CRIMINAL LIABILITY OF PERPETRATORS OF ILLEGAL MEDICAL PRACTICES
(Perspective of Law Number 17 of 2023 Concerning Health)

Muhammad Reski Ansyah1, Abdul Razak Nasution2

12Universitas Pembangunan Panca Budi.

Email: tehbotolayam96@gmail.com

ABSTRACT
In connection with this, Legislation in the Health Sector was made. Based on Article 1 paragraph (1) of Permenkes No. 2052/MenKes/Per/X/2011 concerning Practice Permits and Implementation of Medical Practices, "Medical practice is a series of activities carried out by doctors against patients in carrying out health efforts". The doctor has a Registration Certificate (STR) or has officially held the profession of doctor, dentist, specialist doctor, specialist dentist. After having an STR, a doctor who wants to practice medicine is required to have a Practice License (SIP). The obligation to have a SIP is contained in Permenkes No. 2052/MenKes/Per/X/2011 concerning Practice License and Implementation of Medical Practice. This research uses normative juridical research, as for what is meant by the type of normative juridical research is library legal research because in normative legal research is carried out by examining library materials or secondary data only, where the data collection tool used in research is by library research. The results of this study are that the legal relationship between doctors and patients is regulated by law as an agreement. As a result, doctors are required to carry out the object of the engagement in accordance with their professional expertise. As a result, a doctor can be held legally liable in both criminal and civil courts. In terms of criminal law, a doctor who does not carry out his duties and profession in accordance with the procedure may be subject to a number of provisions of the Criminal Code, especially due to negligence resulting in the death of the patient.

Keywords: Liability, Criminal Offender, Illegal doctor practice

I. INTRODUCTION
Health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation as referred to in Pancasila and the 1945 Constitution of the Republic of Indonesia. Every activity in an effort to maintain and improve the highest degree of public health is carried out based on the principles of nondiscriminatory, participatory, and sustainable in the context of the formation of Indonesian human resources, as well as increasing the resilience and competitiveness of the nation for national development. Things that cause health problems in Indonesian society will cause great economic losses for the country, and every effort to improve the degree of public health also means investment in the country's development.

Health development efforts in the Republic of Indonesia are a mandate from the Constitution, therefore the government continues to strive to improve the quality of health development in Indonesia. The issuance of Law Number 17 of 2023 concerning Health is
proof that the government is very serious in improving the development of public health services. It is explained in Article 1 of Law Number 17 of 2023 that Health Efforts are all forms of activities and/or a series of activities carried out in an integrated and sustainable manner to maintain and improve public health in the form of promotive, preventive, curative, rehabilitative and/or palliative by the Government. Center, Regional Government, and/or the community.

In general, this Law contains subject matter including General provisions, Rights and obligations, Responsibilities of the Central Government and Regional Governments, Health Implementation, Health Efforts, Health Service Facilities, Health Human Resources, Health Supplies, Pharmaceutical Security and Medical Devices, Outbreaks and Outbreaks, Health Funding, Coordination and synchronization of health system strengthening, community participation, guidance and supervision, investigation, criminal provisions, transitional provisions and closing provisions. And with the enactment of Law No. 17 of 2023 concerning Health, 11 (eleven) Laws are revoked and declared invalid (Article 454 of the Health Bill).

Illness is an example that humans (sufferers) are weak and need someone who can fulfill their needs to be healthy. Health services basically aim to carry out prevention and treatment of diseases, including medical services that are carried out on the basis of an individual relationship between doctors and patients who need healing.

Health as a human right must be realized in the form of providing various health efforts to the entire community through the implementation of quality and affordable health development for the community, the implementation of medical practice which is the core of various activities in the implementation of health efforts must be carried out by doctors who have high ethics and morals.

Expertise must be continuously improved through continuing education and training, certification, registration, licensing, as well as guidance, supervision, and monitoring so that the implementation of medical practice is in accordance with the development of science and technology. To provide protection and legal certainty to recipients of health services, doctors, and dentists, it is necessary to regulate the implementation of medical practice.

The government expects all health workers to be able to provide optimal quality of health services without any compulsion in carrying out their duties, both in government, private, and independent or individual practice services which are generally carried out by doctors. As stated in Article 1 paragraph 2 of Law Number 17 of 2023 concerning Health, states that: "Health Efforts are all forms of activities and/or a series of activities carried out in an integrated and sustainable manner to maintain and improve the degree of public health in the form of promotive, preventive, curative, rehabilitative, and/or palliative by the Central Government, Regional Government, and/or the community. With the awareness and compliance of Human Resources (doctors and dentists), the government will be easier in providing guidance and supervision of medical services.

In this regard, Legislation in the Health Sector was made. Based on Article 1 paragraph (1) of Permenkes No. 2052 / MenKes / Per / X / 2011 concerning Practice Permits and Implementation of Medical Practices, "Medical practice is a series of activities carried out by doctors against patients in carrying out health efforts". The doctor has a Registration Certificate (STR) or has officially held the profession of doctor, dentist, specialist doctor, specialist dentist. After having an STR, a doctor who wants to practice medicine must have
a Practice License (SIP). The obligation to have a SIP is stated in Permenkes No. 2052/MenKes/Per/X/2011 concerning Practice License and Implementation of Medical Practice.

1. Every health worker who practices in the field of health services must have a license.
2. The license as referred to in paragraph (1) is given in the form of a SIP.
3. SIP as referred to in paragraph (2) shall be granted by the district/city government upon the recommendation of the authorized health official in the district/city where the Health Worker is practicing.
4. To obtain SIP as referred to in paragraph (2), Health Workers must have:
   a. STR which is still valid;
   b. Recommendation from Professional Organization; and
   c. Place of practice.
5. SIP as referred to in paragraph (2) is each valid for only 1 (one) place.
6. SIP is still valid as long as:
   a. STR is still valid; and
   b. the place of practice is still in accordance with that stated in the SIP.
7. Further provisions regarding licensing as referred to in paragraph (1) shall be regulated by Ministerial Regulation.

   Based on this, it is also in accordance with Article 2 paragraph (1) of the Regulation of the Minister of Health of the Republic of Indonesia Number 2052 / MENKES / PER / X / 2011 concerning Practice Licenses and Implementation of Medical Practices which states that every Doctor and Dentist who practices medicine must have a SIP.

Doctors and dentists with their scientific instruments have distinctive characteristics. This distinctiveness can be seen from the justification given by the law, namely the permissibility of carrying out medical actions against the human body in an effort to maintain and improve health status. Medical treatment of the human body that is not performed by a doctor or dentist can be classified as a criminal offense. Criminal sanctions can be imposed on crimes or violations committed against laws and regulations including in the health sector, especially those related to the implementation of unlicensed medical practices which of course can be dangerous for people who need health services.

The consequences for every health worker who carries out practice without having a license, the criminal provisions are contained in Article 86 paragraph (1) of Law Number 36 of 2014 concerning Health Workers, as punishable by a penalty of a maximum fine of Rp.100,000,000.00 (one hundred million rupiah). In addition, Article 76 of Law Number 29 of 2004 concerning Medical Practices also states that the consequences for doctors or dentists who deliberately practice medicine without having a license to practice can be punished with imprisonment of up to 3 (three) years or a maximum fine of Rp100,000,000.00 (one hundred million rupiah).

**LITERATURE REVIEW**

Criminal Liability

There are two views of criminal responsibility, namely the monistic view and the dualistic view. The monistic view was put forward by Simon who formulated strafbaar feit as an act that the law threatens with punishment, contrary to the law, committed by a guilty person and that person is considered responsible for his actions. According to the monistic school, the elements of the strafbaar feit include both the element of the act, which is
commonly referred to as the objective element, and the element of the maker, which is commonly called the subjective element. Therefore, the unification of the elements of the act and the elements of the maker can be concluded that the strafbaar feit is the same as the conditions for imposing punishment, so it is as if it is considered that if the strafbaar feit occurs, it is certain that the perpetrator can be punished.

Roeslan Saleh argues that criminal responsibility is defined as the continuation of objective reproaches that exist in criminal acts and subjectively qualify to be punished for their actions. The basis for the existence of a criminal act is the principle of legality while the basis for criminalizing an act is the principle of guilt. This means that the perpetrator of a criminal act will only be punished if he/she has a fault in committing the criminal act. When a person is said to have fault concerns criminal liability.

The most important element of criminal liability is fault. With the element of guilt, not all perpetrators of criminal acts can be sentenced, this is in accordance with the principle of responsibility in criminal law is "geen straf zonder schuld; Actus non facit reum nisi mens sit rea" which means that no one is punished if there is no guilt. This principle is not formulated in written law but in unwritten law which is also applicable in Indonesia. Because fault is the determinant in determining the criminal liability of the perpetrator of a criminal offense. Therefore, to determine the existence of fault, a person must fulfill several elements, namely:

a. The existence of the ability to be responsible for the perpetrator;
b. The inner relationship between the perpetrator and his/her actions in the form of intent (dolus) or negligence (culpa) which is referred to as a form of guilt;
c. There is no reason for the elimination of fault or no excuse.

Perpetrators of Criminal Acts

The word perpetrator or maker (Dutch: dader) in this case means the person who commits or the person who makes the wrongdoing in a criminal event. To be able to know or define who is the perpetrator or daader is not difficult but also not too easy. There are many opinions on what constitutes a perpetrator. Satochid Kertanegara said dader with the term perpetrator, while Moeljatno gave the term dader as a maker. Makers according to Article 55 of the Criminal Code are divided into 3, namely the perpetrator (dader), the person who participates (mededader), and the person who persuades / encourages (uitloker). The perpetrator of a criminal offense is only him, whose actions or omissions fulfill all the elements of the offense as contained in the formulation of the offense concerned, whether expressly stated or not expressly stated.

The form or forms of deelneming participation are medeplegen and assistance (medeplichtigheid) which are contained in Articles 55 and 55. Article 56 of the Criminal Code (KUHP). The purpose of formulating criminal offenses in the law either as crimes or offenses is aimed at persons (subjects of criminal law) and only some criminal offenses are aimed at a legal entity found outside the Criminal Code.

The legal subject mentioned and intended in the formulation of a criminal offense is only one person, not several people. However, it often happens that the subject of a criminal offense is committed by more than one person. In this case, it is called participation or Deelneming. Participation or deelneming is an understanding that includes all forms of participation/involvement of people or persons both psychologically and physically by committing each act so as to create a criminal offense. Participation is regulated in Articles
55 and 56 of Law Number 1 of 1976 on the Regulation of Indonesian Law (Criminal Code). Articles 55 and 56 regulate the categories of acts committed that are included in participation or assistance, whether they are included or not.

The criminal provision in Article 55 of the Criminal Code according to its formulation reads:
1. Punished as perpetrators of a criminal offense, namely:
   a. Those who commit, order to commit or are co-perpetrators;
   b. Those who by gifts, promises, by abuse of power or visibility, by force, threat or by causing misunderstanding or by providing opportunities, means or information, have intentionally induced others to commit the criminal offense concerned.
2. In respect of the last-mentioned persons, only those acts for which they have intentionally induced another person to commit, and the consequences thereof, shall be held accountable.

According to the Criminal Code, a co-perpetrator is any person who intentionally participates in the commission of a criminal offense. Initially, what is referred to as co-perpetration is that each participant has committed an act that equally fulfills all the formulations of the criminal offense concerned.

The Criminal Code in Article 55 if examined according to the arrangement, it can be seen that the classification of perpetrators is:

a. Those who commit (pleger)
   This person is a person who alone has acted to realize all the factors or elements of the criminal event. In the event of a crime committed in office, for example, the person must also fulfill the element of status as a public servant.

b. Those who order to commit (doen pleger)
   Here there are at least two people who ordered (doen plegen) and who was ordered (pleger). So it is not the person himself who commits the criminal event, but he orders someone else, even though he is still considered and punished as a person who commits the criminal event himself, but he orders someone else, the order (pleger) must only be an instrument (instrument) only, meaning that he cannot be punished because he cannot be held accountable for his actions.

c. Persons who are co-perpetrators (medepleger)
   Co-conspirator in the sense of the word jointly committed. There must be at least two people, namely the person who commits (pleger) and the person who participates (medepleger) in the criminal event. Here it is required, that the two people all perform the act of execution, so perform the factors or elements of the criminal event. It is not allowed, for example, to only carry out preparatory actions or actions that are only helpful in nature, because if so, then the person who helps is not included in the medepleger but is punished as helping to commit (medeplichtige) mentioned in Article 56 of the Criminal Code.

Medical Practice Without a License from the Ministry of Health

Every medical and health worker who practices must have a practice license, commonly known as a Practice License (SIP). The Practice License is issued by the local government upon recommendation from an authorized health official. The Legal Basis for a Practice License (SIP), found in Article 13 Paragraphs (1) and (2) of Law Number 44 of 2009 concerning Hospitals, states that: "Medical personnel who practice medicine in
hospitals are required to have a license to practice in accordance with the provisions of laws and regulations". Certain health workers working in hospitals are required to have a license in accordance with the provisions of laws and regulations.

Article 46 of Law Number 36 of 2014 concerning Health Workers states that:
1. Every health worker who practices in the field of health services must have a license.
2. The license as referred to in paragraph (1) is given in the form of SIP.
3. The SIP as referred to in paragraph (2) shall be granted by the district/city government upon the recommendation of the authorized health official in the district/city where the Health Worker is practicing.
4. To obtain SIP as referred to in paragraph (2), Health Workers must have:
   a. STR which is still valid;
   b. Recommendation from Professional Organization; and
   c. Place of practice.
5. SIP as referred to in paragraph (2) is each valid for only 1 (one) place.
6. SIP is still valid as long as:
   a. STR is still valid; and
   b. the place of practice is still in accordance with that stated in the SIP.
7. Further provisions regarding licensing as referred to in paragraph (1) shall be regulated by Ministerial Regulation.

Article 36 of Law Number 29 Year 2004 on Medical Practice states that: "Every doctor and dentist who practices medicine in Indonesia must have a license to practice". This is also in accordance with Article 2 paragraph (1) of the Regulation of the Minister of Health of the Republic of Indonesia Number 2052 / MENKES / PER / X / 2011 concerning Practice Permits and Implementation of Medical Practice which states that every doctor and dentist who practices medicine must have a SIP.

The consequences for every health worker who practices without a license are the criminal provisions contained in Article 86 paragraph (1) of Law Number 36 of 2014 concerning Health Workers, as punishable by a maximum fine of Rp100,000,000.00 (one hundred million rupiah). In addition, there is a threat of practicing without a license contained in Article 76 of Law Number 29 of 2004 concerning Medical Practice, Every doctor or dentist who intentionally practices medicine without having a license to practice as referred to in Article 36 shall be punished with imprisonment for a maximum of 3 (three) years or a maximum fine of Rp 100,000,000.00 (one hundred million rupiah). Criminal threats for practicing without a license only exist in Law Number 29 of 2004 concerning Medical Practices.

II. RESEARCH METHOD

The nature of the research used by the author in this legal writing is descriptive analytical because this research describes in detail the social phenomena that are the subject matter. A descriptive study is intended to provide data as accurately as possible about humans, circumstances or other symptoms. This research uses normative juridical research, as for what is meant by the type of normative juridical research is library legal research because in normative legal research is carried out by examining library materials or secondary data only, where the data collection tool used in the research is by library research. This library research is intended to obtain secondary data by studying literature, laws and regulations, theories, opinions of scholars and other matters relating to the subject matter.
III. RESULTS AND DISCUSSION

Legal Liability of Illegal Practicing Physicians.

Law Number 36 of 2009 is basically intended to improve the degree of public health and meet the demands of health development by replacing laws in the health sector that are considered no longer in accordance with current conditions. This is certainly adjusted to the great enthusiasm for the development and development of human resources. Health resources according to Law Number 36 of 2009 Chapter V explains that the environment or scope is Health Workers, Health Service Facilities, Health Supplies, and Technology and Health Technology Products.

The authority of doctors in dealing with patients has been emphasized in Law No. 36 of 2009, specifically in articles 24, 25, 26, 27, 28 and 29. These articles expressly state that a doctor or other health worker cannot without going through certain procedures or having certain expertise in carrying out his duties as a doctor or health worker.

The significance of establishing health resources in a law such as Law Number 36 of 2009 is that the provision of health for the Indonesian population will increase. New health workers. Armed with experience and diplomas only, with proper training and management development, they gradually improve to become experienced and skilled personnel. This certainly encourages efforts to improve health as before. Adequate health facilities such as clinics, health centers, hospitals and others will increase the enthusiasm of the community to be more careful about various symptoms of disease, so that they always support health care efforts.

On the other hand, poor and unmaintained health facilities are the beginning of people's reluctance to be healthy. One of the distinctive features of the medical profession is that it is considered very noble by society because it deals directly with humans as objects and is related to human life and death. People have known since ancient times that a doctor must possess certain fundamental traits, such as good social integrity and prudent behavior. As a result, if something goes wrong in the treatment of a patient, whether it results in disability or death, patients/families often ignore it because they believe it is God's will. However, this view changes when we hear and learn more about doctors being sued by patients or their families.

According to the law, every responsibility must have a basis, namely matters that give rise to a person's legal right to sue another person and matters that give rise to another person's legal obligation to provide accountability. In general, the principles of responsibility in law are distinguished as follows: 1. the principle of responsibility based on fault; 2. the principle of presumption of responsibility; 3. the principle of presumption of irresponsibility; 4. the principle of strict liability; 5. the principle of limitation of liability.

Criminal Liability of a Doctor

The duties and profession of doctors do not rule out the possibility of making one or more mistakes. This issue really needs to be discussed or debated because it is quite clear that committing mistakes will have more serious consequences, especially the damage to trust in the health profession, the good name of the professional group, and those who have used the services of the profession.

According to Berkhover and Vorstam, in an article written by Soerjono Soekanto and Mohamad (1983), a doctor commits misconduct if he does not act in accordance with
his professional obligations. The Act further confirms this formulation by stating that "a doctor commits misconduct if his behavior does not conform to the general guidelines regarding the reasonableness expected of fellow professionals in the same circumstances and in the same place". Based on these two formulations, it can be assumed that doctors cannot be separated from the criminal and civil responsibilities they carry in carrying out their duties.

If a doctor is held accountable under criminal law, he must do so in accordance with the provisions of the Criminal Code. A doctor who violates the law by committing a criminal offense may be held liable if he or she violates one or more of the provisions set out in Articles 359, 360, and 361 of the Criminal Code. This provision is absolutely applicable, meaning that if a doctor commits an act that violates the provisions of the Criminal Code, he or she must be held liable.

It should also be noted that liability arises if it can be proven that the doctor violated the conditions of the crime. Crimes in the field of medicine can be categorized in two ways, namely "negligence" (culpa) committed by the doctor and the element of "intent" (dolus). Previously, it is important to explain the other side of medical crime, or what is commonly referred to as "malpractice". Malpractice is the act of a doctor who is not careful in carrying out his professional duties.

Basically, we do not find the exact measure of a person's actions that are considered careless, especially health workers such as doctors, in the rule of law, but rather in the freedom of the judge who examines it. The emergence of malpractice begins with the relationship between patient and doctor. This relationship provides an opportunity for the birth of rights and obligations of both parties between the patient and the doctor. The transaction between the doctor and the patient indicates that the doctor must use his intelligence and knowledge as a doctor; in this case the patient is obliged to pay an honorarium to the doctor.

The negligence of the doctor that causes harm to the patient results in the patient's right to sue the doctor. An example of a malpractice case is a patient with a diagnosis of septal nephrolithiasis who agreed to undergo surgery to remove the left kidney stone. When the operation was performed, the x-ray used as a guide for the operation was placed upside down by the doctor so that the right kidney was visible.

As a result, the surgeon operated on the healthy right kidney. It was only realized after the surgeon did not find kidney stones in the patient's operated kidney, and in the end, the patient died. The doctor's actions above basically violated the provisions of Article 359 of the Criminal Code and resulted in an unlawful act. and in the end, the patient died. The doctor's actions above basically violate the provisions of Article 359 of the Criminal Code and result in illegal acts. and in the end, the patient died. The doctor's actions above basically violate the provisions of Article 359 of the Criminal Code and result in unlawful acts. In general, doctors who intentionally let their patients suffer without providing help can face prosecution.

Doctors should not choose certain conditions to perform medical actions, especially when it comes to someone's life. Another aspect that becomes an issue of medical crime is the disclosure of medical secrets disclosed by the patient by recalling the oath of office and the secrets of the office he or she holds.

Medical secrets are defined in Regulation of the Minister of Health No. 36/2012 as data and information about a person's health obtained by health workers during the course
of their work or profession, which includes the patient's identity, anamnesis, physical examination results, supporting examinations, diagnosis, treatment, and medical actions, as well as other matters. Keeping medical secrets is both moral and legal. Moral obligations are based on the Indonesian Medical Code of Ethics, as well as legal obligations regulated in Law Number 29 of 2004 concerning Medical Practice and Minister of Health Regulation Number 36 of 2012 concerning Medical Confidentiality.

The problem that often arises is when doctors operate on patients without patient consent on the basis of media indications, or vice versa, without media indications but with patient consent, all of which have a negative impact on patients. If the act is in accordance with the elements of the law, it is said to be unlawful (wederrechtelijk). According to KAP Lamintang, Van Hattum has divided violations of law into formal and material forms.

In the formal sense, an act can only be considered a violation of law if it fulfills all the elements contained in the legal formulation of an offense. Meanwhile, an act can be considered unlawful or not, not only in terms of the provisions of written law, but also in terms of general law and unwritten law. To respond to this statement, an in-depth analysis is required. The analysis focuses mainly on the function of consent, which can eliminate the illegal nature. First of all, it is mentioned that if a doctor performs surgery on a patient based on media indications, then the surgery is justified. This is because the surgery is based on the doctor's professional authority, which is recognized by laws and regulations governing the rights and authority of doctors in applying their professional knowledge and skills. In reality, patient consent is not a general basis for making an exception to the occurrence of a criminal event. An agreement can only eliminate the unlawfulness in certain circumstances, such as the violation of public rights, as demonstrated by a boxing match.

This situation raises the question: can the act of dissection be classified as persecution under the Criminal Code? This depends on the intention and awareness of the act committed. According to the Penal Code, persecution is an intentional act to cause harm that is not motivated by a legitimate aim. Surgery is a medical procedure performed in accordance with the methods and objectives of the medical profession. On that basis, it cannot be qualified as persecution. This argument by itself proves that a doctor need not fret and worry because normal surgery is not a crime, even if the outcome is not favorable to the patient. Professional authority recognized by the law is an unwritten exception for the doctor: that he can only be sued if he commits violence relating to the circumstances without the patient's consent.

In other instances, the doctor cannot be sued even in the absence of the patient's consent, as long as the actions he takes are sufficient to protect the patient's interests. One thing that needs to be known is that medical actions performed by a doctor, even with the consent of the patient, if there is no medical indication for the action taken, are still criminal. This is because the action does not have a specific purpose that is considered appropriate. The existence of criminal liability can be seen or proven by the existence of professional errors, such as errors in diagnosis or errors in healing and treatment.

Determining the existence of professional misconduct automatically requires the opinion or evidence of experts who can provide professional data to the judge handling the case. According to medical science, to determine whether a doctor has committed an error, there must first be a provision regarding the error, which is then determined by law whether the error results in criminal liability.
The error must have a causal relationship with the result, and the error also gives rise to criminal liability. Professional errors need not be accompanied by criminal liability, as death or disability is not always caused by them. In this case, the doctor cannot be punished. In other circumstances where the professional conduct is carried out as a team, the wrongdoer bears the responsibility because it is through the wrongdoing that the fault exists.

Civil Liability of a Doctor

In Indonesia, until recently, there were probably still few who realized how many problems would be returned to the civil liability of a doctor. Civil liability for a doctor occurs when a patient sues the doctor to pay damages for actions that harm the patient.

The author gives the example of a patient (A) contacting doctor B at the place of practice to ask for help so that treatment is carried out and taken. The question arises: as long as he practices medicine, what is the legal relationship between the patient (A) and the doctor (B)?

This question can be examined from both medical and legal perspectives. According to medical science, the term "informed consent" refers to consent based on the principle that every human being has the right to participate in decisions concerning him or her.

The above principles are independent of the following conditions: 1) the patient must have sufficient information to make decisions regarding his/her own treatment; 2) The patient must give consent to the treatment of himself, either orally or in writing explicitly or implicitly.

As for the legal science aspect, the principles and requirements based on the first point above are based on two things, namely: First, the relationship between patients and doctors is fiduciary, which is a relationship based on the belief that doctors have high professional abilities to treat people who are sick or whose health is disturbed. The party who gets trust in this case, namely the doctor, must be able to carry out his obligations elementarily, carefully and must keep media data confidential for the patient. Secondly, a mentally healthy person has the right to make decisions about himself and the fate of his body; in other words, a patient should not be forced to accept a particular course of treatment, even if that course of action is deemed best by the doctor performing it.

Apart from the principles and conditions described above, according to civil law an agreement is called an agreement because two parties have agreed or promised each other to do something. An agreement is a legal relationship between two people or parties based on which one party is entitled to demand something from the other party and the other party is obliged to fulfill the demand. For example, if a patient makes an agreement with a doctor, then that agreement is also a contract for them. The involvement of medical personnel and hospitals in this case is as a party and means of assisting the implementation of the agreement between the doctor and the patient. Civil law basically regulates the interests of individuals with each other in the order of social life.

This is in accordance with the limits set in civil law, which regulates legal relationships between two people. An agreement will give rise or cause an agreement between the patient and the doctor as a result of the consultation and treatment requested by the patient from the doctor. The patient-doctor relationship can be classified as an engagement to do or do something. The doctor in this case must perform, namely trying and
trying to cure the patient and his illness but not promising that the patient will definitely recover and on the other hand the patient still has to pay an honorarium to the doctor who treats him. in the event that the doctor cannot carry out his obligations to the patient or patient in accordance with the agreement that has been reached. Together, doctors can be declared to have committed default or breach of promise and can be held liable to pay compensation.

Compensation for doctors due to default can be traced to Article 1234 of the Civil Code, which is the reimbursement of costs, losses and interest due to the non-fulfillment of an agreement. This is only required if the debtor, after being declared negligent in fulfilling the obligation, is negligent. The unlawful act or onrechtmatigedaad stipulated in Article 1365 of the Civil Code states: every unlawful act that causes damage to another person obliges the person who by mistake incurs the loss, to compensate for the loss. Article 1371 paragraph 1 of the Civil Code further specifies that the cause of injury or disability to the limbs is intentional or reckless, giving the victim the right to be compensated for the cost of healing and compensation for losses caused by the injury or disability.

The aforementioned articles emphasize that the doctor's responsibility as a party to the agreement with the patient has been determined by legislation. The doctor's civil liability occurs if the patient sues the doctor to provide compensation based on actions that harm the patient. Regarding violations committed by doctors, it should not only be based on formal legal violations of written legal norms, but also on non-formal legal norms such as religious norms, customary norms, moral norms, and so on.

Even so, in the event that a person has caused another person to suffer loss, the law still provides an opportunity to make a defense and the obligation to pay compensation by stating certain reasons so that he is exempted from the obligation to pay compensation. One of the articles that mentions the reasons for the doctor's defense is Article 1244 of the Civil Code, which reads: "If the reason is that the debtor must be sentenced to reimburse costs, losses, and interest, if he cannot prove that he did not or did not carry out the obligation at the right time", that due to an unexpected thing, he cannot be held responsible for all of it, even if it is not bad faith on his part. responsibility for the actions he has taken. An order given by a doctor to a nurse who is his subordinate requires the doctor to supervise the implementation of the order. Routine doctor's orders are automatically taken into account by the nurse herself.

The greater the skills and rights of a nurse, the greater the legal responsibility. The main measure in the event of default or tort is carelessness in performing professional acts. The death of a patient due to a doctor's professional error automatically causes the husband or wife or their heirs to be entitled to claim compensation, as stipulated in Article 1370 of the Civil Code. In the case of intentional homicide or due to someone's carelessness, the husband or wife left behind, the victim's children or parents, who usually earn a living, and the victim's occupation are entitled to claim compensation, which must be assessed according to the second position and wealth of the parties, and according to the circumstances.

IV. CONCLUSION

Based on the above explanation, it can be concluded that:
1. The legal relationship between doctors and patients is regulated by law as an agreement. As a result, doctors are required to carry out the object of the agreement in accordance
with their professional expertise. As a result, a doctor can be held legally responsible in both criminal and civil courts.

2. In terms of criminal law, a doctor who does not carry out his duties and profession in accordance with procedures may be subject to a number of provisions of the Criminal Code, especially due to negligence resulting in the death of a patient.

3. Meanwhile, according to civil law, any unlawful act that causes harm to another person, obliges the person who through his mistake caused the loss to compensate for the loss. Intentional or negligent causing of injury or disability to a limb entitles the victim to compensation for the cost of healing as well as compensation for losses caused by the injury or disability. Doctors' violations should not only be based on violations of formal law relating to written legal norms, but also violations of non-formal legal norms such as religious norms, customary norms, norms of decency, and so on.

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