

Tanggung jawab dokter terhadap kerugian pasien atas perbuatan malpraktek kedokteran ditinjau dari undang-undang perlindungan konsumen

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Abstrak

In the healing effort by the physician, there are high risk which cannot be eliminated. The risks can be in the form of loss suffered by physician or patient. According to loss suffered by patient, there are different opinion about physician's liability, as a consequences of medical action. One interesting discourse in this problem nowadays is the possibility of applying of UU No. 8 Tahun 1999 about Consumer Protection to physician-patient relationship. The purpose of the writing of this thesis was to discuss the discourse and to reveal how contractual terms between physician and patient in law and regulation in Indonesia, and how they implemented in some court decisions in Indonesia. The research use normatif yuridis type research, namely more related to research of bibliography stemming to written law norms, either regulations or court decisions, by using primary and secondary data, including interview wherever needed. The data analysed by using analytical descriptive method, especially to describe, analyse, and explain the physician's liability regarding the contractual terms between physician-patient, to loss suffered by patient. From the analysis which had been done, it can be concluded that contractual terms between physician and patient were happened due to therapeutic-transaction or therapeutic-agreement and due to comand of law, namely *zaakwarneming*. In therapeutic-transaction or therapeutic-agreement the physician's duty is the healing effort, not the result Therefore therapeutic-agreement has the character of *inpannmgverbintenis*. One important factor in therapeutic-agreement is the informed-consent, that is the patient's agreement for the medical action after receiving proper information from the physician. In informed consent, given approval have to pursuant to information of physician concerning medical action to be conducted. In the case of loss suffered by patient, the physician's liability can be blamed if the physician can be blamed due to brake the standar operation procedure or the physician no execute its obligation, and the patient suffer a loss, and there is causality relation between those two (brake the standar operation procedure and patient's loss). Beside that, it was also found that physician's liability can ζ so be insist using UU No. 8 Tahun 1999 about Consumer Protection. In implementation, as analysed from court decisions collected for this thesis writing, there are differences in looking at physicians* liability. However, there are consideration of Judges which using fault based liability principle with presumption of negligence and presumption liability principle, base on 'res ispa loquitor' doctrine.