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# Legal Protection of Doctors in Performing Medical Actions Based on Law Number 29 of 2004 Concerning Medical Practice

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## Abstract

This paper is a study that analyzes the legal protection of doctors in providing medical practice services based on law number 29 of 2004 concerning medical practice. Medical services provided to patients are called medical actions that aim to achieve a cure from an illness. Medical action certainly has risks for the patient in its implementation so that an agreement is needed from both parties, namely the doctor and the patient to carry out medical action, which is preceded by informed consent through a therapeutic transaction. The approach used in this study is a normative legal approach. The results of the study show that legal protection for doctors in carrying out medical actions is only stated in article 50 letter a, but it does not explain how the rules and procedures for legal protection for doctors themselves, more then regulate the patient's rights if they suffer a loss against a doctor's medical actions, This creates a feeling of injustice for the medical profession where lawsuits and demands from patients or the patient's family always use all legal domains, both criminal, civil and administrative which ignore the existence of an agreement in the approval of medical action and also violate the legal principle of *ne bis en idem*.

**Keywords:** Legal Protection, Medical Actions and Medical Practice

## 1. Introduction

Health is the main thing in human life, health is a state of well-being of body, soul and social that allows everyone to live productively socially and economically. Health maintenance is an effort to control and prevent health problems that require examination, treatment and/or care, including pregnancy and childbirth. The doctor is a health worker who provides medical services to people in need. Medical services provided to patients are

called medical actions that aim to achieve a cure from an illness, medical actions certainly have risks for patients in their implementation so that an agreement is needed from both parties, namely doctors and patients to carry out medical actions, which are preceded by informed consent through therapeutic transactions. It is not uncommon for post-medical procedures to be carried out to cause dissatisfaction from the patient or the patient's family due to not achieving recovery, there are medical risks that cause other health dysfunctions and even cause the patient to die after medical action and or there are allegations of malpractice due to negligence carried out by the doctor in the procedure. medical treatment, thus causing a medical dispute.

- a. Doctors who seek healing for patients are faced with the law both in civil, criminal and administrative lawsuits, this is justified in the law on medical practice, where doctors can be held accountable, namely, among others:
- b. a. Article 66 Paragraph (1) of the Medical Practice Law Number 29 of 2014 any person who knows or has had his interests harmed by the actions of a doctor/dentist in carrying out medical practice can submit a written request to the Indonesian Medical Discipline Honorary Council.
- c. b. Article 66 Paragraph (3) of the Law on Medical Practice Number 29 of 2004 the complaint referred to in Paragraph (1) and Paragraph (2) does not take away the right of everyone to report suspected criminal acts to the authorities and/or sue for civil damages to the court.
- d. c. Article 68 of the Medical Practice Law Number 29 of 2004 if an ethical violation is found during an examination, the Indonesian Medical Discipline Honorary Council will forward the complaint to the Professional Organization.
- e. d. Article 58 Health Law Number 36 of 2009 everyone has the right to claim compensation against a health worker and/or health provider, who causes losses due to errors or negligence in the health services they receive

The large number of lawsuits against doctors, even though there has been informed consent as a form of engagement that provides doctors with shields in carrying out their medical actions, thus making the medical profession vulnerable to demands and lawsuits for actions that are not in accordance with the expectations of patients who are given medical services by them, so that Legal protection for doctors needs to be questioned. For this reason, the authors are interested in conducting research entitled "Legal Protection of Doctors in Carrying Out Medical Actions Based on Law Number 29 of 2004 concerning Medical Practice".

## **2. Research Methods**

The type of research in this study uses normative legal research (normative juridical) because it focuses on secondary data, with analytical descriptive, namely a study that describes a reality then is analyzed, and collects data to analyze problems. The data collection technique uses library research or document study to search for and find various secondary data to solve research problems by analyzing relevant scientific theoretical reading sources so that they can be used as a basis for research analysis to solve problems, which are then processed using deductive methods. , which is a way of thinking that starts from a general proposition whose truth is already known and ends with a specific new knowledge, and for this research area it was conducted in the Riau Province Region.

## **3. Results and Discussion**

### *3.1. Legal Protection for Doctors in Carrying Out Medical Actions based on Law Number 29 of 2004 Concerning Medical Practice*

Medical action is a professional action by a doctor towards a patient with the aim of maintaining, improving, restoring health, or eliminating or reducing suffering, even though it has to be done, but the medical action is sometimes or often felt unpleasant. Medical action is an action that should only be carried out by medical personnel, because the action is intended especially for patients who experience health problems. A medical action is an ethical decision because it is carried out by humans against other humans, who generally need help and the decision is based on consideration of several existing alternatives. Ethical decisions must fulfill three conditions, namely that the decision must be correct in accordance with applicable regulations, must also have

good goals and consequences, and the decision must be appropriate according to the context and situation and conditions at the time, so that it can be accounted for.

This medical action can only be carried out by doctors in a professional manner, where requirements are required so that a doctor can carry out medical actions, namely among others as mandated in law number 29 of 2004 concerning medical practice, where this is due to the fact that the form of medical practice is in the form of medical action, namely the doctor performs an action on his patient that aims to maintain, improve, restore health, or eliminate or reduce the suffering of the patient. In law number 29 of 2004 concerning medical practice, doctors and dentists are doctors, specialists, dentists, and dental specialists who graduate from medical or dental education both at home and abroad who are recognized by the Government of the Republic of Indonesia in accordance with legislation. Where a doctor must have a standard medical profession education.

Medical professional education standards and dental professional education standards were ratified by the Indonesian Medical Council. Medical or dental education institution associations for medical or dental specialist education standard are prepared and for medical specialist or dental specialist professional education standard is prepared by medical or dental college. Associations of educational institutions in medicine or dentistry in preparing professional education standards must coordinate with professional organizations, collegiums, associations of teaching hospitals, the Ministry of National Education and the Ministry of Health.

Collegiums of medicine or dentistry in preparing professional education standards coordinate with professional organizations, associations of educational institutions of medicine or dentistry, associations of teaching hospitals, the Ministry of National Education and the Ministry of Health. As for education and training in medicine or dentistry, to provide competence to doctors or dentists, it is carried out in accordance with medical or dentistry professional education standards. Every practicing doctor or dentist is required to attend continuing education and training in medicine or dentistry organized by professional organizations and other institutions accredited by professional organizations in the context of absorbing developments in science and technology in medicine or dentistry. Continuous education and training in medicine or dentistry is carried out in accordance with standards set by medical or dental professional organizations. After having education and training standards, then to carry out medical practice and carry out medical procedures, the profession of doctors and dentists who practice medicine in Indonesia must have a doctor's registration certificate and a dentist's registration certificate. The doctor's registration certificate and the dentist's registration certificate are issued by the Indonesian Medical Council.

To obtain a doctor's registration certificate and dentist's registration certificate, the following requirements must be met:

- a. have a doctor, specialist, dentist, or specialist dentist degree;
- b. have a statement letter that has taken the oath/promise of a doctor or dentist;
- c. have a certificate of physical and mental health;
- d. have a competency certificate; and
- e. make a statement that they will comply with and carry out the provisions of professional ethics.

Doctor's registration certificate and dentist's registration certificate are valid for 5 (five) years and are re-registered every 5 (five) years while still fulfilling the specified requirements. The head of the medical council and the chair of the dentistry council in re-registration must hear the considerations of the head of the registration division and the head of the coaching division. The chairman of the medical council and the chair of the dentistry council are obliged to maintain and maintain the registration of doctors and dentists. Doctors and dentists who graduated from abroad who will practice medicine in Indonesia must be evaluated. The evaluation carried out includes:

- a. certificate validation;
- b. the ability to practice medicine as stated by a certificate of having taken part in the adaptation program and a competency certificate;
- c. have a statement letter that has taken the oath/promise of a doctor or dentist;

- d. have a certificate of physical and mental health; and
- e. make a statement that they will comply with and carry out the provisions of professional ethics.

As for doctors and dentists who are foreign nationals, in addition to fulfilling the above requirements, they must also complete a work permit in accordance with the provisions of the legislation and the ability to speak Indonesian. Doctors and dentists who have fulfilled these requirements can be given a doctor's registration certificate or dentist registration certificate by the Indonesian Medical Council.

Temporary registration certificates can be given to doctors and dentists of foreign nationality who carry out activities in the context of education, training, research, health services in the field of medicine or dentistry temporarily in Indonesia. The temporary registration certificate is valid for 1 (one) year and can be extended for the next 1 (one) year. Conditional registration certificates are given to specialist doctor or dentist specialist education program participants who are foreign nationals participating in education and training in Indonesia. Doctors or dentists of foreign nationality who will provide education and training in the context of transferring science and technology for a certain time do not require a conditional certificate of registration. Doctors or dentists of foreign nationality must obtain approval from the Indonesian Medical Council. Certificate of registration and approval is given through education and training providers. The registration certificate is not valid because:

- a. revoked on the basis of statutory provisions
- b. expiration date and the person concerned does not re-register;
- c. at the request of the person concerned;
- d. the person concerned dies;
- e. revoked by the Indonesian Medical Council.

Further provisions regarding procedures for registration, re-registration, temporary registration, and conditional registration are regulated by the Indonesian Medical Council Regulations. Doctors or dentists who already have a registration certificate have the authority to practice medicine in accordance with their education and competence, which consists of:

- a. interviewing patients;
- b. examine the patient's physical and mental;
- c. determine supporting examinations;
- d. establish a diagnosis;
- e. determine management and treatment of patients;
- f. perform medical or dental procedures;
- g. writing prescriptions for medicines and medical devices;
- h. issue a doctor's or dentist's certificate;
- i. store the drug in the amount and type that is permitted; and
- j. dispensing and dispensing drugs to patients, for those who practice in remote areas where there are no pharmacies.

In addition to the above authorities, other authorities are also regulated by the Indonesian Medical Council Regulations. After being registered as a doctor, a doctor must have a practice license issued by the authorized health official in the district/city where the practice of medicine or dentistry is carried out. A practice license can be given to doctors or dentists in 3 places, and one practice license can only be used for 1 practice place. To obtain a license to practice a doctor or dentist, you must have a valid doctor's registration certificate or dentist's registration certificate, have a place of practice and have a recommendation from a professional organization.

The license to practice is still valid as long as:

- a. doctor registration certificate or dentist registration certificate is still valid; and
- b. the place of practice is still in accordance with what is stated in the practice permit.

After having a license to practice, a new doctor can practice medicine. Medical practice is organized based on an agreement between a doctor or dentist and a patient in an effort to maintain health, prevent disease, improve health, treat disease and restore health. Medical practice is organized based on an agreement between a doctor or

dentist and a patient in an effort to maintain health, prevent disease, improve health, treat disease and restore health. Doctors or dentists who are unable to practice medicine must make notifications or appoint replacement doctors or dentists.

The substitute doctor or dentist must be a doctor or dentist who has a license to practice. Doctors or dentists who already have a license to practice medicine and carry out medical practice put up a medical practice nameplate. In the case of a doctor or dentist practicing at a health service facility, the head of the health service facility is required to make a list of doctors or dentists practicing medicine. The leadership of a health service facility is prohibited from allowing doctors or dentists who do not have a license to practice medicine to practice medicine in said health service facility. Medical practice carried out by doctors in carrying out medical procedures must comply with the service standards of doctors and dentists. These service standards are differentiated according to the type and strata of health service facilities. medical doctors to patients.

Medical action performed by a doctor is medical or dental action, hereinafter also referred to as medical action, is a medical action in the form of preventive, diagnostic, therapeutic or rehabilitative treatment performed by a doctor or dentist on a patient. Medical actions performed by doctors are actions that are protected by law, this is because the actions taken are in nature to carry out relief measures in the context of treating, repairing and rehabilitating the condition of patients who come with complaints based on the diagnosis made by the doctor. In carrying out the medical action the doctor must obtain approval and the consent first, the patient must receive a complete explanation, the explanation shall at least include:

- a. medical diagnosis and procedures.
- b. the purpose of the medical action performed.
- c. alternative courses of action and their risks.
- d. risks and possible complications.
- e. prognosis of the action taken.

Approval for medical action is given in writing or verbally and any medical or dental action that carries a high risk must be given a written consent signed by the person entitled to give consent. Approval for medical action is consent given by the patient or next of kin after receiving a complete explanation regarding the medical or dental procedures to be performed on the patient. After the patient or the patient's family gives approval for medical action, then the doctor will carry out medical action on the patient in question. Medical actions carried out by doctors are regulated by provisions based on law number 29 of 2004 concerning medical practice, where the process for carrying out medical actions must meet the requirements and conditions mandated in the provisions of the law and there are several provisions mandated to be regulated in the regulations of the minister of health, as well as arrangements regarding medical approval and medical records. Medical action requires that as a professional act of a doctor, a doctor who has qualifications based on the education and certification he has, then requires the doctor to be registered in a certain container based on the law which then must have a license to practice which is limited to 3 licenses and each Each permit is only for 1 place issued by the local health office and only then can a doctor perform a medical procedure at the practice site.

Some of the rules governing medical actions carried out by doctors which are regulations as stated in law number 29 of 2004 concerning medical practice and other laws that support the implementation of medical procedures, are as follows:

- a. Law number 44 of 2009 concerning Hospitals
- b. Law number 36 of 2014 concerning Health Workers
- c. Law of the Republic of Indonesia Number 23 of 1992 concerning Health.
- d. Regulation of the Minister of Health Number: 290/Menkes/PER/III/2008
- e. Regulation of the Minister of Health of the Republic of Indonesia Number 1419/Men.Kes/Per/X/2005 concerning Organizing Medical Practices
- f. Regulation of the Minister of Health of the Republic of Indonesia Number 585/Men.Kes/Per/IX/1989 concerning Approval of Medical Actions.
- g. Indonesian Hospital Code of Ethics (KODERSI).

- h. PB Decree. Indonesian Doctors Association No.319/PB/A4/88
- i. Regulation of the Minister of Health Number 290 of 2008 concerning approval for medical procedures

Some of the rules above are rules that also provide arrangements regarding medical actions carried out by doctors, such as hospital laws governing hospital provisions in providing health services to the public which includes medical actions carried out by doctors within the scope of the hospital, as well as with the health worker law which explains who can take medical action based on the provisions on medical staff and the health law which contains health standards based on principles that must be followed in providing medical action. Likewise with the Regulation of the Minister of Health of the Republic of Indonesia Number 1419/Men.Kes/Per/X/2005 concerning the Implementation of Medical Practice as an elaboration of the application of law number 29 of 2004 concerning medical practice which is guided by carrying out medical actions carried out by doctors as well as the Regulation of the Minister of Health RI Number 585/Men.Kes/Per/IX/1989 concerning Approval of Medical Procedures, Indonesian Hospital Code of Ethics (KODERSI), Decree of the Indonesian Doctors Association PB.319/PB/A4/88 and Regulation of the Minister of Health Number 290 year 2008 concerning the approval of medical action.

Judging from the existing legal regulations, namely law number 29 of 2004 concerning medical practice, it does not yet regulate legal protection for doctors in a real way in every existing article, there only covers the obligations of doctors in carrying out medical practices. In law number 29 of 2004 concerning medical practice there is only 1 (one) article which mandates legal protection for doctors, namely in article 50 letter a where doctors or dentists in carrying out medical practice have the right to obtain legal protection as long as carrying out their duties according to medical standards. profession and standard operating procedures. The form of legal protection described in this article does not explicitly explain the form of legal protection given to these doctors. When viewed from the meaning of legal protection, that the notion of legal protection is a protection given to legal subjects in the form of legal instruments both preventive and repressive in nature, both written and unwritten. In other words, legal protection is an illustration of the function of law, namely the concept where law can provide justice, order, certainty, benefit and peace. The concept where the law provides justice does not materialize in this case due to lawsuits or demands from the patient or the patient's family to the doctor, where doctors sometimes carry out procedures in a professional and proportionate manner but due to medical conditions unwanted things occur which have an impact on the patient's condition, however continue to be sued and sued by patients and their families.

Not only civil lawsuits, administration is even prosecuted criminally, so that for the sake of legal certainty law enforcers continue to carry out the process of these claims and lawsuits, even though the context of the case is not yet clear on the position of the legal facts so that the doctor is preoccupied with dealing with lawsuits and charges that are alleged to him. This injustice arises because the existing laws and regulations do not mandate which provisions can be held accountable for doctors, from one case one can be prosecuted in 3 different legal channels, instead in law number 29 of 2004 concerning medical practice, all parties are given the opportunity both the patient and his family where in Article 66 Paragraph (3) of the Law on Medical Practice Number 29 of 2004 the complaints referred to in Paragraph (1) and Paragraph (2) do not eliminate the right of everyone to report suspected criminal acts to the authorities and / or sue for civil damages to the court.

This is very contrary to the legal principle of *ne bis en idem*. In general, the notion of *ne bis in idem* is a legal principle which prohibits a defendant from being tried more than once for one act if a decision has been made to convict or acquit him. The *ne bis in idem* principle applies in general to all legal domains. In this case, as in the case of Dr. Muhammad Iqbal.SpS who was sued civilly by his patient, Mrs. Noviar in a civil lawsuit that was heard at the Pekanbaru District Court with decision Number: 292/Pdt/G/2016/PN-Pbr dated 23 August 2017 against allegations of unlawful acts in the form of malpractice which caused disability due to medical wrongdoing, after being ruled victorious and acquitted of all lawsuits, but the plaintiff also reported it to the criminal realm at the Riau Police and an investigation was still being carried out, besides that it was also reported to the Honorary Council and the Indonesian Medical Discipline.

So that the legal protection that should be included in law number 29 of 2004 concerning medical practice does not contain a sense of justice for doctors who carry out medical actions because there is nothing in the

formulation of the article describing legal protection for doctors in carrying out medical actions, in this law it is more many regulate how medical action is carried out with rules and regulations so that the protection of services to patients can be carried out properly.

### *3.2. Legal Consequences for Doctors in Carrying Out Medical Actions that Can Harm Patients Based on Law Number 29 of 2004 Concerning Medical Practice*

Medical action performed by a doctor is medical or dental action, hereinafter also referred to as medical action, is a medical action in the form of preventive, diagnostic, therapeutic or rehabilitative treatment performed by a doctor or dentist on a patient. Medical actions performed by doctors on patients sometimes cause a problem with the results of the medical action, namely where there are objections from the patient or from the patient's family to the actions taken by the doctor which results in an impact on the patient or his family, such as the death of the patient, the emergence of disability, to the patient or other losses that are detrimental to the patient for the actions taken by the doctor.

It is undeniable that the medical actions performed by doctors are actions that come in direct contact with the human body as a patient, any action taken has risks based on the level of action performed by the doctor. However, the risks that will occur based on statutory regulations must be explained by doctors before carrying out medical actions so that patients or families who are authorized to make decisions understand the risks if medical actions are taken. The risks that doctors carry out for patients are sometimes the risk of disability or even death, but this risk is certainly estimated from the diagnosis made by a doctor based on professionalism and proportionality as a doctor with the knowledge and competence he has to prevent death or damage to a disability that is more severe than before if no medical action is taken so that it can be said to be a medical risk.

Medical risk consists of the words "risk" and "medical". Risk (risk) implies "the possibility of something bad happening at some time in the future; a situation that could be dangerous or have a bad result" or the possibility of something bad happening in the future, a situation that could be dangerous or have bad results, while the medical word that is meant is a medical action performed by a doctor, namely: "an action performed on patients in the form of diagnostic or therapeutic. When combined, medical risk can be interpreted as a condition that is not desired either by the patient or by the doctor or dentist himself, after the doctor or dentist makes every effort as possible and also professional standards, medical service standards and procedural standards have been met, but the accident still happening.

Medical risks are sometimes interpreted by the general public as mistakes or negligence committed by doctors who are commonly called malpractice, but there is a difference between medical risk and malpractice, medical risk where doctors have carried out standard medical services and professional standard procedures have been met but accidents or failure, but if malpractice can be said to be due to negligence starting from the procedure to the implementation which results in an accident or failure in carrying out a medical action by a doctor. Failure or accident in this medical action will lead to a request for a doctor's legal responsibility carried out by the patient or the patient's family who feels aggrieved as a result of the medical action carried out by the doctor, this is due to the provision of a legal umbrella to the community, namely the patient or his family, namely among others:

- a. Article 66 Paragraph (1) of the Medical Practice Law Number 29 of 2014 any person who knows or has had his interests harmed by the actions of a doctor/dentist in carrying out medical practice can submit a written request to the Indonesian Medical Discipline Honorary Council.
- b. Article 66 Paragraph (3) of the Law on Medical Practice Number 29 of 2004 the complaint referred to in Paragraph (1) and Paragraph (2) does not take away the right of everyone to report suspected criminal acts to the authorities and/or sue for civil damages to the court .
- c. Article 68 of the Medical Practice Law Number 29 of 2004 if an ethical violation is found during an examination, the Indonesian Medical Discipline Honorary Council will forward the complaint to the Professional Organization.
- d. Article 58 of the Health Law Number 36 of 2009 everyone has the right to claim compensation against a health worker and/or health provider, who causes harm due to errors or negligence in the health services they receive.



On the basis of this arrangement, patients or their families can demand accountability from doctors in carrying out medical actions through 3 channels of legal domains which have legal consequences for doctors who carry out medical actions that harm patients, namely:

a. Criminal

Doctors in carrying out medical actions can be criminally reported, if the patient or the patient's family feels that there is a malpractice action which is related to the offense, both *dolus* and *culpa* where there is an element of intent or negligence which is suspected against the doctor in carrying out medical action against the patient either intentionally or because of his negligence so that The patient experiences conditions beyond the doctor's expectations which result in disability or death. In addition to being charged with the alleged general crime article, special criminal articles were also used. Reporting of criminal complaints can be categorized as criminal malpractice if the act fulfills the formulation of a criminal offense, namely:

- a. The act (positive act or negative act) is a disgraceful act.
- b. Done with the wrong mental attitude (*mens rea*) in the form of intentional, reckless or negligent.
- c. Criminal malpractice that is intentional, for example committing euthanasia (Article 344 of the Criminal Code), disclosing office secrets (Article 332 of the Criminal Code), making fake certificates (Article 263 of the Criminal Code), having abortions without medical indications, Article 299 of the Criminal Code).
- d. Criminal malpractice that is reckless in nature (recklessness), for example carrying out medical actions without the patient's informed consent.
- e. Criminal malpractice that is negligent (negligence), for example, being careless results in injury, disability or death of the patient.

Responsibility before the law for criminal malpractice is individual/personal and therefore cannot be transferred to another person or to a hospital/health facility according to the level of guilt.

b. Civil

Civil lawsuits were filed against doctors due to losses arising from the patient, so that the patient and the patient's family filed a civil lawsuit against the background of article 1365 of the Civil Code. Civil lawsuits or can also be called civil malpractice if they do not carry out their obligations or do not provide their achievements as agreed (breaking a promise). Actions of health workers that can be categorized as civil malpractice include:

- a. Not doing what according to the agreement must be done.
- b. Do what according to the agreement must be done but it's too late to do it.
- c. Do what according to the agreement must be done but not perfect.
- d. Do what according to the agreement should not be done.

Civil malpractice liability can be individual or corporate and can also be transferred to other parties based on the principle of vicarius liability. With this principle, hospitals/health facilities can be held accountable for mistakes made by their employees (health workers) as long as the health workers are carrying out their duties.

c. Administration

Administrative lawsuit through the Indonesian Medical Disciplinary Council which demands the revocation of the register and license to practice given to doctors suspected of having made procedural errors in carrying out medical procedures. A doctor is said to have committed administrative malpractice when the doctor has violated administrative law. It should be noted that in exercising police power, the government has the authority to issue various provisions in the health sector, for example regarding the requirements for a doctor to carry out his profession (Work Permit, Practice Permit). If these rules are violated, the health worker concerned can be blamed for violating administrative law.

Not infrequently, patients and their families through their attorneys carry out prosecutions and lawsuits by including at the same time all three domains of legal channels, be it criminal, civil or administrative, so that

doctors in this case feel very cornered by these lawsuits and demands which can interfere with the doctor's comfort and activities in carry out his profession as a doctor. Sometimes lawsuits and demands directed at doctors are not due to negligence but due to medical risks. This is what creates a sense of injustice for doctors who carry out their profession in a professional and proportionate manner but are also faced with the reality of lawsuits and lawsuits. Even though in law number 29 of 2004 concerning medical practice it has been stated that in every medical action carried out by a doctor must have the approval of a medical action from the patient or the patient's family who is authorized, in this medical action agreement it can be interpreted that the doctor and the patient have made an engagement with the medical action to be carried out, the doctor has given clear notification about the action to be carried out and the risks that will be faced when the action is carried out or after the medical action is carried out.

The agreement between the doctor and the patient through the approval of medical action is actually a legal protection for the doctor, this is used as a reference for doctors to carry out medical actions with all the risks that have been informed to the patient, if the patient and his family agree then with all the risks the action can be carried out by the doctor, but patients and families can also refuse to take medical action after being given informed consent by a doctor. So that the engagement is carried out without being based on compulsion between one party and another where the doctor can also refuse to take medical action if it is felt that it is not in accordance with his competence and abilities.

#### 4. Conclusion

Based on the description of the several chapters above, it can be concluded that legal protection for doctors in carrying out medical actions based on law number 29 of 2004 concerning medical practice is only stated in article 50 letter a, but it does not explain what the rules and procedures for legal protection are for doctors. itself, more than regulates the patient's rights if they experience a loss to the doctor's medical actions, this makes a sense of injustice for the medical profession where claims and demands of patients or patient families always use all legal domains, both criminal, civil and administrative which ignore the existence of an agreement in approval of medical action and also violates the legal principle of *ne bis en idem*. Legal consequences for doctors in carrying out medical actions that can harm patients based on law number 29 of 2004 concerning medical practice, which is regulated in article 66 (1), article 66 (3) and article 68 which provides legal space for patients and their families if feel aggrieved by medical actions carried out by doctors so that doctors are faced with 3 (three) legal impacts, namely criminal law classified as criminal malpractice errors, civil law in claims for civil malpractice and administratively against permits owned by doctors due to administrative malpractice.

#### References

- Adami Chazawi, *Medical Malpractice*, Sinar Graphic, Jakarta. 2015
- \_\_\_\_\_, *Crimes Against Body and Life*, Third Printing, Raja Grafindo, Jakarta 2005.
- Abdulkadir Muhamad, *Indonesian Civil Law*, Citra Aditya Bhakti, Bandung, 2014.
- \_\_\_\_\_, *Law of Engagement*, Alumni, Bandung, 1982
- Bambang Waluyo, *Legal Research in Practice*, Sinar Graphic, Jakarta, 1991
- Bahar Azwar, *The doctor*, Kesaint Black, Jakarta. 2002
- Bahder Johan Nasution, *Physician Liability Health Law*, Rineka Cipta, Jakarta, 2005
- Bahder Johan Nasution, *State of Law and Human Rights*, Mandar Maju, Bandung, 2012
- Bernard L. Tanya et al., *Legal Theory of Cross-Spatial Strategy and Generations*, Genta Publishing, Yogyakarta, 2013
- Burhan Assofa, *Legal Research Methods*, Rineka Cipta, Jakarta, 2002
- Carl Joachim Friedrich, *"Philosophy of Law from a Historical Perspective*, Nuances and Nusamedia. Bandung. 2004
- Decree of PB. Indonesian Doctors Association No. 319/PB/A4/88
- Decree of the Director General of Medical Services Number HK.00.06.3.5.1886
- Frans Hendra Winarta. *Dispute Resolution Law*. Sinar Graphics, Jakarta, 2012
- Hermin Hediati Koeswadji, *Several legal and medical issues*, Citra Aditya Bhakti, Bandung. 1992
- \_\_\_\_\_, *Medical Law*, Citra Aditya Bhakti, Bandung. 1998.
- \_\_\_\_\_, *Law for Hospitals*, Citra Aditya Bhakti, Bandung. 2002.

- <https://www.kamus.besar.com/litigasi>. Retrieved 24 March 2020
- <https://www.Hukumonline.com/clinic/details/reviews/lt52897351a003f/litigation-and-alternative-dispute-resolution-beyond-the-walls/>
- Indonesian Hospital Code of Ethics (KODERSI).
- Indonesian Medical Council, Partnership in Doctor-Patient Relations, Indonesian Medical Council, Jakarta, 2007
- J. Guwandi, Question and Answer of Medical Action Consent (Informed Consent), Faculty of Medicine, UI, Jakarta, 1994
- J. Van Apeldoorn, "Introduction to Law", twenty-sixth printing of Pradnya Paramita, Jakarta. 1996
- Jimly Asshiddiqie, Indonesian Constitution & Constitutionalism, Sinar Graphic, Jakarta, 2010
- Law number 29 of 2004 concerning medical practice.
- Law number 44 of 2009 concerning Hospitals
- Law number 36 of 2014 concerning Health Workers
- Law of the Republic of Indonesia Number 23 of 1992 concerning Health.
- Mahfud MD, Building Legal Politics Upholding the Constitution, Raja Grafindo, Jakarta, 2011
- \_\_\_\_\_, Law and the Pillars of Democracy, Gama Media, Yogyakarta 1999
- Muntaka, Malpractice Criminal Law, Sinar Graphic, Jakarta, 2017
- Ministry of Education and Culture, Big Indonesian Dictionary, BalaiPustaka, Jakarta, 2001
- Miriam Budiardjo, Fundamentals of Political Science, Gramedia Pustaka Utama, Jakarta, 2009
- Nukhtoh Arfawie Kurde, Critical Study of Rule of Law Theory, Student Library, Yogyakarta, 2005
- Tempo Data and Analysis Center, Malpractice Then Goes to Court, Tempo Publishing. Jakarta. 2020
- R. Subekti, Agreement Law, Intermasa, Jakarta, 1992
- Rachmadi Usman. Mediation in Court. Graphics Light. Jakarta, 2012
- Rinanto Suryadhimirtha, Medical Malpractice Law, Total Media, Yogyakarta, 2011
- Rony Hanityo Soemitro, Legal Research Methodology, Ghalia Indonesia, Jakarta, 1990
- Soekarno, Pancasila Basic State; President Soekarno's Course on Pancasila, Center for Pancasila Studies UGM, Yogyakarta, 2013
- Satjipto Rahardjo, Law Studies, Citra Aditya Bakti, Bandung, 2014
- Surajiyo, Justice in the Pancasila legal system, IKHRAIT-Humanira Journal Vol.3 No.2 November 2018
- Susanti Adi Nugroho, Mediation as an alternative to dispute resolution, Telaga Ilmu Indonesia, Jakarta, 2009
- Drafting Team, Comprehensive Text on Amendments to the 1945 Constitution of the Republic of Indonesia Background, Process, and Discussion Results, 1999-2002, Book I, Secretariat General and Registrar's Office, Jakarta, 2010
- Yashiro Kusano, Wakai a new breakthrough in dispute resolution, Grafindo, 2008
- Kadek Arini, Ida Bagus Putra Atmadja, 2016, "Setting Doctor's Error Rate as a Basis for Determining Compensation to Victims of Medical Malpractice", Kertha Wicara, Vol. 05, No. 04, June 2016, h.3-4, <http://ojs.unud.ac.id/index.php/kerthawicara/article/view/21186/13940> Accessed on 21 February 2019 at 16.00 WIB
- Yutika Tri Bhuna Dewi, A.A. Ngurah Wirasila, Sagung Putri M.E Purwani, 2016, "Policy of Providing Compensation to Victims of Medical Malpractice as a Form of Criminal Law Protection", Kertha Wicara, Vol. 05, No. 01, February 2016, p. 2, [x.php/kerthawicara/article/view/21186/13940](http://kerthawicara/article/view/21186/13940) Accessed on 21 February 2019 at 16.00 WIB
- Rahayu, Transportation of People, [etd.eprints.ums.ac.id](http://eprints.ums.ac.id). Government Regulation of the Republic of Indonesia, Number 2 of 2002 Concerning Procedures for the Protection of Victims and Witnesses in Serious Human Rights Violations Republic of Indonesia Law, Number 23 of 2004 Concerning the Elimination of Domestic Violence, 2009. Accessed on 21 February 2019, 16.00 WIB
- Rafael La Porta, "Investor Protection and Corporate Governance; Journal of Financial Economics", no. 58, 1999. Accessed on February 21, 2019, 16.00 WIB
- Regulation of the Minister of Health Number: 290/Menkes/PER/III/2008 concerning Approval of Medical Treatment.
- Regulation of the Minister of Health of the Republic of Indonesia Number 1419/Men.Kes/Per/X/2005 concerning Organizing Medical Practices.
- Regulation of the Minister of Health of the Republic of Indonesia Number 585/Men.Kes/Per/IX/1989 concerning Approval of Medical Actions.