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Juridical Analysis of CriminalLiabilityby Doctors inMedical Malpractice(Study Analysis of Medical Malpractice Case in General Hospital Prof. Dr. R.D. Kandou Malalayang, Manado, Indonesia)

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Abstract: *Malpractice practices that is proven performed by doctors, dentists and medical personnel (who perform medical acts without the delegation of a physician who treats the patient)have both civil and criminal liability. The parties who feel disadvantaged by the occurrence of such malpractice may prosecute civil or criminal charges. Offense that can be included in medical law is culpa offence as aspects of medical law.*
Keywords*: Criminal Liability, Doctor, Medical Malpractice.*

I. INTRODUCTION

As mandated in Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) that every person has the right to live a prosperous and spiritual life, to live, and to obtain well-being and healthy living environment and the right to obtain health services. From the very beginning before being clearly defined in the UUD NRI 1945, health had become part of the life of citizens, including within the Universal Declaration of Human Rights 1948, and then outlined in the World Health Organization (WHO) Basic Document, Geneva 1973, which regulates, "The enjoyment of the fulfillment of health standards is one of the fundamental rights for all human beings"[1].Thus, the health standards must be as fully met by the state as the executor of the rights of its citizens, whereas the community as the recipient of the right may ask explicitly if the government is ignorant of its obligations in the fulfillment of the right to health.

Health as a human right should be realized in the form of providing health efforts to entire society through implementation of a quality health development and affordable tosociety. Indonesia's health development program is aimed at raising awareness, willingness and capability of healthy life for everyone in order to realize optimal health status as one of the elements of general welfare as intended and affirmed in the Preamble of 1945 Constitution of the Republic of Indonesia. Policy development in the field of health originally In the form of healing efforts to patients, gradually evolving towards the unity of public health development efforts with society participation that is comprehensive, integrated and sustainable which includes efforts to increase counseling (promote), prevention (preventive), healing (curative), as very important matter compared to recovery efforts (rehabilitative)[2], because it prevents better than to cure (recover).

Implementation of medical practice which is one of the core parts of various activities in the implementation of health efforts must be conducted by doctors who refer to the standard code of ethics, high moral, and expertise as profession. Essentially, the goal of health development organized by the government is that society acquired their rights on the basis of help. Thereby, the legal relation between doctor and patient is a medical service of legal relationship or in other terms medical action between the health provider and the health receiver.

The development of the relationship pattern between doctor and patient is commonly referred to as therapeutic transaction, whichis a patient is only considered as mere objects, because patients get the services of a doctor in one direction. Because doctor is considered to know best in everything for the patient or father know best, then this therapeutic relationship transaction is patterned as vertical relationship. Then the longer the relationship between the doctor or dentist with the patient shifts in a more balanced relationship, because doctors and patients have their respective rights and obligations to be met. This kind of relationship is known as therapeutic transactions[3].The field of medicine that initially took place in a familial now began to be entered into various legal issues. Today's era can be felt that the activities of doctor in healing the patient is often hampered by the attitude of the patient or his family that is legally demanding habit against the doctor if the treatment is considered less successful[4]. Even doctorwas often claimed to have committed deeds with

malpractice term that adverse patient. The needs of patient and doctor, who initially went well, are gradually lessen with the friction from the outside until a problem arises, where the problem can lead to the court. Therefore, it is required a legal protection that can be an umbrella to create a peaceful atmosphere, safe and comfortable on both sides. It is undeniable that the phenomenon malpractice in Indonesia is not a taboo to talk about. Medical practices that deviate from standard medical procedures will lead to malpractice, and more interesting part is malpractice cases are always experienced by lower middle class society.

Judging from the national legal perspective (especially Indonesian law) the relationship between patient and doctor is included within the scope of the contract law[5]. As an agreement, the right and obligation arises as a result of the agreement, the exercise of right and obligation then emerges potential for a dispute between the doctors with a patient namely medical disputes. This medical dispute begins with the patient's lawsuit to the doctor due to the emergence of patient dissatisfaction with the doctor's actions. The other side, the number of lawsuits from the patient turned out to provide a negative impact, namely the fear of the doctor in providing health to the patient. Doctors become hesitant and afraid in providing medical services. Therefore, doctors who have the completeness of administrative requirements to practice are entitled to legal protection to feel safe in carrying out his profession[6]. Another worrying impact is that doctors perform a defensive treatment practice that performs medical practices that are over standard and sub standard to avoid the risk of demands that will ultimately harm society itself as a service user ofdoctor[7].

Several cases of malpractice allegations by doctors and other health workers also occurred in South Sulawesi. There are several cases that have been triedand some cases are still under investigation. Among several cases that have been decided by a judge, some are convicted of malpractice and there are some cases convicted of innocence. In medical treatment involving doctor and patient,the doctor's profession should deserve legal protection in order to provide certainty in the conduct of health efforts to the patient. According to above description, it is clear that in the case of legal protection of the medical profession as in Article 50 of Law Number 29 Year 2004 on Medical Practice not only in performing its duties and professions, but also the legal protection is given after performing his duties and his profession, as in this case the legal protection against alleged malpractice lawsuits.

With the widespread aspect of the problem mentioned above, researcher will focus on the liability of medical profession related to the alleged medical malpractice. Therefore the problem to be discussed in this article is how is the application of criminal law to the perpetrators of criminal medical malpractice? and How is the legal consideration by the judges in deciding cases against medical malpractice?

a. II. RESEARCH METHODS

Thisresearch is a socio-juridical research conducted to find out the law problem or issue that exist. The result of this legal research is to provide prescriptions of what should be carriedregarding the legal issues proposed. The approach used in this legal research is the statute approach,it is necessary to further review the legal basis by reviewing the laws and regulations concerned with the studied law issue[8]. And conceptual approach is shifting from the views and doctrines that developed in the science of law. Researchers will find ideas that give rise to legal notions, legal concepts and legal principles that are relevant to the issues confronted[9]. Once legal issue is established, it is necessary to search for legal materials relevant to the issues confronted[10]. The primary and secondary legal materials that have been collected are then classified and studied based on the approach method used. In this study, the conceptual approach, the legislative approach, and the comparison approach are used to obtain a systematic and comprehensive overview of primary legal materials and secondary data obtained to produce new legal prescriptions or arguments.

II. III.RESULT AND DISCUSSION

A. Implementation of Criminal Law against Criminal Action Actors of Medic Malpractice

In line with the development of science and technology that bring many changes to human life either in terms of lifestyle changes and social order including in the field of health which is often confronted in a matter that is directly related to the norms and cultures embraced by society who live in a certain place. The influence of socio-culture in society gives an important role in achieving the highest degree of health. Socio-cultural development in society is a sign that society in a region has undergone a change in the process of thinking. Social and cultural change can have both positive and negative effects.Medical Malpractice terminology comes from the English language, namely medical malpracticewhich contains the understanding of an act of carelessness from a person in exercising his profession in the medical field (treatment and patient care). According to the Word Medical Association (1992), medical malpractice is defined as follows:

Medical malpractice involves the physician's failure to conform to the standard of care for the patient's condition, or lack of skill of negligence in providing care to the patient which is the direct cause of an injury to the patient.

In Article 45 of Law Number 29 Year 2004 on Medical Practice states that:

1. Any act of medicine or dentistry to be performed by a doctor or dentist on a patient must be approved.

2. Approval as referred to in paragraph (1) shall be issued after the patient is fully informed.
3. The explanations referred to in paragraph (2) shall at least include:

a. Diagnosis and procedure of medical action;
b. The purpose of the medical action;
c. Alternative actions and risks
d. Risks and possible complications; and
e. Prognosis of the action taken.

4. Approval as referred to in paragraph (2) may be given either in writing or orally.
5. Any high-risk medical or dental action shall be granted with a written consent signed by the person who has the right to give consent.
6. The provisions concerning the procedure for approval of medical or dental action as referred to in paragraph (1), paragraph (2), paragraph (3), paragraph (4) and paragraph (5) shall be regulated by Ministerial Regulation.

Furthermore, in Article 51 of Law Number 29 Year 2004 on Medical Practice mentions doctor's obligation in performing medical practice, among others:

1. Provide medical services in accordance with professional standard and standard of operational procedures and medical needs of patients;
2. Patient to doctor or to another dentist who has better skill or ability, if unable to perform an examination or treatment
3. Conceal everything he knows about the patient, even after the patient dies
4. Conducting emergency help on the basis of humanity, unless he is sure there are others who are on duty and able to do so
5. Increase knowledge and follow the development of medical science or dentistry.

Article 52 of Law Number 29 of 2004 on Medical Practice further stipulates the right of patients to receive medical services in medical practice including:

1. Getting a full explanation of the medical action
2. Asking opinion of doctor or other dentist (second opinion)
3. Acquiring services in accordance with medical needs
4. Refuse medical treatment
5. Acquiring the contents of medical records

To find out whether doctors/dentists and other medical practitioners have malpractice or not, it can be seen from the standard of their profession. The standard of profession is a limitation of ability which includes knowledge, skill/performance and professional attitude minimally to be mastered by an individual (doctors/dentists, medical personnel) to be able to perform their professional activities to the society independently made by their respective professional organizations. The medical profession and medical standards should include, among others:

1. Carefully or thoroughly action as associated with negligence (culpa) and carelessness.
2. Appropriate size of medical science that has gained recognition among the medical profession
3. Ability/proficiency to apply the medical science mastered according to standards recognized in the profession.

Doctors, dentists, and medical personnel who do not comply the professional standards mentioned above mean that they have committed a mistake/malpractice. Malpractice practices proven by doctors, dentists and medical personnel (who perform medical acts without the delegation of a physician who treats the patient)have both civil and criminal liability. The party who feels disadvantaged by the occurrence of such malpractice may prosecute civil damages under article 1365 of the Civil Code as well as criminal charges under Article 359, Article 360, and Article 361 of the Criminal Code.

Civil and criminal charges may be committed jointly by the disadvantaged party (the patient/heirs) for the malpractice. In the event of malpractice occurring at the hospital, the hospital as a legal entity equivalent to a person personally may be held accountable for civil liability under article 1365 of the Civil Code which states that "Every act that violates the law that carries harm to others obliges the person who because of the wrong caused issue the loss, to compensate for the loss".

Article 359 of the Criminal Code regulates that "Whosoever because of his wrongdoing (negligence) cause the death of another person, is threatened with a maximum imprisonment of five years or a maximum detention of one year". Then Article 360 of the Criminal Code also provides that:

1. Any person who is guilty of causing a person to be seriously injured shall be subject to a maximum imprisonment of five years or a maximum imprisonment of one year.

2. Anyone who because of his mistake (causality) causes other people to be injured in such a way, so that diseases or obstacles arise performing job title or search for a certain time. Threatened with a maximum of nine months imprisonment, or a maximum imprisonment of six months.

Then Article 361 of the Criminal Code provides that:

If the offenses described in article 359 and article 360 of the Criminal Code above are carried out in the conduct of a position or searching, then a criminal with plus a third and the guilty person may be deprived of his right to conduct searching in which the offense is committed, and the judge may order that its judgmentto be announced.Article 361 The Criminal Code above confirms the crimes committed in a position or searching, the penalty may be increased by one-third of the maximum sentence penalty that has been established, and may also be subject to additional penalties in the form of revocation of practicing licenses as a doctor, dentist or medical personnel, as well and the judge's decision on the revocation of the license of practice to be announced to the public in order to be publicly known.

In the past, the doctor's relationship with his patient was paternalistic. Patients were generally only able to accept everything the doctor said without being able to ask anything. In other words, all decisions are entirely in the hands of doctors. With increasingly public awareness of their rights, this pattern of relationships also undergoes significant changes. At this time, from legal perspective medicine is a partner of the same patient or equivalent. Their standing, the patient has certain rights and obligations, as well as doctors. Although a person is ill but his legal standing remains the same as healthy ones. It is completely wrong to think that a sick person is unable to make a decision, because in general the patient is actually an independent legal subject and can make decisions for his own benefit. All parties involved in this professional relationship are fully aware of the development.

The basis of the relationship between doctor and patient is on the basis of the patient's trust in the doctor's ability to work as much as possible to cure his illness. The patient believes that the doctor will do everything possible to cure his illness; in the absence of the trust of the patient underlying the medical relationship will be in vain to efforts of the doctor to heal the patient. In addition, the patient may hold the doctor accountable in the event that the physician makes mistakes/negligence and the doctor is unable to take shelter under the pretext of accidental deeds, because the doctor's mistake/negligence causing harm to the patient entitles the patient to sue for damages and criminal sanctions.

Some experts who have conducted research on the relationship between doctors and patients, either in medical, sociological, and anthropological as quoted by Veronica Komalawati[11] states as follows:

1. Russell, states that the relationship between doctor and patient is more than relationship power, that is the relationship between the party having the authority (doctor) as the active party, with the patient performing the role of dependency as a passive and weak party
2. Freidson, Freeborn and Darsky, mentioned that the relationship between doctor and patient is the exercise of medical power by doctor to patient.
3. Schwarz and Kart, revealing the influence of this type of doctor practice on balance of power between patient and doctor in the relationship of health services. In the practice of general practitioner, control is present in patient because his or her arrival is desirable by the doctor, whereas in the practice of a specialist doctor, the control is present on specialist doctor that patient selected. This means that the patient relationship with doctor is more balanced than the patient's relationship with a specialist.
4. Kisc and Reeder, examined how far the patient can be in control of the relationship and assess the performance of a quality medical service that the doctor gives to his patients. In this research, there are several factors that can influence the role of the patient in the relation of medical service, such as the type of doctor's practice (individual practice or the jointly practie), or as a doctor in a medical institution. Each of these positions is a variable that necessary can have an impact on the quality of medical services he receives.
5. Szasz and Hollender, discusses three types of prototypes of relationships between doctors and their patients, the relationship between parents and children, between parents and adolescents, and prototype relationships between adults.

The relationship between doctor and patient to the doctor's healing efforts is between probability and uncertainty because the human body is complex and incomprehensible, so doctors are limited to trying to heal and can not confirm the outcome of treatment. Not to mention the variations that exist in each patient, such as the age, disease level, the nature of the disease, complications and other things that can affect the good results provided by doctor.By due to the nature of the probability and uncertainty of the treatment, then if doctors were less careful and incompetent in the field they could be dangerous for patient. To protect the public from the practice of less qualified treatment thereforelaw is required[12]. Article 50 of Law Number 29 Year 2004 concerning Medical Practice determined that doctors and dentists in carrying out medical practice have the right:

1. Obtaining legal protection throughout performance of duties in accordance with professional standard and standard of operational procedures.

2. Providing medical services according to professional standard and standard of operational procedures.
3. Obtaining complete and honest information from the patient or his family.
4. Receive service rewards.

The rights that arise in the medical profession is actually originated in basic rights, namely the basic social rights and individual rights, in which both will support each other, at least walk in parallel and not conflicting because it is basic human rights. Therefore doctor and patient have these rights together. While obligation arises in terms of doctor-patient's professional relationship, with one of the parties is really acting as a doctor in accordance with the applicable medical profession requirements and norms, so at that time he was acting as a doctor in a certain legal relationship, as doctor-patient professional relationship. It should be emphasized that the type of therapeutic relationship, which is aimed at recovery or improvement of the patient's health. In general, criminal liability may be sought on the offender of a criminal offense if the following conditions are met:

1. Guilt.
   The forms of guilt are as follows:

a. Deliberate
   In the *Memorie van Toelichting* (MVT) Justice Minister when applying CriminielWetboek in 1881 (which became the Indonesian Criminal Procedure Code of 1915), described: "deliberately" is defined: knowingly from the will to commit a particular crime. So it can be said, that deliberately means wanting and knowing what to do. The person who commits the act deliberately wants the action and besides he knows or is aware of what he does. For example, a mother, who deliberately does not give milk to her child, wants and is aware of his actions[13].

b. Omission or negligence
   Omission or negligence is that a person does not intend to violate the prohibition of law, but he does not heed the prohibition. He is neglect, negligent, careless in doing such deeds. Therefore in negligence thedefendant ignores the prohibition thushe is careless in conducting something objective-causal that leads to a prohibited condition.

Regarding this omission, Moeljatno[14] argues that in general for wet crimes it requires that the defendant's willingness is directed against prohibited and criminalized acts. It is excluded if the prohibited circumstances might be largely harmful to the general condition of the person or the goods and if there was a cause of great loss, thus wet must act also against those who were not careful and being careless. Shortly, the cause of the prohibited circumstances is not against the prohibition, he does not want or approve of the prohibition emergence, but his fault, his mistake in his heart when he did such deeds that caused the prohibition, might be concluded that he did not heedthe prohibition.

Moeljatno concluded that deliberate is a different kind of omission. But basically the same, that is the existence of prohibited and criminalized acts, the presence of ability to be responsible and the absence of a forgiving reason, but in other forms. In deliberate attitude, inner feeling of person is opposed to the prohibition.In negligence, heedless to the prohibition until be careless in doing deed in objective-causal inflicted a prohibited condition[15].

2. LiableAbility.

In the Criminal Code there is no stipulation on the meaning of responsible ability. In connection therewith is Article 44: "Whosoever commits an act which is not accountable to him, because his soul is defective in his body or a soul disturbed by a disease does not be punished". From Article 44, Moeljato concludes that for the existence of a responsible ability there must be[16]:

a. The ability to discriminate between good and bad deeds; In accordance with the law and against the law;
b. The ability to determine his will according to his conviction about the good and bad of the deeds.

B. Judge's Legal Consideration in Deciding Cases of Medical Malpractice Crime

Professional Standard that is related to Criminal Law Materiel is an approach that means the relationship between "medical negligence" with criminal responsibility. Whereas its relation through the Criminal Law Formal constitutes the utilization of fundamental prosedural rights including the right of patient protection and the medical obligation to keep the confidential that becomes his belief as described below.

Based on these, the authors agree with the view that the norm of discipline can also be concurrent to ethical norm of profession and/or norm of criminal law, even civil norm, so that ones can do acts that violate the norm of discipline, as well as ethical norm profession and/or norms of criminal law/civil law, therefore the meaning of object examination of Professional Discipline needs to be executed in direction of limitative norms, as well to avoid the existence of a presumption of guilty, existence of will of punishment of profession among Doctor Profession. It must be acknowledged that the examination conducted by MKDKI institution (in

accordance with Law No. 29 Year 2004)is very broad, because the disciplinary offenses include also the area Privaatrechtelijkheid, also has a connection with Administratiefrechtelijkheid. In addition, the norms of discipline become the object of examination such as: a) distrust profession, b) zorgviddigheid (e.g not meticulous in carrying out professions, old age, body defects, drunk and others), c) also the seriousness negligence which becomes the scope Norms of the Professional Standard.

Understanding the meaning of "*Schuld*" (guilt), either *opzet* (deliberate) even *culpa* (negligent) and*Onrechtmatige-daad* (action against law) in the field of Civil Law have a similarity with "*Schuld*" and "*Wederrechtelijkheid*" on Criminal Law, so discussion of criminal liability has similarities with liability in the area of Civil Law.

In regard to Criminal Law Formal as a matter of processual, in fact Article 48 subsection 2 of Law No.29 of 2004 has settled *verschoningsrecht* of doctor profession in a debilitating and deviant position from the historical approach. Doctrinally and jurisprudently, in the process of pre-adjudication, that is inquiries, investigation and prosecution, the medics with the status as witness, the imperative of secrecy should be universal, and *verschonisrecht* is excluded only from the adjudication process before the judiciary (criminal, civil and administrative) therefore its exceptions characteristic when used for "interest of justice" on judge orders not by other law enforcement officials, which means only in the level of mere judicial proceedings. But in its status as the suspect or defendant, verschoningsrecht becomes imperative noting that a medic has right of Non-Self Incrimination guaranteed in jurisprudential, doctrinal and legality principles in the Criminal Justice System.

The main basis for doctor to be able to take medical action against others is science, technology, and competence they have, obtained through education and training. His knowledge must be continuously maintained and enhanced in accordance with the progress of science and technology. Doctor with the scientific equipment it possesses a characteristic. His characteristic is visible from the justification given by the law that is allowed him to perform medical actions on human body in efforts to maintain and improve the level of health. Medical action on the human body performed by a doctor cannot be classified as criminal offense.

The case of malpractice is not new. The most recent case is the case that occurred in Prof. Dr. R.D. KandouMalalayang General Hospital in City of Manado. The District Court declared that doctor AyuSasiaryPrawani, doctor Hendry Simanjuntak, and doctor Handy Siagian were not proven legally and convincingly in carrying out the operation against the victims of SiskaMakatey as prosecuted by Public Prosecutor TheodorusRumampuk and andMaryantiLesar. On the contrary, the Supreme Court declared that physician AyuSasiaryPrawani, doctor Hendry Simanjuntak, and doctor Handy Siagian were proven legally and convincingly guilty of committing a criminal act which due to their negligence resulted death of another person and sentenced to 10 months respectively. J. Guwandi stated that until now there has been no decision of a judge whose consideration can be collected and settled as permanent jurisprudence for malpractice cases[17].

Criminal liability to a doctor suspected of malpractice may be requested if a criminal offense has occurred, that is the event contains one of three elements (based on Indonesian national law), namely (1) behavior or attitude which violates the norm of written criminal law; (2) such conduct is unlawful; (3) the behavior is based on error[18]. Medical job is work carried out on the basis of science and skills and their competence is permitted through a multilevel education. Ethically, the Doctor ProfessionStandard speaks of the professionalism of doctorand ability to provide good medical care. Doctor professionalism is scientifically related to competence, currently measured through competency test or various requirements of its nature, regardless of its human temperament and this is generally submitted measurements to the institution of doctoreducation[19]. Law Number 29 Year 2004 requires doctor to always abreast scientific and technological development through participation in continuing education, but more than that, reading medical books and medical scientific journals should not be forgotten. In addition, professional ethics and general ethics must also be understood, lived and practiced in carrying out the doctor profession sincerely and wholeheartedly, honestly and love towards fellow human beings, with the appearance and behavior, well-said wordsin balance with the dignity of doctor. Doctor should provide all his or her medical science skills in regard to the culture and religion of the patient as he nurtures or treats the patient.

The issue of Professional Standard with Criminal Law Materiel is always related to legal protection and legal liability of medics. Understanding of Professional Standard in relation to Article 50 of Law No. 29 Year 2004 on Medical Practice[20] is not in a limitative position, even should be desired towards extensification of jurisprudence in the doctrine, noting that the limitative nature of the Profession Standard as a measure of legal liability would precisely set medics on proving medical malpractice.

In Criminal Law Materiel, malpractice issue as a translation of "malpractice" especially in connection with medical malpractice is still causing a polemic, because "risk of medical treatment" cannot always be interpreted as a medical malpractice that will enter the area of Criminal Law.

In addition, the case of alleged malpractice provides strict parameters of a relation between the Professional Standard and Criminal Liability, as the icon criminal medical case that is linked with medical

malpractice, eventually produced several parameters to be judged upon the existence of alleged violation of law (criminal) if it meets Parameters as the "*voorportaal*" (front gate) that is tight and limitative nature, among others:

1. The existence of *zorgvuldigheid* (accuracy) that us normal from a doctor
2. A diagnosis has been conducted (position, development and state of medicine) and Therapy (the presence of psychic, psychological and compilation factors arising unexpectedly),
3. Profession Standard, in the form of:

a. "Average" ability,
b. Category and Condition equal (same category and state),
c. The fulfillment upon principle of proportionality and principle of subsidiarity in the purpose of taking medical action.

In other words, some of these requirements will always have relevance to one another as a Professional Competency of Experts and Geographic Competency of Experts, all of them concluded in the context of a general profession standard. After the "*voorportaal*" parameter is passed, without be able to identify the presence of medical malpractice, can be considered by determining whether or not the presence or absence of a very large Culpa or "*Culpa Lata*" or "Gross Negligence". Nevertheless, medical acts that explicitly violate the provisions of the prohibition in the Criminal Law (Abortion, Euthanasia and others) still choose the nature of exceptionality as the reason for the abolition of crime based on intra codification rules (KUHP), such as Article 48 of the Criminal Code (*overmacht*), defense perforce, the *Noodtoestand* (in emergency), Article 49 of the Criminal Code (*noodweerexces*), Article 50 and Article 51 of the Criminal Code (executing the order of position of authorized official).

The liability of a doctor in committing an offense and a criminal action is to impose sanctions based on criminal law, because in accordance with Indonesian national law, a doctor has both ethical and legal responsibilities, when a doctor makes a mistake that has legal consequences, then a legal sanction applies to him. The imposition of sanctions in criminal law can be carried if it meets certain conditions, that is, the act is conducted by legal subject, there are errors, the act is unlawful, the maker or the perpetrator is capable of liability and there is no excuse for abolishing the criminal.

According to the authors, criminal sanctions can only be given to doctors when they have committed deliberately harm to patient. So that criminal sanction is understood as the consequence of malpractice is not appropriate because of negligence was conducted not by the element of intent. In addition, in the dynamics of the principles of Criminal Law, medical acts that allegedly violating the law, also have the nature of exceptionality as the basis of the unwritten criminal code of its nature (extra codification), namely *Afwezigheid van all MaterieleWederrechtelijkheid* (No Crime Without the Nature Against the Law of Materiel), As well as "adagium" that still exist, namely *Afwezigheid van all Schuld* (No Criminal Without Faults).

These principles are often applied as basis for the elimination of criminal offenses against the medical community in cases relating to Medical Malpractice, so the abolition of this penalty may occur if it meets the requirements of the Professional Competence of Experts and Geographic Competency of Experts as the above *voorportaal*. The doctrine of reverse proof (reversal of the burden of proof through *Res Ipsa Loquitur*) is limitative to cases which are in fact and factually a great omission, so the principle of Presumption of Innocence remains the basis of examination of a Medics/Doctor.

III. CONCLUSION

From the results of research it can be concluded that malpractice actions that are proven conducted by doctors, dentists and medical personnel (who perform medical acts without the delegation of a physician who treats the patient)have both civil and criminal liability. Persons who feel harmed by the occurrence of such malpractice may prosecute civil damages under article 1365 of the Civil Code as well as criminal charges under Article 359, Article 360, and Article 361 of the Criminal Code (KUHP) Offense that can be included in the medical lawis culpa offense as the criminal law aspects of medical law. A doctor conducts a profession error when he does not meet the requirements in determining diagnosis or carrying therapy, the requirements of a good medic, which is, does not meet the professional standards in same circumstances and by taking a path that is proportional to the purpose of to the goal to be achieved if doing culpa lata.

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