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The Implementation of Civil Law on Doctor-Patient Relationships in Indonesia

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Abstract: This research aims to identify and analyze the meaning of medical practices in the perspective of human rights; to know and analyze the legal relationship between doctor and patient and to know and analyze the implementation of the articles of the Indonesian civil code in the doctor-patient relationship. This research uses normative legal research because this research is focusing on assessment of the legal provisions (normative) relating to health, complemented with assessment of medical malpractice cases widely discussed in the media lately. The medical practice is a series of activities performed by a doctor to a patient in carrying out health efforts. Medical practice carried out based on Pancasila and based on the value of scientific, benefit, justice, humanity, balance and the protection and safety of patients. Responsibility under civil law in the medical services appear in the form of liability based on breach of contract (violation of Article 1320 of the Civil Code) and liability based on tort (Article 1365 and 1366 of the Civil Code). Liability based on tort, based on responsibility by mistake (liability based on fault). Therefore, it can be directed at any person who commits an unlawful act that causes damage to the other person. Using the principle of reversed proof that the perpetrator may submit things that could prove his innocence. The necessity to change the mindset of the public to choose to pursue the process of civil rather than criminal proceedings. MKDKI (Majelis Kehormatan Disiplin Kedokteran Indonesia-Honorary Council of Indonesian Medical Disciplinary) empowerment as an institution to resolve malpractice liability against the doctor.

Key words: Civil law, doctor-patient relationships, liability law, MKDKI, protection, institutions

INTRODUCTION

Judicial Laws regarding medicine are contained in various Acts: civil code, criminal code and law on medical practice, health law, health workers Act and so forth. Thus, unless law on medicine is realized independently, each general clause (criminal, civil or administrative) could be applied as legal medicine (Chazawi, 2010).

Doctor-patient relationship contains civil law aspects which adheres to the principle of "whoever harms others must compensate" (Article 1365 Civil Code). Legal bond between doctor and patient can occur under agreement (ius contracto) and/or under the law (ius delicto). Ius contractoencourages contract/engagement for voluntary treatment between doctors and patients agreement conducted with or without sign on informed consent (Article 1320 of the Civil Code).

Possible medical disputes based on civil code, among others is wanprestasi or tort (Article 1239), an act of error against the law (Article 1365), negligence resulting in losses (Article 1366) and losses/damagecaused by people or goods which became one's responsibility (Article 1367) (Hargianti, 2006).

Legal physician-patient relationship is formed under agreement. The agreement in contract form is conducted when patients give their consent to the doctors to perform medical action after doctors provide explanation (informed consent). In legal logic perspective, practicing physician has made general offer (openbare aanbod) in providing medical services as the first condition of the agreement. According to the law, agreement occurs when there is an offer proposed by one party and said offer is accepted or approved by the other party. In this case, the agreement is a source of legal bond (Articles 1233 to 1234 of the Civil Code).

Civil relationship between doctor and patient is specific because the result of the deal is not recovery but rather a process in which the physician provides optimal efforts in endeavor to cure the patient. Thus, patients who do not recover or passed away could not sue the doctor's tort for medical acts performed did not deviate from medical profession standard and standard operating procedures. Doctor-patient relationship is not a relationship that carry and demand doctor's legal obligations aimed at results (resultaat verbintennis) of an act of medicine (except plastic-cosmetic medical action (a branch of plastic surgery other than plastic surgery and reconstruction) but rather an obligation to act in medicine optimally without misconducts (inspaning verbintennis). Doctors may not be able to guarantee patient's recovery or survival (Chazawi, 2010).

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Literature review

State law and justice theory based on pancasila as the grand theory: Human rights will be protected under the rule of law concept which promote "equality before the law" principle. On the other hand, the rechtsstaat concept promotes wetmatigheid principle which later became rechtmatigeheid. Indonesia promotes harmonious relationship between government and citizenunder the principle of harmony (Chazawi, 2010).

The principle of harmony in Negara Hukum Pancasila (State of Pancasila Law) Theory meaning could be formulated either positively or negatively. In a positive sense, harmony means harmonious relations whereas in a negative sense it means not confrontational, not hostile to each other. The proposed meaning promotes government behavior in endeavor to establish harmonious relations with the citizen. Despite utilizing principle of harmony, it does not mean the relationship between government and citizen would not emerge dispute. Social or civil life would give rise to disputes in eachlife aspects including disputes between the government and citizen. Nevertheless, a method is required in order to resolve dispute appropriately and does not cause disharmony and disharmonious relationship in the context of the government and people of the Negara Hukum Pancasila (State of Pancasila Law).

As the State of Pancasila Law, Indonesia requires judicial independence as an important part in governance. Especially with regard to implementingstate authority institutions such as Constitutional Court in conducting law judicial review against the NRI Constitution 1945. Thus, decisions generated by the Constitutional Court could be free from intervention of the parties having an interest in the Constitutional Court decisions such as executive and other social institutions (Chazawi, 2010).

Theory of legal protection as the middle theory: The legal protection preserve human rights harmed by others. Protection is given to the citizen so, they can benefit fromrights granted by law. In other words, legal protection is a wide range of legal remedies that must be provided by law enforcement officials to provide a sense of security, against both mind and physical harassment as well as threats from any party (Rahardjo, 2011).

Legal protection provides pride and dignity protection as well as recognition of human rights offered to legal subject under provisions of the law of arbitrarinessor as set of laws or rules that can protect one thing from another. In regards to consumer, the law provides protection to customer rights against misconducts or situation that resulted in non-fulfillment of these rights (Hadjon, 1997).

Legal protection narrowed the meaning of protection which in this case involved protection by the law alone. The protection afforded by the law also related to their rights and obligations in regards to humans as subjects of law in its interaction with fellow human beings and their environment. As subject of law, human possess rights and obligations to make a legal action (Kansil, 1999).

According to Setiono (2004), legal protection is an act or an effort to protect the public from authorities arbitrary actions conductednot in accordance with law. It is conducted to bring order and peace so as to enable citizens to enjoy their dignity as human beings. According to Muchsin, legal protection protects individual activities by harmonizing relationship values or rules that manifest in attitude and actions to create order in social life (Muchsin, 2005). Legal protection is a matter of protecting the subjects of law through legislation and enforced by implementing penalty.

Civil law accountability theory as applied theory: According to the law, individuals not only be held responsible should a result is objectively harmful and has been inflicted with malicious intent by actions also because, it has been desired even without malicious intent or if these consequences without desired at least not in fact has been estimated by the individual and caused by his actions. The sanctions were characterized by the fact that the acts constituting the offense arelimited by psychological condition. A certain criminal state of mind, should he anticipates or warrants harmful effect (mens rea) is considered an offense. This element is indicated by the term "error" (in the wider sense, dolus or culpa). If penalty are imposed only on offense based on psychological condition, then it is accountability by "mistake" (culvability) as opposed to the absolute responsibility (liability) (Kelsen, 2014).

A concept related to legal liability is legal accountability. A person is legally responsible for the actions conducted meant he was responsible for a penalty should his actions were against the law. Usually a person is responsible for their own actions. In such cases, the subject of legal responsibility is identical with the subject of legal liability (Kelsen, 2014).

Civil law liability generally culminate in granting compensation to the injured party from responsible party (Article 1365 of the Civil Code) or negligence (Article 1366 of the Civil Code). In addition to violations of law norms, a person is also required to provide compensation if he is in tort (deny agreed achievements or conduct). Achievement is something that must/should be met by the parties in an engagement; therefore achievement is the content of an engagement. There are four kinds of

torts, namely negligent performance, partial performance, overdue performance and misconduct in performance.

Problems: Philosophical problems that arise in medicine practice can be expressed as follows: based on ontology aspect, the definition of medical practice is practice of professional medical personnel who are competent in medicine field after adequate study and have sworn to devote life for the benefit of humanity.

Based on epistemology aspect, the requirements that must fulfilled by a physician to be able practice is (Guidelines issued by the Medical Council, referring to the Law No. 29 Year 2004 on Medical Practice):

- Competent, a physician ought to pass a competency check after undergoing education in medicine field for 7 years. For specialist, a physician ought to study further in related field for 4-5 years
- Having taken oath of medical profession
- Having obtained Surat Tanda Regristrasi (STR) or registration letter
- Having possessed Surat Izin Praktik (SIP) or practice lisence

Based on axiology aspect, the nature of physician duties and obligations is dedicating one's life for the sake of humanity, act in fairness with emphasis on patient's health and safety. The problems are as follows:

- Vague meaning of physician practices in the perspective of human rights
- Vague implementation of the articles civil code in regards of doctor-patient relationship

Moreover, the problems on Juristic aspects are: conflict of norm between the content of Article 66 Paragraph (1) by Law Number 29 Year 2004 regarding medical practice with Article 66 Paragraph (3) of the samelaw (Here in after reffered to as the medical practice act) and Article 29 Law No. 36 2009 on Health with Article 84 Law No. 36 2014 on Medical Force as well as incomplete of normfrom Article 58 Paragraph (2) Law No. 36 of 2009 on health as has been noted.

Regarding complaint issues contained in Article 66 Paragraph (1), "any person who acknowledge or interests harmed by the actions of doctors or dentists in conducting medical practice are eligible to complain in written form to the Chairman of the Honorary Council of Indonesian Medical Disciplinary or Majelis Kehormatan Disiplin Kedokteran Indonesia (MKDKI)".

But in Paragraph (3) contained provision that stated "complaint referred to in Paragraph (1) and (2) does not remove the citizen right to report any alleged criminal act to the authorities and/or use for damages in court".

The meaning and purpose in the second paragraph Article 66 of the Medical Practice Act is vague, possess multiple interpretations and is unfair for physicians. There are vagueness of the norm (vague of norm). Given these verses, the physicians may suffer complaint, reported, sued and penalized multiple times (the phrase "does not eliminate the right" ambiguous, unclear and unnecessary. Even the publishing of this paragraph as a whole possess no benefit because complaining and/or reporting the loss to the authorities citizen's right and can not be eliminated by the previous paragraph).

Furthermore, in Article 29 of this law stated "in the case of health force suspected of negligence in carrying out his profession such negligence must be resolved first through mediation".

Phrase "must be solved first" is incomplete. What next? Should the mediation has reached an agreement are civil and criminal liability also still in progress? Until recently there has been no government regulation or proper explanation of this Health Act. This is occurrence of incomplete of norm.

The content of Article 58 Health Act ought to be analyzed in depth because it is related to the title of this study which states:

- Each citizen is entitled to claim damages against a person, health force and/or the provider to incur losses due to errors or negligence in the health services received
- A claim for compensation referred to in Paragraph (1) shall not apply to health force who performed life-saving actions or prevention of disability for a person in an emergency situation
- The provisions concerning claims submission procedure referred to in Paragraph (1) shall be regulated in accordance with legislation provision

The provision in Paragraph (2) of this Act obscure the meaning and purpose of Paragraph (1) and does not reflect fairness for the community who peruse health service. It is caused by.

A person who determines one's illness in an emergency is a doctor while the patient is does not make decisions. Medical emergency action does not necessarily require patient consent (informed consent) (contained in Article 8 of the Regulation of the Minister of Health No. 240 of 2008 on Measures Agreement of Medicine: "in case of emergency, life-threatening or cause permanent disability, patient consent is not required").

Physicians who do not perform medical action (when required him to do so) or delaying action due to various reasons that lead to disability or death of patients is a violation of Article 1 of the Code of Medical Ethics, Article 1365-1366 of the Civil Code of the Errors and Negligence regarding giving compensation as well as section 304 of Criminal Code regarding negligence that harmed a patient in an emergency.

Both kinds of abuses is clearly a malpractice but it is not regulated in health Act. Thus here there is vagueness and norm insufficiencies (incomplete of norm).

The content of Article 58 Health Act ought to be analyzed in depth because it is related to the title of this study which states: everyone has the right to demand compensation against an individual, healthcare providers and/or the provider to incur losses due to errors or negligence in the health services received.

Claims for compensation referred to in Paragraph (1) shall not apply to health workers who perform life-saving actions or prevention of disability a person in an emergency.

Regarding sociological problematics, patients and families prefer resolving disputes through criminal law, instead of civil law. In fact, it is not beneficial for both physicians and for patients. Patients and/or their families will not receive any of the settlement of disputes through the criminal law. Should the dispute is resolved civilly, there is likelihood that a patient will be recompensed for damages or failure of medical action.

Therefore, this research aims to find and analyze physician practices in human rights perspective, to find and analyze legal relationship between physicians and patient and to find and analyze implementation of civil code articles in doctor-patient relationship.

This research could be utilized to provide insight and input for legal practitioners, patients and or their families, physicians, journalists and the general public regarding physician practice, physicians civil liability to his practice, especially those listed in Article 1320, 1365 and 1366 of civil code. Thus, in the future potential medical disputes ccould be minimized. By knowing the meaning of the practice and its civil liability in Indonesia as well as the system and the right formula in the settlement will benefit the community, justice and maintain safety.

Physicians can learn about civil liability of their practice so they would act more carefully, work meticulously and thoroughly in order to avoid and be saved from law penalties, particularly civil law. Physicians will no need experience hesitation and fear in practicing their profession as long as it is conducted in accordance with the guidelines and rules that apply.

MATERIALS AND METHODS

This study uses normative legal research as this research is focused assessment of the legal provisions (normative) on laws relating to health, it provides an assessment of the physician malpractice cases which are widely discussed in the media recently. A focused approach to juridical normative basis considering this research's objective is analyzing primary legal materials in the form of related legislation and secondary legal materials to provide solution to problems in articles of the civil law implementation regarding physician practice.

RESULTS AND DISCUSSION

Global doctor practice's significance: Operationally, the "Doctor" definition is a health force who became first contact for a patient to solve all the health problems they are facing regardless of illness, organ, ages and genders as early and as much as possible, thorough, complete, continuous and in coordination and collaboration with other health professionals, using the principle of effective and efficient services and uphold the professional responsibilities, legal, ethical and moral. The service is limited to basic medical competence acquired during medical education. According to Mufida, a physician' obligations involve the following aspects:

- Perform checks on patients to diagnose patients quickly and provide fast and precise therapy
- Actively provide medical services to healthy and sick patients
- Handle acute and chronic diseases
- Conducting medical records that meet the standards
- Taking action early stages of severe cases and prepare patient to be sent to hospital
- Remain responsible for patients referred to a specialist doctor or being treated in hospital and monitor patients who have been referred or consult
- Acting as a partner, advisor and consultant to patients
- Providing advice for care and maintenance as illness prevention
- Along with medical science development, patient treatments must be comprehensive, covering promotive, preventive, curative and rehabilitative services. Doctors are entitled and also obliged to take such action for patient's health. Promotive actions includes giving lectures for example preventive vaccination, provide curative medicine/surgery, rehabilitative, e.g., medical rehabilitation

- Advice families of patients to participate in efforts to improve health, disease prevention, treatment and rehabilitation
- Being introspective and conduct self-development/ lifelong learning and conducting research to develop medical science
- Duties and doctor exclusive rights to provide sick leave notice and health certificate examining patients

The term "doctor" provides a number of predicates, responsibilities and other existential roles. Without forgetting the dominant process of learning and intellectual development, a doctor also in principle, mandated to carry out the antropo-social tasks and realizing individual responsibility, embodies "truth" and justice which is not separated from context and reality of where the physician is. By continuing to adhering responsibility of scientific disciplines, a physician should be able to apply medical world with the reality of today's society.

Human rights globally established two rules related to health, namely: protection of public health that are legitimately restrict human rights and right to health of individuals and the government's obligation to provide it. In the first part is more directed at the Public Healthcare which regulations are still in progress whereas in determining the obligations that possess fundamental right to health, prioritized on the rules for public health.

Regulation on health rights in legal instrument could be seen in Article 25: (1) Universal Declaration of human rights, stating that "Everyone has the right to a standard of living adequate for health of himself and of his family, including food, clothing, housing and medical care and necessary social service". Health right is fundamental for each individual in terms of basic rights including achieving adequate standard of living. Universal declaration human rights links are:

- The rights to healthcare
- The rights to information
- The rights to self determination

Health has broader scope, not only in regards to indvidual but includes all factors that contribute to healthy living (healthy live) such as environmental issues, nutrition, housing, etc. While right to health protection and right to medical care which are patient rights is a specific sections of the right to health (Firdaus, 2014).

Doctor-patient relationships: The relationships between doctor and patient not only shapedmedical relationship, also shaped legal relationshipss. Medical relationships will be governed by the medical rules. Whereas as legal relationship will be governed by law. Informed Consent request is a manifestation of the autonomy adhering ethics principle and human dignity (respect for persons).

Doctor-patient relationship contains aspects of civil law which adheres to norm "whoever harms others must compensate" (Article 1365). Legal bond between doctor and patient can occur under the agreement (ius contracto) and/or under the law (ius delicto). Ius contracto of formed therapeutic contract (healing engagement) voluntarily between doctors and patients after they agreed with or without signing the informed consent.

From the point of civil law, medical practice errors occur when misconduct committed by physicians in conjunction with the provision of medical services to patients causes civil damages. This sometimes simultaneously occur with criminal elements. Elements of the physical health, life and death as a result of physicians misconduct is an essential element of fault/negligence of the doctor's practice from the point of civil law and criminal law. Patient's civil damage the basis of the formation of civil legal liability for doctors against losses caused (Guwandi, 2005).

Patients who are not cured could not become basis of doctor's tort as long as medical acts provided do not deviate from the medical profession standard and standard operating procedures. Doctor-patient relationship is not a relationship that carry and demand legal obligation for doctors aimed at results (resultaat verbintennis) of an act of medicine but rather an obligation to act in medicine optimally without misconduct (inspaning verbintennis). Doctors may not be able to guarantee the final result of a recovery or survival (Chazawi, 2010).

Should in medical practice process doctors make mistakes/are negligent, despite having given informed consent by the patient to the doctor or written expressly in the form informed consent that patients agree to not sue/prosecute, when undesirables occurred doctors could still be prosecuted and/or sued. Such occurrence had everything to do with informed consent but a violation of the obligation to obtain informed consent, the doctors were "only" given administrative sanctions in the form of reprimand to license revoke. Other legal sanctions (criminal and/or civil) enforced in case of loss, injury, disability or patient death.

Legal physician-patient relationship is formed from an agreement. The agreement is therapeutic contract

(treatment) which is formed when the patient gives consent to the doctors to perform medical action after they give explanation to the patient (informed consent). Based on legal logic, practicing physician has made general offer (opencare aanbod) in providing medical services as the first condition of the agreement formation. According to the law, the agreement occurs when there is an offer by one party and it is accepted or approved by the other interested party. In this case, the agreement is a source of legal bond (Article 1320 of the Civil Code).

There are four requirements for the validity of the agreement: agreement, competence, particular condition and allowed condition (Article 1320 of the civil code which governs the validity of the agreement). Agreement is sense of sincerity or give and take or voluntary between the parties forming the agreement. The agreement do not exist when the contract was made on the basis of coercion, deception or mistake.

Meanwhile, competence means that interested parties shall be persons who by law is declared as a legal subject. Every citizens are legally competent to enter into contracts. Incompetents are the ones prescribed by the law such as children, adults placed under surveillance (curatelle) and the mentally disabled. Childrens are underage citizen, according to Law No. 1 of 1974 regarding marriage, under 18 (eighteen) years. Married citizen under 18 (eighteen) years are considered adults, means capable to make arrangements.

Moreover, Particular Condition means objects managed in contract should be clear, at least could be determined. Therefore, it should not be vague. It is important to provide a guarantee or assurance to the parties and prevent the onset of fictitious contracts. For example buying and selling a car, it should be clearly stated the brand, manufacture year, color, engine number, etc. More detail would be better for the contract. It is inadvisable to conduct buying and selling car, without further explanation.

Finally, the contents of the contract must not conflict with the law which is coercive, public order and/or morality. For example infant trade is invalid because they conflict with those norms.

Civil code provides freedom of contract to interested parties in both written and oral form, provided it meets the requirements set in Article 1320 civil code. Thus, the contract does not have to be in written form. Based on civil code perspective, error occurs in event of physician's malpracticein relation to provision of medical services to patients causing civil damages. This sometimes occurs simultaneously with criminal elements such as physical health, life and patient survival loss as a result of physician malpractice. It is an essential element of physician error based on civil law and criminal law perspective. Occurred patient civil damage is the basis of the formation of civil legal liability for doctors against losses.

Physician practice accountability: Understanding the responsibility is very broad according to Salim (2011), the sense of responsibility could be grouped into three: accountability, responsibility and liability. Accountability is usually related to finance or accounting or related to payment process. In addition, accountability can be interpreted as confidence. Responsibility can be interpreted as burden share as a result of an act. Liability can also be interpreted as an obligation to correct occurred mistakes. It also indicated to pay damages suffered (also called as accountability).

According to Bahder, there are several conditions of physician malpractice. First, patient does not recover or their condition worsen after medical malpractice based on professional standards, standard procedures and general principles of medicine. Second, patient does not recover or their condition worses as a direct result (causaal verband) of any medical action. If the condition occurred, it means the doctor has made a mistake including practices, therefore the patient is entitled to demand reimbursement for losses incurred from medical malpractice. Severe conditions/result that fulfilled Criminal Law criteria such as death or serious injury, patient could establish criminal accountabilityin the form of punishment (strafbaar) instead of compensation (civil).

Accountability in the realm of civil law generally expressed in terms of compensation or losses compensation. Loss definition in broad sense according to Nieuwenhuis (1985) is reduced assets belonged to one of the parties as a result of norm violations by other party (action or negligence) which relatively rests on a comparison between the two states. Losses represent the difference between circumstances occurred as result norms violations compared to conditions which should be obtained when norm violation did not occur (Nieuwenhuis, 1985).

Patients who are not recovered could not become basis of physician's tort as long as conducted medical acts do not deviate from medical profession standard and standard operating procedures. Doctor-patient relationship is not a relationship that carry and demand legal obligation for doctors aimed at results (resultaat verbintennis) from medicine action but rather as an obligation conduct medicine action optimally without misconduct (inspaning verbintennis). Doctors may not be able to guarantee patient's recovery or survival (Chazawi, 2010).

From Civil Law perspective, professional responsibility is very closely related to the provisions concerning engagement, namely concerning treatmentand therapeutic agreement (the rapeutic engagement/contract). Based on civil law, there are two categories of engagement: engagement based on effort/optimal action (inspannings verbintenis) and engagement based on results (resultaat verbintenis). Agreement between doctors and patients is included in the first category. Furthermore, Article 1320 of the civil code affirms that agreement validity should fulfill the following four conditions:

- The agreement of both parties free of coercion, mistake, misunderstanding and deception
- Both parties are considered adequately competent in forming agreement
- Existing agreed conditions
- The agreement is based on halal cause, justified and not prohibited law as well as makes sense to be fulfilled by the interested parties

Health force and facilities in approved location where medical acts were performed is responsible for implementingagreement provisions. Therefore, a deviation from the applicable provisions could result in legal sanctions against guilty party in the form of criminal, civil or administrativesanctions.

Health force or facilities caused patient loss, can be prosecuted to compensate losses suffered according to Article 1365, 1366, 1367, 1370 or Section 1371 Book of Civil Law.

The lawsuit addressed to a doctor in person is conducted if the doctor performed malpractice in a private practice or at a hospital as guest doctor. The lawsuit addressed to chairman of health facilities where health personnel who conducted malpractice works. However, health facilities harmed could sue the said personnel as a result. It is important to know that the health force who work in a health-care facility to be more careful in carrying out their duties.

Article 58 of Law Number 36 Year 2009 on health states that everyone is entitled to compensation due to errors or negligence committed by health force and compensation referred to in Paragraph (1) shall be implemented in accordance with the legislation. Verse (1) could be explained as follows.

Granting compensation right is an attempt to provide protection for every person based on outcoume whether physical or non-physical errors as well as negligence from health personnel part. This protection is very important as negligence or mistakes outcomes can lead to death or cause permanent disability.

Physical loss is loss or malfunction of the whole or part of an organ while the non-physical losses associated with a person's dignity.

Article 1365 of the Civil Code states that: "every law breaking act which bring harm to others, require a person incurred the loss to compensate it". Article 1366 of the civil code states: "everyone is responsible not only for the losses caused by their actions but also for the losses caused due to negligence or lack of awareness".

Whereas Article 1367 states: "a man is not only responsible for his actions caused by his own actions but also losses caused by the act of dependents or caused by goods which are under their control".

Lastly, Article 1371 of the Civil Code states: "injury or disability of a limb by mistake or inadvertently, entitling victim to in addition to reimbursement of recovery expense, demanding reimbursement of losses caused by injuries or disabilities are".

Personal lawsuit against the doctors could be conducted, should the physician performed malpracticein a private practice or in a hospital (as an unpaid guest doctor). Should patients harmed by medical personnel who worked as organic labor at health care facility for example hospital (earn paycheck), therefore the hospital or facility which should be used based on the principle of responde at superior and the principle of joint responsibility under Article 1367 of the civil code, negligent health personnel may be subject to administrative sanctions.

This protection is very important as negligence or mistakes may lead to loss of physical, non-physical, permanent disability or death. Physical loss is loss or malfunction of the whole or part of an organ while the non-physical losses associated with a person's dignity.

The lawsuit is based on law breaking act not only directed at perpetrators. In this case the doctor, nurse or other health professionals. The prosecution could be directed towards individual/institution responsible for the actions of others or harm caused by objects under their management. For example, a doctor should be responsible to the nurses who were under his command, the hospital should be responsible to law breaking act committed by employees, both interns as well as other health professionals or equipment they manage. This is in accordance with the provisions of Article 1367 of the civil code.

CONCLUSION

Physician practice significance in human rights perspective: The practice of medicine is a series of activities undertaken by a doctor to a patient in carrying

out health efforts. Medical practice carried out is based on Pancasila, scientific value, benefit, justice, humanity, balance and patient's protection and safety. The purpose of medical practice are as follows: provide protection to the patient, maintain and improve the quality of medical services provided by doctors and provide legal assurance to the public. In the implementation, physician practices are:

- Perform actions should be performed by physician
- Not to perform actions not to be done by physician
- Obey the medical profession standard and standard operating procedures
- Do not violate any provision of the legislation

Civil code articles implementation in doctor-patient relationships: Civil liability (liability) on fault practice doctor in Indonesia are as follows:

- Responsibility under civil law in the medical services appear as a liability based on tort (breach of Article 1320 of the Civil Code) and accountability based on tort (Article 1365 and 1366 of the Civil Code)
- Accountability based on tort is a responsibility under contract (contractual liability). Therefore, it can only be targeted at interested parties involved in therapeutic transaction
- Accountability based on tort is a responsibility related to existence of fault (liability based on fault) Therefore, it can be directed at any person who commits law breaking act that causes damage to the other party
- Based on enactment of the rules regarding the responsibilities, it was obvious that law breaking act lawsuit is broader than prosecution based on tort
- Proving tort lawsuit is more difficult than criminal counterpart due to medical standards is not understood by the general public
- Using the principle of proof, the offender can provide things to prove his innocence. Based Theory of Rights, the burden of proof may be made by the plaintiff or the defendant, since the two parties have rights and obligations (doctor and patient) to give and take
- The need to change public mindset to pursue civilinstead of criminal proceedings
- The government should empower MKDKI (Honorary Council of Indonesian Medical Disciplinary) as an institution to resolve malpractice liability against the doctor

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