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Legal Position of Medical Malpractice in Indonesia

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Abstract: Medical malpractice can take form in several different ways. For instance, a mistake in diagnosis, a wrong prescription, failure to provide medical care and surgical failure both intentionally and unintentionally are all forms of medical malpractice. It can happen and is in fact happening all over the world, affecting the medical fraternity and also patients. In Indonesia, there are two statutes that are supposed to govern all medical malpractice cases. They are Act No. 36 year 2009 and 2004. However, it is submitted that there is no legal definition of malpractice to be found in both acts. Therefore, the Criminal Code and Civil Code are resorted to in order to resolve cases of medical malpractice. It is the aim of this study to give an overview of what is meant by medical malpractice in Indonesia. The writers will also identify the relevant laws pertaining to medical malpractice in the country and in so doing determine whether the laws are adequate to solve medical malpractice cases.

Key words: Legal position, medical malpractice, Indonesia, determine, pertaining

INTRODUCTION

The position and status of the medical profession in the community be it doctors or other health professionals are very precious. This is because doctors could cure patients or save the human souls. The current development indicates that the medical profession experienced many problems and lawsuits. No matter how small the fault is on the part of the doctor, the doctor will be sued or prosecuted for failure to cure the patient would then be accused of medical malpractice.

Medical malpractice can disrupt a patient's health or cause harm to the patient such as injuries, disability and even death. Medical malpractice prevalent in many countries such as Canada (Dewees *et al*., 1991; Mayeda and Takase, 2005), even in the 1970 and 1980's the United States and the United Kingdom have experienced medical malpractice crisis (Danzon, 1984; Henry, 1968; McQuade, 1991). Similarly happened in Malaysia, although, the development of medical malpractice cases are not as many of these countries but each year the number of medical malpractice have increased (Roy, 2004).

Indonesia is also experiencing the same thing. Medical malpractice cases continue to increase each year. According to data from the Indonesian Medical Council (IMC), the number of medical malpractice cases in 2013 was 183 cases. Of the 183 number of malpractice cases as many as 60 cases involved general practitioners, 49 cases involved surgeons, 33 cases involved gynecologists and 16 cases involved pediatricians. The Jakarta Legal Aid Institute of Health data states that from 1998-2004 there were 405 medical malpractice cases (Afandi, 2009). Based on the data from the Indonesian Medical Association (IMA), it was reported that from 1998-2004 there were 306 reported medical malpractice cases. According to the chairman of the Indonesian Medical Disciplinary Honorary Council, every 62 medical malpractices were reported every year. However, the overall number of malpractice cases in Indonesia is unknown because there is no official government agency that reports on this issue.

Each year, the number of claims for compensation due to medical malpractice cases continue to grow. Verily the signs of the medical malpractice crisis in Indonesia, such as in the United States in the 1970 and 1980's had begun. The amount of increase in the number of medical malpractice cases in Indonesia raises a question of the professionalism of the doctors and other health personnels. The high number of medical malpractice cases in Indonesia will erode the patient's trust to doctors and hospitals in Indonesia, resulting in Indonesian patients leaving Indonesian doctors/hospitals and seeking medical treatments abroad.

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The impact of the increasing number of medical malpractice cases in Indonesia can be seen in the significant increase in the number of patients who seek treatment abroad. The current development shows that the countries most visited by Indonesian patients are Malaysia, Singapore, Thailand and China (Herqutanto, 2009). This should be a concern and a serious warning for doctors, hospitals and government to improve on the Indonesian health care system and its legal enforcement in ensuring errant doctors and hospitals committing medical malpractice goes punished.

MATERIALS AND METHODS

This study is qualitative in nature, using normative juridical approach (McCracken, 1988). This study uses a legalistic or doctrinal approaches using content analysis as its analysis techniques. Content analysis is a research technique which is carried out systematically by analyzing legal instruments pertaining to medical malpractice cases (Maanen, 1979). The purpose of legalistic or doctrinal research is to find, explain, examine, analyze and propose in a systematic way, any fact, principle, concept, theory in a certain laws and law enforcement institutions in order to find knowledge and breed new ideas for a legal change or renewal (Yaqin, 2007).

History of health law and medical malpractice in Indonesia: World civilization of medical treatment starts from ancient society's belief on mystical objects. At that time there was no scientific studies to prove the cause of a person's disease. It led to the emergence of various figures began to discover and foster more rational treatment system.

In the course of time, medical science continues to develop even more sophisticated treatment technology. This resulted in the need for regulation of the medical profession to protect the rights and obligations of doctors and patients. Since, the Dutch colonial era, Indonesia (formerly called the Dutch East Indies) has had health legislation originating from the Dutch law Het Reglement op de Dienst der Volksgezondheid 1882. After Indonesian independence, health legislation continues to be developed with the issuance of Government Regulation of Law No. 10 in 1960 as a forerunner to the Indonesian health legislation.

The Indonesian Constitution in 1945 has provided a guarantee that every Indonesian citizen has the right to obtain quality health care so that the existence of health legislation is a necessity to provide for the protection and supervision of health workers in their profession, so that in 1960, the Indonesian government issued Law No. 9 of 1960 on Principles of Health. This law is the first generation of health law after Indonesia's independence. Although, not perfect but this law is a milestone for the development of health legislation in Indonesia.

In 1992, Indonesia issued Law No. 23 of 1992 on Health to enhance the previous law. This law is better than the previous legislation. This law involves the community in the health care system and the rights and obligations of the doctor-patient mentioned explicitly. Law No. 23 of 1992 on Health deemed no longer suitable to the times so it was replaced by Law No. 36 2009 on Health. There are three crucial reasons that influence these changes: the rapid development of medical technology, changes in the system of government from a centralized system towards a decentralized system and the shift pattern of the doctor-patient relationship from the principle of paternalism toward the principle of patient autonomy.

The issue of medical malpractice emerged in Indonesia in about 1981. The medical malpractice became known after a medical malpractice cases performed by Dr. Setianinggrum in Pati regency, Central Java Province. This case received attention from various parties both from the medical profession, legal experts and the public.

Actually, before the case Dr. Setianinggrum, there have been some cases of medical malpractice in Indonesia but public awareness of the development of medical malpractice emerged after the case of Dr. Setianinggrum. This led to the establishment of the World Congress on Medical Law in 1982 and on the initiative of a number of doctors and legal experts on November 1, 1982 established the Law Review Group Health in Indonesia with the aim of studying the possibilities for the development of health law as a new discipline in Indonesia. Furthermore, the development of health legislation incorporated into the National Health System (NHS) in 1982 and incorporated into the Guidelines of State Policy Guidelines 1983 and 1988 as guidance in implementing health development in Indonesia. Since then, the subject of health law has been incorporated into the educational curriculum of the Faculty of Medicine and Faculty of Law in Indonesia (Guwandi, 2003).

RESULTS AND DISCUSSION

Medical malpractice and medical negligence: Now a days, the term malpractice is very popular in the medical field aithough it is also used in other professions such as lawyers, advocates, judges, accountants, journalists, police and others. In general, malpractices is a term that is always a bad impact, stigmatic and contrary to the rules.

There are two terms of medical errors made by physicians or other health workers: medical malpractice and medical negligence. There are some opinions stating

that medical malpractice is different from medical negligence. However, some legal experts argue that it is difficult to distinguish medical malpractice and medical negligence. Indeed, in some of the literature, the term is often used interchangeably as if the meaning is the same. According to Creighton (1986), malpractice is considered synonymous with professional negligence. It is supported by the opinion of Mason and Smith (1986) where it was mentioned that malpractice is a term instant confirmation the which is increasingly used as a synonym for medical negligence.

It is submitted that the term medical malpractice is not the same as medical negligence. All mistakes made by doctors and other health workers in both legal and ethical aspects are medical malpractice. For example, breach of discipline or intentional actions of doctors resulted in worsening of the patient's health. Therefore, the definition and scope of the medical malpractice is wider than medical negligence.

The term medical malpractice was first used by Sir William Blackstone in 1768. According to Sir William Blackstone (Mohr, 2000; Costante and Puro, 2003), medical malpractice is.

"That, malapraxis is great misdemeanor and offense at common law, whether it be for curiosity or experiment or by neglect because it breaks the trust the which the party had placed in his physician and tends to the patient's destruction." Black Law Dictionary (Henry, 1968) formulates medical malpractice as.

"Professional misconduct or unreasonable lack of skill or failure of one rendering professional services to exercise that degree of skill and learning commonly applied under all the circumstances in the community by the average prudent reputable member of the profession with the result of injury, loss or damage to the recipient of Reviews those services or to Reviews those Entitled to Rely upon them".

In the United States health care law to prove the existence of a medical malpractice action, the patient must prove the following conditions:

- Doctor's obligation to carry out medical care to patients
- Medical action must be in accordance with professional standards
- The medical action resulted in injuries so that the patients get compensation (Gittler and Goldstein, 1996)

According to Anisah Che Ngah, medical negligence is an act which contains mistakes in establishing the diagnosis and doctors are not careful or detail in providing medical attention or other medical action (Ngah, 1990). Carefulness and detail observation become important as they are the benchmark of code and conduct.

World Medical Association (WMA, 2005) states that medical negligence caused by doctors who work not in accordance with the standards of the medical profession or a lack of expertise or negligence in performing medical care causing the patient injury, disability or even death.

In the case of Donoghue v. Stevenson A.C.562, Lord Atkin stated that negligence is when a person is obliged to maintain and care for the other party (the patient) but he did not do so and cause the other party to suffer losses. In the case of Blyth v. Birmingham Waterworks Co 11 EXCH. 781, Lord Anderson said that faux pas is someone ignores common action duly executed by another person or an improper action that is not commonly done by other people.

It should be understood that not all the actions of doctors who fail to cure patients is a medical malpractice action, because there are risk and medical accidents in any medical action. All medical failures is not an act of medical malpractice when doctors perform surgery in accordance with the Standards of Medical Operations (SOP). However, surgery can lead to unwanted result that was not previously thought to be apparent, resulting in patient injury, disability or even death. It is called the medical risk or medical accidents, not medical malpractice

Doctor or other health personnel are not responsible in cases of unintended consequences that are not caused by a lack of expertise or knowledge of a doctor. Therefore, not all careless actions or attitudes are referred to as medical malpractice (Buang, 1999). If the doctor carrying out their profession in accordance with the standards of the medical profession and operational standards that have been adjusted to the current development of medical science, the doctor could be free of all charges.

Study and in-depth analysis show that in the three health legislation prevailing in Indonesia, there is not found a single study that mention the definition of medical malpractice. The formulation of a known medical malpractice is currently interpreted in two forms: intentional medical malpractice and unintentional medical malpractice (negligence). This formula is based on the actions of doctors in making medical action and the consequences of such actions that could harm the health of the patient as causing injuries, permanent disability and even death. For both forms of malpractice, intentionally or unintentionally (negligence), the perpetrator can be charged under the criminal law, civil and Health Law relating to administrative affairs.

Medical malpractice (ethical and legal aspect): Medical malpractice in Indonesia can be divided into two aspects:

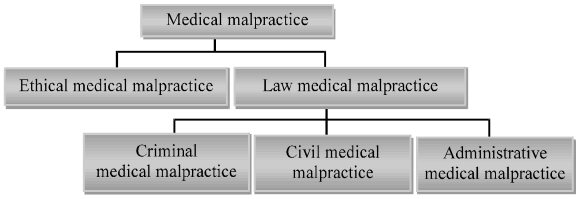

Fig. 1: Types of medical malpractice

the ethical aspects and legal aspects. Medical malpractice in the legal aspect is further divided into three different aspects, namely criminal law, civil law and administrative law. All types of medical malpractice have different solution path, a different legal basis and are handled by different judiciary (Fig. 1).

Ethical medical malpractice: Ethical value must grow and develop in each professional group. Professional groups can only be supervised by members of the profession who understands the ins and outs of the profession. Therefore, each institution must have its own professional association code of ethics. The code of ethics is to maintain the dignity and honor of the profession and protect the public safety of all forms of error in their profession.

Dodig and Cronkovic stated that a code of professional ethics appears when an occupation organizes itself into a profession. It is central to advising individual professionals how to conduct themselves in judging their conduct and to an understanding of a profession (Cronkovic, 2014).

In the medical profession, ethical values are reflected in the Code of Medical Ethics of Indonesia and the Indonesian Medical Pledge. Doctor's oath containing a "moral contract" between doctor with god while medical ethics contained "moral obligation contract" between doctor with colleagues and patients. Ethical malpractice is where doctors perform medical acts contrary to Indonesian medical ethics code. Indonesian medical ethics existed since a long time ago. Indonesian medical ethics are arranged in an instrument called the Code of Medical Ethics Indonesia. The Code of Medical Ethics Indonesia are ethical standards, principles, instruments that apply to all doctors throughout Indonesia.

The Code of Medical Ethics Indonesia are the rules and supervision for doctors in their profession to cure patients. The substance of the Code of Medical Ethics Indonesia must be in accordance with the Declaration of Helsinki issued by the World Medical Association. Declaration of Helsinki based on the Geneva Declaration, namely that "healing and patient safety will be taken into consideration and the purpose of the doctor" (Roy, 2004).

Medical malpractice: the legal aspect

Criminal medical malpractice: Criminal malpractice occurs when a patient dies or has a disability due to negligent, less carefulness of doctors or other health care workers. Criminal malpractices are divided into two; intentional/deliberate criminal malpractice and negligent criminal malpractice.

According Moelyatno intentional action is an action that was done knowingly or under the offender's knowledge in performing these actions. For example, doctors who perform abortion, euthanasia and doctors who deliberately did not help patients even though he was aware that he was the only one in the area, resulting in the subsequent death of those patients.

While on the other hand negligence occurred because of lack of attention, less accurate and less cautious in the treatment or medication to the patient, thereby unwittingly causing injury, disability or death of a patient. Negligence is essentially the same as deliberate action but the only difference is in the quality (degree). The degree of intentional error is higher than negligence.

In general, aspects of medical negligence are based on Article 359 of the Criminal Code and Article 360 of the Criminal Code. This study is used against doctors for alleged medical malpractice action because both articles can accommodate virtually all medical acts that harm the health of the patient.

Article 359 of the Criminal Code states that a person's act of negligence causes death to another person. In this study, the definition of negligence is not intention to act but the result of a negligent act that is death. If the doctor had suspected from the beginning or thinking about the consequences of his actions, then the doctors will not perform such actions. Because doctors do not think of the consequences that would arise, then the doctorscan be blamed.

One example is the incident of Suwarti who died in 2002 in Bangkalan after giving birth to her first child. The patient's family reported the doctor to the police with allegations of medical malpractice because his actions had violated Article 359 of the Criminal Code.

Civil medical malpractice: Medical malpractice in the aspects of civil law is based on the agreement between doctors and patients. The pattern of the relationship between doctor and patient is no longer solely based on trust but must be based on a contract or agreement that each party has rights and obligations.

In the legal aspect, the agreement between doctors and patients is based on the principle of medical consent (informed consent). Approval of medical action is a process of obtaining patient consent either in written form

or given impliedly. In principle, approval of medical action is one form of the principle of autonomy of the patient who has been recognized globally and has been set by law or Indonesian medical ethics.

To obtain a patient's consent, physicians should not deceive patient's by covering up the facts and risks that might occur. In the case of Salgo v. Leland Board of Trustees 1957, 317 P 2d 170, 154 Cal, a doctor was convicted when he hide the facts about the patient's disease. For the sake of getting the approval of the patient, the physician should not hide the fact that the medical risk is very high.

The principle of informed consent is a form of safeguard for a physician in carrying out treatment on patients. If the agreement is not implemented or implemented inaccurately, then the doctor has violated the law which has been agreed by both parties. Losses incurred can only be measured in terms of material losses, i.e., losses that can only be measured with money such as maintenance costs, travel expenses, operating costs and the cost of medicines.

Administrative medical malpractice: Administrative malpractice occurs when a doctor or other health professionals conduct skilled-practice without a license to practice, perform medical acts not in accordance with the license issued, medical practice with an expired license and practicing without making medical records. The interesting thing in this law is administrative violations committed by doctors are not just punished administratively, for example revocation of the practice license but doctors could also face criminal penalties if it resulted in physical and mental harm or death of the patient.

Shifting paternalism and autonomy of the patient: The principle of paternalism puts physicians in a very high position. Doctor is a good father and knows what is best for the patient's health (a doctor knows). Some Asian countries are still putting high expectations and trust to physicians. For example, in Japan, doctors will not respond when patients ask many questions about the drugs, treatments or other types of alternative treatments that will be undertaken by the patient. In fact, there is a physician who directs the patient to remain silent because the doctor knows better what is best for the patient.

In Japan, many doctors still committed to the principles of paternalism with closed door practice medicine. Many doctors in Japan do not deliver comprehensive information to patients, it is reflected in Japan has not implemented the principle of autonomy of the patient. Naoki Miyaki said that doctor as an individual did not mention information on patient disease. Doctor chose not to explain the situation because their believe that patient should live with their family with ease. Deciission are made by their relative. This shows that medical consent is made by relative or someone close. So, Japan still take account paternalism (Morioka, 1995).

Not least in Malaysia, where the patient's put high expectations and trust on physicians. Puteri Nemie found that major problems in Malaysian hospitals is that the patient's right to give consent has rarely been notified to the patient. Patients are usually asked to sign a consent form prior to treatment or surgery however most of the time they did not understand and comprehend what they have signed (Kassim, 2004).

According to Muhammad Nur Azmi Baharuddin, the results of research on cancer patients at Selayang Hospital found that although patients generallyaccept their fate but the patient or the patient's family would be like to be involved in the treatment and will refuse medical action if it is made without their knowledge and consent.

However, the principle of paternalism is gradually abandoned by the declaration of the global principle of patient autonomy. One form of patient autonomy is the principle of informed consent that binds the freedom of doctors in performing medical acts in accordance with his wishes. All medical actions must be carried out when consent has been given by the patient. Indirectly, this means that the principle of medical ethics is to uphold the rights of patients, namely the principle of respecting the principle of freedom of the individual to determine what medical action is desired.

Informed consent in Indonesia: The principle of patient autonomy is found after the Nuremberg court decision that sparked the Nuremberg Code in 1947. This decision establishes that any doctors who carry out clinical research must obtain consent from patients. In the Nuremberg Code of 1947, the autonomy of patients is set in Rule 1 which principally contains moral values for the patient to self-determination based on full information and valid and accurate medical records (respect of persons). Then the rights of self-determination in the doctor-patient relationship becomes the principle of informed consent.

The principle of patient autonomy is one of upholding human dignity that has been declared in the Universal Declaration of Human Rights 1948, the International Covenants on Economic, Social and Cultural Rights and on Civil Rights in 1966, the European Convention on Human Rights in 1959 and also the Convention on Bioethics Council of Europe which was passed on 1 Disember 1999 (Kokkonen, 2004).

According to J Keown, the term autonomy is a person's ability to think and make decisions. The decision was made without any coercion and voluntary (Keown, 1995). According to Anisah, patient autonomy is to respect the rights of patients. If the patient requires information, the physician must provide and convey information clearly and correctly. If the doctor wants to examine the patient, then the patient must be approved first. In the code of professional conduct 1987 and 1995 Patient's Charter states that prior to carrying out medical action, the patient has the right to be informed in advance and then give consent.

The principle of patient autonomy has also been in introduced in Indonesia through the Executive Board decision of the Indonesian Medical Association (PB-IDI) No. 319/PB/A.4/1988. This decision was reinforced by the enactment of the Ministry of Health of Indonesia No. 585 of 1989 regarding the approval of the Medical Action (informed consent principle). Then, strengthened again in Article 45 of the Law of the Republic of Indonesia No. 29 Years 2004 regarding Medical Practice which states that any action/treatment in general and dental patient should only be done after the patient signed the consent form and after complete explaination of information.

The implementation of the principle of informed consent in Indonesia started with a therapeutic agreement between doctors and patients. The agreement was made in an informed consent form and must be signed by the doctor and the patient or the patient's family. Therapeutic agreement is not an agreement that requires physician to cure the patient because the doctor was not able to determine the outcome of the treatment. All doctors will try to act professionally with its knowledge and experience so that physician must put efforts to cure the patient, instead of focusing on the "results" (Patil and Anchinmane, 2011).

In the implementation of informed consent, before the patient gives consent, the physician is required to provide information or give a complete explanation to the patient about methods of treatments, the risks and opportunities for the patient's recovery. In Article 45 paragraph of Law No. 29 2004 on the Practice of Medicine states that at least doctors should explain to patients the following things before medical action:

- Diagnosis and procedures for medical action
- The purpose of medical action
- Another alternative treatment
- The risks and complications that may occur
- The prognosis

The Ministry of Health of the Republic of Indonesia No. 585 of 1989 on Approval of Medical Measures stated that medical information be given either requested by the patient or not requested by the patient. Patients are not fully equipped with medical knowledge so the rights and obligations of the patient should be explained to them in detail and the patient should also know the advantages and disadvantages of the medical action both at the diagnostic and therapeutic stage. If patients do not want medical action recommended by the physician, the patient may reject and choose other alternative treatment methods.

In the practice of medicine, the patient's consent can be given orally and in writing and even impliedly but Law No. 29 2004 requires that medical consent should be given or made in writing. In high-risk medical procedures which has the risk of causing the patient's death, the approval of medical action should be made in writing.

Doctors who treat patients or other doctors based on the doctor's instructions that will run the medical action are under the obligation to provide information or explanation. Information or explanation about the medical action to be performed can be provided by other physicians or other health professionals if medical action is not a surgery or other invasive treatments. If the medical action in the form of surgery or other invasive treatment, other doctors are not allowed to provide information or explanation. Several patient's rights are stated in the Indonesian code of medical ethics:

- The right to life, the right to their own bodies and the right to die naturally
- The right to a humane medical care in accordance with the standards of the medical profession
- The right to obtain an explanation of the diagnosis and treatment from the doctor
- The right to refuse diagnostic and therapeutic procedures
- The right to be referred to other specialists if needed
- The right to confidentiality or a personal medical record
- The right to obtain information on regulations and the cost of hospitalization
- The right to contact with family, clergy or others
- The right to obtain details of the cost of treatment

Doctors should explain to the patients about his situation, illness, recovery opportunities, medical action to be performed and the risk involved in the process of surgery. After patients were given the necessary information, the patient will determine or decide what is best for him. The right of self-determination is protected and becomes the patient's rights. If the patient refuses

medical action offered by the doctor, then the doctor should not force the patient to follow his advice, even though doctors know that such refusal may endanger his life.

Other constraint and challenges: Competition in improving health services in The Association of Southeast Asian Nations (ASEAN) countries is a challenge for Indonesia to pursue it's health service development in improving the quality of medical care in every hospital in Indonesia.

Singapore, Malaysia and Thailand offer a better health service and are deemed superior with a number of health professionals who are competent and the diagnostic and treatment facilities are most highly sophisticated. Those countrie promote and invite foreign patients including patients from Indonesia to go to their hospitals so that the hospitals are not only used for treating patients but are included into the tourism industry as a source of foreign exchange earnings.

Is it true that these factors are their advantages? According to Bal (2009) and Herqutanto (2009), it is not a main factors. Clinically, the skills of doctors in Indonesia are not inferior when compared with overseas doctors. The main factor that causes the patient to seek treatment abroad is effective communication between doctor and patient. For example, the treatment in Singapore is very satisfying, because the patient can consult with a physician up to 1 h. Doctors in Singapore are also willing to be contacted by patients via mobile phone or the hotline number listed on his card. A patient can consult with a doctor via email and Short Message Service (SMS) enven when they are no longer in Singapore (Makoul *et al*., 2007).

In Indonesia, it is a rare occurrence when a patient can consult with a physician for 15 mins. Most of the doctor-patient relationship in Indonesia is merely one direction. the reason being, doctors do not have the time to listen to patient complaints and go through the patient's medical history due to the high number of patients but limited time. Lack of time to entertain the high number of patients caused a lot of medical malpractice cases where doctors do not practice extra care resulting in incidences where for example gloves, gauze, scissors, needle and hose pieces were left inside the patient's body.

Actually, if the doctor understands the doctor's duties and rights of the patient as well as practising prudence and concern, many medical malpractice cases can be avoided. Unfortunately, there are still many doctors who do not really care and understand their obligations as physicians thus eliminating the trust of patients (Kaplan *et al*., 1996).

CONCLUSION

The medical profession is often considered as a noble profession and is held in high esteem as compared to other professions. History has shown that patients used to assumed that doctor is half "God" because he knows and can predict the "life and death" of a patient. This belief was encouraged, albeit unknowingly, by the doctors themselves by practicing the paternalism treatment approach which is synonym with the adage concept of "doctor's know best". Doctors are believed to be those with high level of knowledge, Therefore, encouraging patients to depend very highly on their doctors with great expectations. It means that a doctor makes all the decisions regarding the medical action pertaining to the recovery of his patients. While it cannot be denied that doctors will certainly do their utmost best to treat their patients, doctors can also fall below the degree of expectations expected from them. This can be seen from the number of medical malpractice cases reported all over the world including Indonesia. However, due to the development of modern medicine, paternalism approach had begun to be abandoned and the autonomy of patients which applied the principle of Medical Measures Agreement (informed consent) are being globally recognized and implemented in medical treatment.

The current developments show that, each year, the number of medical malpractice cases continue to increase which raised concerns and doubts about the quality of the professionalism of doctors in Indonesia. Due to the increased number of medical malpractice cases in Indonesia, the public trust in the hospital and the doctor or other health personnel is significantly reduced so much so that the public would prefer to get medical treatment abroad even if it is just to undergo a medical check up.

Both health legislation, the Law No. 36 of 2009 on Health and Law No. 29 of 2004 regarding Medical Practice have brought changes in the health care system that was originally based on the theory of paternalism, toward patient autonomy by applying the principle of informed consent. However, both laws cannot be relied upon to resolve cases of malpractice in Indonesia because there are still many weaknesses, especially in the verification system.

All regulations for the enforcement of health laws still adopt a demonstration of the Dutch colonial era. Those who act refute the doctor is the patient or the Public Prosecutor. Patients and prosecutors may not be able to prove the guilt of doctors as they both lay on medical science such as problem diagnosis, therapy and surgical techniques. In the process of evidence during the trial, patients and the public prosecutor may use

information from the doctor as an expert witness to prove the guilt of doctors caring for the patient. However, the problem is, it is not easy to find a doctor who would be willing to testify as an expert witness in court that his colleagues had been negligent in carrying out his profession. The difficulty in proving the guilt of the doctor will increase the number of medical malpractice cases in Indonesia because existing rules are not able to formulate a verification system that makes it easy for patients to prove that the doctor guilty.

All parties should actively contribute to improve health services management in Indonesia. Doctors and hospitals are responsible directly on this issue and should look inward and evaluate each of the health-related services. If this is not done in a sustainable manner, a significant number of the public will cease to get treatment from the doctors and hospitals in Indonesia and this in turn will cause the hospitals to lose financially. Patients who have money will seek treatment abroad while it is the middle-income patients who will be left to get treatment at the Indonesian hospitals which are subsidized by the government and they are the ones who will continue to be exposed to the risks of medical malpractice.

REFERENCES

Afandi, D., 2009. [Mediation: Alternative medical dispute resolution (In Indonesian)]. Indonesian Med. Mag., 59: 189-193.

Bal, B.S., 2009. An introduction to medical malpractice in the United States. Clin. Orthopaedics Relat. Res., 467: 339-347.

Buang, S., 1999. The law of negligence in Malaysia (Translated by A.M. Yusoff). Dewan Bahasa dan Pustaka, Kuala Lumpur, Malaysia. (In Malay)

Costante, P.A. and J.S. Puro, 2003. Medical malpractice: An historical perspective. N. Jersey Med. J. Med. Soc. N. Jersey, 100: 21-25.

Creighton, H., 1986. Law Every Nurse Should Know. 5th Edn., Saunders Publisher, London, England, UK., ISBN:9780721618326, Pages: 335.

Cronkovic, G.D., 2014. On the importance of teachingprofessional ethics to computer science students. Msc Thesis, Malardalen University Vasteras, Vasteras, Sweden.

Danzon, P., 1984. The frequency and severity of medical malpractice claims. J. Law Econ., 27: 115-148.

Dewees, D.N., M.J. Trebilcock and P.C. Coyte, 1991. The medical malpractice crisis: A comparative empirical perspective. Law Contemp. Prob., 54: 217-251.

Gittler, G.J. and E.J. Goldstein, 1996. The elements of medical malpractice: An overview. Clin. Infect. Dis., 23: 1152-1155.

Guwandi, J., 2003. [Doctor patient and the law]. Ph.D Thesis, University of Indonesia, Jakarta, Indonesia. (In Indonesian)

Henry, C., 1968. Blacks Law Dictionary. West Publishing Co., Minnesota, USA., Pages: 111.

Herqutanto, 2009. [O Indonesian doctors communicate]. Ph.D Thesis, University of Indonesia, Depok, Indonesia. (In Indonesian)

Kaplan, S.H., S. Greenfield, B. Gandek, W.H. Rogers and J.E. Ware, 1996. Characteristics of physicians with participatory decision-making styles. Annl. Internal Med., 124: 497-504.

Kassim, P.N.J., 2004. Medical negligence litigation in Malaysia: Whither should we travel?. Insaf J. Malaysian Bar, 33: 14-25.

Keown, J., 1995. To treat or not to treat: Autonomy, beneficence and the sanctity of life. Sing. L. Rev., 16: 360-362.

Kokkonen, P., 2004. Medicine, the law and medical ethics in a changing society. World Med. J., 50: 5-8.

Maanen, J.V., 1979. Reclaiming qualitative methods for organizational research: A preface. Administrative Sci. Q., 24: 520-526.

Makoul, G., A. Zick and M. Green, 2007. An evidence-based perspective on greetings in medical encounters. Arch. Internal Med., 167: 1172-1176.

Mason, J.K. and R.A. Smith, 1986. Forensic Medicine for Lawyers. Butterworths Publisher, London, England, UK., Pages: 339.

Mayeda, M. and K. Takase, 2005. Need for enforcement of ethicolegal education-an analysis of the survey of postgraduate clinical trainees. BMC. Med. Ethics, 6: 1-12.

McCracken, G., 1988. The long interview. Sage Publications, Newbury Park.

McQuade, J.S., 1991. The medical malpractice crisis-reflections on the alleged causes and proposed cures: Discussion paper. J. R. Soc. Med., 84: 408-411.

Mohr, J.C., 2000. American medical malpractice litigation in historical perspective. Jama, 283: 1731-1737.

Morioka, M., 1995. Bioethics and Japanese culture: Brain death, patients' rights and cultural factors. Eubios J. Asian Intl. Bioethics, 5: 87-90.

Ngah, A.C., 1990. Medical negligence litigation: Is defensiv medicine now the norm? 12th commonwealth law conference. LexisNexis Corporation, New York, USA. http://www.lexisnexis.com.my/free/articles/anisah.htm.

Patil, A.M. and V.T. Anchinmane, 2011. Medicolegal aspects of consent in clinical practice. Bombay Hosp. J., 53: 203-208.

Roy, P.G.D., 2004. Helsinki and the declaration of helsinki. World Med. J., 50: 9-11.

WMA., 2005. Statement on medical malpractice: Adopted by the 44th world medical assembly Marbella. World Medical Association, Spain. http://www.wma.net/en/30publications/10policies/20archives/m2/.1 ducation-an analysis of the survey of postgraduate clinical tarinees. BMC.

Yaqin, A., 2007. Legal research and writting. Malayan Law J. SDN. BHD., 1: 1-10.