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THE CURRENT DEVELOPMENT OF THE MEDICAL MALPRACTICE LAW IN INDONESIA

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Abstract:

The law relating to medical malpractice in Indonesia develops rapidly in the last two decades. Started from the Medical Practice Act 2004 and continued with some other legislations. The Medical Practice Act 2004 does not directly touch the medical malpractice issue actually. However, every discussion on medical malpractice law in Indonesia must consider the mentioned Act. The Act introduces the mechanism of disciplinary accountability for doctors through the Medical Disciplinary Tribunal (MKDKI), an independent organ under the Indonesian Medical Council (KKI). The latest progress was the enactment of the Health Professional Act 2014. This Act promotes ADR methods for resolving disputes arising in health service in one side, however it, in the other side, also strengthens criminal liability for particular forms of medical negligence. It seems that the development of the Indonesian medical malpractice law got influences from other countries. This paper aims at exploring the current development of the Medical Malpractice Law in Indonesia and identifying the external influences on it.

Keywords: Medical Malpractice, Medical Malpractice Law, Indonesia.

1. Introduction

Medical malpractice is a central issue under the the subject matter of medical law, especially in Indonesia. As an object of study, medical malpractice issue has a magnetic power. No legal issue within the medical law which has received massive attentions from researchers and authors more than medical malpractice. Medical malpractice is also an attractive issue for the media publicity. There are some analyses to explain this fact. Firstly, medical malpractice constitutes a new legal issue in Indonesia. It has been common that something new will generally attract people to understand and to make exploration on it. Secondly, the phenomenon which is known as medical malpractice has hit the mind of people

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and made them aware against the risk of medical treatment due to human error factor (medical negligence).

Doctor-patient relationship was traditionally ceated on the basis of the fiduciary principle. Such a relationship is known in local terms as *'hubungan kepercayaan'* (fiduciary relationship). For the purpose of treatment, patients rely fully on their doctors' professional capacity. The medical malpractice phenomenon has opened the patients' mind that their doctors can do wrong while performing medical treatment and they possibly become the victim of a medical negligence.

The term medical malpractice has been known in Indonesia since nineteen eighties[1] and gained its popularity since 2003 when the so-called 'medical malpractice crisis'[2] took place in Indonesia. Although the term medical malpractice (known in local language as *malpraktik medik*) has now been very popular, unfortunately there is no legislation which specifically governs medical malpractice issue. It seems that medical malpractice is a mere sociological term rather than a legal term. It is used in daily communication and found in academic writing, but the term has never been used in legal proceedings. It cannot be found both in legislations and judicial judgments. If it is the fact, why do we talk about medical malpractice law? That is actually the importance of this paper. This paper will answer the question on how medical malpractice cases in Indonesia have been and should be approached based on the existing law. All relevan sources which can be employed to deal with medical malpractice issue compose the so-called medical malpractice law.

2. Sources of medical malpractice law in Indonesia

The meaning of the source of medical malpractice law in this context is any source which develops the body of medical malpractice law. Medical malpractice law in this context is responsible to answer the following questions:

1. What is medical malpractice?
2. What are the elements of medical malpractice?

[1] Term medical malpractice became an academic discourse in Indonesia since 1980's in relation to the criminal prosecution against doctor Setyaningrum. She was alleged for having negligently caused the death of her patient. Prosecution was made based on Section 359 of the Penal Code.

[2] In some literatures the term medical malpractice crisis usually refers to the social phenomon occurring in the United States of America in 1970's. The use of the term medical malpractice crisis in Indonesian context refers to the massive publicity of alleged medical malpractice cases in media in 2003.

3. What are the legal consequences for doctors who involve in medical malpratice?
4. How to settle medical malpractice dispute?

It can be said that there are three sources of medical malpractice law in Indonesia namely legislation, doctrine, and case law. Legislation is the most important one among the three sources mentioned. It is true that there is no legislation governing medical malpractice issue in Indonesia, however there are several statutes which can be referred when dealing with medical malpractice cases as follows:

a. The Medical Practice Act 2004 *(Undang-undang Nomor 29 Tahun 2004 Tentang Praktik Kedokteran)*;

This Act was enacted on October 06th, 2004 in responding the issue of medical malpractice. The main purpose of this Act (stated in Section 3) is to promote good medical practice in Indonesia. Hence, it can be implied that this Act constitutes a legal instrument to prevent bad practice (malpractice) in the practice of medicine. The most crucial point of this Act in relation to medical malpractice issue is probably the establishment of the medical disciplinary tribunal which is named *Majlis Kehormatan Disiplin Kedokteran Indonesia (MKDKI).*

b. The Health Act 2009 *(Undang-undang Nomor 36 Tahun 2009 Tentang Kesehatan)*; and

This Act was enacted on October 13rd, 2009. This Act provides the lagal basis for the injured patients to get compensation [Section 58 (1)]. Besides, this Act also introduces mediation as a mean to resolve dispute arising in health service, including medical malpractice dispute [Section 29].

c. The Health Professional Act 2014 *(Undang-undang Nomor 36 Tahun 2014 Tentang Tenaga Kesehatan)*.

This Act was enacted on October 17th, 2014. This Act endorses mediation as governed in the Health Act 2009 as a mean to resolve dispute arising in health service [Section 78]. Besides, this Act also provides the legal basis for establishing criminal liability for health care professionals including doctors [Section 84].

What meant by doctrine is juristic or scholarly opinion, especially those given by the prominent law scholars. Doctrines helps to clarify the definition of medical malpractice, its scope and limitation. Doctrines can be found mostly in text books. Formerly, there were two Dutch professors who are influential in the discussion of medical law in Indonesia, Professor Leenen and Professor Van der Mijn. Their opinions on various issues within medical law including medical malpractice are most quoted. Besides, some authors in Indonesia also quote definition of medical malpractice from other western scholars such as William Blackstone (Black's Law Dictionary).[3]

Doctrine Four D's of professional negligence has also frequently been quoted when explaining the elements of medical malpractice[4]. The acronym Four D's is very popular. Four D's stands for:

a. Duty of care
b. Dereliction of the duty of care
c. Damage
d. Direct Causation

Another souce of medical malpractice law in Indonesia is case law. Judicial judgment on medical malpractice cases, including those available in other countries, are actually very helpful as a reference to approach cases in hand and to make proper judgments. However, it seems that case law plays less significant role in developing the body of medical malpractice law in Indonesia. It is because the jugdes in Indonesia are not bound by the previous court decision *(yurisprudensi)*. In Indonesian legal system, precedent is not binding but persuasive. In practice, Indonesian judges rarely quote precedents for their judgement. This happen not only in relation with medical malpractice cases, but also occur to other cases in general.

[3] See J. Guwandi, *Malpraktik Medik*, Jakarta: Fakultas Kedokteran Universitas Indonesia, 1993, p. 3; Ari Yunanto & Helmi, *Hukum Pidana Malpraktik Medik: Tinjauan dan Perspektif Medikolegal*, Yogyakarta: Andi, 2010, p. 27; Soetrisno, *Malpraktik Medik dan Mediasi sebagai Alternatif Penyelesaian Sengketa*, Jakarta: Telaga Ilmu, 2010, p. 4.
[4] See Moh. Hatta, *Hukum Kesehatan dan Sengketa Medik*, Yogyakarta: Liberty, 2013, p. 172.

Besides, the number of medical malpractice cases which were decided in the courts are also limited. Some books even quote cases from other countries such as US, UK and Australia. Hence, the function of case law is more an academic reference rather than a judicial reference for judges in Indonesia.

3. Definition of medical malpractice

There is no statutory definition of medical malpractice. Definition of medical malpractice ussualy refers to doctrines. Definition of medical malpractice can be found in literatures and other sources. According to Sal Fiscina, the word malpractice literally means bad practice. It is formed from two words, 'mal' means bad and 'practice' means work.[5] Medical treatment is considered as ‘bad’ when it deviates from the accepted standard of medical practice.[6]

The meaning of bad practice in medical context can also be understood by referring to the following statement:

> “In general speaking, medical malpractice means the failure of medical professionals to provide adequate or appropriate treatment to patients resulting in a personal injury or substantial loss of earning capacity. Medical malpractice is a doctor’s failure to exercise the degree of care and skill that a physician or surgeon of the same medical specialty would use under similar circumstances”.[7]

According to Black’s Law Dictionary malpractice is any professional misconduct, unreasonable lack of skill. This term is usually applied to such conduct by doctors, lawyers, and accountants. 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 those services or those entitled to rely upon them. It is any professional misconduct, unreasonable lack of skill or fidelity in professional or judiciary duties, evil practice, or illegal or immoral conduct.[8]

[5] Sal Fiscina, et al, *Medical Liability*, St. Paul: West Publishing Co, 1991, p. 2
[6] Standard of medical practice in Indonesia is known in various local terms such as *standar profesi* (standard of profession), *standar pelayanan* (standard of service), *standar prosedur operasional* (SOP), etc.
[7] "What is Medical Malpractice?" diunduh dari http://www.medicalmalparctice.com, pada tanggal 17 April 2013 jam 10.00 WIB.
[8] William Blackstone, *Black’s Law Dictionary*, 5th Ed,

The absence of legislation which specifically governs the medical malpractice issue has little or much created confussion. One of the best example is that many people confuse medical malpractice with medical negligence. To be understood that beside medical malpractice, another term ‘medical negligence’ has also been used both in daily speaking and in academic writing in Indonesia. These two English word have been adopted in Indonesian language. The local term for medical malpractice is *malpraktik medik*, while the term medical negligence is known in local language as *kelalaian medik*.

Even though the statutory definition of medical malpractice is absent, however definition of medical malpractice can actually be inferred from various provisions of the existing legislations. Professional misconduct by medical practitioners in particular or health professional in general has been formulated in several legislations as follows:

a. The Medical Practice Act 2004

Section 66 (1) of the MPA 2004 states:

“Any person who knows or whose interest is harmed by doctor or dentist in performing medical practice may make written report to the chairman of MKDKI”

In this provision professional misconduct is formulated as the conduct of doctor or dentist while practicing medicine which harms the patient’s interest (especially physical health).

b. The Health Act 2009

Section 58 (1) of the HA 2009 states:

“Every person deserves to insist on compensation against someone, health professional, and/or health care provider who cause damage due to negligence commited while giving health service the the person in question”.

In this provision professional misconduct is formulated as negligence committed by someone, health professional and/or health care provider while delivering health service which causes damage upon the health care receiver.

c. The Health Professional Act 2014

Section 77 of the HPA 2014 states:

"Every health care receiver who suffers from damage due to the negligence of the health professional may insist on compensation"

In this provision professional misconduct is formulated as negligence of the health professional which cause damage upon the health care receiver. From the above formulations, it can be concluded that medical malpractice is negligence commited by doctor while performing his profession which causes damage upon the patient. Therefore, the elements of medical malpractice based on the above definition are:

- Doctor's negligence;
- Patient's damage; and
- Causal link between the doctor's negligence and the damage suffered by the patient.

4. Medical malpractice liabity

Doctors can become the subject of legal liability either civil or criminal depending on the nature of the wrongdoing they committed. Civil liability can be held when doctors committed civil wrongs, while criminal liability can be imposed when they committed criminal offences. In general, civil liability refers to legal provisions in the Civil Code and criminal liability refers to the legal provisions in the Penal Code. There are two forms of civil wrong recognized under the Indonesian Civil Code namely *wanprestatie* (breach of contract) and *onrechtmatige daad* (tort)[9]. Contractual liability can be held based on Section 1239 of the Indonesian Civil Code, while tortuous liability can be held based on Section 1365 of the Civil Code. Penal code rules several offenses which are directly or indirectly relate to the medical profession. For the purpose of identification, such offenses are usually termed medical offense (tindak pidana medik). Among the examples are abortion,[10] euthanasia,[11] and disclosing the patient's confidential information to the third party.[12]

[9] *Wanprestatie* is the Dutch term for breach of contract. *Onrechtmatige daad* is the Dutch term for tort.
[10] Section 348 of the Penal Code *(KUHP)*
[11] Section 344 of the Penal Code (KUHP)
[12] Section 322 of the Penal Code (KUHP)

After the enactment of the Medical Practice Act 2004, medical liability should refer to this Act. The Medical Practice Act 2004 governs some administrative requirements for practicing medicine in Indonesia. This act also governs the rights and duties of doctors and dentists. Some ethical duties as recognized under the medical ethics have been made legal duties under this Act such as the duty to keep the medical secrecy (the patient's confidential information). As a consequence, violation against such duties may render doctors not only to ethical accountability but also criminal liability since such a violation has been defined as an offense.

The Medical Practice Act 2004 also introduces the mechanism of disciplinary accountability. Disciplinary accountability can be established when doctors violate disciplinary rules made by the Indonesian Medical Council (KKI). The Council has formulated 28 forms of medical disciplinary violaton.[13] Disciplinary accountability is held by the Medical Diciplinary Tribunal (MKDKI). According to Section 64 butir (a), the tasks of MKDKI are to receive report, to examine and to decide cases on the violation of the medical disciplinary rules by doctors and dentists. The report can be made by the injured patients or by other persons[14].

Professional misconduct which constitutes the essence of medical malpractice constitutes the violation against the medical disciplinary rules. Bad medical practice, to which the medical malpractice concept refers to, is manivested into any kind of medical treatment which does not comply with the accepted standard of practice (standar profesi, standar pelayanan, standar prosedur operasional, dll). Therefore, medical malpractice cases are basically under the domain of MKDKI. However, MKDKI is not the only institution authorized to examine and to decide medical malpractice cases. Legal policy taken by the Indonesian government is to put MKDKI as the first but not the only gate in relation to medical malpractice liability. The mechanism of the disciplinary accountability held in MKDKI does not close the opportunity to establish legal liability in the courts.[15]

[13] See Section 3 of the Rule of Indonesian Medical Council Number 4 Year 2011 on Professional Discipline of Doctor and Dentist *(Peraturan Konsil Kedokteran Indonesia Nomor 4 Tahun 2011 Tentang Displin Profesional Dokter dan Dokter Gigi).*

[14] See Section 66 (1) of the Medical Practice Act 2004.

[15] See Section 66 (3) of the Medical Practice Act 2004 which states that report to MKDKI does not close the opportunity to initiate legal action either civil or criminal litigation.

Medical malpractice bears medical liability, but medical liability is not always due to medical malpractice. Medical liability can also be established due to medical offences such as illegal abortion, euthanasia etc. Medical malpractice liability requires an occurrence which is qualified as medical malpractice. Doctors will be liable for malpractice if it is proven that he, while carrying out the medical treatment, has negligently caused damage upon his patient. Under the Indonesian legal system, negligence constitutes cause of action either for civil proceedings and criminal proceedings. Therefore medical malpractice cases can be brought into either civil court or criminal court.

a. Civil Liability for Medical Malpractice

From the perspective of civil law, medical malpractice can be qualified as *onrechtmatige daad (perbuatan melawan hukum)* as governed in Section 1365 of the Indonesian Civil Code *(Kitab Undang-undang Hukum Perdata).* Section 1365 of the Civil Code mentions that any person whose negligence has caused damage upon another is obliged to pay compensation. In order to be compensated, the injured patient has to prove the doctor's negligence as well as the causal link between doctor's negligence and the damage suffered by the patient.

Besides referring to section 1365 of the Penal Code, civil suit against doctor due to medical malpractice can be also made based on Section 58 (1) of the Health Act 2009 and Section 77 of the Health Professional Act 2014.

b. Criminal Liability for Medical Malparctice

Criminal prosecution against doctor due to medical malpractice for medical malpractice can be made based on Section 84 of the Health Professional Act 2014. Section 84 of the HPA 2014 governs two types of offense which are applicable for medical malpractice cases. First is a gross negligence which results in death as governed in Section 84 (1), and second is a gross negligence which results in serious injury as governed in Section 84 (1).

The first offense is punishable with a maximum 5 years of imprisonment, and the second offense is punishable with a maximum three years of imprisonment.

5. Medical malpractice dispute resolution

Even though the term medical malpractice has been common and received wide acceptance, however there some scholars who are reluctant with this term. One of the reason is because term medical malpractice is stigmatic for doctors. Doctors who has been associated with this term will be perceived as bad persons. It is probably because many people understand medical malpractice as a crime. Alternatively, those who are reluctant with the term medical malpractice offer to use medical negligence which is considered softer than medical malpractice. Besides, there is also a proposal to use the term medical dispute (sengketa medik) instead of medical malpractice cases. The reason is that it is not clear wheather the alleged doctors have really committed medical malpractice or not. It is under the court jurisdiction to make judgment. In many cases, what have been sounded as medical malpractice cases are just a communication of dissatisfaction which was stimulated by poor communication. In such a situation, the use of the term medical malpractice case is detrimental for doctor's reputation. Hence, it is fair to qualify that complaint as medical dispute not medical malpractice case.

Safitri Hariyani identifies that dispute between doctor and patient occurs when there is a dissatisfaction of patient against doctor in relation with the performance of the medical treatment. This dissatisfaction arises in relation with the damage suffered by the patient which is assumed to have occurred due to the doctor's negligence.[16]

Medical malpractice disputes arise usually due to patients' dissatisfaction against medical treatment they received from doctors or hospitals. They are because the medical treatments in question have been presumed to have caused the patients suffering from damage. Ussually before the patients make legal actions, they firstly communicate their dissatisfaction to their doctors or hospitals. The purpose of this communication is to get an

[16] Safitri Hariyani, *Sengketa Medik: Alternatif Penyelesaian Perselisihan antara Dokter dengan Pasien*, Jakarta: Diadit Media, 2005, p 57

explanation on how the doctors carried out the medical treatments and why the patients suffer from damage.

After receiving explanations from doctors or hospitals, those who have been satisfied with they will usually accept the mentioned unexpected outcome. Moreover, if the hospitals, besides providing clear explanation, also show their empathy to the patients, the problems will not grow up becoming disputes. Empathy can be shown by giving no financial charge for the given treatments and/or providing further medical treatments for free. On the other side, when the injured patients are dissatisfied with the hospitals response to their complaints, it may create dispute between the patients and doctors/hospitals in question. Such disputes may also grow up into legal cases in the courts, either civil or criminal cases.

Besides establishing legal liability, the court also facilitate dispute settlement. It is expected when the wrongdoers have been called for liability, the cases will end. Nevertheless, the court is not the only institution which facilitates dispute settlement. There are several mechanisms for settling disputes out side the court which can be employed for resolving medical malpractice disputes. Various mechanisms for settling medical malpractice disputes outside the court will be discussed in the following:

a. Medical Disciplinary Tribunal (MKDKI)

MKDKI stands for Majlis Kehormatan Disiplin Kedokteran Indonesia. MKDKI is an organ under the Indonesian Medical Council (Konsil Kedokteran Indonesia/KKI). Both KKI and MDKDI were established based on the Medical Practice Act 2004. Section 64 (a) of the MPA 2004 governs that MKDKI receives, examines and decides cases of the disciplinary violation by doctor and dentist. When the reported doctor or dentist is found guilty for having violated disciplinary rule, MKDKI may inflict administrative sanction in the form of either written probation, recommendation for the suspension of resgistration letter/practicing lisence, or obligation to take particular medical education and training [Section 69 (3) of the MPA 2004].

It seems that MKDKI is an effective means for establishing professional liability but not effective as a means for medical dispute resolution. The forms of sanction it may impose is probably detrimental for doctors but gives no impact to the injured patients. MKDKI cannot facilitate the payment of compensation whatever the injured patients insist on.

b. Medical Ethics Tribunal (MKEK)

MKEK stands for Majlis Kehormatan Etika Kedokteran. MKEK is an organ under the Indonesian Medical Association (Ikatan Dokter Indonesia /IDI) which functions to enforce the medical ethics among the members of the association. Depending on the degree of violation, MKEK may inflict administrative sanction ranging from written probation, temporary scorsing, dismissal, and revocation of the recommendation for practice not exceeding of three years.

Supposed after the Medical Practice Act 2004 coming to force, MKEK runs the examination of cases based on referral from MKDKI. As governed in Section 68 of the MPA 2004, when the nature of misconduct committed by the reported doctor is ethical violation, MKDKI will refer that case to the professional association (MKEK). Considering the lack of access to MKDKI, in practice the people sometime go directly to MKEK instead of MKDKI. In investigation process, for instance, police investigators oftenly request explanation from MKEK to make sure whether the reported doctor has violated the law or not.

c. Consumer Dispute Tribunal (BPSK)

BPSK stands for Badan Penyelesaian Sengketa Konsumen. BPSK was established based on the Consumer Protection Act 1999 (Undang-undang Nomor 8 tahun 1999 tentang Perlindungan Konsumen. BPSK is an organ under the Ministry of Trade (Kementerian Perdagangan). BPSK is available in districts, except BPSK Jakarta which is under the provincial government.

BPSK basically established for settling consumer dispute, however it, in practice, has also facilitated the settlement of medical malpractice disputes. The number of medical malpractice dispute which has been brought to BPSK is limited. So far only BPSK Denpasar and BPSK Yogyakarta which have ever received and settled medical malpractice dispute. BPSK employs several methods of dispute settlement such as mediation, arbitration and conciliation.

d. Resolving Medical Malpractice Dispute through ADR (Mediation)

The discussion on medical malpractice dispute resolution must consider the ADR methods, especially mediation. Mediation has been adopted by the Health Act 2009 and later been endorsed by the Health Professional Act 2014. Section 29 of the Health Act 2009 states that in case the health professional commited negligence while performing his profession, such negligence must be primarily resolved through the mechanism of mediation. Section 78 of the Health Professional Act 2014 states that in case the health professional has been alleged of having negligently caused damage upon the health care receiver, the dispute arising due to that negligence must be primarily resolved through out of court settlement mechanism as intended by the legislation. Out of court settlement mechanism refers to mediation which is governed in the Health Act 2009.

Based on the above provisions, it is clear that medical malpractice dispute must primarily be resolved through mediation process. There two schemes of mediation the disputing parties may opt, either out-court mediation or in-court mediation/court-connected mediation/court-annexed mediation.[17] The procedure of court-annexed mediation is comprehensively governed by the Supreme Court Decree No 1 Year 2016 on Court-annexed Mediation (Peraturan Mahkamah Agung Nomor 1 Tahun 2016 Tentang Mediasi di Pengadilan)

6. External influences

In modern time, the development of law in every country receives influences from other countries. Especially in globalization era, when global communication and interaction between nations is much easier, external influences are unavoidable. The current development of the Indonesian malpractice law has also received influences from other counties, especially the United States of America and the Netherlands. In the following, such external influences will be identified:

a. American Influence

Professional misconduct involving the medical practitioners in Indonesia is termed *malpraktik medik* or *malpraktik kedokteran*. These terms were the direct transalation of the English term medical malpractice which is commonly used in American medical

[17] Court-annexed mediation is carried out by sertified mediators either judges or professional mediator which are registered in the District Court *(Pengadilan Negeri)*.

jurisprudence.[18] The old definition of medical malpractice which covers the intentional wrongdoing by doctors are still influential up to recent time. Many Indonesian jurists are of the opinion that intentional wrongdoing of doctors is under the coverage of the medical malpractice concept, besides negligence. Therefore, they put medical negligence as a part of medical malpractice concept. Intentional wrongdoing within medical malpractice context is considered as a crime and therefore it is criminally punishable. Such category of medical malpractice is later known as criminal malpractice. The example of this category of medical malpractice is illegal abortion and euthanasia. Some authors qualifies criminal malpractice as the pure malpractice *(malpraktik murni)*.[19]

Many authors refers to the doctrines of Four D's (Duty, Dereliction, Damage, and Direct Cause) when describing the elements of medical malpractice.[20] This doctrine seems to be adopted from the American medical jurisprudence.

b. The Dutch Influence

As the Indonesian legal system was built in accordance with the Dutch legal system, the Dutch influence on the development of the Indonesian law in general is obvious. In relation to the medical malpractice issue, the influence of the Dutch medical jurisprudence can be seen among others in the following aspects:

i. The doctrine of *Culpa Lata* and *Culpa Levis*

The doctrine *culpa lata* and *culpa levis* are always referred when discussing the degree of doctor's negligence. These Latin terms were first adopted from the Dutch literatures. *Culpa lata* is equal to English term gross negligence. It is known in Dutch as *grove schuld*. Whereas *culpa levis* means slight negligence. Under the Indonesian medical jurisprudence *culpa lata* amouts to criminal prosecution, while *culpa levis* amounts to civil action.

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[18] See Hermien Hadiati Koeswadji, *Hukum Kedokteran: Studi tentang Hubungan Hukum dalam mana Dokter sebagai Salah Satu Pihak*, Bandung: Citra Aditya Bakti, 1999, p. 122

[19] See J. Guwandi, *Hukum Medik*, Jakarta: Badan Penerbit Fakultas Kedokteran Universitas Indonesia, 2007, p. 21; Sofwan Dahlan, *Hukum Kesehatan: Rambu-rambu bagi Profesi Dokter*, 3rd Ed, Semarang: Badan Penerbit Universitas Diponegoro, 2003, p. 60; and Alexandra Ide, *Etika dan Hukum dalam Pelayanan Kesehatan*, Yogyakarta: Grasia, 2012, p. 292.

[20] See Moh. Hatta, *Hukum Kesehatan dan Sengketa Medik*, Yogyakarta: Liberty, 2013, p. 172.

ii. The Doctrine of *Resultaat Verbintenis* and *Inspanning Verbintenis*

Indonesian medical jurisprudence recognizes two types of doctor's obligation in relation to medical treatment namely *inspanning verbintenis* (effort-based obligation) and *resultaat verbintenis* (outcome-based obligation)[21]. These concepts were first introduced by a Dutch Scholar, Ph. A.N. Houwing in his book *"De inhoud van de verbintenis en de overmatch"* 1953.[22]

iii. The establishment of the Medical Disciplinary Tribunal

The establishment of the Medical Disciplinary Tribunal (MKDKI) seems to be inspired by such a tribunal in the Netherlands known as *tuchcollege* (disciplinary tribunal). *Tuchcollege* is governed in *External Tuchrecht* (external disciplinary law).[23]

7. Conclusion

From the above discussion it can be concluded that the law relating to medical malpractice in Indonesia has been growing rapidly. Currently Indonesia has sufficient legal instruments for dealing with medical malpractice issue. Medical malpractice cases can be approached through either liability perspective or resolution perspective. Medical malpractice liability can be held in either civil court or criminal court. While the resolution of medical malpractice dispute must primarily employ the mechanism of mediation. The current development of medical malpractice law in Indonesia receives influences from other countries especially America and Netherlands.

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