

# Protection Model and Fulfillment of Patient Rights on the Implementation of Informed Consent in Indonesia

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**Abstract:** Due to the cases that occur related to the practice of medicine, the law contributes in providing solutions for both physicians and patients as consumers of health, although medicine has a code of professional ethics as the basis of doctors in carrying out their work. This study focuses on, how judges assess the express consent on the implementation of informed consent and secondly, how the model of protection and fulfillment of patient rights in the implementation of informed consent in Indonesia. The research method used is normative legal research, based on health law and the health minister's regulation as the main benchmark in analyzing. The results of the discussion illustrate that, the main point of doctors and health workers in carrying out their duties is the implementation of concrete agreements both written and oral. Second, the model for protecting patient rights in law enforcement is applying reverse evidence to doctors as defendants of malpractice in relation to the fulfillment of informed consent. From several cases, it appears that the judge's decision is not fundamental to informed consent, but tends to the negligence aspect of the doctor or medical personnel use to Article 359 of the Criminal Code.

## 1 INTRODUCTION

The existence of a medical code-ethics is one of the non-penal efforts for medical profession in carrying out medical practice. The effort shows that the protection of professions is very important that based on science (Faden & Beauchamp, 1986). This is not sufficient for society as well as health consumers, thus it needs a regulation to be a legal device as a legitimacy for patients to fulfil their basic needs. Eventually, the existence of the health law and several health minister regulations not only affect the community as consumers of health services, but also a strong legal basis for the implementation of medical practice. Notwithstanding, there are still violations committed by doctors and medical personnel, both based on mistakes and negligence, so that it gives negative impact to the patient (Muhammad, 2004).

Some cases were entered the realm of law and handled by courts related to medical malpractice are Judgment Number 46 K / Pdt / 2006, Judgement Number 90 / Pid.B / 2011 / PN.MDO and Judgement Number 1110 K / Pid.Sus / 2012. Some of these cases are representatives of the implementation of health law enforcement in Indonesia. Meantime, 2 investigations of this research, namely how is the

judge assesses the express consent on the implementation of informed consent and how is the model of protection and fulfillment of patient rights in the implementation of informed consent in Indonesia (Teguh, 1992).

The importance of this research is to find out the model of legal protection for patients in the framework of implementing informed consent in Indonesia (Budianto, 2012).

## 2 METHODS

The study reviewed is a study with document study categories, namely court decision analysis on medical malpractice based on the judge's decision text (Budianto, 2012). To achieve the desired results, the way is done is to construct a case, identify the parties to the conflict, sit down the case, the parties' arguments, the judge's judgment and the decision.

### 3 RESULTS AND DISCUSSION

#### 3.1 Judge Appraisal of the Expressed Consent on Implementation of Informed Consent

Basically, law enforcement contains: (1) legal material (regulations / legislation); (2) law enforcement officers (judges, prosecutors, police, lawyers and correctional institutions); (3) legal facilities and infrastructure and (4) legal culture. The process of law enforcement itself is closer to the general adage, which is like a currency that has 2 (two) sides. Whereas between quality instruments and legal instruments must not prioritize one thing in line with the concept of the legal mind (justice) (Emanuel, 1999).

The process of law enforcement actually does not occur at the application / law enforcement stage, but can be started at the formulation stage (the law-making stage). Meanwhile, law enforcement is an effort to bring ideas and concepts into reality. Law enforcement is a process to realize legal desires into reality. Legal desires are the thoughts of the legislature that are formulated in legal regulations (Afandi, 2009).

Regarding law enforcement in the settlement of criminal cases, there is an invalidity of the principle of legality, even though, the principle of legality is recognized as a fundamental principle by countries which is using criminal law as a media of countering crimes, but the enactment is not absolutely, in the sense, the actor can equate an act that has occurred as a criminal offense and can be punished as long as such acts are contrary to written law which in international criminal law is called the principles of general law that recognized by nations (Jaya & Serikat, 2004).

To facilitate on understanding of the judge's assessment of the Expressed Consent, several cases are described as follows (Satjipto, 2009):

a. Judgement-number; 90 / PID.B / 2011 / PN.MDO

This case is a criminal act due to negligence that caused the death of someone, Siska Makatei (Article 359 of the Criminal Code Jo. Article 361 of the Criminal Code, Article 55 paragraph (1) of the 1st Criminal Code. Defendant from Dr. Dewa Ayu Sasiary Prawani (Defendant I), Dr. Hendry Simanjuntak (Defendant II) and Dr. Hendy Siagian (Defendant III) and Plaintiff of the Public Prosecutor. At the Manado District Court Number 90 / PID.B / 2011 / PN.MDO dated September 22, 2011 the complete amendments are as follows: 1. Declare Defendant I Dr. Dewa Ayu Sasiary Prawani,

Defendant II Dr. Hendry Simanjuntak and Defendant III dr. Hendy Siagian, was not proven legally and convincingly guilty of committing a crime in the First Primary and Subsidies indictment, Second Indictment and Third Primary and Subsidiary's indictment. The primary indictment charged to the Defendants violates Article 359 of the Criminal Code Jis Article 361 of the Criminal Code Jo article 55 paragraph (1) to the Criminal Code which is a weighting article of the article charged in the first subsidiary charge which violates Article 359 of the Criminal Code Jo Article 55 paragraph (1) to the 1st Penal Code of Jis, the acquittal of the defendants from the first primary indictment is violating Article 359 of the Criminal Code. Article 361 of the Criminal Code Jo Article 55 paragraph (1) to the Criminal Code, then the Defendants must also be released from the first subsidiary charges, namely violating Article 359 of the Criminal Code Jo Article 55 paragraph (1) to the Criminal Code. Release Defendant I, Defendant II and Defendant III therefore of all charges, and Recover the rights of the Defendants in their abilities, position and dignity.

Furthermore, at the level of appeal at the Supreme Court based on Decision Number 365 K / Pid / 2012, stated that the Defendants were respectively Dr. Dewa Ayu Sasiary Prawani (defendant I), dr. Hendry Simanjuntak (defendant II) and dr. Hendy Siagian (defendant III), was proven legally and convincingly, was guilty of criminal acts as referred to in article 359 of the Criminal Code in conjunction with article 55 paragraph (1) of the 1st Criminal Code, sentenced the defendants, respectively. Dewa Ayu Sasiary Prawani (defendant I), dr. Hendry Simanjuntak (defendant II) and dr. Hendy Siagian (defendant III), with imprisonment for 10 (ten) months, with consideration of the judge, namely:

- Judex Fact misappropriates the law, because it does not properly consider juridically relevant matters, namely based on the results of medical records Number 041969 which has been read by expert witnesses dr. Erwin Gidion Kristanto that when the victim entered the General Hospital (General Hospital) Prof. R. D. Kandou Manado, the general condition of the victim is weak and the victim's status is severe;
- The Defendants before carrying out the cito section cesarean operation against the victim were carried out, the defendants without conveying to the victim's family the possibility that could occur to the victim;
- The actions of the defendants carried out an operation against the victim Siska Makatei

which then occurred an air embolism that entered the right ventricle of the heart which prevented blood from entering the lungs and then failed lung function and subsequently resulted in heart failure;

- The actions of the defendants have a causal relationship with the death of the victim Siska Makatey according to the Certificate from the General Hospital Prof. Dr. R. D. Kandou Manado Number 61 / VER / IKF / FK / K / VI / 2010, dated April 26, 2010. Based on the review returned to the Supreme Court in the Judgment Review No. 79

PK / PID / 2013, dr. Ayu and friends were released from the indictment. Decision of the judicial review chaired by Mohammad Saleh and consisting of Prof. Surya Jaya, Syarifuddin, Margono, Maruap Pasaribu. However, this decision was not taken unanimously. One member of the assembly, Prof. Surya Jaya, gave a dissenting opinion. Ridwan cited the consideration of the decision that the applicant reviewed again did not violate the Standard Operating Procedure in dealing with caesarian cito surgery. The Judicial Review considers the *judex factie* (district court) consideration to be correct and correct. "Ordering that the convict be expelled from the correctional facility and restore the good name of the convicts in the verdict. The decision handed down against Dr. Ayu et al, both the first level, appeal, and cassation were to do negligence. The acts of the Defendants as regulated and threatened with Article 76 of the Republic of Indonesia Law Number 29 of 2004 concerning Medical Practices Jo. Article 55 paragraph (1) of the 1st Criminal Code, it is fulfilling other inter-elements. The element of "person" is a personal pronoun, which is usually used in each formulation of the articles of a criminal act from the relevant legislation or in other words can also be interpreted as the subject of the offender. The offense subject was Defendant I Dr. Dewa Ayu Sasiary Prawani, defendant II dr. Hendry Simanjuntak and defendant III dr. Hendry Siagian where the identity of Defendant I, Defendant II and Defendant III.

2. The element "due to his/her error becomes caused of the death of another person"

At the time before the cito section cesarean operation against the victim was carried out the defendants had never told the family about the worst possibilities including death that could have occurred to the victim if the cito section surgery was carried out on the victim and the defendants as doctors who carried out the cito surgery section sesaria on the victim does not conduct investigations such as chest

photorontgen heart examination and other investigations, etc. Hence, this is the negligence of defendants.

In medical action carried out by Dr. Ayu there are several things, namely:

- Julia was declared in an emergency at 6:30 p.m., even though it should have been declared an emergency since she was hospitalized in the morning.
- Some of the medical actions of Ayu and her colleagues were not included in the medical record.
- Ayu did not know the infusion and the type of infusion drug given to the victim.
- Although Ayu assigned Hendy to inform the patient and his family of the action plan, Hendy did not do it. He instead handed over the approval sheet of the action that Julia had signed to Ayu, but it turned out that the signature on it was fake.
- There is no good coordination in Ayu's team when taking medical action.
- There is no preparation if the victim suddenly experiences an emergency.

Some of the court decisions above are related to informed consent which has implications for medical malpractice on medical action, in patient relations and doctors / health personnel. The position of the patient in a condition that is very weak, helpless, and does not get legal protection, specifically the Health Act, the Law on Health Workers, the Medical Practice Law, and the Law on Hospitals, clearly places the patient in the object that needs care, so there is no legal gap to claim their rights, related to procedural errors, permanent disability and disability, even death due to medical action. Here, the informed consent that is the basis for approval in medical action has been ignored.

Sanctions contained in the legislation in the health sector itself do not appear to be strict, because the judge refers more to the provisions in the Criminal Code article on negligence. Judges should be able to refer to the informed consent arrangement in the Minister of Health Regulation No. 290 / MENKES / PER / III / 2008 concerning Approval of Medical Actions, even though this regulation is the implementation of Article 45 of the Medical Practice law. All parties involved in the allegation of medical malpractice always ignore the provisions in this article.

However, in the Judicial Review of the Supreme Court of the Republic of Indonesia Number: 76 PK / Pid / 2013, on behalf of defendants Dewa Ayu Sasiary

Prawani, Hendry Simanjuntak and Hendy Siagian, the Supreme Court declared and ruled that the convicted were not proven legally and convincingly guilty committing a criminal act that is charged, therefore the panel of judges at the Judicial level cancels the Supreme Court Decision Number: 365 K / Pid / 2012 dated 18 September 2012 which cancels the Manado District Court Decision Number: 90 / Pid.B / 2011 / PN.MDO.

The above case shows that aspects of informed consent are ignored by doctors. This can be proven in the form of the signature of the victim in the special action approval letter and the surgical and anesthetic approval submitted by Dr. Hendy Siagian to be signed by the victim is different from the signature of the victim who is in the Identity Card (KTP) and the Askes Card. Then after being examined by the Makassar Branch Forensic Laboratory and based on the results of the Criminal Laboratories examination on June 9, 2010 NO. LAB: 509 / DTF / 2011 Criminal Laboratory stated that the signature on behalf of Siska Makatey aka Julia Fransiska Makatey on the document was an autograph signature / "Spurious Signature".

From this evidence, the aspect of informed consent and the existence of therapeutic transactions are the basis for a doctor to take medical action. With the ignored aspects of informed consent and terepeutik transactions, the criminal law teachings are included in negligence on medical action. To be able to get a doctor, a doctor who performs a medical action without being preceded by the informed consent aspect and the related transaction, the authorized party must be able to prove it. Without the aspect of informed consent in a medical action, it can enter the element of error in accordance with Article 359 of the Criminal Code.

Juridically, the binding basis of the Regulation of the Minister of Health No. 290 / MENKES / PER / III / 2008 for which there are no sanctions against ignorance of informed consent is detrimental to the patient. In medical action, patients and doctors / health workers should be in a balanced position, namely the legal relationship between patients and doctors / health workers is contractual with each other in the law. This must be understood in medical action, so that actions that are suspected to be malpractice of medicine to patients can be avoided. Keep in mind that approval in medical action that contains high risk must obtain written approval signed by the right of consent. Whereas if a medical action that is not at risk can be given with verbal consent. Essence of approval from informed consent in medical action between patient and doctor / health worker.

For this reason, informed consent by looking at the facts of the court decision which is allegedly malpractice conducted by medicine can be minimized, by placing an informed consent arrangement for everyone's rights (Kansil, 1991). By placing informed consent as a right inherent in a person, whether patient, doctor / health worker, a balanced relationship pattern will be maintained, parallel to each other. Appreciation of patient rights by placing informed consent rights on patients' rights that must be respected, respected, and given strict sanctions if not done (Sudra & Pujihastuti, 2016). This places informed consent on the pillar of the essence of the recognition of the right to health for everyone. There has been a fundamental change in the informed consent perspective in the health sector as part of the patient's rights that are protected, valued, and safeguarded for the benefit of all, as well as improving health status in Indonesia (Mulyo, 2006).

### 3.2 Model of Protection and Fulfillment of Informed Consent in Indonesia

Building a concept in the form of a law enforcement model related to informed consent, the Decision Number 46 K / Pdt / 2006 must first be elaborated. The Siloam Gleneagles Hospital malpractice case on circumcision without the consent of the patient. In this case the Plaintiff is Abraham Lodewyk Phaseary, residing in the Binong Permai Blok EE 11/13 Housing, Curug Tangerang, and the Defendant is PT.Siloam Healthcare, cq. Siloam Gleneagles Karawaci Hospital, having its address at Jalan Siloam Number 6 Lippo Karawaci, Tangerang consisting of dr. Rudi Hartanto, dr. Nanda Romli, dr. Rizal s. Pohan. In consideration before total anesthesia is carried out, the Plaintiff gives oral and written approval by signing an informed consent letter offered by the nurse only to undergo surgical removal of the pen above the left ankle which will be carried out by Defendant IV as a bone surgeon.

Before the total anesthesia was carried out, the Plaintiff had never discussed, never requested, and never gave oral or written approval for circumcise surgery (circumcision surgery on the penis) against the Plaintiff in Defendant I by Defendant II, Defendant III, Defendant IV. Because the Plaintiff as an Ambonese Protestant Christian has never had the intention and plan to be circumcised by anyone, anywhere and anytime.

After the Plaintiff gave oral and written approval by signing the informed consent referred to in point 3 above, then Defendant III as the anesthetist carried

out a total anesthesia of the Plaintiff, so that due to the total anesthesia the Plaintiff lost consciousness and did not remember anything else; Whereas when the Plaintiff was unconscious and did not remember anything due to the general anesthesia of item 5 above, in addition to the operation of pen extraction in the ankles carried out by Defendant IV as a bone surgeon, it turned out that Defendant II had carried out invasive actions ( medical which can directly affect the integrity of body tissue) illegally against the Plaintiff, which is to perform circumcise surgery (circumcision surgery on the penis) against the Plaintiff's penis without giving an explanation to the Plaintiff, and without written or oral approval from the Plaintiff to the Defendants, both before and after the circumcise operation, the Defendant II's action was known and approved by Defendant I, Defendant III and Defendant IV.

The act of circumcise operation without the consent of the Plaintiff committed in Defendant I by Defendant II which was known and approved by Defendant I, Defendant III and Defendant IV has been proven and recognized by Defendant I in Letter Number 093 / RSSG / CS / XII / 98, dated 8 December 1998, which in essence Defendant I acknowledged and apologized for having carried out a circumcise surgery without the consent of the Plaintiff; Whereas the actions of circumcise operations without the approval of the aforementioned Plaintiff have violated Article 2 paragraph (1), (2) and (3) of the Minister of Health Regulation RI Number 585 / Men.Kes / Per / IX / 1989 concerning Approval of Medical Measures. The agreement based on Article 8 paragraph (1) Regulation of the Minister of Health RI Number 585 / Men.Kes / Per / IX / 1989 must be given by adult patients (Plaintiff) in a conscious and mentally healthy condition. The act of circumcise surgery without the approval of the Plaintiff also violated the Code of Ethics of the Indonesian Hospital (KODERSI) Article 2, Article 9, Article 10 and Article 11, Chapter III of the Hospital Obligations Against Patients.

In addition to the actions of circumcise operations carried out illegally by the Defendants without the consent of the Plaintiff, it turned out that Defendant I was also not willing to provide a copy of the Plaintiff's medical record requested by and be the right of the Plaintiff based on Article 10 paragraph (2) and Article 14 Minister of Health Regulation RI Number 749A / Men. Kes / Per / XII / 1989, regarding medical records / medical records, where medical records / medical records are required by the Plaintiff in the interests of basic health maintenance and

treatment of the Plaintiff, as well as material for verification in lawsuits.

Article 55 of Law Number 32 of 1992 concerning Health regulates that: Every person has the right to compensation due to errors or negligence committed by health personnel Explanation of Article 55 of Law Number 32 of 1992 concerning Health expressly and clearly regulates that "The granting of rights to compensation is a efforts to provide protection for every person for a consequence, whether physical or non-physical due to errors or negligence of health personnel ". This protection is very important because due to negligence or error it may cause death or cause permanent disability.

He actions of the Defendants who have carried out circumcise operations without the Plaintiff's approval and are not willing to provide a copy of the Plaintiff's medical/ medical record which is the right of the Plaintiff, is an unlawful act as referred to in Article 1365 BW which has caused a very large loss to the material good Plaintiff/ physical or immaterial/ non-physical. The plaintiff in person and through the previous attorney, has repeatedly asked for accountability and demanded compensation, but there was no response and there was no good faith from the Defendants, to compensate the Plaintiff.

The Tangerang District Court has taken the decision, namely Number 221 / PDT.G / 2004 / PN.TNG. dated March 3, 2005, the arguments are as follows: IN THE EXCEPTION, the Defendant's Exception cannot be accepted; in the principal case (1) Refusing the Plaintiff's claim for the whole; and (2) To sentence the Plaintiff to pay court fees in the amount of Rp. 514,000 (five hundred and fourteen thousand rupiahs). Then in an attempt to appeal, the Plaintiff's District Court verdict was confirmed by the Banten High Court with the decision Number 54 / Pdt / 2005 / PT. Banten, dated September 1, 2005.

Subsequently based on a special power of attorney dated March 16, 2005 an application for an appeal was filed orally on October 26, 2005 as evident from the cassation deed No. 221 / Pdt.G / 2004 / PN.TNG, made by the Court Clerk Negeri Tangerang, an application accompanied by a memorandum of cassation containing the reasons received at the Registrar's Office of the District Court on November 9, 2005.

It was seen that throughout the evidentiary event, the Plaintiff did not prove the act of general anesthesia or the failure of local anesthesia by Defendant III against the Plaintiff, according to the Panel the assessment of this case which became the starting point of the problem was the verification of the new anesthesia action then there would be a truth

assessment whether or not the permit granted by the Plaintiff to Defendant III. Based on the denial evidence from the Defendant in fact the Plaintiff did not succeed in proving his claim, in which case the Defendant III did not carry out general anesthesia but local anesthesia.

The *Judex Facti* does not at all consider the fact that the Cassation Appellant during medical treatment, when anesthetized by the Cassation Defendant III or while in the operating room, is a patient in a helpless condition who entrusts himself to the Cassation Defendants in full. All parties other than the Cassation Appellant at that time were only Cassation Respondents and nurses working for the Cassation I Respondent so that all information from the Cassation Defendants and existing documents were made unilaterally by the Cassation Defendants.

Whereas the legal fact that occurs is that the Cassation Petitioner is unconscious, even before entering the operating room, so that it is not possible for the Cassation Appellant to know whether any of the Cassation Defendants really explained that they would carry out the circumcise action, let alone to give consent to circumcise actions that will be carried out by the Cassation Defendants; So it is very unfair and impossible to prove *Judex Facti*'s legal considerations which essentially argue that the Cassation Appellant must prove that the Cassation Appellant has been totally sedated.

Instead it was the Cassation Defendants who were supposed to prove that the Cassation Appellant in a conscious and fully understood condition would be carried out by the circumcise action. For this reason, the Cassation Defendants should prove their argument by providing a Medical Record / Medical Record of the Cassation Applicant requested by and become the right of the Cassation Appellant, thus violating Article 10 paragraph (2) and Article 14 of the Minister of Health Regulation Number 749A / Men.Kes / Per / XII / 1989, concerning Medical Records.

Decision of the Supreme Court on March 15, 1972, Number 549K / Sip / 1971, stated: "Based on jurisprudence, the Judge is free to give the burden of proof, more precisely if the evidence is charged to those who are better able to prove it". This is in accordance with the theory put forward by R. Subekti, the Judge should be able to share the burden of proof, in the last level emphasizing the consideration of justice R Subekti, 2001). Instead it must be maintained not to let the Judge order proof of something negative.

If the Judge absolutely follows these rules, namely that the one who argues is burdened with proof, then

the author believes that it will cause a burden of proof that is biased for him. Thus in the end it will not reach a good goal or outcome, because on one side it is told to prove something negative" (Teguh Samudera, 1992).

The Civil Law Renewal states that the judge who is aware of the meaning of his position will not forget that in dividing the burden of proof, he must act honestly and sportsmanship, will not impose on a party to prove things that cannot be proven. So, it is wrong and contrary to the law of *Judex Facti* consideration which states that the Cassation Appellant cannot prove the existence of an act of general anesthesia against the Cassation Applicant because the Cassation Defendants should prove otherwise by submitting a medical record / medical record of the Cassation Appellant, which the Respondents did not Cassation. Likewise, regarding the granting of permits to carry out circumcise actions that have never been conducted by the Cassation Appellant, so what happens after the Cassation Appellant is sedated is beyond the knowledge and awareness of the Cassation Appellant (Teguh Samudra, 1992).

*Judex Facti* has been mistaken in applying the law and violating the applicable legal rules (*schending van het recht*) by making a consideration: "that the Defendant I is not available to provide a medical record / medical record copy to the Plaintiff in the opinion that the Assembly is given or not given a medical record copy also does not cause Defendant I to exist or not to commit unlawful acts in connection with the Plaintiff's objection to the medical record/medical record's actions"; "Circumcise action is a medical action while not giving a copy of a medical record is an administrative action, therefore the objection or problem is not an act that qualifies as an unlawful act in the sense of civilization"; Judgment of *Judex Facti* has violated the law because Article 10 paragraph (2) Regulation of the Minister of Health RI Number 749A/ Men.Kes /Per / XII /1989, regarding medical records / medical records explicitly regulates that: "Fill in the patient's medical record. Medical records can be used as: a. Basic health care and treatment of patients; b. Material of evidence in law cases, c. Material for purposes research and education and d) the basis for payment of health service fees, materials for preparing health statistics.

It turned out that the Cassation Defendant I was not willing to provide a copy of the medical record / medical record of the Cassation Applicant requested by and be the right of the Cassation Applicant based on and Article 14. Therefore it is not excessive if the Cassation Appellant argued that the Petitioners'

Cassation filed to provide a medical record / medical record is to conceal the actual facts considering that the medical record contains all records and documents which include, among other things, examination, treatment, actions and other services to the Cassation Appellant while receiving medical services from the Cassation Defendants, who cannot / are prohibited to be deleted, as regulated Article 6 of the Regulation of the Minister of Health No. 749A/Men.Kes/Per/XII/1989, as follows:

- Correction of error of note is made on the wrong writing and given initial by the officer concerned;
- Abolition of writing in any way is not permissible "; Then the Judex Facti considerations which state that a copy of a medical record is an administrative action are therefore erroneous because the objection or problem is not an act that qualifies as an unlawful act in the sense of civilization, because it is clearly regulated in the above provisions that medical records are documents that are very important for the basic interests of maintaining the health and treatment of the Cassation Appellant, as well as for evidence in legal proceedings.

Errors or omissions of the Cassation Defendants are strictly a violation of the law, namely:

- The previous Cassation Appellant had never received an explanation, information from the Cassation Defendants regarding circumcise actions violating Article 2 paragraph (3) and (4) Regulation of the Minister of Health RI Number 585 / Men.Kes / Per / IX / 1989 concerning Medical Agreements;
- The Cassation Appellant never gives consent or permission in any form, to anyone to be carried out circumcise action against the Cassation Applicant violating Article 2 paragraph (1) and (2) Regulation of the Minister of Health RI Number 585 / Men.Kes / Per/ IX/1989 concerning Approval Medical;
- Until the Cassation Appellant is injected with drugs, the Cassation Appellant is never given an explanation and also gives approval for circumcise action, which has been acknowledged by the Cassation Defendants. If it is true that quod non, the arguments of the Cassation Defendants that there has been an explanation and approval of the Cassation Appellant before the circumcise, explanation and approval actions for circumcise actions are given under conditions of anesthesia or

unconscious, violating Article 8 paragraph (1) of the Regulation of the Minister of Health RI Number 585 /Men.Kes/Per/IX/1989 concerning Medical Agreements;

- Doctors who carry out surgical / surgical medical procedures (Respondent Cassation II) have never provided any explanation or information, while it is stipulated that information must be given by the doctor who will perform the operation violates Article 6 paragraph (1) of the Regulation of the Minister of Health of the Republic of Indonesia Number 585 / Men .Kes / Per / IX / 1989 concerning Medical Agreements;
- The Cassation Defendant III knew that there was no approval from the Cassation Appellant but still allowed the Cassation Defendant II to circulate the Cassation Applicant in violation of Article 12 paragraph (1) of the Regulation of the Minister of Health RI Number 585 / Men.Kes / Per / IX / 1989 concerning Medical Agreements;
- The Cassation Defendant I is also not willing to provide a copy of the medical record / medical record of the Cassation Applicant requested by and becomes the right of the Cassation Appellant and can prove the unlawful conduct of the circumcise act without permission to violate Article 10 paragraph (2) and Article 14 of the Minister of Health Regulation Number 749A / Men.Kes / Per / XII / 1989, regarding medical records / medical records.

Thus, it becomes clear and clear that the Court of Appeal has been mistaken by taking over the consideration of the District Court which violated the law and therefore the appeal petition of the Cassation Appellant on this matter was considered reasonable enough to be granted. So that the decision of the Banten High Court, dated September 1, 2005 Number 54/Pdt/2005/ PT. Banten and Tangerang District Court Decision March 3, 2005 Number, 221/ PDT.G /2004/PN.TNG. must be canceled.

Considering, that for these reasons the Supreme Court is of the opinion, objections cannot be justified because the High Court ruling that upholds the District Court's ruling has been correct and correct, that is not wrong in applying the law, objection regarding an award-proof evaluation of an the fact cannot be considered in the examination at the cassation level, because the examination at the cassation level only relates to not being implemented

or there is an error in the implementation of the law (Rahardjo, 2003).

## 4 CONCLUSION

Informed consent is the main door of doctors / medical personnel in carrying out their duties, so the role of informed consent is very important. From several cases it was found that the informed consent influence was made the main basis by the judge in assessing the causality of an act. Approval in medical actions that contain high risks must obtain written approval signed by the right of consent (P. R. Indonesia, 2004). Whereas if a medical action that is not at risk can be given with verbal consent. Essence of approval from informed consent in medical action between patient and doctor / health worker.

The model of protection and fulfillment of patient rights at the level of law enforcement (the court) is to apply the principle of inverse evidence to doctors / medical personnel, because it is more effective and open opportunities for patients to obtain justice. Keep in mind that, the application of this principle must be balanced, and not a negative thing (R. Indonesia, 2009).

## REFERENCES

- Afandi, D. (2009). *Mediasi: Alternatif Penyelesaian Sengketa Medis. Majalah Kedokteran Indonesia*, 59(5).
- Budianto, A. (2012). *Kasus Malpraktek Antara Penegakan Hukum dengan Rasa Keadilan Masyarakat*.
- Emanuel, L. (1999). *Latin for Lawyers*. Aspen Publishers.
- Faden, R. R., & Beauchamp, T. L. (1986). *A history and theory of informed consent*. Oxford University Press.
- Indonesia, P. R. (2004). *Undang-Undang Republik Indonesia Nomor 32 Tahun 2004 Tentang Pemerintahan Daerah*. Jakarta: UU RI.
- Indonesia, R. (2009). *Undang-undang Republik Indonesia nomor 36 tahun 2009 tentang Kesehatan*. Jakarta: Republik Indonesia.
- Jaya, P., & Serikat, N. (2004). *Pemberlakuan Hukum Pidana Secara Retroaktif Sebagai Penyeimbangas Legalitas Dan Asas Keadilan (Suatu Pergeseran Paradigma Dalam Ilmu Hukum Pidana)*.
- Kansil, C. (1991). *Pengantar hukum kesehatan Indonesia*. Rineka Cipta.
- Muhammad, A. (2004). *Hukum dan penelitian hukum*. Citra Aditya Bakti, Bandung.
- Mulyo, R. C. A. (2006). *Peranan Dokter Dalam Proses Penegakan Hukum Kesehatan (Studi Kasus Di Rumah Sakit Dokter Kariadi Semarang)*.
- Rahardjo, S. (2003). *Sisi-sisi lain dari Hukum di Indonesia*. Penerbit Buku Kompas.
- Satjipto, R. (2009). *Penegakan Hukum Suatu Tinjauan Sosiologis*. Yogyakarta: Genta Publishing.
- Sudra, R. I., & Pujihastuti, A. (2016). *Pengaruh penulisan dianosis dan pengetahuan petugas rekam medis tentang terminologi medis terhadap keakuratan kode diagnosis*. *Jurnal Manajemen Informasi Kesehatan Indonesia*, 4(1).
- Teguh, S. (1992). *Hukum Pembuktian Dalam Acara Perdata*. Alumni, Bandung.