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RESEARCH ARTICLE

JURIDICAL REVIEW OF LAW ENFORCEMENT OF THE MEDICAL CODE OF ETHICS AGAINST THE DOCTOR WHO COMMITS MALPRACTICE ACTS MEDICAL

Rohadi, Agus Triono and Hieronymus Soerjatisnanta

Faculty of Law, Lampung University, Bandar Lampung, Indonesia.

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Abstract

Formulation in this research is: (1) Indonesian Medical Code of Ethics? (2) Judge's Considerations in Deciding Case Tagainst Doctors Who Commit Medical Malpracticebased on Decision Number 1441/Pid.Sus/2019 /PN.Mks?. The method used is qualitative descriptive with data sources obtained from laws, books, journals and related articles. The results of this research are: In relation to violations of the code of ethics, in health law there are several ethical theories that can be used as a basis for consideration in making a decision to violate the code of ethics for the medical profession. There are three types of ethical theories that are widely known in the health aspect: Classical Ethical Theory, value ethical theory, Contemporary Ethical Theory. Decision 1441/Pid.Sus/2019/PN. Max. regarding malpractice, the perpetrator was acquitted by the judge, the perpetrator was charged with Article 79 letter c in conjunction with Article 51 letter a of Law Number 29 of 2004 concerning Medical Practice and Article 360 paragraph (1) of the Criminal Code, because it was based on the chronology of events, documentary evidence, witness statements and the defendant's statement. in this case it has fulfilled the elements contained in the statutory regulations.

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Introduction:-

Health is one of the important needs in supporting people's lives. Without health, of course a person will not be able to carry out his activities optimally. As a basic need, health is a right for every individual (the right of self-determination) which must be realized in the form of providing safe, quality and affordable health to the community (Riska Andi Fitriono, Budi Setyanto and RehnalemkenGinting, 2016) Law plays an important role in realizing this form of health provision and optimizing the level of public health.

Malpractice has been known for a long time, case by case developments are becoming more numerous and varied in line with the rapid flow of globalization that is sweeping the world (Sylva Flora NintaTarigan, Juwita Suma, EnjoysniArsyad, ZulFikar Ahmad.2023) Indonesia is one of the countries where malpractice cases are increasingly rampant and many have surfaced and are being sued formally by patients/families before court or are still at the level of complaints to police agencies, so it is not wrong if this is one of the things that health circles are afraid of in health services to public. What you also need to know is that, because serious illnesses are generally treated in hospitals, it can be estimated that 80% of malpractice cases occur in hospitals, while the rest occur in doctors' private practices. Therefore, it can be concluded that lawsuits for malpractice are not only directed at doctors, but

Corresponding Author:- Rohadi

Address:- Faculty of Law, Lampung University, Bandar Lampung, Indonesia.

often also involve the hospital or institution where the service takes place and can also involve paramedics who accompany the doctor.

A special thing about the medical profession is that this profession is very noble in the eyes of society, because this profession is directly related to humans as objects and is related to human life and death (VennySulistiyani, ZulhasmarSyamsu. 2015). The public has long known that there are several fundamental qualities inherent in a doctor, namely good social integrity and wise behavior. Therefore, if a patient is mishandled, whether it results in disability or death, the patient/family often just ignores it because they think it is God's destiny. However, nowadays this view is starting to change, more and more often we hear and know about doctors being sued/sued by patients or families in both civil and criminal cases.

Article 208 of Law Number 17 of 2023 confirms that Medical Personnel or Health Personnel who are suspected of committing unlawful acts in the implementation of Health Services which may be subject to criminal sanctions, must first seek a recommendation from the assembly.

Regarding this malpractice case, it has also been examined and decided by the Makasar District Court, namely decision number 1441/Pid.Sus/2019 /PN.Mks. The perpetrator is suspected of having committed a criminal act under Article 79 letter c in conjunction with Article 51 letter a of the Republic of Indonesia Law Number 29 of 2004 concerning Practice. Medicine and Article 360 paragraph (1) of the Criminal Code (KUHP).

The Public Prosecutor's (JPU) indictment sentenced the defendant, namely Dr. Elisabeth Susana, M.Biomed with imprisonment for 4 (four) years and a fine of Rp. 30,000,000 (thirty million rupiah) with the provision that if the fine is not paid, it will be replaced by imprisonment for 3 (three) months, because it has been legally and convincingly proven guilty of committing a criminal act of medical practice and because of its negligence it causes other people to suffer serious injuries as regulated and punishable by crime in Article 79 Letter c in conjunction with Article 51 Letter a of Republic of Indonesia Law Number 29 of 2004 concerning Medical Practice and Article 360 Paragraph (1) of the Criminal Code in accordance with the first indictment and the second indictment. However, the judge decided to acquit the defendant of the charges against him.

Negligence is a very common element of medical malpractice. Malpractice itself has a literal meaning, failure to carry out duties. This failure can be caused by various factors: (Alexandra Indriyanti Dewi,2008)

1. There is an element of negligence. Negligence is an attitude of not being careful, carrying out one's duties carelessly or unreasonably. But it can also be interpreted as providing actions below the standard of medical services.
2. There is an element of wrongdoing. This mistake in action occurs because the doctor lacks accuracy in observing the patient so that undesirable things happen.
3. There are elements of violation of professional rules or law. Violations of this professional rule occur when a doctor or health worker takes action outside the limits of his or her authority.
4. There is deliberate intent to carry out detrimental actions. Deliberate actions occur when a doctor or other health worker does things outside of what he or she should do just for the sole reason of gaining profit.
5. The problem formulation in this research is:
6. Indonesian Medical Ethics Code of Ethics?
7. Judge's Considerations in Deciding Case Tagainst Doctors Who Commit Medical Malpracticebased on Decision Number1441/Pid.Sus/2019 /PN.Mks?

Research Methods:-

This research is a type of normative-empirical legal research, namely research whose object of study includes statutory provisions (inabstracto), in this case the applicable regulations related to the problem to be studied and its application to events (inconcreto). This type of research is descriptive, namely explaining completely, in detail, clearly, and systematicallyabout the results of research in the form of scientific papers

Discussion:-

Indonesian Medical Code of Ethics

In a general sense, malpractice is an evil or bad practice, which does not meet the standards set by the profession (Fitriah Faisal, Rahman Hasima, Ali Rizky. 2020) If this understanding is applied in the medical field, it can be said

that a doctor commits malpractice if he does something wrong (wrong doing) or he does not or does not adequately take care of the patient's treatment/care (neglect the patient by giving or not enough care to the patient). Malpractice is closely related to every professional attitude, for example nurse malpractice, pharmacist malpractice, advocate malpractice and so on (Siti Rokayah, GunawanWidjaja. 2022) So malpractice is not always doctor/dentist malpractice. There is no definition of malpractice under the law. Article 29 of the Health Law uses the word "negligence" if a doctor neglects to carry out his profession, while Law Number 29 of 2004 concerning Medical Practice Article 1 number 14 uses the word "mistake" in the case of a doctor not applying medical knowledge. Meanwhile, the use of the word "malpractice" is actually contained in Law 18 of 2009 concerning Animal Husbandry and Animal Health, Article 69 paragraph (1) letter b, but once again there is no meaning. Even the writing contained in the Big Indonesian Dictionary (KBBI) is not malpractice but "malpractice" which has the definition of medical practice being wrong, inappropriate, violating the law or code of ethics.

According to GunawanWidjaja, medical malpractice is wrong practice, whether due to errors or negligence committed by doctors or other health workers, whether originating from consent or not, which occurs during or as a result of providing professional medical services in accordance with their expertise and abilities. , and if it is violated and results in injury or loss to the patient, the patient is obliged to provide compensation (Angelika S, M., &Widjaja, G.2022) An action is called medical malpractice if it meets the following criteria:

1. Medical procedures carried out are not based on explanation and approval;
2. The medical procedures performed are not in accordance with standards;
3. Medical procedures are not carried out based on the precautionary principle;
4. There was an error or negligence in the medical procedure;
5. These medical procedures cause direct harm to the patient.

In the world of medicine, a small mistake can often result in major losses, especially for the patient (Hadi, IGAA. 2018). In general, patients cannot differentiate between what is an ethical violation and what is categorized as an unlawful act. In principle, ethical violations do not necessarily constitute malpractice, while malpractice certainly constitutes a violation of the medical profession's code of ethics. In relation to violations of the code of ethics, in health law there are several ethical theories that can be used as a basis for consideration in making a decision to violate the code of ethics for the medical profession. There are three types of ethical theories that are widely known in the health aspect (Alexandra Indriyanti Dewi,2008)

Classical Ethical Theory.

One of the theories in classical ethics is teleology. This theory provides the basis that whether an action is correct or not depends on the resulting consequences. For example, in the act of abortion, according to the teleological approach, abortion can be justified if the reasons used are adequate and the aim is truly to save the mother's life. So if an action is beneficial or has good consequences then it is permissible to do it. It's just that the goals or benefits for some people can lead to injustice for some people

Value Ethics Theory

Value ethics states that value is determined as a material quality, a characteristic of content. Value does not exist but is valid and cannot be returned to human empirical elements. There are several benchmarks that can be used as a measure of ethical values, namely the value of honesty and authentic values. Authentic value can be defined as "genuine" or being yourself. An authentic human being is a human being who lives and shows himself according to his authenticity and personality. As an example, it is hoped that a doctor will become a specialist because that person loves his profession, appreciates the human value in his profession and aspires to dedicate his life to his profession. Thus his profession as a doctor is authentic to that person's personality.

Contemporary Ethical Theory

Contemporary ethics is concerned with the basis for ethical decision making in modern medicine problems. Noble character is included in it because every action taken must reflect the noble character of every paramedic.

Every act of violating a doctor's code of ethics will always be related to ethical values in its resolution. Sometimes differences in views in making an ethical decision are caused by medical actions not only based on obligations but also conflicting morals. So the role of medical ethics institutions is also needed in resolving problems of ethical violations. There are times when ethical issues regarding a doctor's actions are brought into the juridical realm if the action is categorized as an unlawful act. If we look at the term unlawful act according to experts, including: R.

WirjonoProdjokoro uses unlawful act, Utrecht uses the term act which is contrary to legal principles (SarmantoSimanihuruk. M. YaminLubis. Mhd. ArifSahlepi. 2022). According to R. WirjonoProdjodikoro, "acts that violate the law are rather narrow, because what is meant by this term is not only acts that directly violate the law, but also acts that directly violate regulations other than the law, but are said to indirectly violate the law."

Viewed from the aspect of civil law, there are two possibilities that can be used as a juridical basis for medical malpractice actions (Kinanti, Armanda D., 2016) First, the lawsuit is based on a breach of contract. The lawsuit for breach of contract in the provisions of the Civil Code (KUHPerdata/BW) is contained in Article 1329 which reads, "Every agreement to do something or not to do something, whether the debtor does not fulfill his obligations, gets a solution in the obligation to provide compensation. costs, losses and interest".

So according to BW, a lawsuit for breach of contract that occurs in the case of a malpractice lawsuit can be filed because a therapeutic agreement was violated. A therapeutic agreement is a relationship between a doctor and a patient which is stated in an agreement between the two of them in which the patient is the party who asks for help to cure his illness and the doctor is the party who heals. The agreement includes written and unwritten agreements as long as the conditions for the validity of the agreement have been fulfilled based on the provisions of Article 1320 BW. Second, the lawsuit is based on an unlawful act. Lawsuits for unlawful acts are regulated in Article 1365 BW which reads, "Every unlawful act that causes loss to another person requires that the person whose fault it was to cause the loss must compensate for the loss."

Professional ethics is part of social ethics, namely philosophy or rational critical thinking about the obligations and responsibilities of humans as members of humanity (Imam Makmun, Supardin, &Hamsir. 2022) In its application in the field of professional ethics, it is always dissatisfied with empirical descriptions of a phenomenon. It requires judgments in order to be implemented (Darji Darmodiharjo,2004) In medical ethics, it has two sides, one side of which is interrelated and influences each other, namely occupational ethics or medical ethics, which concerns issues related to the attitude of doctors towards their colleagues, the attitude of doctors towards their assistants and the attitude of doctors towards society. while the ethics of medical care, namely medical ethics in everyday life regarding the attitude and actions of a doctor towards the sufferers for whom he is responsible (RiskaAndi Fitriano,2016). One of the requirements to be able to know that a doctor has carried out the correct action or treatment process is to measure it against the standards of the medical profession, or the minimum standards for medical services that are used as guidelines in the implementation of the profession. What is meant by professional standards according to Lacnen is acting carefully and carefully according to medical standards as a doctor who has average abilities compared to doctors from the same category of medical expertise, in the same situations and conditions with the means of effort, (middelen) which is comparable or professional with the concrete aim of the medical action or deed.

Meanwhile, other sources say that medical professional standards are something that must be done (commissio) or must not be done (omissio) by the words of doctors from certain categories (general practitioners, specialists, super specialists) in the same conditions and situations (M. Nurdin2020). If detailed further, the standard for the medical profession (doctor) is divided into 6 (six) elements, namely:

1. Do it carefully or thoroughly (Zorg VuldinHandele)
2. According to medical standards (Volgens de Medische Standard)
3. Average ability (average) compared to the same medical expertise category (Gemeddel de Van gelijkeMedische categoric).
4. Same situation and conditions (gelijkeomstaginghaiden)
5. Comparable or professional means of effort (midelen) (principle of professionalism) (met meddelendei in redelijke vet haudingstramm)
6. With the concrete aim of the action or medical action or medical goal (tot the concrete handlings doel).

The description above shows how important the medical standard element is in medical professional standards because every treatment implementation must always be based on applicable medical standards. According to Leenen, medical definition is a way to carry out medical accusations based on medical knowledge and experience. The preparation of these medical standards is intended so that the health plans provided by doctors have clear benchmarks so that the public knows for sure whether the medical treatment prescribed for them is appropriate or not.

However, the existence of laws and professional codes of ethics is quite a crucial problem in health services. In general, the law regulates the behavior of every member of society, while the code of ethics regulates certain professions. However, between the law and the professional code of ethics, there are quite fundamental similarities and differences. The similarities between the two are norms that regulate human behavior in living together in society. The main difference lies in the form of arrangement, namely touching the top;

1. Institutions/institutions that create these norms;
2. Binding strength
3. Types of sanctions and legal consequences imposed,
4. Institutions/institutions that impose sanctions, and
5. Criteria used as a benchmark for whether or not there has been an error/negligence.

The difference between professional ethics and actual law, by Hermein Hadiati Koeswadji, explains that professional ethics has distinctive characteristics, namely;

1. Regulating the behavior of professional implementers/bearers,
2. Made based on a consensus/agreement between implementing implementers,
3. The power binds it to a certain time and to a certain thing,
4. The nature of the sanctions is moral and psychological,
5. Types of sanctions can be in the form of professional discreditation,
6. control and assessment of its implementation is carried out by the relevant professional associations/organizations.
7. Meanwhile, the law has characteristics, namely:
8. Regulate human behavior in general;
9. Made by an official State institution that has authority for every person;
10. Binding as something that is generally obligatory until it is revoked/replaced with a new one;
11. The nature of the sanctions is in the form of physical/material suffering (lichamelikleed);
12. The types of sanctions can be criminal (straf), compensation (schandevergoeding) or action (maatregel), and
13. control and assessment of its implementation is carried out by community members and official institutions from the structural law enforcement apparatus.

Judge's Considerations in Deciding Case Tagainst Doctors Who Commit Medical Malpracticebased on Decision Number1441/Pid.Sus/2019 /PN.Mks

Based on the study of decision number 1441 /Pid.Sus/2019/PN.Mks, namely: That the defendant dr. Elisabeth Susana, M.Biomed on Friday 15 September 2017 at around 12.00 WITA or at some time in September 2017, at the Belle clinic Jl. Wolf No.119 Ex. Mamajang in Kec. Mamajang, Makassar City, Makassar City or the place that is still remembered today, namely the location of the Makassar District Court "in completing clinical practice, you deliberately did not fulfill your obligation to provide clinical assistance in accordance with the principles of proficiency and work standards as well as the patient's clinical needs as mentioned in Article 51 letter a", which is done in the following way:

That the specialist doctor is a specialist doctor who moved from the Trisakti Medical Staff in connection with the Specialist Doctor Registration Certificate (STR) from the Indonesian Clinical Council (KKI) with Registration Number 312110031708 7227 and was recruited as an individual from the Makassar Branch of the Indonesian Specialist Doctors Association (IDI) with registration number NPA.IDI 2301.45066 and open free training on Jl. Wolf No. 119 Ex. Mamajang in District. Mamajang City Makassar based on Overall Specialist Permit (Rasa) Number: 446/901.1.08/DU/DKK/VII/2017 in the name of Dr Elizabeth Susana, Date 25 August 2017

That on Friday 15 September 2017 at 12.00 WITA, witness Agita DioraFitri together with witness Yeni Ariani came to the specialist doctor training place, especially at the Beauty center Jl. Wolf No. 119 Ex. Mamajang in District. Mamajang, Makassar City, Makassar City, full intention to complete beauty medicine, after registering, witness Yeni Ariani expressed her concern that witness Agita DioraFitri would also carry out beauty treatment as had been done by witness Yeni Ariani, then subsided to say that the witness Agita DioraFitri will have her cheeks thinned first, then filler is inserted into her nose to make it look sharper. That then the victim injected 0.1 cc of hyaluronic acid into the nose of examiner Agita DioraFitri, but because there was vaginal discharge in the area of both examiners, Agita DioraFitri, confirmed the plot and then injected hyaluronidase as an enemy of spots in the nasal cavity, then unexpectedly witness Agita DioraFitri whined on the ground and closed her eyes and then when she

woke up, witness Agita DioraFitri said that she could not see in her left eye, then documentation and witness Yeni Ariani took witness Agita DioraFitri to Gudang I Makassar Clinic.

The reason for re-administering medication was not in accordance with the Skills Guidelines, Strategic Work Standards (SPO), and the patient's clinical needs, namely that the respondent injected filler into the nose of witness Agita DioraFitri without making written clinical consent (informed consent) to observe Agita DioraFitri as a patient before doing so. demonstration, although realizing that every clinical activity must obtain written approval (informed consent) from the patient or the patient's closest relative as intended in Article 45 paragraph (1) of Law no. Regulation of the Republic of Indonesia Number 29 of 2004 concerning Treatment and Article 1 number 1 and Article 3 paragraph (1) of the Republic of Indonesia Strength Pastor's Guidelines Number 290/MENKES/PER/III/2008 concerning Sanctions for Clinical Activities. The plaintiff in completing clinical practice related to clinical style (beauty therapy) through nasal filler infusion does not have certification of expertise or proof of clinical style ability from the Association of Clinical Experts (IDI) in this case PERDAWERI (Indonesian Enemy Relations with Maturation, Welfare, Flavoring and Regenerative), as regulated in Article 1 number 10 of the Republic of Indonesia Regulation Number 29 of 2004 concerning Clinical Practice, Article 20 paragraph (2) and Article 22 paragraph (1) of the Code of Conduct for the Perkasa Pastor of the Republic of Indonesia Number 2052/MENKES/PER/X/ 2011 concerning Practice Permits and Carrying out Clinical Practice.

The plaintiff did not create a Standard Functional Strategy (SPO) for Nasal Filler Infusion which is a capability as a Clinical Practice Rule for clinical personnel in completing operations, in accordance with the Clarification of Article 50 of Republic of Indonesia Regulation Number 29 of 2004 concerning Clinical Practice, Article 1 number 11 of the Guidelines for Pastors of Strength of the Republic of Indonesia Number 2052/MENKES/PER/X/2011 concerning Practice Permits and Implementation of Clinical Practice and Article 10 of the Republic of Indonesia Health Chaplain's Guidelines Number 1438/MENKES/PER/IX/2010 concerning Clinical Benefit Norms. The litigant in providing clinical assistance via nasal filler infusion to observer Agita DioraFitri did not carry out a total initial assessment as an anamnesis regarding the patient's clinical history, clinical history, sensitivity to certain drugs or foods. sensitivity and other issues related to patient well-being; not completing the overall actual assessment, including checking circulatory strain, heart rate, breathing, not completing supporting assessments, for certain basic laboratory assessments. As for the criminal charges of the public prosecutor in Decision Number 1441/PidSus/2019/PN.Mks, the charges against the defendant are regarding "criminal acts of practicing medicine and because of his negligence resulting in serious injuries to other people" as regulated and punishable by crime in Article 79 letter c Jo Article 51 letter a of Law Number 29 of 2004 concerning Medical Practice and Article 360 paragraph (1) of the Criminal Code have been legally and convincingly proven to have been carried out by Elisabeth Susana, M. Biomed.

In accordance with the first indictment and the second indictment. Sentencing the defendant Dr. Elisabeth Susana, M.Biomed with imprisonment for 4 (four) years and a fine of IDR 30,000,000 (thirty million rupiah) with the provision that if the fine is not paid it will be replaced by imprisonment for 3 (three) months. Then in decision 1441/Pid.Sus /2019/PN.Mks the judge's decision is as follows:

1. Say Dr. Elisabeth Susana, M.Biomed, has not been legally and convincingly proven guilty of committing a crime as stated in the first indictment and
2. Released the respondent Dr. Elisabeth Susana, M.Biomed from the main indictment and subsequent prosecution;
3. Reaffirm the freedom of the accused person in terms of capacity, position, sobriety and worth; his dignity;

Judge's considerations in Decision Number **1441/Pid.Sus/2019 /PN.Mks** which **one** the doctor's malpractice free verdict is as follows:

1. Intentionally Intentionally in the KBBI is intentional or not by chance. As stated in criminal law regulations, intentionally is defined as imagining the results of one's actions. Intentional elements in criminal law theory, there are 3 (three) types of intentionality, namely:
 - a. Intentionally intended (opzetalsoogmerk);
 - b. Deliberately as an awareness of certainty (opzet met bewustheid van zekerheid of noodzakelijkheid);
 - c. Deliberately with the awareness that it is likely to happen (opzet met waarshijnlijkheidsbewustzijn);

A doctor will be brought to court if he has committed an action that is detrimental to a patient. In Elisabeth Susana's chronology, M. Biomed, aka the perpetrator, is a general practitioner, not a beauty specialist. This fulfills the

element of deliberately carrying out a profession as a doctor in the field of aesthetics so that the practice is not in accordance with the SOP and causes harm to patients or victims.

2. Not Fulfilling Obligations Obligations in the KBBI are something that must be implemented. According to Notonegoro, an obligation is a responsibility that provides something that must be provided by a certain party.

In the chronology of decision 1441/Pid.Sus/2019/PN.Mks, the perpetrator alias Elisabeth Susana, M. Biomed did not first interview the victim regarding the actions to be taken and what risks would occur if there was a failure to carry out a practical action. In this case, it is clear that the element of not fulfilling one's obligations as a doctor has been fulfilled and can be held accountable. According to Article 360 of the Criminal Code, "any person who, through negligence, causes serious injury to another person shall be punished by imprisonment for a maximum of five years or at least one year" with the following elements:

1. According to the KBBI, anyone is anyone or anyone can be the perpetrator. In the Law Dictionary whoever means everyone. Criminal law explains that what is meant by anyone is every person as a legal subject, as stated by Mahrus Ali, the subject of criminal acts recognized by the Criminal Code is a human being (natuurlijk person). Using the word whoever means that anyone can be a perpetrator of a criminal offense under Article 360 of the Criminal Code. Based on research findings in decision number 1441/Pid.Sus/2019 /PN.Mks, the whoever element in this decision has been fulfilled in the name of Elisabeth Susana, M. Biomed, who works as a doctor at a beauty clinic in Makassar. In accordance with the identity and indictment of public prosecutor Elisabeth Susana, M. Biomed was charged with committing a criminal act. So the element of whoever has been fulfilled against the perpetrator.
2. Due to negligence. Negligence in the KBBI is a lack of care or failure to carry out obligations. Negligence or culpa in criminal law is an error resulting from not being careful enough so that something happens accidentally (Nurul Fitriani&Nurfifah, 2018: 105). Mistakes or negligence that cause other people to suffer serious injuries are detrimental actions so they can be blamed and held accountable in accordance with applicable regulations.

In accordance with the author's research on decision number 1441/Pid.Sus/2019/PN.Mks, the defendant's actions should be punished according to the facts, both in documentary evidence, witness and victim statements along with part of the defendant's statement which fulfills the elements in Article 79 letter c Junto Article 51 letter a RI Law Number 29 of 2004 concerning Medical Practice and Article 360 paragraph (1) of the Criminal Code. In decision 1441/Pid.Sus/2019/PN. Mks, the perpetrator Elisabeth Susana, M. Biomed has neglected an obligation to provide medical services to the victim or patient named Agita DioraFitri. In the chronology of the case, the perpetrator carried out a medical activity, namely beauty treatment or nose filler on the victim to make her nose look sharper. However, previously the perpetrator did not carry out informed consent, marked by the consent given by the patient to the specialist doctor after the patient received clarification regarding what the specialist doctor would do. In general, all types of crime provide protection for society and more specifically for victims of crime or negligence that causes material and immaterial harm to victims. In decision number 1441/Pid.Sus/2019/PN. Thank you, the judge was acquitted of the perpetrator. According to the author, in imposing the sentence, the judge was wrong, the perpetrator should have been punished and at least given a fine to compensate the victim as previously explained by the author.

Conclusion:-

In principle, ethical violations do not necessarily constitute malpractice, while malpractice certainly constitutes a violation of the medical profession's code of ethics. In relation to violations of the code of ethics, in health law there are several ethical theories that can be used as a basis for consideration in making a decision to violate the code of ethics for the medical profession. There are three types of ethical theories that are widely known in the health aspect: Classical Ethical Theory, value ethical theory, Contemporary Ethical Theory.

Decision 1441/Pid.Sus/2019/PN. Max. regarding malpractice, the perpetrator was acquitted by the judge, the perpetrator was charged with Article 79 letter c in conjunction with Article 51 letter a of Law Number 29 of 2004 concerning Medical Practice and Article 360 paragraph (1) of the Criminal Code, because it was based on the chronology of events, documentary evidence, witness statements and the defendant's statement. in this case it has fulfilled the elements contained in the statutory regulations. Namely, the element of deliberately not fulfilling his obligations as a doctor and because of his negligence causing other people to suffer serious injuries.

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