Conceptual Article

Comparison of Aesthetic Plastic Surgery Laws Applied in the United States and Indonesia

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ABSTRACT

Advances in science and technology in the field of aesthetic plastic surgery today no longer aims to treat but is used to change a person in supporting his appearance. The authority to carry out these medical procedures belongs to the Reconstructive and Aesthetic Plastic Surgeon Specialist (Dr. SpBP-RE), but the results of the medical actions carried out by Dr. SpBP-RE are not necessarily in accordance with the wishes of the patients. In order to avoid disputes between Dr. SpBP-RE and its patients and how to deal with it, the laws that apply in every country in the field of medicine, especially aesthetic plastic surgery, must be clear and firm. This study aims to find out and analyze the laws that apply in the field of aesthetic plastic surgery in Indonesia and in the United States so that the results can be theoretically and practically useful in overcoming medical malpractice. The type of research used was "juridical normative" research, and the analysis of legal materials was carried out qualitatively using descriptive analytical and prescriptive methods. The author compared the legal relationship between Dr. SpBP-RE and its patients, the efforts to handle medical malpractice, and proved and negated it in the field of aesthetic plastic surgery in legal proceedings in the United States and Indonesia. It is expected that Indonesia can learn from the countries that have succeeded in dealing with medical malpractice in the field of plastic surgery.

Keywords: Comparative law; plastic surgery; United States and Indonesia

A. INTRODUCTION

Major doubts regarding the legality of aesthetic plastic surgery surgery have been removed by considering the purpose of this type of surgery as well as the authorization of operations aimed at enhancing one's appearance, so that aesthetic plastic surgery operations are now considered legal under the law. Although most of the legal systems in Islamic countries do not approve of it, some countries actually do not allow it (haram), while some do allow it under certain conditions.

The history of modern facial plastic surgery begins more than 100 years ago, when several men independently began exploring new surgical efforts for reconstructive and functional repair and also to improve appearance (Simons, & Hill, 1996).

In their research, Michelle M. De Souza et al stated "plastic surgery includes both reconstructive and cosmetic surgery" (De Souza et al, 2018). Aesthetic Plastic Surgery is not performed to treat physical disabilities; therefore, it is different from reconstructive plastic surgery which aims to treat physical defects, such as cleft lip or cleft palate. In certain conditions like this, they still agree to be allowed (Salehi, & Mangion, 2010).

According to the author, advances in science and technology, as well as the increase in human ability to manipulate the physical condition of humans who are born as they are, have made doctors who work in the field of health and related to the human physical condition step forward to think to fulfill the wishes / wishes of patients who want change the appearance to make it more attractive, so that it can support its work performance. The desires to be achieved are: beauty/handsomeness, harmonious appearance by changing the shape of the body's organs. This progress continues to this day that many people want to modify their body parts as they like.

In this article, the author will compare the relationship between Plastic, Reconstructive Surgeons and Aesthetic(dr. SpBP-RE) and their patients, efforts to treat medical malpractice, and prove and negate it in the field of aesthetic plastic surgery in the legal process in Indonesia and the United States as one of the causes of medical malpractice. developed countries in the field of medicine and medical technology. The main thing that is compared is the applicable health law. However, health laws that apply in several countries are also mentioned as a comparison material.

There are 3 (three) legal systems known in the world: Civil Law System (Continental Europe), Common Law System (Anglo Saxon), and Socialist Law System (Socialist Law), (de Cruz, 1999). Indonesia adheres to the Civil Law System which emphasizes legal sources from laws and regulations, while the United States, which is developing in any field is more advanced, adheres to the Common Law System (Faisal, Hasima, & Rizky, 2020). According to Sutiono, the source of law is a legal entity consisting of legal parts that are related to one another which aims to achieve that unity (Sutiono, 2021). In addition to the three legal systems, there is 1 (one) more legal system, namely Islamic Law System (Islamic Law).

Of the four legal systems commonly used by countries in the world, they are: the Civil Law System and the Common Law System. The differences and similarities between the two systems are as follows:

Table 1 Differences in Civil Law System from Common Law System

No.	Factors Differences	Civil Law System	Common Law System
1.	Source of Law	Legislation, Jurisprudence	Jurisprudence
2.	Countries	: Albania, Austria, Netherlands, Belgium, Bulgaria, Brazil, Chile, Denmark, Ecuador, Finland, Indonesia, Japan, Germany , Colombia, Hungary, Macao, Egypt, Greece, Central Africa, Iran, Portugal, Arabia, Vietnam, Vatican,	: United States, Australia, United Kingdom, India, Hong Kong, Ireland, Canada, Pakistan, New Zealand, Qatar, Oman, Tonga, Uganda, Jamaica, Hong Kong, Ghana.

		Thailand, Turkey.	
3.	History	Derived from the Roman tradition – Germania.	The British brought to the United States, not the laws of the British Empire, but local laws/customs of British society.
4.	Judges in the trial process	Judges are not bound by the President, but the laws and regulations as a reference.	Adhering to the doctrine of stare decisis or doctrine of precedent (Judges decide cases on the basis of previous similar decisions)
5.	The Judicial System	Inquisitorial in nature, judges play a major role in deciding and directing cases and are active in assessing evidence.	Using an adversary system, means developing a strategy, putting forward as many arguments as possible.
6.	General Principles	Judges' decisions have binding force, because they are based on statutory regulations, systematically arranged in codification.	Sources of law are not systematically arranged, Judges play a role not only in determining and interpreting, but also creating new legal principles Give top priority to jurisprudence

Source: https: //Haloedukasi.com/differentiation of civil law and common law legal systems

Table 2 Similarities between Civil Law System and Common Law System

No.	SIMILARITIES
1.	Distinguishing between legal institutions and other types of social institutions, law is independent and autonomous.
2.	The implementation and enforcement of the law is entrusted to a group of legal professionals who carry out activities in the legal field.
3.	Legal profession bearers must have legal education
4.	Legal science is a separate field of knowledge that continues to develop
5.	Law becomes an integrated system, because experts have succeeded in building general theories
6.	As a system, law will always change from time to time
7.	Growth law as a system is believed to take place based on legal logic such as interpretation methods
8.	There is the rule of law over politics
9.	Pluralism of the legal system makes the law more sophisticated and continues to develop to solve a conflict in law

10.	Western legal traditions are also enriched by social values new ones as a result of social upheaval or revolution.

Source: Blueteenx.wordpress.com/2016/12/14/persamaan-beda

The source of medical knowledge is Hippocrates, so the way the medical profession is practiced everywhere will be the same. Likewise, both in Indonesia and in the United States, the source is the same; the difference is progress in the fields of knowledge and technology. Including progress in the field of law where the adherents of the Common Law System in the United States are more advanced than the Civil Law System in Indonesia, which is a developing country, particularly the development of health/medical law (Faisal, Hasima, & Rizky, 2020).

However, Beauchamp and Childress in Key Notes on Plastic Surgery (Richards, & Dafydd, 2014) put forward four principles of medical ethics for application in bioethics. According to him, by applying each of these principles, the right course of action can become clear. The principles are:

a. Autonomy.
- The highest medical principle is respect for patient autonomy.
- It is not permissible to impose services/ medications/ care on patients without their consent, even if refusal will lead to death.
- Taking a paternalistic approach, stating that the doctor will do the best for his patient.

b. Non-maleficence.
- Obligation not to endanger people - primum non nocere (not to endanger)

c. Benefits.
- Telling the patient that the doctor must be kind to the patient.
- Doing what's best for the patient is the same as being best for him.

d. Justice.
- Providing fair, wise and reasonable treatment, act fairly in terms of treatment/care as well as knowledge and skills.

Several studies that the authors found related to similar studies, namely:

First, the research conducted by Kartina Pakpahan et al, with the title Comparison of Legal Protection of Patients Victims of Plastic Surgery Malpractice in Indonesia and South Korea. In this study, Kartina, et al., compared legal protection for patients who were victims of plastic surgery malpractice that occurred in Indonesia and South Korea. Based on this research, the form of legal protection against the criminal act of plastic surgery malpractice in Indonesia is regulated in the Consumer Protection Law in general and the Health and Medicine Act in particular, while in Korea it is regulated in the South Korean Constitution which contains safety in terms of malpractice (Pakpahan, et al., 2021).

Second, the research conducted by Nurul Maghfiroh and Heniyatun with the title Juridical Study of Plastic Surgery as Ijtihad in Islamic Law. Nurul and

Heniyatul focused on the research related to the purpose of plastic surgery, namely: first, plastic surgery which aims to repair damaged (defective) bones or cells so that they can function again; second, plastic surgery which aims to beautify the perfect body shape to make it look more attractive; and the third is plastic surgery which aims to replace one of the organs in the body that is damaged as a result of an accident or disease. In Islamic law it is only divided into 2 (two) types, namely: first, plastic surgery which aims to improve and perfect the shape of a defective body organ (acquired) and the second is plastic surgery which aims to beautify the perfect body shape so that it looks more beautiful and interesting (prohibited) (Maghfiroh, & Heniyatun, 2015).

Third, a research entitled Plastic Surgery in the Perspective of Islamic Law conducted by Havis Aravik, Hoirul Amri and Choiriyah, this study discusses how plastic surgery is in the perspective of Islamic law (Aravik, Amri, & Choiriyah, 2018).

Fourth, the research conducted by Dara Yuliyanti Ningsih and Irwan Iskandar with the title of the Efforts of the International Society Of Aesthetic Plastic Surgery (ISAPS) in Promoting Plastic Surgery in South Korea. Dara conducted related research on the reasons why the International Society of Aesthetic Plastic Surgery (ISAPS) seeks to promote plastic surgery in South Korea, as well as what efforts are being made in this regard (Ningsih, & Iskandar, 2017).

Fifth, the research conducted by G. Vissers et al entitled An Analysis of Plastic Surgery Training: Belgium and The United Kingdom. In their research, G. Vissers et al stated that the aim of the study was to compare plastic surgery training in Belgium and the UK and to identify strengths in each training system (Vissers et al, 2021).

Sixth, the research with the title History of Plastic Surgery: Art, Philosophy, and Rhinoplasty conducted by a researcher named, Valdas Macionis. In his research, Valdas underlines the importance of etymology in the interpretation of the concept of plastic surgery. Valdas stated "The controversy over the concept of plastic surgery also prompts a deeper insight into the relevant etymology" (Macionis, 2018).

Seventh, the research conducted by Frederick P. Franko in 2001 entitled "State Laws and Regulations for Office-Based Surgery". The research by Frederick suggests that the health and safety concerns of patients undergoing surgery in an office setting are now receiving attention from lawmakers and state regulators across the country. Emmanuele stated “health and safety issues of patients undergoing surgery in office settings are now gaining the attention of state legislators and regulators throughout the country” (Franko, 2001).

Eighth, the study conducted by Gennaro Selvaggi et al entitled "A Review of Illicit Psychoactive Drug Use in Elective Surgery Patients: Detection, Effects, and Policy". The study of Gennaro Selvaggi et al aims to summarize existing knowledge, and provide surgeons with information on how to: 1) detect patients who may be using illicit drugs; 2) assessing the impact of using illegal drugs that specifically require reconstructive surgical intervention; 3) reviewing existing policies regarding

asymptomatic drug users when planning elective surgery (Selvaggi, Spagnolo, & Elander, 2017).

Based on these studies, the researchers did not find similarities to the focus of the research that the researchers did. The research in this paper does not discuss how plastic surgery is in the perspective of Islamic law as research conducted by Nurul Maghfiroh and Heniyatun and Havis Aravik, et al, this research also does not focus on the role of the International Society of Aesthetic Plastic Surgery (ISAPS) in an effort to promote surgery. plastic surgery in South Korea as research conducted by Dara Yuliyanti Ningsih and Irwan Iskandar or discussing the importance of etymology in the interpretation of the concept of plastic surgery as research conducted by Valdas Macionis; The author's study did not compare plastic surgery training in Belgium and the UK and to identify strengths in each training system as was done by G. Vissers et al, the researchers did not study the health and safety issues of patients undergoing surgery in an office setting as was done by G. Vissers et al. Frederick P. Franko; and the issues the researchers raised did not aim to: 1) detecting patients who may be using illegal drugs; 2) assessing the impact of using illegal drugs that specifically require reconstructive surgical intervention; 3) reviewing existing policies regarding asymptomatic drug users when planning elective surgery as research conducted by Gennaro Selvaggi et al, research conducted by researchers has a similar focus with research conducted by Kartina Pakpahan et al., which is related to the comparison of legal protection for patients victims of plastic surgery malpractice, but the researcher compared the settings between Indonesia and the United States while Kartina compared the settings in Indonesia and South Korea.

Based on the above background, the problem is "how is the legal comparison in the field of aesthetic plastic surgery applicable in the United States and Indonesia in terms of: 1.Legal Relations between Dr. SpBP-RE With Its Patients; 2.Handling Medical Malpractice; 3.Efforts Model for Proving Medical Malpractice Handling; 4.Basis for Eliminating Medical Malpractice."

B. DISCUSSION

1. Legal Relations Between Dr. SpBP-RE and Its Patients.

a. In the United States

In the United States and some other countries, this type of aesthetic plastic surgery is known as cosmetic surgery. Cosmetic surgery is also not to treat physical disabilities. They also distinguish between cosmetic and reconstructive surgeries (Salehi, & Mangion, 2010). The legal relationship between a Plastic Surgeon and his patient is a contractual relationship, before taking medical action, the doctor is obliged to make a contract/agreement with the patient. So that the patient will have a proof of contract either with the doctor or clinic or hospital where the patient is undergoing treatment. The content and nature of the contract depend on the doctor, clinic or hospital concerned. In the contract, it is stated what obligations must be fulfilled, namely: obligations to facilities, obligations to results. In New Brunswick, even in Iran it is the same. On the basis of a contract/agreement (Salehi, & Mangion, 2010), if

there is a violation of the contract, the contract can be used as a basis for considering sanctions.

In these countries, some medical obligations are based on contracts, so medical liability is contractual. The same applies to the legal system in France. According to Demogue (Salehi, & Mangion, 2010) in France added there is an obligation to provide guarantees. The contract states that if there is a failure that must be revised, then the facilities (what is meant are materials, consumables) are the responsibility or burden of the patient while for medical actions it is the responsibility of the Plastic Surgeon who will of course devote all his efforts. expertise for the success of the operation. This is very helpful for both parties in solving problems in the event of a dispute. This is slightly different from the conditions in New Brunswick, where oral statements are taken into consideration in making the jury's decision (Bergquist, 1983).

Legal relations are contractual and must be written in detail (Salehi, & Mangion, 2010), including:

- Doctors promise to use their knowledge, skills and experience in accordance with or the same as those of their fellow professionals.
- The contract pays attention to / based on "results" (resultaat verbintennis)
- Risk factors must be disclosed
- The guarantee must be clear, in case of failure, whether revision is free or there are no details of what the Plastic Surgeon's responsibility / burden is and what the patient's burden is.
- The deadline for the lawsuit is 1 (one) year after the operation.
- Postoperative care must be clear, it must also be written.

Consent is valid when the patient's decision is voluntary; the patient understands correctly or accepts the proposed medical treatment; the person who agrees must understand the information provided by the Plastic Surgeon and have the capacity to make decisions.

The US Food and Drug Administration (FDA) (Khoo, & Mazzarone, 2016), requires that the use/installation of implants breast(mammoplasty) in women is carried out with an MRI (examinationMagnetic Resonance Imaging)every 2 (two) years. This must be stated in the contract clearly, because it involves costs and risks.

In the UK, consultation is carried out at least 2 (two) weeks before surgery. The operation is not allowed on the same day as the consultation day. This is intended to provide sufficient time for the patient to digest the information (Salehi, & Mangion, 2010). .

b. In Indonesia

In Indonesia, the relationship between a doctor and a patient is a relationship between 2 (two) legal subjects that are related to medical law. Both form a medical relationship and a legal relationship, which is regulated by legislation (Hariyani, 2005).

Furthermore, the medical relationship between doctors and patients is based on trust in the doctor's ability to make every effort to cure the disease he is suffering from. In addition, because the doctor-patient relationship is a human-to-human relationship, the relationship is closer to equal rights between humans (Hariyani, 2005).

In its development, there are 2 (two) kinds of legal relations between doctors and patients, namely:

(1). Relationship by contract (Therapeutic Transactions)

Contractual relationships occur because both doctors and patients are believed to have equal freedom and position. Both parties enter into an agreement in which each party must carry out its role in the form of rights and obligations. In law, there are 2 (two) types of agreements, namely: inspanning verbintenis and resultaat verbintenis. In accordance with the terms of the agreement, the conditions in accordance with Article 1320 of the Civil Code must be met. In an effort to carry out medical actions sometimes or often causing pain, so that it does not conflict with the law, must meet the following requirements (Hariyani, 2005):

- Having medical indications, to achieve a concrete goal.
- Working according to the rules that apply in medical science, these two conditions are called lege artis.
- Obtaining prior consent from the patient.

In general, the doctor-patient relationship is a relationship of maximum effort, but according to the author, as previously explained, in certain circumstances it is a work-related relationship, including aesthetic plastic surgery, which does not have to have medical indications, but must have a concrete goal and in accordance with Article 69 number (2) is "not against the norms prevailing in society and is not intended to change identity which leads to crime".

Juridically, medical action is often included in the definition of a crime, but with the fulfillment of the three conditions mentioned above, it becomes the basis for safe medical action. Qualification of medical action does not only have meaning for criminal law, but also administrative law, where doctors must have a Practice Permit (SIP) and also civil law, which is aengagement/agreement therapeutic between a doctor and a patient.

In this study, according to the author, for aesthetic plastic surgery, the patient wants to perform medical procedures, whether there are medical indications or not, the relationship as described above includes: inspanning verbintenis and resultaat. verbintenis. Starting with a question and answer (history), then a physical examination, sometimes doctors need supporting examinations, such as laboratory tests, to confirm the diagnosis. Then, the doctor plans therapy, by prescribing drugs and other instructions. Before the medical procedure is performed, the patient is allowed to go home, to reconsider whether to undergo surgery or not. If the patient agrees, then at the time that has been set and mutually agreed upon, the patient will come back to dr. the SpBP-RE. In this process, dr. SpBP-RE records questions and answers since the beginning of arrival in the Medical Record . Furthermore, to undergo the operation process, the patient previously signed an informed consent, which is an approval of the action to be taken by dr. SpBP-RE. This is a form of equality between doctors and patients.

Based on the Regulation of the Minister of Health of the Republic of Indonesia Number: 290/MenKes/PER/III/2008, the approval can be given

orally or in writing, because aesthetic plastic surgery is a high-risk case, the approval must be in writing. Currently, the form and content of informed consent are still general in nature, lacking in detail. For aesthetic plastic surgery agreement because it is very vulnerable (regarding the results) it must be done in writing, and with very clear details, and must pay attention to the Decree of the Minister of Health of the Republic of Indonesia No. 756/MENKES/SK/VI/2004 concerning Preparation for Liberalization of Trade and Services in the Health Sector and Law of the Republic of Indonesia No. 8 of 1999 concerning Consumer Protection.

Then in carrying out the operation process, as explained above, it must be recorded in the medical record. After completion of the operation, the patient should follow doctor's instructions and instructions to carry outcare postoperative .

To fulfill the legal requirements for therapeutic transactions based on Article 1320 of the Civil Code, namely subjective requirements and objective conditions. These conditions among others (Said, 2016): 1. Contractors must be able to act as legal subjects; 2. The agreement between the legal subjects must be on a voluntary basis, without coercion; 3. The agreement promises in the field of health services; 4. The agreement must be for a lawful reason and not against the law.

(2). Relationship by law (Zakwarneming)

When the patient is unconscious, the doctor cannot provide information. Then, it is the zaakwarneming, which is taking over the responsibility from someone until the person concerned is able to take care of himself again.

In such circumstances, the engagement that arises is not based on the patient's consent, but based on an act according to the law, namely the doctor is obliged to take care of the patient's interests as well as possible after the patient regains consciousness. arising from these actions (Hariyani, 2005). For further action depends on the consent of the patient concerned.

In the case of this aesthetic plastic surgery case, it could happen to an unconscious patient as a result of an accident victim damaging his face.

In the relationship between dr. SpBP-RE with patients in the United States and in Indonesia, there are similarities in terms of plastic surgery with high risk, it must be stated in a written statement that is valid as a contract between the two, but specifically in Indonesia for plastic surgery that is not at high risk, the statement can be made orally.

2. Handling Medical Malpractice

a. in the United States

In Anglo Saxon countries, especially regulation and law enforcement regarding medical malpractice has been far developed than in Indonesia (Faisal, Hasima, & Rizky, 2020). This can be seen from the rules contained in these countries. In the United States there are no feudal medical laws that apply to the entire country. In trying doctors in each state has its own provisions. Some of the known medical legal instruments in the United States are as follows (Mariyanti, 1998): The

1. Liability Act is a strict legal instrument, with the stipulation that: when a doctor is willing to accept a patient, the doctor assumes full responsibility.

2. Good Samaritan Law. For the liability article, this law has a different policy from the Liability Act. In an emergency, a doctor is completely freed from the possibility of prosecution, even from the consequences of malpractice, which is considered very likely because of the emergency situation.
3. Medico Legal Consideration. It is a very complex collection of legal provisions that fall into the field of medicine. The goal is to protect doctors from malpractice that doctors can't avoid. This is not due to negligence but because medical science itself cannot guarantee the success of a treatment or medical action.

Medico Legal Consideration has a clause that requires doctors to be careful, especially in surgery, whether the action is effective or very urgent, there must be a recommendation from at least 1 (one) other doctor.

The 2017 study conducted by Chiehfeng Chen et al highlighted the perception among plastic surgeons that the media reported medical disputes and medical litigation in favor of patients, with the result that 37.1% of plastic surgeons surveyed argued that patients are always victims (Chen et al, 2017).

The United States is one of the successful countries in dealing with medical malpractice (Faisal, Hasima, & Rizky, 2020). Law enforcers know how the rules of the game solve malpractice problems. Especially for aesthetic plastic surgery, it is not only written agreements that are a concern, but verbal statements are also promises that must be kept. Medical science is a special science that is difficult for non-medical people to understand. Efforts to improve the quality of law enforcement is a good first step, namely by including medical law. This is done to achieve justice, both for patients and doctors whose work is full of unpredictable risks.

b. In Indonesia

The law enforcement of medical malpractice cases in Indonesia, including criminal acts, uses the same rules as general criminal acts, namely based on the Criminal Code and the Criminal Procedure Code. Therefore, the attached provisions are the same as the provisions for law enforcement in cases of other crimes such as theft and murder even though medical events are a special branch of science that is difficult for ordinary people to understand, including law enforcers who do not know medical knowledge that is full of things that are difficult to predict.

In positive Indonesian laws, such as the Criminal Code, Law Number 36 of 2009 concerning Health, Law Number 29 of 2004 concerning Medical Practices After the decision of the Constitutional Court, the term "medical malpractice" is not specifically regulated (Faisal, Hasima, & Rizky , 2020). Not all of these cases were resolved through investigations or police reports, but through trials conducted by the Indonesian Medical Disciplinary Honorary Council (MKDKI).

Several cases that reached the court level were finally resolved mostly through institutions established by the Indonesian Medical Council (KKI), where ethical deviations were passed through the Medical Code of Ethics Council (MKEK), and those related to discipline were through the MKDKI.

Paul L. Tahalele, Chairman of the Indonesian Surgical Specialist Association on March 23, 2013

stated that from 2006 to 2012 there were 182 (one hundred and eighty-two) cases of medical malpractice (Tempo.co, 2013). Of the 182 cases, 60 (sixty) cases were carried out by general practitioners, 49 (forty nine) cases by surgeons, 33 cases by obstetricians, 16 (sixteen) cases by pediatricians, and others (various types of cases). - various) as many as 10 (ten) cases. The sanctions given include: revocation of practice licenses where there are 29 (twenty nine) cases, 6 (six) people are required to take re-education, meaning that the doctor's knowledge is lacking, resulting in malpractice cases. In the United States in 2000 alone, there were 86,640 cases of malpractice claims (Ardianingtyas, & Tampubolon, 2004). In Indonesia until the end of 2012, there were 182 cases (Tempo.co, 2013). Other cases that have also ensnared doctors into the criminal realm include: communication with patients, broken promises, neglect of patients and competency problems.

According to the authors specifically for aesthetic plastic surgery, medical malpractice is not continued because of a strong "culture of shame" in Indonesia and a person's psychological effects involved in the operations performed. Besides, it is also because law enforcement officers do not understand much about medical science. However, currently Indonesia has included health law as one of the concentration courses given to law doctoral candidates.

According to the author, by looking at the success of the United States in handling thousands of malpractice cases that go to court, Indonesia can imitate the methods and rules that apply there. This is to protect the patient and dr. SpBP-RE, by providing knowledge on how to handle medical malpractice like in America, law enforcers can conduct investigations and prove the truth of the occurrence of malpractice. Efforts to improve the quality of law enforcers by providing health laws are a good start for medical law enforcement.

3. Efforts Model for Handling Medical Malpractice

a. In the United States

In the United States, medical law is strongly influenced by the legal system in general in the country (Faisal, Hasima, & Rizky, 2020). In the Anglo Saxon country, judges are the main center of legal development through their decisions. In resolving medical malpractice cases, mainly for Aesthetic Plastic Surgery cases, applying the recipsa loquitur principle, which means the things speak for it self, or "the thing/event speaks or states itself", this is intended to help the victim or plaintiff in prove his claim, and this doctrine is directly related to the burden of proof. It was explained that the res ipsa loquitur did not prove anything, it only transferred the burden of proof from the plaintiff to the defendant. The application of this doctrine does not apply automatically, only in certain cases where a person's fault is very clear, so that it can be easily identified. This doctrine also applies in an effort to prove aesthetic plastic surgery malpractice and is not applied if the presence or absence of negligence still depends on something that is relative (Faisal, Hasima, & Rizky, 2020). Sit down the issue must be clearly true, definite and without hesitation. This doctrine is often stated that "the evidence speaks for itself". Because even a layman can already know the

existence of negligence or mistakes. However, if the circumstances of the incident and other factors that cover the incident still have to be considered, then the doctrine of re ipsa loqitur cannot be applied.

In that country, there are 3 (three) types of standard measures of evidence, namely (Faisal, Hasima, & Rizky, 2020): a. By a preponderance of evidence, that there must be a lot of evidence so that if it is measured it has a power of more than 50% (fifty percent); b. By clear and convincing evidence, that the level of the size of the evidence gives the impression to the Jury that the level of truth is clearer than that stated by the plaintiff; c. Beyond a reasonable doubt, that the evidence must actually be on the side of the plaintiff, so that there is no doubt about the defense assessment of the defendant.

One way of success of the Anglo Saxon countries in resolving medical malpractice cases, especially the United States, is by applying reverse evidence. This reverse proof is applied to cases where even ordinary people know that the case was negligence, or by turning the burden of proof on those involved in the surgery, to find out whether they really committed negligence or it was a medical risk factor (Balkik, & Cakmak, 2007). 2018).

Medical malpractice specifically for plastic surgery in the United States is currently caused by:

- lack of attention in the field of care / maintenance errors. post surgery
- failure of surgery, permanent scarring, if all risk factors are included in the agreement, application to the Court will not be carried out.
- The key to patient satisfaction when dr. SpBP-RE shows empathy.
- Instructions that are not clear (must be written).
- Miscommunication between doctor and patient.
- The increase in claims and requests for compensation is due to:
- Increase patient awareness of their rights.
- Patient understanding of the obligations and responsibilities of Plastic Surgeons, other Health Workers and Hospitals.
- Purpose of the claim:
- Prevention of low-quality medical services and punishment of perpetrators.
- Compensation for the injured.
- Providing compensation for damage due to negligence.

The American Society for Aesthetic Plastic Surgery states that Samuel Sarmiento et al. has conducted research using The Westlaw data base (Thomson Reuters) which contains data between February 2000 and August 2017 (Sarmiento et al, 2019) where the research was conducted between October 2017 and January 2018. From this data, there were 594 cases of malpractice. 196 cases had relevance to plastic surgery, while 31 cases were excluded due to duplication and incomplete information, because they were duplicates and the information was incomplete, so out of these, 165 cases met the main relevance criteria, with the following results. :

- The main allegation was medical malpractice, with the main allegation being surgical procedures at 55%, informed consent process / agreement at 23%, follow-up at 7%, others at 5%.

- By subspecialty: cosmetic (aesthetic) surgery at 74%, reconstructive at 26%.
- Operation time: preoperative by 13%, intraoperative by 51%, postoperative by 17%, and others by 9%.
- Most of the plaintiffs were 89% women and the remaining 11% were men.
- The operation is performed at the age of 18 to 65 years, the most at the age of 42 years.
- Place of occurrence of malpractice: 90% was Private Clinic, 10% was Teaching Hospital.
- As the winner for Plastic Surgeon (defendant) of 72%, Patient (plaintiff) of 28%.
- Most common court decisions by Judges was 118 (73%) and by Jurors of 37 (23%).
- Defended by doctors was 52 cases (72%), while by the plaintiff was 20 cases (28%).
- The most happening locations were in New York.

Based on the legal assessment, the court's decision was in favor of the Plastic Surgeon. This is because in the United States it is difficult for patients to get expert witnesses, lawsuits are limited by law, post surgery that does not follow instructions and perform self-medication. On the other hand, deviations were found, including: the doctors taking too much skin, wearing the wrong size implant, or not supervising postoperative care. Although this case is won by many doctors, in order to avoid prosecution, it is recommended to: hold a meeting with the patient to discuss the problem, offer corrective procedures, ensure compliance during the surgical process and communicate with the patient as often and effectively as possible. The other factors are the obligation to keep a detailed and signed medical report as evidence in Court, and the patient must be able to prove that the standard of care is not being met.

b. In Indonesia

Indonesia is a country with the ideology of Pancasila, in which Pancasila does not teach sanctions to solve a problem, and Pancasila does not lead to punishment. Pancasila teaches moral responsibility, so every dispute resolution mainly in the medical field is mostly by negotiation For the cases of aesthetic plastic surgery. it is in accordance with the basis of the Indonesian state, namely Pancasila, which prioritizes deliberation for consensus so that not many medical malpractices are resolved by litigation. In addition, as previously explained, most Indonesians still have a "culture of shame", so that the negotiation process is more appropriate because it is not known to many people.

Based on the prevailing laws and regulations in Indonesia and the current dispute resolution procedures for aesthetic plastic surgery cases, according to the author, there are 2 (two) ways,: litigation and non-litigation, which is usually a negotiation process between the disputing parties. For the legitimacy process, it can be through Civil Law or Criminal Law.

Proof in a criminal case is different from proof in a civil case. Proof of criminal cases aims to seek material truth, namely the real truth, while proof of civil cases aims to seek formal truth, meaning that the judge must not exceed the limits proposed by the litigants. Therefore, for a criminal judge, when he is looking for the material truth of a case, the incident must be proven or proven (beyond reasonable doubt) (Sofyan, 2013).

Proving malpractice cases is very important, especially medical malpractice cases. Moreover, malpractice cases in Indonesia are sometimes not satisfactorily resolved. According to Darwan Prints, a proof is true when a criminal event has occurred, and it is the defendant who is guilty of doing so and must be held accountable for it (Prints, 1989).

Evidence is to provide certainty to the judge about the existence of an event or act committed by a person, so that evidence can be used as a basis for making a judge's decision. The difficulty of proving malpractice makes it difficult for malpractice cases to be brought to court.

In the case of medical malpractice in Indonesia, the evidence is regulated in the Criminal Procedure Code (KUHP). As regulated in Article 183 of the Criminal Procedure Code, a judge may not impose a sentence on a person unless with at least 2 (two) valid evidences he believes that a criminal act has actually occurred and that the defendant is guilty.

According to Wirjono Prodjodikoro, negative evidence based on the law should be maintained with the following reasons (Prodjodikoro, 1992):

1. There should be a judge's conviction about the defendant's guilt in order to be able to impose a criminal sentence, the judge should not be forced to convict people even though the judge is not sure of the defendant's guilt.
2. It is very useful if there are rules that bind judges in formulating their beliefs, so that there are certain guidelines that must be followed by judges in conducting trials.

Therefore, judges are bound by valid evidence, meaning that judges may only decide based on evidence determined by law. Based on Article 184 paragraph (1) of the Criminal Procedure Code, that which includes legal evidence are: 1. Witness testimony; 2. Expert Statement; 3. Letters; 4. Hints; 5. Statement of the Defendant.

As stated in the explanation of the 1945 Constitution of the Republic of Indonesia, Indonesia is a state of law. So that the principles and principles of the rule of law must be firmly adhered to and must not be defeated by momentary needs, circumstances and needs at any time. In a state of law that holds the highest power is the "law" which is universally called the Rule of Law. One of the main elements is the principle of presumption of innocence, as contained in Article 66 of the Criminal Procedure Code, that the suspect or defendant is not burdened with the obligation of proof. However, according to J. Guwandi, medical malpractice is a special type of case, where medical expertise or knowledge is very different from the legal science controlled by law enforcement, many different circumstances and it is unpredictable what will happen (Guwandi , 2007).

By using evidence as regulated in the Criminal Procedure Code, it makes it difficult for law enforcers to resolve cases of medical malpractice. This can give injustice to the parties, both victims and suspects. The limited knowledge of law enforcement regarding medical law, makes medical malpractice cases difficult to resolve. In Anglo Saxon countries such as the United States, the cases of malpractice occur a lot, and it is unavoidable. Many cases occur, but can be resolved in court because they use reverse evidence, which will make it easier to resolve the malpractice case (Faisal, Hasima, & Rizky, 2020).

In Indonesia, the reversal of the burden of proof has been recognized in the Corruption Act and the Money Laundering Law. In Indonesia, at first, they thought that reverse evidence violated the presumption of innocence. Therefore, now it can be interpreted that the paradigm of reverse proof that violates the presumption of innocence has changed. Reverse evidence is used to overcome injustice and is used for urgent the matters in which the government is powerless to overcome. It is generally known that medicine is a specialized field with the unpredictable end result. Therefore, a doctor accused of malpractice when he does not feel that he has done it, so he must be able to prove it himself. This helps resolve medical malpractice cases which most law enforcement officers find very difficult to prove.

In Indonesia, in solving medical malpractice problems, the proof is by using expert witness testimony, which involves professional organizations, namely the Indonesian Doctors Association (IDI), which has independent institutions, including: the Indonesian Medical Discipline Honorary Council (MKDKI) and the Medical Code of Ethics Council (MKEK), as for the case of Aesthetic Plastic Surgery. These expert witnesses are included in the litigation process and non-litigation medical malpractice.

4. Basic Medical Malpractice Elimination

a. In the United States

In the United States, it applies and develops in jurisprudence and legal literature on the basis of criminal exclusion that specifically applies in the medical field, because in medical law there are several things that are not found in generally accepted law (Faisal, Hasima, & Rizky, 2020) .

The basis for eliminating acts in the medical field are (Guwandi, 2007):

(1) Risks in treatment

(a) Inherent risks: Every medical action performed by a doctor, whether diagnostic or therapeutic, always carries an inherent risk in the action itself. Risk may or may not arise. If the doctor has acted carefully and thoroughly based on the standard procedures of the medical profession, then if an unwanted result arises, it cannot be blamed.

(b) Allergic reactions: Excessive reactions of a person's body due to allergies that arise suddenly and can not be predicted in advance. When this reaction occurs, the patient experiences anaphylactic shock, and the doctor cannot be blamed.

(c) Reaction to complications in the patient's body: Complications that arise suddenly in patients who cannot be predicted beforehand, cannot be blamed on the doctor. Often the patient's prognosis is good, suddenly the patient's condition worsens and dies for no known cause. After finishing the operation in good condition, being treated for several days in the room, suddenly pulmonary embolism occurred and the patient died.

(2) Errors in clinical judgment

Error in judgment or medical judgment, or so-called medical error. That is, if a doctor has followed professional standards used in general, it cannot be considered negligent, if it turns out that the decision taken is wrong.

(3) Violenti non fit iniura

It is one of the doctrines in the science of law which is called the assumption of risk, the assumption that there is a big risk that is already known. This teaching

is used in medical law in operations that contain high risks that cause serious consequences. In such cases, the doctor must explain in full to the patient or his family.

(4) Contributory Negligence

This doctrine is used to explain a patient's inappropriate behavior or behavior, resulting in self-injury.

As explained earlier that in the United States, all risk factors and all information must be explained to the patient, especially for aesthetic plastic surgery patients, so the basis for this omission must also be explained. There, the judge's decisions can be used as a special justification for medical cases, where in the medical world, risk is something that cannot be predicted and always accompanies every medical action, so that the decision regarding the omission can also be used as a justification.

b. In Indonesia

In Indonesia, the basis for eliminating acts is included in the element of action or Actus Reus, this element is directly related to criminal responsibility, if this element is not fulfilled then a person cannot be held criminally responsible. According to Amir Ilyas, the elements of action (Actus Reus) are as follows (Ilyas, 2012):

- matching the formulation of the offense,
- against the law,
- no justification.

There is no justification for Article 48 of the Criminal Code which reads "No one shall be punished for committing an act due to a compulsion of circumstances." other matters, honor, carry out acts of forced defense for oneself or others, honor, decency or property for oneself or for others, because of that instant attack or threat of imminent attack at that time which is against the law" Furthermore, Article 50 paragraph (1) The Criminal Code, namely "carrying out the provisions of the law" and then Article 51 paragraph (1) of the Criminal Code, namely "carrying out actions to carry out legal office orders or those given by the competent authority". This means: other than those stipulated by the law, no other basis is used.

The basis for eliminating crime, in this case the justification for an act, in handling or resolving malpractice cases in Indonesia is no different from other cases such as theft or murder (Faisal, Hasima, & Rizky, 2020). Legislation in continental countries is the main source of law. However, written laws were made at certain times and under certain conditions and situations. When society continues to develop in accordance with the development of science and technology, culture, values and norms in society also change. Therefore, the law must be fair to follow developments that occur in society.

Sometimes a statutory regulation in its application to special conditions is considered not to provide justice (Faisal, Hasima, & Rizky, 2020). For example, it is related to the basis for eliminating the crime or justifying reasons regulated in the Criminal Code, for the medical world where if a doctor performs a medical action that legally fulfills the formulation of the offense, if an error occurs in a medical action, the doctor will be punished. Legislators should understand the development of science and technology and think that medical practice is full of risks, which cannot be predicted and

controlled. Therefore, legislators should pay attention and make clear rules by imitating the way to resolve malpractice in the United States, including the elimination of medical malpractice cases specifically for aesthetic plastic surgery, so that doctors and patients get justice in accordance with the objectives of the law itself.

Thus, some of the differences and similarities in the legal treatment for aesthetic plastic surgery in the United States and in Indonesia are as follows:

1. Applicable legal system:

In the United States: Common Law System

In Indonesia: Civil Law System

2. Applicable legal relationship: Contractual

In the United States: - the attention to the results (Resultaat Verbintennis)

In Indonesia: - maximum effort (Inspanning Verbintenis)

- the attention to the results (Resultaat Verbintenis)

3. Handling of medical malpractice:

In the United States:

- each state has its own provisions

- the legal instruments: the Laibility Act; Good Samaritan Law; Medico Legal Considerations.

in Indonesia:

- the same as general crimes, namely the Criminal Procedure Code and the Criminal Code.

- Law of the Republic of Indonesia Number 29/2004, concerning Medical Practice.

- Law of the Republic of Indonesia Number 36/2009, concerning Health.

4. Medical malpractice evidence model:

in the United States:

- using the standard burden of proof measure: By a preponderance of evidence; By clear and convincing evidence; Beyond a reasonable doubt.

- court proceedings (litigation).

in Indonesia :

- with expert witness

- special aesthetic plastic surgery rarely gets to court

- with non-legitimacy which is mostly resolved by negotiation.

5. Basis for Criminal Elimination:

in the United States:

- Risks in medication: Inherent risks, Allergic reactions, Risks of complications in the body

- Errors in clinical judgment.

- Violenti non fit iniura

- Contributory Negligence

in Indonesia: Justification in the Criminal Code: Article 48; 49 paragraph (1); 50 paragraph (1); 51 paragraph (1).

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