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Medical Malpractice in the Legal View

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***Abstract*— This time, malpractice problem of health service start to talk lively by the various society. That matter is seen from many indictment cases of malpractice which submitted by the society about a doctor profession that regarded to have inflicted the patient in conducting a task which are cause the wrong act, feel pain, injury, physical defect, body damage, and death. A law justification of doctor malpractice which is cause the inflicted of patient, so the victim side could be demand for material and immaterial compensation. The law protection of doctor malpractice's victim who is demand to the court, a judges could apply a Res Ipsa Loquitur doctrine, its means that the victim sides does not need to prove the presence of carelessness substances, but they enough to show the truth.**
Keywords: medical malpractice, legal view

I. INTRODUCTION

The rise of lawsuits filed by the community today, shows a decrease in public trust in doctors, besides that since the enactment of Law Number 8 of 1999 concerning Consumer Protection triggers the public to like demanding, or other causes that are often identified with the failure of healing efforts by doctors. Someone who has a health disorder must have come to a doctor to get a cure for his illness. Then there is a legal relationship between doctors and patients, which gives rise to rights and obligations. In carrying out the obligation for the doctor that can cause suffering for the patient, due to negligence or lack of caution the doctor in carrying out his profession. Known as malpractice *(malpractice)* can overload the medical and legal liability to bad consequences for the patient.

Talking about the *malpractice* is derived from the word *"mall"* which means bad. While the word "*practice* " means an action or practice. Thus it can literally be interpreted as a "bad" medical action taken by a doctor in relation to the patient. In Indonesia, the term *malpractice* that is well known by health workers is actually just a form of *medical malpractice*, which is *medical negligence* which is called *negligence* in Indonesian *medical*. According to Gonzales in his book *Legal Medical Pathology and Toxicology* states that *malpractice is the term applied to the wrongful or improper practice of medicine, which results in injury to the patient*[1].

Cases of suspected malpractice such as icebergs, only a few appear on the surface. Among them were alleged malpractice cases carried out by three doctors namely Dewa Ayu Saiary Prawani, Hendry Simanjuntak and Hendy Siagian, who were considered guilty of handling patients so they died in 2010 at Malalayang Hospital in Manado. The three doctors were sentenced to 10 months in prison by the Supreme Court after previously being acquitted by the Manado District Court (PN), North Sulawesi [2].

Doctor Ayu's case is not just an alleged malpractice event, but due to the sentence imposed by the Supreme Court (MA), thousands of doctors are almost in throughout Indonesia held rallies demanding freedom dr. Ayu deemed to have been criminalized so that service to the community disrupted by no doctors who serve so that we see as the law can not solve the problem.

So in this case we can see that the law, the origin of social human consciousness in which society is the patient Today's hospitals no longer want to be treated arbitrarily by doctors who treat it but on the other hand the courage of people who are aware of the law raises social upheaval by doctors in the form of rejection of penalties that may be imposed on a doctor, so the law is needed so that everyone returns as a virtuous social human being as Hugo Grotius argues that chaos occurs solely because of social friction in living together, especially when there are no rules to play together. There are a variety of imagery open there, either in the form of taking ownership of others, or in the form of broken promises and so forth.

II. DISCUSSION

Doctor as one of the main components of the public health care providers have a very important role because it is directly related to the provision of health services and quality of services delivered. The foundation for doctors to be able to carry out medical actions against other people is the science, technology, and competencies that are acquired through education and training. His knowledge must be continuously maintained and improved in accordance with the advancement of science and technology. Doctors with their scientific devices have unique characteristics. Its peculiarity can be seen from the justification that is justified by law, namely the permissibility of medical action against the human body in an effort to maintain and increase the level of humanity by which the patient's body is the property of the patient which must be guarded without

intentional damage or due to negligence in the treatment process.

The correct term according to the Indonesian Dictionary of the Department of National Education published by Balai Pustaka is " *malpractice* , while according to the medical dictionary is "malpractice". Literally the term "malpractice" means *bad practice (bad practice)*. Malpractice is a medical practice that is carried out wrongly, inappropriately, violating the Law, code of ethics (Indonesian Medical Dictionary, 2008, 500). Malpractice is the treatment of a wrong disease or injury due to ignorance, carelessness or criminal intentions. The term malpractice in medical law means bad doctor practice [3].

Malpractice according to Azrul Azwar has several meanings. *First*, *malpractice* is any professional mistake made by a doctor, because at the time of doing his professional work, not checking, not assessing, not doing or leaving things that are examined, assessed, done or done by a doctor in general, in a situation and the same conditions. *Second* , *malpractice* is every mistake made by a doctor, because doing medical work is below standard that is actually on average and reasonable, can be done by every doctor in the same situation or place. *Third*, *malpractice* is any professional mistake made by a doctor, which includes wrong doing due to unreasonable acts and errors due to skills or lack of loyalty in carrying out obligations or and / or professional trust [4].

According to Munir Fuady, *malpractice* has the understanding that every medical action taken by a doctor or persons under his supervision, or a health service provider performed on his patients, both in terms of diagnosis, therapeutic and management of diseases carried out in violation of the law, propriety, decency and principle professional principles are carried out intentionally or inadvertently causing wrongful actions of pain, injury, disability, bodily damage, death and other losses that cause doctors or nurses to be responsible for administrative, civil and criminal liability [5].

As a result of medical malpractice that becomes a criminal act must be a consequence in accordance with what is determined by the Act. The consequences of death, serious injury, pain or injury that bring disease, or injury that hinders the task and livelihood can form criminal responsibility which is not just a compensation (civil) but may be a punishment [6] .

A. Negligence that causes death

Article 359 of the Criminal Code is always charged with death which is allegedly caused by a doctor's mistake. Article 359 formulates "whoever because of his mistake causes someone else to die" in addition to the inner attitude of the *culpa after the* sentence "causes others to die", namely:

a. There must be an act;
b. The consequences of actions in the form of death; and
c. The existence of a causal relationship between the form of action and the consequences of death;

The inner attitude of the *culpa is* not aimed at actions, but in the consequences of death. *Culpa* can be divided into three types, based on their level of angle :

a. Unconscious negligence, the author does not realize that the remedies to be carried out can cause illegal consequences in the law. Its relationship with health services, doctors do not know that the actions they want to do can result in death;
b. Realized negligence, awareness of the emergence of the consequences of medical action to be realized. The doctor believes that the consequences will not arise, but after the medical action is taken it turns out that the consequences arise; and
c. Including in the realized omission, it has been realized that the consequences can arise, but are sure that they will not arise. After the action is taken and symptoms that lead to the onset occur. Has done enough to avoid it, but in fact after the consequences have arisen.

B. Negligence that causes injuries

Article 360 of the Criminal Code is commonly used to prosecute doctors for alleged medical malpractice. Article 359 is used when causing death. Two kinds of criminal acts according to Article 360 are:

(1) "... because of his mistakes caused other people to get seriously injured ..."

(2) ".. because of his mistakes caused other people to be injured in such a way that a disease or obstacle arises perform job positions or search for a certain time ... "

From Paragraph (1) the elements can be specified:

a) There is negligence;
b) The existence of an act;
c) Due to severe injuries;
d) There is a causal relationship between serious injury and the form of action.

Paragraph (2) contains elements:

e) There is negligence;
f) The existence of an act;
g) The consequences: wounds that cause disease; wounds that make it difficult to carry out occupation or occupation for a certain period of time;
h) There is a causal relationship between action and effect.

The sentence "causes people to hurt", contains three elements, namely:

a. The existence of an act as a cause;
b. The consequences of other people being injured;
c. The existence of a causal relationship between the form of action and due to someone else's injury.

Wounds are actions in such a way that the body's surface is different from its original form. Article 360 mentions three types of injuries, namely:

a. Serious injury;
b. Wounds that cause disease;
c. Injuries that make obstacles run the job position or search for a certain time.

Article 90 mentions various types of serious injuries:

a. Falling sick or getting a wound that does not give hope will heal completely, or which causes death;
b. Not able to continue to carry out duties or occupation jobs;
c. Loss of one senses;
d. Get severely disabled;
e. Suffering from paralysis;
f. Disturbed thinking for more than four weeks;
g. Death or death of a woman's womb.

In Law Number 29 of 2004 concerning Medical Practices regarding acts that can be convicted include:

1. Practicing medicine without having a Register Certificate (Article 75 paragraph (1));
2. Practicing medicine without having a Practice Permit (Article 76);
3. Using an identity in the form of a degree or other form that creates an impression for the community as if the person is a doctor or dentist (Article 77);
4 Use tools, methods or other ways of giving service to the community that creates the impression that the person concerned is a doctor or dentist (Article 78);
5. Do not put up a signboard (Article 79 letter a);
6. Do not make medical records (Article 79 letter b);
7. Not fulfilling obligations in accordance with the provisions of Article 51 (Article 79 letter c), and;
8. Corporations or individuals who employ doctors or dentists without not having a registration certificate and license to practice (Article 80).

If a person at the time of committing an unlawful act knows very well that his actions will result in a certain condition which is detrimental to the other party it can be said that in general a person can be accounted for. The condition for being able to say that one knows very well about the existence of circumstances that cause the possibility that the consequences will occur. This act of error occurred because of the lack of thoroughness of the doctor in observing the patient so that there was something that was not desired together. This inaccuracy is an action that falls into the category of action against the law, thus causing the loss to be borne by the patient [7].

So that in respecting the patient's right to get medical services to his body which is the right of every individual, the doctor must fulfill various conditions to be able to carry out his profession as a doctor because if ignored then the doctor has ignored the right of the patient which will eventually lead to malpractice in medicine.

The birth of Law No. 29 of 2004 concerning Medical Practices regulates the management of medical practices in Indonesia. There are several conditions that must be met by a doctor, so that the authority to carry out medical practice, not only the expertise gained from the doctor's education. Administrative requirements include:

a. Have a Registration Certificate (STR) of a doctor or dentist issued by the Indonesian Medical Council which is valid for 5 years and re-registered every 5 (five) years (Article 29);
b. Overseas graduates who practice in Indonesia must pass an evaluation. For foreign doctors other than passing an evaluation, they must have work permits in Indonesia. After fulfilling other requirements, new foreign doctors can be given a Registration Certificate (STR) (Article 30);
c. Have a Practice Permit (SIP) issued by an authorized health official in the district or city where it is practiced (Article 36 jo 37).

Minister Regulation No.561 / Menkes / Per / X / 1981 concerning Granting Permits to Run a Job and Practical Permit for Specialist Doctors. Three kinds of permits Practical doctors:

a. A doctor's license (SID) is a permit issued to specialist doctors who carry out work according to their profession in the Republic of Indonesia.
b. A practice permit (SIP) is a permit issued to specialist doctors who carry out work in accordance with their profession as private individuals in addition to other duties / functions of the government or private health service units.
c. Individual practice licenses (SIP) are solely permits issued for specialists who carry out their work in accordance with their profession as individual private persons solely without assignments to the government or private health care units.

Each doctor's license and practice permit are valid for 5 (five) years and can be renewed by reapplying. With the

fulfillment of administrative requirements doctors are authorized to perform medical services because they have SIP, SID, STR.

C. Loyalty to appointments (Contracts must be respected)

It is not surprising that many decisions of the medical profession state that no *malpractice* by doctors is often cynically responded by lawyers. Recognizing the emergence of these differences of opinion that should not need to happen, it is necessary to find a solution to eliminate them. One way is to formulate together about the understanding of what is meant by *malpractice*. In addition, it is also necessary to look for criteria regarding the limits of the doctor's authority in carrying out his profession, both in terms of legal, moral, ethical and disciplinary (professional aspects), so that if a doctor in carrying out his professional duties has fulfilled all the requirements that have been determined, indeed there are parties who feel aggrieved by the actions of doctors, the community does not arbitrarily say that doctors have done *malpractice* [8].

Medical malpractice other than being prosecuted can also be prosecuted civilly in the form of compensation payments. The legal basis for civil or civil malpractice is a therapeutic transaction or contract between the doctor and the patient, which is the doctor's relationship with the patient, where the doctor is willing to provide treatment or medical treatment to the patient and the patient is willing to pay a fee to the doctor [9].

Responsibility in the field of civil law can be found in every health service. This is understandable because in every health service there is always a relationship between two parties as legal subjects, where each party has the same rights and obligations. The intent with the two parties here is the doctor with the patient. The relationship between the doctor and the patient is regulated in an agreement whose conditions must be met in general as stipulated in Article 1320 BW. The doctor's relationship with the patient in terms of health care is commonly referred to as a *therapeutic* transaction. In this *therapeutic* transaction the doctor is obliged to provide the best possible service in accordance with professional standards (medical) that have been determined by law.

Definition Therapeutic agreement is an agreement between a doctor and a patient that gives the doctor the authority to carry out activities to provide health services to patients based on the expertise and skills possessed by the doctor.

In the Preamble of the Indonesian Medical Ethics Code contained in the Decree of the Minister of Health of the Republic of Indonesia Number 434 / Minister of Health/X/1983 concerning the Applicability of the Indonesian Medical Ethics Code for Doctors in Indonesia, including the therapeutic agreement as follows:

" What is meant by a therapeutic agreement is the relationship between doctors and patients and patients carried out in an atmosphere of mutual trust, and always covered by all emotions, hopes and concerns of human beings"

Understanding therapeutic transactions there are several definitions of scholars, namely:

1. HH Koeswadji:
Therapeutic transaction is an agreement (*Verbintenis*) to find or determine the most appropriate therapy for patients by a doctor.

2. Veronica Komalawati:
Therapeutic transactions are legal relationships between doctors and patients in medical services in a professional manner, based on competencies that are in accordance with certain expertise and skills in the field of medicine [10].

In Besides giving birth to rights and obligations, the relationship between doctors and patients also forms legal responsibility. For the doctor, the achievement of doing something or not doing something in medical treatment aimed at the interests of the patient's health is a very basic legal obligation in the therapeutic contract. Viewed from the perspective of civil law, medical malpractice occurs when mistreatment by a doctor in relation to the provision of medical services to a patient causes a civil loss. Loss of physical health, mental health, and the lives of patients due to mistreatment by doctors is an important element of medical malpractice

With the emergence of a legal consequence of civil losses, the accountability of civil law is established for the doctor against the losses incurred. The legal relationship between doctors and patients arises based on agreements and laws. Engagement because the agreement brings a state of default, while the violation of the doctor's law on the legal obligation of the doctor because the law is called an unlawful act in Article 1365 of the Civil Code. In addition to violations of the law due to agreement, there can also be a violation of legal obligations due to a law called *Zaakwaarneming*. *Zaakwaarneming* is to do something secretly and voluntarily for the benefit of others without consent and to the knowledge that it creates the best possible obligation to carry out the responsibility for the consequences arising if there is an error in the implementation of something (Article 1354 BW).

D. There must be compensation for any losses suffered

The doctrine is the opinion of the jurists and the basis for the use of doctrine, namely the principle of law which promotes communis opiniono doctorum or one cannot deviate from the general opinion of scholars or legal experts. The doctrine that applies in the health sciences is *Res Ipsa Loquitur* meaning doctrine that takes the side of the victim. Proof in the civil procedure law that determines that the victim of an unlawful act in the form of negligence does not need to prove the element of negligence, simply shows the facts. The goal is to achieve justice. This doctrine is usually used in cases *of* medical *malpractice*

The conditions for the enactment of *Res Ipsa Loquitur* are, *first*, the incident does not usually occur; *second*, the loss is not caused by a third party; *third* , the instruments used in the supervision of the perpetrators; and *fourth* , not the victim's fault. This doctrine is felt to give more to the patient, considering the patient is a layman in the field of medical science. It is very contrary to the principle of justice if a patient who is a victim of an act of negligence, still has to prove the occurrence of negligence. Even though the patient did not know the process of how negligence occurred, because he had entrusted his life and health to a doctor who was considered more expert. For this reason the burden of proof is the doctrine of *Res Ipsa Loquitur is* charged to medical officers who are considered to know more about the process and standards used in carrying out the medical action. The patient does not need to prove / expose the process of negligence, it is enough to show the consequences of his suffering. Thus, the doctrine of *Res Ipsa Loquitur* is

actually a kind of *circumstantial evidence*, which is a proof of a fact where the facts can be used to draw conclusions.

In the meaning that The Doctrine of *Res Ipsa Loquitur* is a doctrine in the field of civil proof that determines that the victim's party is unlawful in the form of negligence in certain cases and does not need to prove an element of negligence on the part of the perpetrator, but simply by showing the facts and withdrawing itself the conclusion that the perpetrators of the perpetrators are likely to commit acts against the law.

The doctrine of *Res Ipsa Loquitur* aims to achieve justice, where the victims of unlawful acts in certain cases are very difficult to prove the existence of an element of negligence, especially if the evidence of the unlawful act is good enough to access the perpetrators or in the control of the perpetrators, but it is very difficult for victims to access, and therefore it is unfair if the victim must bear the consequences of the act which is actually negligence from the other party.

In the Indonesian legal system, one of the components of which is a substantive law, among the applicable positive laws, there is no known term *malpractice*, both in Law No.

23 of 1992 concerning health and in Law No. 29 of 2004 concerning Medical Practice. Paying attention to Law No. 23 of 1992, especially in Article 54 and 55 referred to as a doctor's mistake or omission. Whereas in Law No. 29 of 2004, especially in Article 84 is said to be a violation of doctor's discipline. The main grip used to determine the existence of *malpractice is* quite clear, namely the existence of a professional error committed by a doctor when performing treatment and there are other parties who are harmed by the doctor's actions. The fact is that it is not easy to determine when there is a professional error.

If there are irregularities in the provision of health services, patients can claim their rights violated by the provider of health services in this case the hospital and doctors / health workers. Doctors / health workers and hospitals can be asked for legal responsibility, if they do negligence or mistakes that cause harm to patients as consumers. Patients can sue for medical legal *liability (medical liability)*, in case the doctor makes a mistake / negligence. Doctors cannot take refuge on the pretext of unintentional actions, because doctors' mistakes / negligence that cause harm to the patient creates the right for the patient to sue for compensation.

Law Number 23 of 1992 concerning Health provides legal protection, both to patients as consumers and producers of health services including Articles 53, 54 and 55 of Law No. 23 of 1992. If there is a dispute in health services, to settle a dispute must refer to Law No. 23 of 1992 and UUPK and the process through civil society institutions, mediation. In the event of a dispute between producers of health services and consumers of service services, there are 2 lines available, namely litigation lines and non-litigation channels, namely the settlement of disputes through the court. The process of resolving disputes or negligence of health can be done outside the court and in court based on the agreement of the disputing parties. The most common settlement is through off-court mediation with the *Alternative Dispute Resolution* (ADR) system.

A new doctor is brought to court if there is a loss for the patient. This loss arises due to a breach of an obligation in which an agreement was previously made. The standard of medical service is made based on the rights and obligations of doctors, both those regulated by the code of ethics and those regulated by law. With the promulgation of Law No. 23 of 1992 concerning Health, criminal threats to errors or omissions carried out by doctors that cause patients to suffer from disability or injury, are no longer solely referring to the provisions of Article 359, 360 and
361 of the Criminal Code, because in the Health Act the criminal threat was formulated. The threat contained in article 82 of Act No. 23 of 1992 concerning health in paragraph (1) letter (a) states "anyone who is without expertise and authority deliberately doing treatment or treatment as referred to in Article 32 paragraph (4)" is sentenced with a maximum imprisonment of five years and or a fine of a maximum of one hundred million rupiah "

Medical malpractice other than being prosecuted can also be prosecuted civilly in the form of compensation payments. In health services, if a patient or family considers that the doctor has committed an unlawful act, the patient or his family can file a claim for compensation under the provisions of Article 55 of Law No. 23 of 1992 concerning Health.

E. Juridical Basis of Medical Malpractice Lawsuit

Two possibilities that can be used as a juridical basis for medical malpractice lawsuit are:

1. A lawsuit based on *a default* on a contract;

The doctor's responsibility due to medical malpractice is due to a wider default than liability due to unlawful conduct. This is based on Article 1236 jo 1239 Civil Code, in addition to compensation, patients can also demand fees and interest.

Default in medical services arises because of the actions of a doctor in the form of providing inappropriate treatment services in accordance with what was agreed. Improper treatment can be an act of inadvertent care, or due to negligence of the doctor concerned so that it violates the therapeutic goal.

Defaults in medical services occur, if they meet the following elements:

a. The doctor's relationship with the patient occurs based on a therapeutic contract;
b. The doctor has provided inappropriate health services that violate the goals of the therapeutic contract;
c. Patients suffer losses due to the actions of the doctor concerned.

The legal relationship between doctors and patients is based on mutual trust between the two parties. Healing is the ultimate goal of the therapeutic contract but not the object of the doctor's obligation that can be demanded by the patient. A doctor's main obligation is *inspanning*, which is a hard effort from a doctor that must be carried out to heal the patient's health.

Patients who do not recover cannot be used as reasons for default for doctors as long as the medical treatment is not deviating from professional standards, because the legal relationship between patients and doctors is not a demanding relationship to the results of medical services, but the obligation to provide the best medical treatment where doctors are unable to guarantee results. end.

The results of the treatment of healing, recovery, or maintenance of the patient's health are not a legal obligation for the doctor, but a mere moral obligation as a result of not legal sanctions but moral and social sanctions. As long as the medical treatment of the patient is carried out according to professional standards and standard operating procedures, even without healing results that are expected not to produce medical malpractice from a legal point of view.

Medical doctor's treatment that violates professional standards

is that doctors are considered to perform medical malpractice. On condition, not recovering or more severe illness from patients after receiving medical treatment from the standpoint of professional standards. If this is a direct result of medical malpractice by a doctor giving birth to medical malpractice, the patient has the right to claim compensation for the wrong treatment.

High-risk medical services must be made in written form for *informed consent.* The aim is to free legal risk for unwanted consequences.

The form of doctor's default in medical services is:

a. Do not provide health services at all as promised;
b. Providing health services is not as appropriate, not according to the quality and quantity with which it was agreed;
c. Providing health services but not late on time as agreed;
d. Provide other healths services than originally agreed upon.

Each default contains aspects of loss for the other party. The element of loss is in the phrase "reimbursement of costs, losses and interest". As a result of this patient's loss, it becomes the basis for the assessment of the presence or absence of medical malpractice. After proven the existence of losses, then seen how the form of medical treatment carried out by doctors. The form of loss due to default in the form of material losses that can be measured by the value of money, especially maintenance costs, travel costs and medical expenses provided that this loss must be proven.

2. Lawsuits based on unlawful acts *(onrechtmatigedaad)*

Listed in Article 1365 of the Civil Code: "Every act that violates the law that brings loss to others, obliges the person who for the wrong cause to cause the loss to replace the loss".

From the sound of the article, it is interpreted that the medical treatment of doctors deviates from professional standards and causes patient losses including categories of unlawful conduct. Losses must be true due to wrong medical treatment and must be proven both in terms of law and medical science.

Medical malpractice that has entered the field of criminal law or become a crime at the same time constitutes an unlawful act that can be held liable for civil liability for losses incurred through articles 1365 jo 1370 and 1371 of the Civil Code. Medical malpractice indicators are included in unlawful acts, namely medical malpractice has entered the realm of automatic criminal law including illegal acts.

The second legal basis for filing a lawsuit is illegal. If there are facts that appear to be illegal, even though there is no agreement between the parties. To file a claim must be fulfilled 4 (four) conditions as stipulated in article 1365 of the Civil Code:

a. The patient must experience a loss;
b. There is a mistake;
c. There is a causal relationship between errors and losses; and
d. The act is against the law.

Unlawful acts are active or passive actions that are carried out intentionally or negligence that are contrary to the rights of others, with their own legal obligations with moral values that must be heeded in the community. It also includes conditions for demanding compensation by unlawful acts, namely that there must be acts and nature of the law.

Four conditions must be met to demand the loss of an unlawful act:

a. The existence of acts that include qualification of unlawful conduct;
b. The error of the maker;
c. Due to losses;
d. The existence of a relationship of action with the consequences of loss of others.

Each default contains aspects of loss for the other party. The element of loss is in the phrase "reimbursement of costs, losses and interest". As a result of this patient's loss, it becomes the basis for the assessment of the presence or absence of medical malpractice. After proven the existence of losses, then seen how the form of medical treatment carried out by doctors. The form of loss due to default in the form of material losses that can be measured by the value of money, especially maintenance costs, travel costs and medical expenses provided that this loss must be proven.

Judging from the types of consequences of unlawful acts, especially unlawful acts against a person's body, compensation can be given if there are any of the following elements. First, economic losses, such as spending on medical expenses and hospitals; second, injury or disability to the victim's body; third, physical pain; and mentally ill, such as stress, extreme sadness, excessive hostility, anxiety, and various other mental / mental disorders. Code of Civil law (Civil Code) does not explicitly or even does not refer in detail to certain compensation, or one aspect of compensation, the judge has the freedom to apply the compensation in accordance with the principle of propriety, as long as it is requested by the victim / plaintiff . The justification for the freedom of the judge is because the interpretation of the word loss, biya and interest is very broad and can cover almost everything related to compensation. Compensation in doctor's malpractice can be in the form of immaterial compensation, the amount of which cannot be calculated mathematically, but is more likely to be at the discretion of the judge.

Judges' considerations include the severity of the mental burden borne by the victim, the status and position of the victim, the situation and conditions in which the malpractice acts occur, and the situation and mental condition of the victim and perpetrator.

III. CONCLUSION

Weaknesses of the health legal system in Indonesia because Indonesia does not have a normative law (Law) regarding medical malpractice so that there are no legal arrangements and provisions for malpractice. Another problem is the willingness of doctors who are used as expert witnesses in an alleged case of malpractice because among the doctors themselves there is a corps protection and try to not disclose the mistakes of other doctors. However, it does not mean that legal efforts to claim patient rights related to malpractice cases will forever fail. Patients with strong evidence and if the doctor is truly proven to have malpractice, surely the patient's rights will be accepted again. Therefore, patients who feel they have complaints about

medical services they receive at health institutions must collect as much information as possible so that efforts to demand justice for their rights are not in vain.

Even so, criminal law recognizes the existence of criminal exclusion reasons in health services, namely: justification reasons and forgiveness reasons. But it is not necessarily a reason for repayment and forgiveness to abolish a criminal act for the medical profession. Approval *(informed consent)* as the suppression of crime. It does not mean that for the profession the doctor is exempt from all criminal liability, because the reason is correcting and forgiving for the doctor's actions, there are only certain exceptions as in Article 15 of Act No. 23 of 1992 concerning Health. If viewed from a legal standpoint, the responsibility of the hospital, either government or private, is the same responsibility that can be prosecuted and demanded compensation if proven negligence, either from the doctor, nurse, midwife or negligence in the field of hospital management. One of the principles of the organization, namely the principle of *"authority"* determines that in any organization, including the organization of the organization there must be the highest leadership who bears responsibility.

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