

CHAPTER ONE

INTRODUCTION

A. Background of Research

For the last few years, we have heard about the malpractice claims against doctors in various regions in Indonesia. The media have discredited and accused that the doctors have made mistakes in the medical treatments. Cases of malpractice allegations are often reported by the media. The doctors are considered irresponsible and careless in carrying out their profession. Besides, what the news reports is not entirely true. It sometimes misleads the public opinion who actually need better medical help.¹

For an example, dr. Ayu's malpractice case was widely reported by the media in late 2013 and early 2014.² In this case, the Supreme Court decided that dr. Ayu and her two colleagues had been found guilty for committing criminal acts "an action that caused the death of a person due to her negligence".³ The punishment imposed to dr. Ayu and two colleagues was ten months of imprisonment.⁴ Although in the end of February 2014, the Supreme Court had nullified the previous decision and released the convicts (dr. Ayu and two

¹Michel Daniel Mangkey, "Perlindungan Hukum Terhadap Dokter dalam Memberikan Pelayanan Medis" *Ejournal Unsrat, Lex et Societatis*, Vol. II/No. 8/Sep-Nov/2014 p. 14

²Case of dr. Ayu occurred in April 2010 when Julia Frances Makatey died in Hospital Prof Dr RD Kandou Malalayang, Manado for a caesarean. In this case dr. Ayu was the doctor who performed the Caesarea surgery. what made by dr. Ayu alleged medical malpractice that caused the death of the patient.

³ See further Article 359 of Criminal Code (*Pasal 359 KUHP Jis. Pasal 361 KUHP, Pasal 55 ayat (1) ke-1 KUHP*)

⁴ Supreme Court Decision no. 365 K / Pid / 2012 (*Putusan Mahkamah Agung 365 K / Pid / 2012*)

colleagues)⁵. However, it was still unfair for the convicts that they had to undergo an unnecessary legal process. Not only wasting time, this case has obviously created psychological trauma for convicts. This case does not only harm dr. Ayus' personal reputation but also harms the reputation of medical professions.

What factors that increase malpractice cases? Are all reported cases of malpractice true or they are merely caused by patients' dissatisfaction? It has been known that doctors have a major role in treating patients. But in every medical practice there is such thing as a medical risk.⁶ There are unavoidable risks of any medical procedure.

The Medical Practice Act 2004 or known as the MPA 2004 (*Undang-Undang No. 29 Tahun 2004 tentang Praktik Kedokteran*) has set up all of the medical practice issues. There are 88 sections in the MPA 2004 and almost all sections describe how doctors should act, how medical practice should not harm the patients and penal provisions for doctors. There is only one section providing the legal protection for doctors. Section 50 (a) states that "doctors deserve to obtain legal protection while carrying out duties in accordance with professional

⁵Supreme Court Decision No. 79 PK / PID / 2013 of 2014 (*Putusan Mahkamah Agung Nomor 79 PK/PID/2013 Tahun 2014*)

⁶Medical Risk is a state that is not desired by the doctors, after the doctor has tried as much as possible to meet the standards of the profession, medical service standards and standard operating procedures, but accidents still happened. With this medical accident risk or contain elements that can not be blamed (*verwijtbaarheid*), can not be prevented (*vermijtbaarheid*) and the unpredictable (*verzienbaarheid*). Every medical action, particularly in the field of surgery and anesthesia, will always contain a risk. There is a risk that can be calculated and there also a risk that can not be calculated in advance. So the emergence of medical risks that have to be made as minimum as possible.

standards and standard operating procedures"⁷ The section unfortunately does not explain further the form of legal protection provided for doctors.

It is a problem when the MPA 2004 (*Undang-Undang No. 29 Tahun 2004 Tentang Praktik Kedokteran*) itself does not provide a clear legal protection to be applied. The MPA 2004 also becomes controversial since it contains criminal sanctions which seem not appropriate to medical profession.⁸ Some doctors actually do not understand well about malpractice violations that are not described in this Act.

The increase in lawsuit against doctors has decreased the public trust upon them. The lawsuits filed to the doctors were caused by the patients assuming that the diseases may not be cured because of doctors' failure. Doctors only try to give medical treatment based on the knowledge, and the failure in the implementation of medical science is not always associated with the failure in medical treatment.⁹

How to protect doctor? Various legislations which govern health matter seems to be unfair for doctors. Unclear regulations create confusion and could harm the doctors.

⁷ Section 50 of the MPA (*pasal 50, Undang-Undang No. 29 Tahun 2004 tentang Praktik Kedokteran*)

⁸Sri Siswati, 2013, *Etika dan Hukum Kesehatan dalam Perspektif Undang-Undang Kesehatan*, Jakarta; PT Raja Grafindo Persada, p. 22

⁹ The explanation of Medical Practice Act paragraph 5

This research on the legal protection for doctors aims to improve the protection that is too weak. There is only one article in The MPA 2004 (*Undang-Undang No. 29 Tahun 2004 Tentang Praktik Kedokteran*) which contains the protection for doctors. Even most of legislation in health matter do not favor to doctors. The law always contains about duty, responsibility, and penal provisions to them.¹⁰

Overlapping in regulations is also the issue to achieve legal certainty. This will affect the doctors who have been accused for committing medical errors. This situation has made the legal process take a long time. Therefore, to protect doctors, The MPA 2004 (*Undang-Undang No. 29 Tahun 2004 tentang Praktik Kedokteran*) should be evaluated in order to avoid any improper application of the Act to the doctors, because the medical practice is a complex issue.¹¹

The threat of litigation may stimulate doctors to avoid any medical action which potentially creates lawsuit. The doctors tend to choose a treatment whose risk is less and refer the patient to others in avoiding potential risk. As a result, the patients will suffer from unnecessary delay of treatments.

¹⁰Sri Siswati, *Opcit*, p. 22

¹¹ See, Safrowi, 2010, *Perlindungan Hukum Terhadap Profesi Dokter Terkait Dugaan Malpraktek Medik, Skripsi*, UIN Syarif Hidayatullah, Jakarta

B. Research Problem

Based on the background, some research problems can be formulated as follow:

1. What is the importance of legal protection for doctors?
2. How does the MPA 2004 (*Undang-Undang No. 29 Tahun 2004 tentang Praktik Kedokteran*) provide legal protection for doctors?

C. Objectives of Research

1. To study on the importance of legal protection for doctors.
2. To understand how the MPA 2004 (*Undang-Undang No. 29 Tahun 2004 tentang Praktik Kedokteran*) provide legal protection for doctors.

D. Benefits of Research

1. Scientific approach: to develop health law science, particularly on legal protection for doctors.
2. Practicing approach: to provide better legal protection for doctor.

