

Informed consent that has Potentially Medical Malpractice

Abstract

The research analysis the philosophy of informed consent that has potentially medical malpractice in physicians-patient relationship. The research emphasizes the principle of equalization between doctor and patient. In reality, it is frequently no equality in physician-patient relationship, whereas patient has right to deserve maximum health service in accordance with the objective of national development – boosting the awareness, willingness and ability to live healthy for everyone. Health is one of public wealth and a human rights that protected by State and stated in Preamble and Article 28 H verse (1) The 1945 Constitution.

The type of the research is normative research and using regulations, conceptual, cases, and comparison as the approaches. The result of the research is filosofi of informed consent (lack of informed consent) that has potentially medical malpractice in physicians or medical worker-patient relationship. Principally, informed consent is a basic right given by God to every human being and it is universal in scope. Therefore, any medical action conducted by physician has to obtain patient's consent and guaranteed by Constitution.

Informed consent is regulated by the Regulation of Ministry of Health Number 290/Menkes/PER/III/2008 on Informed Consent. Regulation of Ministry of Health is published prior to the Law on Hospital. The regulation only details the procedure of informed consent administratively. Some of the Attorney General decisions does not state the principle of informant consent but only states the negligence of physician and it refers to Indonesia Law Code Article 359 that states the negligence as mistake or carelessness.

The result of research recommends the amendment of Law on Hospital, especially on the addition of strict sanction. In any medical action, informed consent should be conducted. By this amendment, informed consent will not refer to Law Code Article 359 anymore but to Law on Hospital.

Key Words: informed consent, physician, patient, and medical malpractice