

## LEGAL PROTECTION ON VICTIM OF MEDICAL MALPRACTICE

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### ABSTRACT

*Doctors as professions have the duty to cure the illness of the patient, there are often differences of opinion because of different angle of view, this can arise because many factors that influence it, there may be negligence at the time of the doctor or the patient's disease is heavy so less likely to recover, or there is a mistake on the side patient. In addition, the community or patients more see from the point of the results, while doctors can only try, but do not guarantee the results as long as the doctor has worked in accordance with applicable medical profession standards. Law enforcement proportional to the actions of doctors who perform medical malpractice acts in addition to providing legal protection for the community as patients usually have a weak position, on the other hand also for doctors who are involved with legal issues if it has been through the judicial process and proven not to commit acts of malpractice. Will be able to restore the good name that is considered contaminated, because the relationship between physician and patient is not a relationship that is ordinary work or superiors subordinates but the nature of trust. Demands for medical malpractice often run aground in the middle of the road because of the difficulty of proof. In this case the physician needs to defend himself and defend his rights by presenting the reasons for his actions. This is due to the absence of special law and legal studies on medical malpractice that can be used as guidance in determining and overcoming the malpractice of medicine in Indonesia. To create a form of legal certainty and to guarantee health care services and to accommodate those needs other than the Criminal Code the government has passed Law Number 36 Year 2009 on Health and Law No. 29 of 2004 on Medical Practice.*

Keywords: Legal Protection, Crime Victims, Medical Malpractice

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### Introduction

Protection and law enforcement in Indonesia in the field of health is obviously still lacking. One by one there are some examples of cases that occur for a patient who is not getting the proper service, the worst, and sometimes will end in death. Cases of criminal offenses in the medical field that many occur and are exposed in various media are only a few cases that evaporate, so it can be said as an iceberg. The evaporation of these criminal cases is also a sign of progress in society, on its awareness of its rights with respect to health and medical services, as well as awareness of its rights to obtain equal legal protection in the health sector.

The enactment of Law Number 36 Year 2009 on Health provides an opportunity for service users or goods to file a lawsuit / lawsuit against a business actor in case of a conflict between the customer and the business actor who is deemed to have violated his / her rights, late / no late / late Doing something that causes harm to the service user / goods either loss of property or injury or death.

This implies that patients as consumers of health services can sue / sue hospitals, doctors or other health workers in the event of a conflict. The era of globalization today medical personnel is one of the professions that get the public spotlight because the nature of his devotion to the community is very complex.

In line with the mandate of Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it is stipulated that every person shall have the right to health care, the state responsible for the provision of appropriate health service facilities and public service facilities. Therefore, every activity and effort to improve the highest level of public health is implemented based on the principle of non-discriminative, participatory, protection and sustainability which is very important for the establishment of Indonesian human resources, increasing the resilience and competitiveness of the nation, and national development.

Health services are basically aimed at implementing prevention and treatment of a disease, including medical services on the basis of individual relationships between physicians and patients who need a cure for their illness. The physician is a party who has medical or medical expertise who is considered to have the ability and competence to perform medical actions. While the patient is a sick person who will lay the disease and entrust him to be treated and cured by a doctor, therefore the doctor is obliged to provide the best medical services for patients.

It is also often the occurrence of negligence or omission that is a form of mistake that is not intentional, but also not something happen by accident, in this omission there is no malicious intent of the perpetrator. The negligence or negligence and misconduct in the conduct of the medical action causes the patient's dissatisfaction towards the doctor in carrying out medical treatment efforts according to the medical profession. Such negligence and errors cause the disadvantage of being on the patient's side.

Doctors as professions have the duty to cure their illnesses, there are often differences of opinion because of different angles of view, this may arise because of many factors that affect it, there may be negligence while the doctor, or the patient's illness is so

severe that less likely to heal, or there is a mistake there Patient side. In addition, the community or patients more see from the point of results, while doctors can only try, but do not guarantee the results as long as the doctor has worked in accordance with applicable medical profession standards.

Technological advances in biomedical field accompanied by ease in obtaining information and communication in this globalization era facilitate the patient to get second opinion from various parties, both from within and outside the country which at end if the doctor is not careful in giving explanations to the patient, will result in reduced Patient confidence to the doctors. Until now medical law in Indonesia can not be formulated independently so that the restrictions on malpractice can not be formulated, so the content of the definition and limitations of medical malpractice has not been uniformly depending on which side people look at it.

Article 66 paragraph (1) of Law Number 29 Year 2004 regarding Medical Practice also does not contain the provisions of medical malpractice. The article affirms that any person who knows or interests are harmed on the actions of a doctor or dentist in carrying out medical practice may hold in writing to the chairman of the Indonesian Medical Disciplinary Board of Honor.

This article provides the legal basis for reporting a physician to his or her professional organization if there is an indication of a physician's action that carries a loss not as a basis for demanding compensation for the doctor's action.

Professional law enforcement on the actions of doctors who perform medical malpractice acts in addition to providing legal protection for the community as patients usually have a weak position, on the other hand also for doctors who are involved with legal issues if it has been through the judicial process and proven not to do the malpractice act will Can restore the good name that is considered contaminated, because the relationship between doctors and patients is not a relationship that is ordinary work or superiors subordinates but the nature of trust.

Demands for medical malpractice often run aground in the middle of the road because of the difficulty of proof. In this case the physician needs to defend himself and defend his rights by presenting the reasons for his actions. Both plaintiffs in this case patients, doctors and practitioners, judges and prosecutors have difficulty in dealing with this malpractice problem, especially from the legal technical point of view or the right legal formulation to use. The problem lies in the absence of law and legal studies, especially about medical malpractice that can be used as guidance in determining and overcoming the malpractice of medicine in Indonesia. Because medical malpractice studies from the legal point of view are very important. The problem of medical malpractice is more focused on legal issues, because medical malpractice is a medical practice that contains unlawful properties that cause fatal consequences for patients.

Few malpractice cases appear on the surface there are many actions and medical services performed by doctors or other medical personnel who are potentially malpractices reported by the public but are not resolved legally, for the community this seems to indicate that law enforcement is impartial to the patient Especially the small community whose position is certainly not equivalent to a doctor.

Understanding Malpractice is a bad practice or wrong action, and / or treatment of the wrong patient. The term malpractice is commonly used to suggest wrong actions among professions in the field of health / medicine Understanding the victim of malpractice is a person who suffered an accident due to the act or negligence of a physician in the use of skills or knowledge that is common in treating. The meaning of the person in this sense is the patient who is the person who came to the doctor because of illness.<sup>1</sup>

It will be very difficult sometimes understood by patients who are victims of malpractice because it is not very easy to bring this medical malpractice problem to the legal path. The community then takes the assessment that law enforcement officers are less serious about responding to this medical malpractice case. To establish a suspect or a defendant is certainly not an easy thing especially for malpractice cases involving medical aspects.

From a legal standpoint, negligence or wrongdoing will be related to the nature of unlawful acts committed by capable persons. A person is said to be responsible if it can realize the true meaning of his actions. And an act is categorized as a criminal malpractice if it meets the formulation of criminal offense that the act must be a disgraceful act and done the wrong inner attitude of deliberate, carelessness or negligence.

Communities harmed by medical malpractice require legal protection that has resulted in further harm or suffering to the patient, to create a form of legal certainty and to guarantee health care services and to accommodate those needs other than the Criminal Code the government has issued namely Law Number 36 Year 2009 On health and Law No. 29 of 2004 on Medical Practice.

As a profession, of course doctors have legal arrangements that can be a guide in carrying out his profession and as much as possible to avoid violation of ethics of that medicine, therefore for the handling of legal evidence about mistakes or negligence of doctors in carrying out his profession many obstacles encountered in proving the error, The profession is applying systematic knowledge to solve problems that are relevant to the main values of society (Law and Legal Profession), the profession of doctors has value and recognition is very high in society because at the time people experience pain they will seek doctors to treat his illnesses .

<sup>1</sup> Abdussalam, 2015, *Buku Pintar Forensik*, PTIK, Jakarta, p. 251

In conducting a diagnosis (making medical records), giving therapy to conduct medical treatment, the physician should always be guided by the procedures established by his professional bond, the doctor's intention is to help the patient and seek to cure the patient pleading for help. But sometimes the results obtained just the opposite of the intention. Patients do not get healed, even got flawed or more strategic, death. When it happens and is published in the mass media then usually people assume that the doctor has malpractice. Though actually doctors are also ordinary people who can forget, thorough, experiencing stress, pain, neglect or do no wrong. And this condition is often experienced by doctors who must handle many patients.<sup>2</sup>

Legal protection against malpractice victims includes the Criminal Code, Law Number 36 Year 2009 on Health, Law Number 29 Year 2004 on Medical Practice. Legal protection is provided to obtain legal guarantees for the suffering / loss of persons who have been victimized by criminal or malpractice victims. One form of legal protection provided to patients or victims of malpractice is the provision of compensation to patients or victims through a court decision. Essentially providing protection against malpractice victims is very important and should not be underestimated.

### **Legal Protection of Victims / Patients**

The protection of the victim's interests is an integral part of the effort to improve the social welfare that can not be separated from the state's goal of protecting the entire Indonesian people and to promote the common welfare, or in other words that the protection of the victims is essentially an integral part of the protection of society Overall in order to achieve social welfare. Therefore, providing protection to individual victims of malpractice as well as also contains the sense of providing protection to society, because the existence of individuals in the formation of a society or in other words that society is made up of individuals, therefore between communities and individuals roped each other. The consequence is that between individuals and communities have mutual rights and obligations. Although it is realized that between communities and individuals in many respects have different interests, there must be a balance of arrangements between rights and obligations between the two.

Legal protection against malpractice victims is based on social contract arguments and social solidarity arguments. As for the first states, the state may be said to monopolize all social reactions to crime and prohibit actions that are personal (*eigenrichting*). Therefore, whenever a crime occurs and carries a victim, the state must also be responsible for addressing the needs of the victims.

Based on these thoughts, it can be said that the protection of the victims is a form of government obligation to the citizens because the victim has the right to it. The protection of the victim may be in the form of immediate victim protection in the form of indemnification by the perpetrator of a criminal offenses against the victim, referred to as restitution, and compensation provided by the state to the victim as a suspect, defendant, convicted or otherwise treated For reasons based on applicable legislation by law enforcement officials, such compensation is referred to as compensation.

Restitution and Compensation is the top policy in reducing the suffering of the victim. The purpose of making policies to reduce the suffering for the victims, by Mandelshon cited by Iswanto, is said to be the most important goal because it will be able to further empower the community and ensure its life.<sup>3</sup>

The types of losses suffered by victims are not only in physical form as the costs incurred for physical wound healing as well as the possible loss of income or profits that may be obtained, but also non-physical losses are difficult and may not even be assessed with money.

The theoretical concept of the protection of victims can be done in various ways either through juridical steps accompanied by non-juridical measures in the form of preventive measures. The concept of protection against victims of crime is given depending on the type of suffering / loss suffered by the victim. For example, for the loss of the mental / psychological nature of the form of compensation in the form of material / money is not sufficient if not accompanied by mental recovery efforts of the victim, otherwise if the victim only suffered material victim (such as lost property) services that are psychic impressed too much. The concept of victim protection through juridical steps is one of them through legal policy in terms of material law and in terms of formal law.

Accountability is always associated with mistakes, either by mistake (rarely / even never) or negligence. In general, criminal acts occur due to negligence, inadvertence, and deliberate committed by the doctor. The negligence made by the doctor during his or her profession can lead to criminal prosecution. The nature of the criminal law is the norm and sanction imposed on the offender, in the Indonesian criminal law system. Sanctions given to offenders have been regulated in the Criminal Code.<sup>4</sup>

### **Doctor's Responsibility in Medical Service Efforts**

The doctor as a professional is responsible for any medical action taken against the patient. In carrying out its professional duties, it is based on good intentions that is sincerely pursued based on his knowledge which is based on doctor's oath, medical code of ethics and his professional standard to heal / help the patient, among others are:

<sup>2</sup> Alexandra Indriyanti D, 2016, *Mafia Kesehatan*, Pinus Book Publisher, Yogyakarta, p.98

<sup>3</sup> Soejatmiko. H.M. 2014, *Masalah dalam Praktik Yuridik*, Seminar RSUD, Malang, p. 15

<sup>4</sup> Sofyan Lubis, 2015, *Mengenal Hak Konsumen dan Pasien*, Buku Kita, Jakarta, p 82

## 1. Ethical Responsibility

The rules governing the ethical responsibility of a physician are the Indonesian medical code of ethics. The Indonesian Medical Code of Ethics is drafted by considering the International Code of Medical Ethics on the basis of Pancasila and the 1945 Constitution. This Indonesian Medical Code of Ethics regulates interpersonal relationships that include the general obligations of a physician, the physician's relationship with his patient, the duty of the physician towards his colleague and the physician's obligation to himself.

Violation of ethics does not necessarily mean a violation of the law, otherwise violation of the law is not necessarily a violation of Indonesian medical ethics. The examples of such violations are:

### A. Pure Violation of Ethics

1. Withdraw unreasonable rewards or withdraw fees from family and dentist
2. Take over the patient without his peer's approval
3. Praise yourself before the patient
4. Never follow continuing medical education
5. Doctors neglect their own health.

### B. Violation of ethicolegal

1. Sub-standard medical services
2. Regulate false statements
3. Unlock secrets of occupation or doctor's job
4. Abortion provokatus.<sup>5</sup>

## 2. Profession Responsibility

The responsibilities of the physician profession are closely related to the professionalism of a doctor. This is related to:

### A. Education, experience, and other qualifications.

In carrying out his professional duties a doctor must have a degree of education in accordance with the field of expertise that understood. With the basic knowledge gained during his education in medical school and specialization and experience to help sufferers

### B. Degree of care risk.

The degree of risk of care is attempted to the smallest, so the side effects of treatment should be minimal. In addition, the degree of risk of care should be informed of the patient and his family, so that the patient may choose an alternative treatment that is notified by the doctor

### C. Equipment maintenance

The need to use inspection using equipment maintenance, if from the results of outside examination less accurate results obtained so that the necessary inspection using the aid tool.

## 3. Legal Responsibility

The doctor's legal responsibility is a doctor's attachment to the legal provisions in carrying out his profession. The responsibility of a doctor in the field of law is divided into three parts namely the legal responsibility of physicians in the field of civil law, criminal liability and administrative law responsibilities.

The criminal liability here arises when it can first be proven that there are professional errors, such as errors in diagnosis or errors in the ways of treatment or care. From a legal point of view, mistakes / omissions will always be related to the unlawful nature of an act committed by a person capable of taking care of Java if it can realize the real meaning of its actions, and realize that its actions are not considered appropriate in the community and are able to determine its intention / In doing the deed.

In relation to this responsible ability, in determining that a person is guilty or not an act that is done is an act that is prohibited by law and the existence of an inner connection between the perpetrator and the deeds that are done in the form of *dolus* or *culpa* and the absence of a forgiving reason.

Some examples of deliberate criminal malpractice are abortion without medical indication, leaking medical secrets, failing to help someone who is in an emergency, doing euthanasia, issuing an incorrect medical certificate, making improper *visum et repertum*, and giving a description Which is not true in court in the capacity as an expert. In analyzing whether the doctor's actions contain any criminal liability, it is in the case of surgery. The main issue that needs to be is surgery with medical indications, whether it is done doctor to the patient, then the doctor's actions can be justified. Whereas if surgery is done without medical indication, then the doctor's action is criminalized.

### The Criminal Law Aspects of Medical Malpractice

Medical malpractice can enter the field of criminal law, if it meets certain conditions in three aspects namely the requirements in physician's attitude, medical treatment requirements, and terms of effect. Basically the requirement in medical treatment is a

<sup>5</sup> Nusye Ki Jayanti, 2009, *Penyelesaian Hukum dalam Malpraktik Kedokteran*, Pustaka Yustisia, Yogyakarta, P. 118

deviant medical treatment. The requirement of the inner attitude is deliberate or culpa in medical malpractice. Terms of effect is a condition of the incidence of harm to the health or the life of the patient.

Medical treatment is not always active (in the form of a particular act, but also does not do as it ought to do) because by not doing the doctor violates a legal obligation. Because of the crime and the existence of legal relationships with the patient, in the event that a doctor must act according to professional standards and standard procedures. Not doing as required to do so is also a part and medical treatment that can be the object of medical malpractice field.

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Basically the matters of error both broad and narrow (culpa) are about the inner state of a person in relation to the deeds and consequences of deeds and to the circumstances surrounding the deeds, the objects of deeds, and the consequences of deeds. Therefore the doctor's inner attitude in the medical malpractice culpa is aimed at least in 4 things:

- A. In the form of deeds
- B. On the unlawful nature of deeds
- C. In the patient-object deeds and
- D. On the consequences of deeds, along with the accompanying elements.<sup>6</sup>

Culpa patient as the object of action is in the form of what should be known about all things contained in the patient's self, especially regarding the disease (history of illness and the cause of the disease). Meanwhile, due to negligence doctors do not care about what should be known about everything about the patient's illness. Everything he should know is not to be ignored or neglected which is ignored. Which ignorance will be very strong effect on what doctors do to patients and their consequences.

Culpa about the nature of the law against the act must be interpreted that the absence of awareness or knowledge that the form of medical treatment that would be done by doctors is against the procedure or standard of medical profession. Meanwhile, in realizing or wanting to realize the actions of doctors really want the action. The physician's error regarding the deeds here can not be separated from the unlawful nature of the deed. The doctor does not realize that the form of deeds he intends to do is distorted or wrong from what should be done. The doctors said that it is not in accordance with professional standards and standard procedures according to Law Number 29 Year 2004 is not in accordance with the standard of medical or dental services. The doctor's negligence is that he does not understand and does not understand the standard of profession, but as a doctor is required to know. This is the attitude of the careless mind that the medical community blames in the eyes of law.

The culpa's inner attitudes directed at the consequences contain the following three meanings:

- A. Doctors do not realize that from the actions they intend to do can result in illegal consequences in law. From the outset, doctors do not know, do not realize or do not understand that his actions are going to do, will cause the effect is prohibited by law, whereas a doctor is required to have such awareness. This is completely frivolous because of the consciousness of his timeback as a result of his deeds simply does not exist. Such negligence is called unconscious omissions (onbewuste culpa)
- B. The consequence can be realized but because based on thoughts of intelligence, experience, popularity or condition of prime patients, equipment used, experience prevailing in similar cases and others, doctors believe the consequences will not arise, but after the actions realized was a forbidden consequence It really arises. Such a culpa is called the conscious culpa (bewuste culpa)
- C. Conscious effects may arise. But it is believed he has the ability to neutralize the symptoms to the consequences so that the consequences do not occur. After the deed done and enough to avoid it, but the reality after the action then the consequences arise.

The third meaning does not stand alone. Must be cumulative with both, while the second meaning and the third meaning by its very nature can stand alone. From that description the inner attitude of culpa in criminal malpractice must be culpa lata which is a form of heavy negligence. This means careless, careless, inner attitude does not want to know, even want to be true alone, do not bother to the consequences that will happen is a very dangerous inner attitude. Such inner attitude is different from the attitude of inner civil malpractice. The inner attitude of civil malpractice is sufficient with an inward attitude called culpa levis or light culpa simply because it is forgotten or erroneous. Culpa levis can occur in unlawful acts.

Malpractice demands based on criminal law in other words as crime in the medical field that can be categorized, among others:

- A. Deceiving the patient (Article 37 of the Criminal Code)
- B. The acts of courtesy infringement (Articles 290,294, 295 and 286 of the Criminal Code)
- C. Abortion without medical indication (Articles 299,348, 349 and 350 of the Criminal Code)
- D. Deliberately letting the patient go unpunished (Article 322 of the Criminal Code)
- E. Leaking medical secrets (Article 322 of the Criminal Code)
- F. Negligent resulting in death or injury (Articles 359, 360 and 361 of the Criminal Code)
- G. Providing or selling counterfeit drugs (Article 386 of the Criminal Code)
- H. Making false statements (Articles 263, and 267 of the Criminal Code)
- I. Performing Euthanasia ((Article 344 of the Criminal Code)

<sup>6</sup> Soekidjo Notoatmodjo, 2010, *Etika dan Hukum Kesehatan*, Rineka Cipta, Bandung, p.55

In Law Number 6 of 1963 concerning Health Manpower even though it has been revoked by the issuance of Law Number 23 of 1992 and renewed by Law Number 36 Year 2009 but its essence is implicitly it can be used that malpractice occurs when health workers neglect their duties, Doing something that should not be done by a health worker either remember the oath of office or profession.

Common malpractice by doctors is generally known to occur because of the following:

- A. Doctors or dentists have little control over the medical practice that is already prevalent in the medical or dental profession
- B. Providing medical or dental services under professional standards
- C. Doing heavy negligence or providing care with care
- D. Carry out medical acts contrary to law.<sup>7</sup>

If the doctor or dentist does such things as mentioned above, the person who violates a health law or malpractice, and may also be subject to legal sanctions. For that then the community or the patient may demand compensation for the negligence. Therefore, the community or the patient can demand a compensation for the negligence. For that the claimant or the public who want to demand compensation should be able to prove the existence of four elements:

- A. The existence of an obligation for health workers to patients or patients, but not done
- B. Health workers have violated the usual standard of medical service (medical)
- C. The plaintiff or patient and / or his / her family has suffered damages which can be claimed for damages
- D. Obviously (factually) the loss is caused by substandard or medical / hygienic measures.

If the health worker (doctor or dentist) does not do something that fulfills the criminal element, but performs acts contrary to the professional ethics then the person performs the malpractice of ethics. For ethical offenses or ethical malpractices in question. Not subject to legal or criminal sanctions. But only ethical sanctions. In medical practice often patients or families of patients as plaintiffs do not need to prove the negligence of the defendant or the health worker. But with the facts found is actually a proof. For example the emergence of postoperative complications of appendix there is a cotton left in the patient's stomach, resulting in postoperative complications. In this case there is no need to prove malpractice in surgery or surgery.

Negligence as an indication of malpractice can be divided into two namely:

- A. Negligence in the civil sense, if the negligence of a medical or medical officer does not result in a violation of the law means that the consequences of such negligence do not result in injury, disability or death. A civil violation is clearly a sanction of ethics that is governed by a professional code of ethics. Every health profession has a professional code of ethics. Health profession itself also consists of various professions, such as doctors, dentists, nurse midwives, public health, sanitarian and so on. Each of these health professions has associations or professional associations such as IDI, PDGI, IBI IAKMI, HAKLI, and so on. Professional organizations should have their own Professional Code of Ethics. Every violation of the Professional Code of Ethics of each member of the profession then each of these professional organizations will provide sanctions.
- B. Negligence in the criminal sense, if the negligence of the medical or medical officer results in violation of law or law. This means due to negligence of the health officer caused other people or patients injured, disabled or died. The sanction of violation of the law is clearly a criminal or punishment determined by the court, after going through an open court process.

### **Legal Efforts for Patients Against Malpractice**

In the event of any deviation in the provision of health services, patients or recipients of health care services may claim their rights, which are violated by the providers of health services in this case hospitals and doctors / health workers.

Doctors / health workers and hospitals may be required legal liability when doing negligence / errors that cause harm to patients as consumers of health services. Patients may sue for medical liability in the case of a doctor making mistakes / omissions. Doctors can not take shelter under the pretext of accidental deeds, because physician's errors / omissions that cause harm to the patient entitle the patient to sue for damages.

Law Number 36 Year 2009 on Health provides legal protection both to the patient as the recipient (consumer) of health services and the provider of health care services, such as in Articles 53, 54, and 55. In the event of a dispute between the parties in the service Health so to resolve disputes or disputes should refer to the Health Act and the Consumer Protection Act as well as the process through the courts, mediation.

In connection with this case in case of dispute between health service business actors with consumer of health service service available 2 litigation path that is settlement of disputes outside the court and non litigation lane is settlement of dispute through judiciary.

The process of settlement of a dispute of errors and / or medical negligence may be made outside the court and in court based on the wishes of the disputing parties concerning health matters. A frequent solution is through out-court mediation with the Alternative Dispute Resolution (ADR) system.

Medical profession is much related to ethical problem which can potentially lead to medical dispute between health care providers and recipients of health services, therefore it is needed a special container / institution can be a filter to resolve disputes between health service providers (hospitals, doctors, And health workers) and recipients of health services (patients).

<sup>7</sup> Adami Chazawi, 2007, *Malpraktik Kedokteran*, BayuMedia Publishing, Malang.p.15

One institution that can also be implemented is an Ombudsman that involves outsiders to dispute the dispute between doctors / health workers and hospitals with patients can be applied fairly and credibly all parties involved in health disputes. Institutions with the Ombudsman system have been implemented in various countries and Indonesia may adopt to determine that health services do not violate existing and prevailing laws.

Some things to consider in the dispute resolution with the Ombudsman model are:

- A. The Ombudsman will not consider a complaint, if legal proceedings are being pursued
- B. The main role of the ombudsman in accordance with its jurisdiction is to seek service improvement to the complainant party of business actors
- C. Ombudsman decisions are limited to recommendations in the form of specific steps that need to be taken to improve the behavior of business actors.

The existence of compensation to be paid to the consumer depends on the conditions of the particular model in accordance with the court complaint filed, such as in the UK, that the Ombudsman of Insurance is entitled to impose compensation of a maximum of 100 Pounds Sterling.

Consumer disputes are disputes with regard to violations of consumer rights. Its scope covers all aspects of law, both civil, criminal and state administration. Therefore, the term consumer transaction dispute is not used, because the latter seems narrower, which only covers aspects of cultivation only.

According to the Consumer Protection Act the settlement of disputes has its peculiarities. So that the parties to the dispute in this case the consumer can settle the dispute that follows some judicial environment or choose a way of settlement out of court, namely dispute resolution through the role of commission ombudsman.

Article 45 paragraph (1) of the Consumer Protection Law affirms that any disadvantaged consumers may sue business actors through an agency responsible for resolving disputes between consumers and business actors or through different courts within the general judicature. The provisions of the subsequent paragraphs confirm that consumer dispute resolution can be pursued through courts or out of court based on the voluntary choice of the parties to the dispute.

Furthermore, the choice of litigation in court or outside the judiciary is a voluntary choice of the parties. The explanation of the second paragraph of Article 45 of the Consumer Protection Act affirms the possibility of peace among the parties before they are litigated in court, shall be interpreted as the choice of parties, either alone or jointly to pursue the way of settlement in court or out of court, Peace between them fails or from the beginning they have taken alternative (peace). Thus the word voluntary must be interpreted as the choice of the parties both alone and jointly to pursue the way of settlement in court or out of court, because the peace efforts inevitably take alternative peace. Article 45 paragraph (1) of the Consumer Protection Law confirms the settlement of disputes outside the judiciary does not eliminate the criminal liability as stipulated in law. A pause should not only be a criminal responsibility that is open to opportunities for disclosure, but also other responsibilities, for example in the field of administration of a consumer country that is not harmed. Consumers whose rights are impaired are not only represented by the prosecutor in prosecution in the general court for criminal cases, but he himself may also sue other parties within the administrative court of the state if there are administrative disputes in them.

A lawsuit may be committed by a group of consumers who have the same interests. Elucidation of Article 46 paragraph (1b) asserts, "This law recognizes a class action or class action. Class action or class action must be filed by a customer who is completely harmed and can be legally proven. One of which is evidence of a transaction. This provision shall be differentiated with the lawsuit by representing to another person as provided for in Article 123 paragraph (1) of the HIR.

The third classification is a non-governmental organization. The existence of this Non-Governmental Organization pursuant to the provisions of Article 1 number (9) and Article 44 paragraph (1) of the Consumer Protection Act must be registered and recognized by the government

With a lawsuit by the government they will only sue the business actor if there is substantial material loss and / or the victim is not small and not mentioned whether such a lawsuit is still required if there is a lawsuit from the consumer or can be done simultaneously with a lawsuit from the consumer classification One to three.

Article 45 Paragraph (1) and Article 46 Paragraph (2) of the Consumer Protection Act seem to only allow consumer complaints to be filed into the general judicial environment. This restriction clearly prevents consumers whose case may touch the competence of the administrative court. But the interpretation of the existence of the administrative court can be reduced from Article 46 paragraph (2) which affirms, the lawsuit committed by a group of consumers. '

If the consumer is broadly defined, that includes the recipient of the public service, the state administrative court should also serve the lawsuit, provided that the dispute arises from the existence of a concrete, individual and final written award. Meanwhile, according to A. M. Donner the understanding of government officials or administrative bodies, among others, can be extended to the form of companies that serve services for the public interest. Thus state-owned or regional-owned enterprises can be categorized as an extension of the government's hand in dealing with the community.

To address the litigation of the litigation, the Consumer Protection Act provides an alternative way of providing an out-of-court dispute resolution. Article 45 paragraph (4) of the Consumer Protection Law stipulates that if a consumer dispute settlement has

been selected out of court, a court action can only be made if the attempt is declared unsuccessful by either party or by the parties to the dispute. This means that the settlement in court remains open after the parties fail to resolve their dispute outside the court.

A further interpretation of the provisions of that article, that non-court settlement is a peace effort between the parties to the dispute and the out-of-court settlement can be done through an independent body such as the Consumer Dispute Settlement Agency (BPSK).

If the settlement through BPSK, one party can not stop the case in the middle of the road, before BPSK dropped the verdict. This means that they are bound to go through the screening process until the time of the verdict.

## Conclusion

Legal protection of victims of medical malpractice crimes is essentially limited in number and regulated scope is still very limited. The material law is only contained in the Law on Medical Practice and the Law on Health and the Criminal Code while the law of the show is the same as the criminal procedural law in general that is by referring to Law Number 8 Year 1981 on Procedural Law Criminal. In the Positive Criminal Code, criminal offenses relating to errors or omissions of medical personnel (medical) may occur in the field of criminal law are provided, among others, in Article 346, 347, 348, 359, 360, 386 of the Criminal Code . The Criminal Code gives great attention to the legal protection of victims of medical crime, which is accompanied by criminal responsibility and punishment pattern. This is very possible because the Criminal Code has a central position as the main law of criminal law that can be applied in general. In Law Number 36 Year 2009 on Health, the formulation of criminal responsibility towards medical crime serves as protection for victims of criminal acts in the medical field as set forth in Article 29. In Law Number 29 Year 2004 regarding Medical Practices the formulation of criminal responsibility for criminal acts in the medical field serves as protection for victims of medical crime as set forth in Articles 76 to 80 accompanied by criminal liability and punishment pattern. In the Draft Penal Code provides direct protection access in the form of providing compensation to the victim more broadly against all the offense. Considering the concept of victim of malpractice crime is closely related to the concept of loss and death of a person, the determination of criminal sanction in the form of compensation (restitution, compensation, social welfare guarantee / compensation) to the victim and the improvement that must be done on physical disability is a kind of alternative criminal sanction Most effective way of providing access to direct protection against the victim's / victim's family's loss and sense of justice, even highly relevant financial sanctions in the form of compensation if based on the experience that crimes in malpractice are usually done on grounds of disobedience to ethical standards Medicine and not a few business reasons where the important patients want to do surgery on it.

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