputes, including structuring and enforcement (complience and enforcement) in the areas of administrative law, the field of civil and criminal law. According to the authors that criminal sanctions are intended to give deterrent effect to the doctor as ultimum remedium used as a weapon of last resort, the end of a chain with a view to eliminating consequences to the detriment of patients and the public and the medical profession itself. It means that criminal sanctions in the practice of medicine is only a supporting course for other sanctions such as administrative sanctions and civil sanctions.

Legal responsibilities of physicians in terms of the burden of proof in general refers to the principle of responsibility (Liability Principle) who applied use of a certain principle of responsibility depending on the circumstances, there are at least three (3) principles or theories about the responsibility which is known, is: (Saefullah, HE 1999)[9]

1) The principle of responsibility based on the element of fault (fault liability, liability based on fault principle)

In general, the law on civil liability still applies the principle of liability based on fault or "tort", as defined in Article 1365 BW. Thus everyone who suffered losses due to the actions of others can demand compensation or damages (compensation) from the person who caused the loss, so in principle responsibilities on the basis of this error, the burden of proof is on the party who suffered loss (burden of proof on the shoulder of the Plaintiff). If the person who suffered the loss (the plaintiff) can not prove the existence of an element of fault on the adverse party (defendant), then the people who suffer such losses can not obtain compensation or compensation.

2) The principle of responsibility based on the presumption (rebuttable presumption of liability principle)

In the principle of "presumption of liability" the burden of proof shifted from the plaintiff (victim) to the defendant (the party harm). So, based on this principle the defendant is responsible for the losses incurred unless he can prove it has taken all necessary measures to avoid the damages or that it was impossible to do, so the plaintiff or victims can file claims to obtain compensation without having to prove the existence of an error on the part of the defendant. Thus the question that the responsibility of the defendant based on the "presumption" (presumption) means that the defendant's liability can be avoided if the defendant proves that it is not guilty (absence of fault).

Nevertheless, the position of the patient as well as consumers who are subject to consumer protection laws and based on the provisions of Article 22 of Law No. 8 of 1999 on Consumer Protection that the evidence against the existence of an element of fault in criminal cases is the burden and responsibility of businesses without the possibility for the prosecution to prove. Then the provisions of Article 28 of Law No. 8 of 1999 on Consumer Protection, that proof of the presence or absence of the element of fault in tort is a burden and responsibility of businesses.

3) The principle of absolute liability (no-fault liability, absolute or strict liability principle)

The principle of absolute liability (no-fault liability or liability without fault) in the literature are usually known by the phrase strict liability or absolute liability. With the principle of strict liability for the purpose of responsibility without having to prove their guilt. The reason for applying the principle of absolute liability in today's modern society, with respect to activities or businesses that contain great harm to others, those who cause harm (defendant) may be held liable if the type of activities in society that can pose a great danger that could threaten the safety of others, especially if the hazard is so great even though the company carried out with caution. The basis of this responsibility is still the implementation of business / activity is realized true though that activity / business brings risks. Application of the principle of absolute liability is the price that must be paid to the public.

If peace were carried out outside the court have not produced an agreement, the parties still have a chance to make peace in court. Because the positive law was (especially civil law), this way is recognized and for now this precedence by taking the way of peace. In the civil case, the decision could be null and void if not preceded by peace. Judges will give time for forty days to mediate in order to achieve peace, and it still reaffirmed at any time will be a trial by asking to what extent the peace efforts made by the parties. And this peace can be made throughout the trial before the case is decided by a judge.

Likewise with, including the civil judicial process to dispute the patient's physician, then in accordance with the Appellate Court of the Republic of Indonesia No. 1 of 2002 on the Empowerment Institute of Peace, the judge granted an obligation to provide the opportunity for both parties to resolve their case through mediation unless it has been do not see the process of mediation and settlement solutions, the proceedings were resumed. This indicates that the litigation should be placed as the last weapon ultimum remedium of all the efforts undertaken settlement.

If the trial court also peace can not be achieved, then inevitably doctor litigants must prepare everything to stand trial. The need to be prepared are: collect all the written evidence, prepare witnesses, prepare expert witnesses, preparing all medical scientific material related to the case and appoint a reliable advocate and legal understanding of medicine.

b. Non litigation

In hospital medical disputes or doctor or patient self-righteousness and the other should be responsible. This position does not benefit all parties because it will provoke an outside party involved in the dispute. So wise if any dispute resolved. Basically settling disputes (especially civil matters) through peace will be better and satisfy a sense of justice for the litigants, because the relationship between the parties can still be established well when compared with the case resolved in court. In addition, the dispute can be completed entirely without leaving resentment among litigants, with low cost and relatively fast completion.

In the provisions of Law No. 29 Year 2004 regarding Medical Practice, unregulated alternatives regarding the settlement of problems between doctor and patient, but merely regulates the criminal and disciplinary sanctions in the form of administrative sanction. Alternative problem resolution are set out in Chapter XI of dispute settlement in particular Article 77, Article 78 and Article 79 of Law No. 36 Year 2014 on Health Workers namely:

Article 77 that: "Any Recipient Health Services harmed by errors or omissions Health Workers can ask for compensation in accordance with the provisions of legislation". Furthermore, the provisions of Article 78 that: "In terms of health personnel suspected of negligence in carrying out his profession that cause harm to recipients of health services, disputes arising from the negligence should be resolved first through dispute resolution outside the court in accordance with the provisions of legislation. "Then the provisions of Article 79 states that:" Settlement of disputes between health personnel and health facilities conducted in accordance with the provisions of legislation. "

The provision follows the principle of ultimum remedium that the criminal proceedings and other litigation process is placed as the last weapon in the settlement of disputes between doctors, health professionals, and the hospital with the patient. It is based on the consideration that the medical profession and health workers are integrated with the hospital as a container, having primary responsibility for humanitarian obligation to help the soul and human safety, health care standards therefore need to be truly prepared.

Dispute resolution mechanisms through the non-litigation basically refers to the concept of Alternative Dispute Resolution as defined in the provisions of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution. Methods of settling disputes in the legislation is a method that is built on the concept of civil, with reference to the principle of pacta sunt servanda,by applying the method of conferences, mediation, conciliation, and arbitration.

Arbitration Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution emphasizes the form of alternative dispute resolution mediation (and the use of experts). Not even rule out the possibility of dispute settlement through other alternatives. Regarding the completion of this alternative Arbitration Law and Alternative Dispute Resolution Law 30 of 1999 determines as follows: (Munir Fuady, 2000)[10]

Article 6:

(1) Disputes or differences of opinion can be resolved by the parties through alternative dispute resolution based on good faith to waive settlement of litigation in state court.
(2) Settlement of disputes or differences of opinion through alternative dispute resolution as in paragraph (1) resolved in the meeting directly by the parties within a period of fourteen (14) days and the results are set forth in a written agreements.
(3) In the event of a dispute or difference of opinion referred to in paragraph (2) can not be resolved, then on written agreement of the parties, disputes or differences of opinion resolved through one or more advisory expert or through a mediator.
(4) If the parties are in no later than 14 (fourteen) days with the help of one or more advisory expert or through a mediator fail to reach an agreement, the parties can reach an arbitration institution or agency of alternative dispute resolution to appoints the mediator.
(5) Upon the appointment of a mediator by the institution of arbitration or alternative dispute resolution institutions, within a period of seven days of mediation efforts should already be started.
(6) The business of settling disputes or differences of opinion through a mediator referred to in paragraph (5) to uphold confidentiality, within a period of 30 days should be achieved in the form of a written agreement signed by all parties concerned.
(7) The agreement settlement of disputes or differences of opinion in writing is final and binding on the parties to implement in good faith and shall be registered in the District Court within a period of 30 days of signing.
(8) The agreement settlement of disputes or differences of opinion referred to in paragraph (7) shall be completed within a period of 30 days after registration.
(9) If the peace effort as referred to in paragraph (1) through (6) can not be achieved, then the parties pursuant to a written agreement may apply for the business settlement through arbitration institution or ad hoc arbitration.

As for alternative dispute resolution outside of court medical can be reached between the patients with medical personnel as follows: (http / Kesimpulan.com.News.dugaan-malpractice-kedokteran.html, accessed on January 11, 2015)

a) Lumping it, ie let the dispute does not need to be extended.
b) Avoidance, chose not to make contact again with the adverse party.
c) coercion, one party to force the other party through a third person.
d) Negotiation, the negotiating parties to take a decision.
e) Mediation, the parties negotiate with the services of a third person as an educator, resource person, catalisator, translator.
f) Arbitration, the disputing parties submit to a third party / arbitrator for a decision.
g) Adjudication, involving a third party that the court has the authority to give a verdict and execution.

Medical dispute resolution through legal channels, there are three logic presupposes that the logic of the patient, the doctor logic and legal logic. The logic of the law can be neutral or sided with the doctor or the patient shifts, depending on which one is most true logic. Advantages of dispute resolution through legal channels was objectively, more certain, highlight the

external side, sanctions can be imposed on the guilty party such as a cage or compensation. The disadvantage is the completion of the legal system is often at odds with moral values, it takes a long, exhausting labor, the mind, not the least cost, and can end up with a win-loss, loss-loss, is rigid, do not touch the conscience. (http://Kesimpulan.com News, accessed on September 26, 2010)

The form of settlement out of court, among others:

a) Arbitration
Dispute resolution through arbitration body is a settlement with the way the parties appoint arbitrators with an odd number that serves as an impartial referee and has no interest other than for the purpose of reconciling to get things done According to policy matters, so that his case is not resolved by the courts. The weakness of this method because not all regions in Indonesia have arbitration institutions.

b). Negotiation
Settlement in this way is to seek to bargain with the aim of reaching mutual agreement. This method is popular because without involving others so that the problems being faced are not known by others and do not involve official bodies such as arbitration.So that it can be done anytime and anywhere.

c). Mediation
Settlement of disputes by mediation method that involves another person as a neutral mediator, but does not make decisions or conclusions to the parties, but support for the implementation of the dialogue between the parties with an atmosphere of openness, honesty and brainstorm for the purpose of achieving consensus. So the mediator function here only as a facilitator to bring the two sides in order to exchange ideas and dialogue. This happens if the parties are reluctant to meet each other or have a sense of fear that if the offer was rejected by the other party. This method is also popular in the community because it does not require an official body so it can be done anywhere and anytime.

d) Conciliation
Dispute settlement by conciliation method is by way of desire to bring the disputing parties to reach an agreement and settle disputes. Or also interpreted bring the disputing parties to resolve the problems between the two sides in the negotiations.

c. Code of Ethics

Code of Indonesian medical previously drafted in 2001 which was passed later IDI in 2002, yet accommodate the substance of the professionalism of doctors and patient safety, as implied in the arrangement of Law Number 29 Year 2004 regarding Medical Practice, Law Number 36 Year 2009 on Health and Law 44 Year 2009 on Hospitals, Law 40 of 2004 on National Social Security System (Navigation) and Law No. 24 of 2011 on the Social Security Agency (BPJS), as well as various other laws that regulate the medical profession.

Ethics is a reflection of the orderly conduct of business of the motion or moral intuition and moral choices that someone decided. Medical ethics can be interpreted as an obligation based on character / morality that determines the practice of medicine. Over the last few decades, issues of medical ethics is the most important issue rather than awareness, with concerns focused on several major issues. Today's society has been questioned aggressively about how and to whom health care is given. Public attention on the issue of medical ethics have brought the medical profession to the increasing need of the public view of this, not only with regard to the relationship between doctor and patient, but also on how advances in science and medical technology affect issues of human rights, the structure of society and government policies in terms of health care. (Indonesian Doctors Association, 2004)

Code of Medical Ethics Indonesia based on the principles of social life that is Pancasila which has equally recognized by the Indonesian people as a philosophy of life of the nation. Majesty and glory is demonstrated by six (6) the nature of which must be presented by each physician, namely: (Indonesian Doctors Association, 2004)

1) The divinity,
2) Virtue cultivation,
3) The purity of intention,
4) The seriousness of the work,
5) Humility, as well as
6) Integrity and social science

Doctors have a great responsibility, not only to other human beings and the law, but the important thing is to his own inner conviction, and ultimately to God Almighty. Patients and their families will receive the results of operations of a doctor, if he believes that physician specialty and sincerity, so that they do not consider to be a problem when the recovery efforts have failed. It should be noted that the actions of every doctor, affecting many people's opinion on the whole "corps" doctor (Indonesian Doctors Association, 2004).

Services provided to patients who should be treated are all over the ability of the physician in the field of science and humanity. Under the provisions of Article 8 of Law No. Letter f 29 Year 2004 regarding Medical Practice that: the Indonesian Medical Council has the authority to conduct joint guidance of doctors and dentists on the implementation of professional ethics established by professional organizations; and Furthermore, the provisions of Article 24 of Law No. 36 Year 2009 on Health that :

(1) Health workers must comply with a code of ethics, professional standards, the right health service users, service standards, and standard operating procedures.
(2) The provisions of the code of ethics and professional standards as referred to in paragraph (1) shall be governed by professional organizations.
(3) The provisions concerning the rights of health service users, service standards, and standard operating procedures as described in paragraph (1) shall be regulated by the Regulation of the Minister.

In medical practice, there are at least three (3) norms namely:

1). Discipline, as a rule the application of medical science;
2). Ethics, as a rule the application of medical ethics (KODEKI); and
3) The law, as the rule of law medicine.

Enforcement of the medical profession's ethics conducted by the Honorary Council of Ethics (MKEK) as mentioned in Article 1 paragraph 3 Guidelines for the Organization and Work Management Honorary Council of Indonesian Medical Ethics, that: "Honorary Council of Ethics (MKEK) is one of the autonomous bodies Doctors Association Indonesian (IDI), which was formed specifically in the Central, Regional and Branch to perform tasks to court profession, coaching and professional ethics or institutional duties and other ad hoc in each level. "

MKEK is the enforcement agency ethics of the medical profession (KODEKI), in addition to MKDKI (Indonesian Medical Disciplinary Council) the competent authority to determine whether there is a mistake made doctors and dentists in the application of the disciplines of medicine and dentistry, and establish penalties (see Article 1 point 14 of Law No. 29 of 2004 on Medical Practice).

Enforcement of codes of medical ethics through MKEK an internal enforcement mechanisms in the field of medicine that does not rule out other positive law enforcement. MKEK determine an act violating the ethics of the medical profession or not, so that when an act is sufficient evidence to otherwise violate the ethics of the medical profession it will be processed through the trial MKEK.

Coaching discipline for doctors conducted by Indonesian Medical Disciplinary Council (MKDKI), as defined in Article 55 of Law No. 29 of 2004 on Medicine that:

(1) To enforce discipline doctors and dentists in the administration of medical practice, was formed Indonesian Medical Disciplinary Council.
(2) The Indonesian Medical Disciplinary Council is an autonomous institution of the Indonesian Medical Council.
(3) The Indonesian Medical Disciplinary Council in carrying out its duties are independent. Article 64 of Law No. 29 Year 2004 regarding Medical Practice that Indonesian Medical Disciplinary Panel of charge:
    1) Accepting the complaint, examine and decide cases of violation of discipline doctors and dentists are submitted; and
    2) Developing guidelines and procedures for handling cases of violation of discipline doctor or dentist.

CONCLUSION

Results of this study concluded that the concept of a legal settlement to errors in medical practice subject to all positive law justice system in both criminal law, civil law, the law of the State administration, consumer protection, code of conduct and discipline of medicine, thus potentially cause legal uncertainty for the medical profession as well as optimizing the impact on inhibition of improving the quality of public health services in general.

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