

# LEGAL PROTECTION ASPECTS OF MALPRACTICE VICTIMS BASED LEGAL VIEW IN INDONESIA

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**Abstract** Malpractice cases are a crime that is very common in Indonesia. Malpractice is basically an act of a professional that is contrary to standard operating procedures (SOP), code of ethics, and applicable laws, whether intentional or as a result of negligence that results in loss or death to others. Aspects of legal protection for patients who are victims of malpractice by doctors based on Indonesian law, namely : preventively with the existence of regulations governing malpractice, namely in the Civil Code (KUH Perdata), the Health Law, the Consumer Protection Law, the Medical Practice Law, and the Legal Code, Penal (Penal Code) and repressively the lack of action resulted in a loss, the person who performed the action imposed sanctions in the form of civil sanctions, namely to compensate both the administrator sanctions and criminal sanctions.

**Keywords:** Legal Protection, Patients, Malpractice Victims.

## 1. Introduction

Observing the mass media coverage lately, there is an increase in the suspicion of cases of malpractice and medical negligence in Indonesia, especially with regard to a doctor's misdiagnosis which has a negative impact on his patients. In the last few months, the mass media has been rampant in informing about cases of lawsuits / lawsuits (civil and / or criminal) to doctors, other medical personnel, and / or hospital management filed by medical service consumers who are victims of malpractice (malpractice) or medical negligence.

There are various factors behind the emergence of these malpractice suits and all of them originate from the victim's psychological and physical harm. Starting from a misdiagnosis and in turn an impact on therapeutic errors to the negligence of doctors after surgery on patients (surgical instruments are left in the body parts), and other factors. [1]

Apart from this phenomenon, there are those who question whether these cases are categorized as medical malpractice or are they merely human errors from the doctor? To note, so far in our country there is no legal provision regarding medical profession standards that can regulate professional errors. And actually this malpractice case is not new. Since many years ago, this case is quite familiar in Indonesia.

Malpractice cases are a crime that is very common in Indonesia. Malpractice is basically an act of a professional that is contrary to the applicable SOP, code of ethics and law, whether intentionally or as a result of negligence that results in loss or death to other people.

On the other hand, in implementing health service measures, medical personnel, namely doctors and nurses, do not rule out an error or negligence. Errors or negligence made by doctors in carrying out their professional duties can have fatal consequences both to the body and soul of the patient (in medical / legal terms this incident is called malpractice) and this is of course very detrimental to the patient as a victim of malpractice. [2]

As a victim of malpractice who has been harmed, of course the patient will demand what they are entitled to. Patients who are victims of malpractice will demand compensation or hold the doctor responsible. These demands can be in the form of civil charges, namely compensation, criminal charges, namely imprisonment for malpractice actors and even prosecutions to professional organizations, namely in the form of temporary suspension or revocation of licenses and being expelled from membership of the organization.

The enactment of Law No. 36 of 2009 on Health replaces Law No. 23 of 1992, Law no. 8 of 1999 concerning Consumer Protection, Law no. 29 Year Year 2004 on Medical Practice and other regulations relating directly or indirectly to health care or health system and its application to protect victims of malpractice relating to the rights

owned by the victim, so what is the purpose of the law, namely certainty, justice and benefit can really be fully implemented.

The birth of Medical Law, namely the Law on Medical Practice No. 29 of 2004. LN No. 116 of 2004, TLN No. 4431 which is part of the Health Law, is intended to make patients' rights more protected by law. The Medical Law rests on two human rights, namely the right to health care (the right to healthcare) and the right to self-determination ( the right to self-determination or zelf-bechikkingsrecht ). [3]

Before the Medical Practice Law was born, the Consumer Protection Act was in place, which aims to protect the rights of consumers, both consumers who use goods and services.

The field of medicine is included in Consumer Protection, because doctors and hospitals are categorized as business actors providing services to consumers, in this case consumers are patients who take medication to doctors or hospitals. This has been clearly stated in Law Number 8 of 1999 concerning Consumer Protection. In addition, provisions regarding sanctions for 2 violations of the rights of consumers are also regulated in this Law, namely in Article 19 paragraph (1), including doctors and hospitals who violate consumer rights. So that the Consumer Protection Law complements the Health Law that is currently in effect, namely Law Number 36 of 2009.

## **2. Formulation of the Problem**

The problems raised in this scientific journal are :

1. How aspects of legal protection for patient of malpractice victim by doctors by law in Indonesia ?
2. How a doctor can be said to act as malpractice ?
3. What are the people's assumptions about malpractice?
4. How attempts malpractice protection in service health?

## **3. Research methods**

This type of legal research used is normative legal research. Types and sources of legal materials in the form of primary, secondary and tertiary legal materials with techniques of obtaining legal materials in the form of documentary studies or literature studies by studying, recording and copying literature books, related laws and regulations, opinions of scholars, theses, other materials there is a connection with the problem under study, using qualitative analysis systematically then using deductive methods by drawing conclusions from general to specific.

## **4. Research Results and Discussion**

The form of legal protection for victims of malpractice by doctors is regulated in the Civil Code, namely in the form of regulating the accountability of doctors who commit malpractice to provide compensation to victims of malpractice for losses arising from: [4]

- a. Non-compliance with the therapeutic agreement agreed upon by the doctor or default (default), namely based on Article 1239 of the Civil Code.
- b. Actions against the law, namely based on Article 1365 of the Civil Code.
- c. Negligence or carelessness in doing or acting, namely based on Article 1366 of the Civil Code.
- d. Neglect of obligations based on Article 1367 Paragraph (3).

In the Consumer Protection Act it is not clearly regulated regarding patients or victims of malpractice, but the patient or victim of malpractice in this case is also a consumer. In addition, the Decree of the Minister of Health of the Republic of Indonesia No.756 / MEN.KES / SK / VI / 2004 concerning Preparation for Liberalization of Trade and Services in the Health Sector, states that health services are a business. In fact, the World Trade Organization (WTO) includes hospitals (RS), doctors, midwives and nurses as business actors.

Legal protection for victims of medical malpractice as consumers can be seen in the provisions of Article 19 Paragraph (1) of the Consumer Protection Law which in full states that " Business actors are responsible for providing compensation for damage, pollution, and / or loss to consumers due to consuming goods and / or services produced or traded. "

Based on the provisions of Article 19 Paragraph (1) of the Consumer Protection Law, losses suffered by victims of malpractice as service consumers due to medical actions taken by doctors as service business actors can be sued with a number of compensation.

Compensation that can be requested by victims of malpractice according to Article 19 Paragraph (2) of the Consumer Protection Law can be in the form of refunds of goods and / or services of similar or equivalent value, or health care and / or provision of compensation in accordance with the provisions of laws and regulations applicable.

Based on the description above, it can be concluded that the form of legal protection for victims of malpractice is regulated in Law No. 8 of 1999 concerning Consumer Protection, which is in the form of a doctor's accountability arrangement to provide compensation to victims of malpractice as consumers, as a result of errors or negligence in their health services or malpractices committed by doctors as business actors as well as regulating the enforcement of criminal law provisions accompanied by additional penalties.

What is meant by Health Workers according to the Government Regulation of the Republic of Indonesia No. 32/1996 Regarding Health Workers Article 1 (1) is "everyone who devotes himself / herself to the health sector and has knowledge and / or skills through education in the health sector which for certain types requires to make health efforts. According to the Law No ; 23 /1992 on Health, Article 1 (3) the intended health worker is "any person who devoted themselves in the health field as well as having knowledge or skill through education in the field of health for a certain type requires authority to perform health efforts.

The details of health workers as stated above are very important, especially in determining their professional and legal responsibilities.

In the new Health Law , namely Law No. 36 of 2009 concerning Health which replaces Law no. 23 of 1992 states that the legal protection for victims of malpractice is almost the same as the protection in Law No. 23 of 1992, it's just that there are additional provisions to limit the form of legal protection provided. The provisions are contained in Article 58 paragraph (1), paragraph (2) and paragraph (3), namely:

Paragraph (1):

"Every person has the right to demand compensation against a person, health worker, and / or health provider who causes harm due to errors or negligence in the health services they receive."

Paragraph (2):

"The claim for compensation as referred to in paragraph (1) does not apply to health workers who take measures to save life or prevent someone's disability in an emergency."

Paragraph (3):

"Provisions regarding the procedures for filing claims as referred to in paragraph (1) shall be regulated in accordance with the provisions of laws and regulations."

The granting of the right to claim compensation to victims of malpractice is an effort to provide protection for everyone (victims of malpractice) for any consequences that arise, both physical and non-physical due to the fault or negligence of a health worker (in this case a doctor).

This protection is very important because the result of negligence or error from the doctor may cause pain, injury, disability, death, or damage to body and soul.

In medical services, there will be no separate health workers from consumers, in this case the patient. Patients are known as recipients of health services and from the hospital as providers of health services in the field of health care.

The definition of consumers in Law No.8 / 1999 on Consumer Protection, namely every person using goods and or services available in society, whether for the interests of themselves, their families, other people, or other living creatures and not for sale. The definition of this consumer is the end consumer. Products in the form of goods, for example: medicines, food supplements, medical devices Products in the form of services, for example: health services provided by doctors, dentists, health insurance services.

In Law No. 29 of 2004 concerning Medical Practice as mentioned in Article 66 Paragraph (1) of the Medical Practice Law, stipulates a situation where there is an error involving health care providers, in this case by doctors, which can be submitted a complaint to the Chairperson of the Indonesian Medical Discipline Honorary Council (MKDKI) by every people who know or have harmed their interests.

In addition to being able to report the losses they have suffered to the Honorary Council of Indonesian Medical Discipline, according to Article 66 Paragraph (3) of the Medical Practice Law, victims of malpractice who have been harmed due to a doctor's mistake or negligence in carrying out medical actions can also report criminal allegations to the competent authorities and / or sue for damages in a civil case to court.

Furthermore, it is stated in Articles 67 and 68 of the Medical Practice Law that the Medical Discipline Honorary Council has the authority to examine and give decisions on complaints received. If there are ethical violations (based on KODEKI), the Medical Honorary Council will forward the complaint to professional organizations.

Based on the above explanation, it can be concluded that the form of legal protection for victims of medical malpractice is regulated in Law No. 29 of 2009 concerning Medical Practice, which is in the form of granting rights to victims of malpractice to make legal remedies for complaints to the Chairman of the Indonesian Medical Discipline Honorary Council, which can also simultaneously take legal remedies in criminal law and civil law to court and grant authority to the Disciplinary Honorary Council Indonesian Medicine (MKDKI) to issue a decision to impose disciplinary sanctions on doctors who are found guilty.

Criminal medical malpractice only occurs in material crimes (KUHP), which is a criminal act that prohibits certain consequences which are punishable by criminal sanctions. The result is a condition for the completion of the criminal act. As for the consequences that become an element of criminal medical malpractice are death, serious injuries, pain, or injuries that cause illness, or injuries that hinder duties and livelihoods. [5]

Mistakes in criminal medical malpractice generally occur because of negligence by doctors. In this case it can happen because the doctor is doing something he shouldn't or is not doing something that should be done.

In the event of a criminal medical malpractice (crime malpractice), criminal liability must be able to be proven about the existence of a professional error, for example a misdiagnosis or an error in treatment or treatment.[6]

In the event that a victim of criminal medical malpractice is seriously injured, or an injury that causes illness, or an injury that hinders duties and livelihoods, the criminal provisions are regulated in Article 360 :

A yat (1) which reads: "Whoever because of his fault (negligence) causes another person to be seriously injured, shall be punished by a maximum imprisonment of five years or a maximum imprisonment of one year."

Paragraph (2): "Any person who because of his fault (negligence) causes another person to be injured in such a way as to cause illness or obstruction to carry out his job, position or breakup for a specified period of time, shall be punished by a maximum imprisonment of nine months or a maximum imprisonment of six. month or a maximum fine of four thousand five hundred rupiahs. "

To be able to assess and prove an act (medical action) is in the category of malpractice or not, according to Hubert W. Smith, malpractice includes 4D, namely: [7]

a. There is a duty, in this element there is no negligence if there is no obligation, therefore the first element states that there must be a legal relationship between the patient and the doctor / hospital.

b. There is a deviation in the implementation of duties (dereliction), where a doctor performs an obligation to a patient who deviates from the professional standard.

c. Irregularities will result in direct caution, in this element there is a clear causal relationship between the medical action taken by the doctor and the harm suffered by the patient.

d. The doctor will cause damage (damage), namely that the doctor medical action undertaken was the direct cause losses to the patient.

Which includes the criteria for malpractice medical action, namely:

- a. There are regulations on the law
- b. There is a legal relationship between the parties
- c. There is a violation of rights and obligations
- d. There are legal consequences that result

A medical action performed by a doctor can be classified as a medical malpractice if the medical action fulfills the form of default (poor performance), and / or fulfills the elements of an illegal act and the medical action results in harm to the patient or victim. Malpractice both physically and mentally can be prosecuted either in the form of compensation or imprisonment.

Legal cases in medical services generally occur in hospitals where health workers work. A hospital is something that can basically be grouped into:

Medical services in the broadest sense involving promotive, preventive, curative and rehabilitative activities.

Education and training of medical personnel

Research and development of medical science.

The hospital's legal liability, in this case the legal entity owning it can be sued for the losses incurred, can be:

Directly as a party, to an agreement if there is default, or

2. Not directly as an employer if the employee, in the sense of the laws and regulations, has committed an illegal act.

The form of compensation is aimed at improving the situation, and most of the compensation is in the form of a large amount of money. Compensation for such losses must be assessed according to the capabilities and positions of the two parties and must also be adjusted according to the circumstances. This most recent provision generally

applies in terms of providing compensation issued for an illegal act against a person. In terms of responsibility for medical services, where the patient feels aggrieved, it is necessary to know who is involved in the medical personnel. Medical personnel are doctors, who cooperate with other professionals in organizing and providing medical services to the public or patients.

Apart from nurses, other professionals in the health and medical fields, such as laboratory and radiologists, health educators and educators, administrators of various medical equipment and supplies, especially in service institutions such as hospitals, specialist clinics, and joint practices, are urgently needed as a companion. doctor. Doctors also need assistants in the fields of administration, insurance, accounting, law and society. This seemingly complex, although well-organized institution is called the "medical service bureaucracy". If an error occurs in the medical procedure and results in loss on the part of the patient, then the responsibility is not directly to the hospital. Regarding responsibility, you must first see whether the mistake was done by the doctor himself or other medical personnel. Every problem that occurs either on purpose or accidentally needs to be researched first. If the mistake made by the medical personnel is specifically the doctor who did it, usually the hospital is generally responsible. And doctors who carry out the action can also be penalized.

For health workers, especially those who work in hospitals, there are two workers, namely: personnel from PNS (Civil Servants) and Private. In carrying out their professional duties, both civil servants and private workers have different responsibilities. For health workers (doctors) from civil servants who make mistakes / negligence in medical treatment, usually the doctor is given a sanction in the form of transferring work to another health agency or temporary dismissal. Whereas for private doctors, in the case of making mistakes / negligence, usually the sanctions imposed are in the form of being dismissed by the hospital where they work. And the consequences of mistakes from doctors or other paramedics that cause harm to patients will be a burden for the hospital.

Responsibility seen from the perspective of civil law contains several aspects, namely that it can be caused by "default", because an act violates the law, it can also be due to carelessness resulting in the death of people and also due to carelessness causing bodily disabilities. The consequences of the actions that result in the loss are carried over because the nature of the agreement that occurs between the doctor and the patient is an agreement called "inspannings verbintenis". An agreement that must be carried out carefully and with great care (inspanning) and the relationship between the doctor and the patient is also a result engagement, or what is known as "verbintenis resultaat".

So that based on the things that have been mentioned earlier, it is necessary to pay attention to the interests of patients by providing protection for victims who have suffered losses from the errors of medical personnel by speeding up the process to get compensation.

The rise of malpractice in Indonesia has made people distrustful of health services in Indonesia. Ironically again, the health authorities are worried that Indonesian medical personnel will no longer dare to take medical action for fear of facing the law. Again, this is due to a lack of good communication between medical personnel and patients. It is not uncommon for a medical professional to not tell the cause and effect of a medical action. Patients are also reluctant to communicate with medical personnel about their illness. Therefore, the Ministry of Health needs to provide counseling or outreach to the public about how a medical personnel is performing.

Nowadays professional demands for this profession are getting higher. Cornering news and accusations that doctors had made a mistake in the medical field emerged. In developed countries, which were first acquainted with the term medical practice, it turns out that the demands for medical personnel who commit improper practice have not subsided. Usually the biggest targets are surgeons (orthopedics, plastics and nerves), anesthetists and specialists in obstetrics and gynecology. In Indonesia, the phenomenon of patient dissatisfaction with the performance of medical personnel is also growing. In early January 2007, the public was shocked by a demonstration by victims of suspected medical malpractice at Polda Metro Jaya demanding that the police continue to investigate every case of suspected malpractice that has been reported by the public.

Such demands from the public are understandable given the very few cases of medical malpractice that have been resolved in court. Is it civil law, criminal law or administrative law. In fact, the national and regional mass media have repeatedly reported allegations of medical malpractice by doctors, but these often do not lead to resolution through the judicial system.

One of the effects of malpractice today (globalization).

We are currently living in an era of globalization, an era full of challenges, an era full of competition where the door opens for foreign products and foreign workers to Indonesia. If we relate it to the medical world, there are benefits to be gained, but also many disadvantages. The benefits are as era of globalization, then it is possible to be the presence of a sophisticated health care equipment. This provides a greater chance of success in healing the

patient. However, there are also many losses incurred. The entry of sophisticated equipment requires human resources who can operate it and repair it if it breaks. The highlight here is in terms of operation. Let us give an analogy first, with the inclusion of sophisticated equipment, the quality of health services must be improved. However, what is happening now is that many medical personnel make mistakes in the operation of this sophisticated equipment, causing malpractice. It is clear that this dependence on health care equipment can hamper health care. To follow up on this problem, so that malpractice does not occur, it is necessary to provide counseling to health service personnel regarding this issue. Then, it is necessary to adjust the educational curriculum with technological developments. One thing that is even more important is the need for awareness for medical personnel to continue to study and learn in order to increase their ability to use this sophisticated equipment to prevent malpractice.

To avoid malpractice, there are things that we must pay attention to, including:

Choose a place of treatment (hospital or clinic) that has a fairly good reputation. Don't just consider the distance from the house as a basis for choosing a place for treatment. Do not hesitate to choose a place far away as long as the reputation is good, even though there are health services near your home but the reputation is not clear.

When the patient is hospitalized, there will be a doctor appointed to treat the patient. Don't hesitate to ask the doctor you trust from the management, especially if you have doubts about the doctor who treats the patient you bring.

Don't be afraid to ask your doctor about medical procedures being performed. According to the Health Law, a patient's family has the right to know what medical actions a doctor takes to a patient. Do not hesitate to ask about the diagnosis, the basis of medical action and what are the benefits of the medical procedure performed by the doctor.

Don't be afraid to ask the doctor what medication is given to the patient. As a family, you have the right to know and are protected by the Health Law. This is because it is not uncommon for doctors to only pursue commissions from drug distributor companies so that they provide more or even unnecessary drugs to patients.

Hospital collaboration with professional organizations to deal with malpractice

Accidents (bad results) do not occur as a result of one cause (single cause), but are the result of multiple causes (multiple causes). A human error seen at the time of an accident is actually only an active error, which we might call a causative or precipitating factor / precipitation. Meanwhile there are other causal factors that are latent errors or what we refer to as predisposition, underlying factors, contributing factors, etc.

Active errors occur at the level of the front line operator and their effects are immediate, while latent errors tend to be beyond the control of the front line operators, such as poor design, improper installation, poor maintenance, mismanagement of management decisions, and poor organizational structure.

Latent error is a major threat to the safety (safety) in a complex system, and therefore often go undetected and can lead to various types of active errors. Latent errors do not feel like errors, but are actually the root of mismanagement that has led to many unsafe conditions in medical practice in the field. If one time this unsafe condition meets an unsafe act (active error), then an accident occurs. Thus we need to understand that the cause of an accident is not a single factor but multiple factors.

Thus, it would be better if we look for causal factors that are classified as predisposing, which are more systemic, organizational and managerial, so that we can take preventive measures, also systemically. In the internal discussion of the Indonesian Doctors Association in the middle of last year, several root causes were raised, namely:

1. Low understanding and application of medical ethics. This is thought to be the result of the education system at the Faculty of Medicine which does not provide material on medical ethics as material that includes affective - not only cognitive.
2. Understanding of materialism which is getting stronger in society in general and in medical services in particular.
3. The absence of legislation that guarantees the accountability of the medical profession (currently we are waiting for the enactment of the Medical Practice Law which is expected to regulate accountable medical practice).
4. The absence of good clinical governance in medical services in Indonesia, which can be seen from the absence or lack of standards (competence, behavior and services) and guidelines (case management), as well as the lack of strict enforcement of these standards and guidelines.

It is suspected that there are still many other causes or derivatives from the above causes, such as the absence of medical education standards, regulations that allow doctors to work in many practice places (health facilities) with the risk of depleting the quality of the doctor-patient relationship, expensive medical education - especially PPDS, a financing system that imposes most decisions on doctors, commercialization of hospitals, and others.

By looking at the causative factors above, preventing malpractice must be done by improving the system, from education to medical practice management. It is recommended that medical ethics education be started earlier since the first year of medical education, by providing more tools for making ethical decisions, providing lots of practice, and providing more exposure in certain clinical-ethical conditions (clinical ethics), so that ethical thinking it is hoped that this will become part of the consideration of everyday medical decision making. Of course we understand that ethics education is not necessarily able to change a person's ethical behavior, especially if the example given by his seniors is contrary to the ideal situation in education.

The values of materialism that are embraced by the community must be contained by providing training and role models that demonstrate the ethical and professional attitudes of doctors, such as autonomy, beneficence, non-maleficence and justice, and altruism. It is believed that this is the most difficult part of a systemic effort to prevent malpractice, because it requires a large and simultaneous political will from the medical profession to be willing to move in this direction. Big changes must be made.

The Medical Practice Law is expected to be a vehicle that can lead us in this direction, as long as it is implemented properly. Educational standards are set in order to achieve competency standards, then national registration and licensing are carried out for those who will practice. The council must be brave and firm in implementing the regulations, so that the accountability of the medical profession can really be upheld. Standards of behavior must be set as a more concrete and enforceable rule than just a code of ethics. Likewise, service standards must be published to regulate basic matters in practice, while detailed provisions must be regulated in guidelines. Overall, it will provide guidelines for medical practice, become rules for the discipline of the medical profession, which must be implemented, monitored and enforced by the Indonesian Medical Discipline Honorary Council (MKDKI). The "dirty" professionals are cleaned up and the "rotten" are banished from professional society.

Provisions that support good clinical governance must be made and enforced. In this case the role of the hospital is very necessary. Hospitals must be able to prevent medical practice without authority or outside their authority, able to "force" professionals to work according to professional standards, and be able to provide an "atmosphere" and culture that is conducive to the proliferation of evidence-based medical practice (EBM).

#### 1. Malpractice prevention efforts in health services

With the tendency of the community to sue midwives due to malpractices, it is hoped that midwives in carrying out their duties will always act carefully, namely:

- a. Do not promise or guarantee will be the success of its efforts, since the agreement in the form of effort (inspaning verbintenis) no agreement would succeed (resultaat verbintenis).
- b. Before intervening, informed consent is always carried out.
- c. Record all actions performed in medical records.
- d. In case of doubt, consult a senior or a doctor
- e. Treating patients humanely with attention to all their needs.
- f. Establish good communication with patients, families and the surrounding community.

#### 2. Efforts to face lawsuits

If the health efforts made to the patient are not satisfactory so that the midwife faces legal prosecution, then the midwife should be passive and it is the patient or family who actively proves the midwife's negligence.

If the allegation against a midwife is criminal malpractice, the midwife can :

a. Informal defense, by submitting evidence to fend off / deny that the allegations submitted are baseless or do not refer to existing doctrines, for example the midwife submits evidence that what happened was not intentional, but is a medical risk (risk of treatment), or submits an excuse that he does not have the mental attitude (men rea) as required in the formulation of the accused offense.

b. Formal / legal defense, the defense by asking or pointing to the doctrines of the law, by denying the claim by way of rejecting the elements of liability or defense to free itself from liability by submitting evidence that what is the influence of forced.

Speaking of defense, it is better if the midwife uses the services of a legal advisor, so that the technical nature of defense is left to him.

In civil cases in civil malpractice charges where the midwife is being sued to pay compensation in the amount of money, what is done is to counter the plaintiff's arguments, because in civil court, the arguing party must prove in court, in other words the patient or lawyer must prove the argument as the basis for the lawsuit. That the defendant (midwife) is responsible for the suffering (damage) suffered by the plaintiff.

To prove the existence of civil malpractice is not easy, mainly there are no facts that speak for themselves (*res ipsa loquitur*), let alone prove that there is an act of dereliction of duty and there is a direct relationship between neglecting obligations with damage to health, whereas the ones who have to prove are lay people in the health sector and this is what benefits the midwifery workers.

In Indonesia, there are provisions for informed consent which are regulated, among others, in Government Regulation No. 18 of 1981, namely:

1. A healthy adult human in body and spirit has the right to fully determine what to do with his body. The doctor is not entitled to perform medical actions against the will of the patient, even if it is for the patient's own benefit.
2. All medical procedures (diagnostic, therapeutic and palliative) require written or oral informed consent.
3. Every medical procedure that carries a significant risk, requires a written consent signed by the patient, after the patient has previously received adequate information about the need for the medical action concerned and the risks involved.
4. For actions not included in point 3, only verbal consent or silence is required.
5. Information about medical procedures must be provided to patients, whether requested or not requested by the patient. Withholding information is not allowed, unless the doctor / midwife believes that the information is detrimental to the patient's health interests. In this case the doctor can provide information to the patient's closest family. In providing information to the patient's closest family, the presence of a midwife / other paramedic as a witness is important.
6. The contents of the information include the advantages and disadvantages of planned medical actions, both diagnostic, therapeutic and palliative. Information is usually given orally, but can also be written (in relation to informed consent).

## 5. Conclusion

Based on the discussion in this journal, the authors can conclude that:

1. Aspects of legal protection of patients victims of malpractice by a doctor under the laws of Indonesia, namely

a) Preventive: with the existence of regulations governing malpractice, namely in the Civil Code (Civil Code), Health Law, Consumer Protection Law, Medical Practice Law, and the Indonesian Civil Code. Criminal Law (KUHP).

b) In repressive: the lack of action resulted in a loss, the person who did the act imposed sanctions in the form of civil sanctions, namely to replace the loss. Administrative sanctions, namely temporary dismissal from the position (doctor) held, dismissal of membership and revocation of medical practice permit by the Honorary Council of Indonesian Medical Discipline (MKDKI). Criminal sanction, namely the act is an act against the law and can be subject to a maximum imprisonment of 12 years.

2. The act Doctor that might said as malpractice are:

- a) There are regulations on the law.
- b) The existence of a legal relationship between the parties.
- c) There is a violation of rights and obligations
- d) There are legal consequences that result.

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