

ABSTRACT

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RES IPSA LOQUITUR DOCTRINE AS A LEGAL PROTECTION EFFORT AGAINST VICTIMS OF AESTHETIC PLASTIC SURGERY MALPRACTICES (COMPARATIVE STUDY OF INDONESIA WITH SOUTH KOREA)

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Medical malpractice cases in Indonesia, especially with regards to plastic surgery are regulated by Article 66 of Law Number 29 of 2004 concerning Medical Practice and Article 1365 of the Civil Codes as a Lawsuit of Unlawful Act triggered by indications of negligence and noncompliance of medical procedures against professional standard, standard operating procedures, and/or applicable laws and regulations. The res ipsa loquitur doctrine as civil evidence in medical disputes, plays a role in providing justice for patients, it doesn't require patients to prove negligence committed by the doctors, but based on the available facts. This study was conducted by using normative law supported by a comparative law approach. This study assessed the comparison of legal protection regulations, doctors' accountabilities, as well as the implementation of res ipsa loquitur doctrine to the medical malpractice cases through lawsuit against the law, between Indonesia and South Korea. It can be concluded that medical malpractice by suspected doctors committing negligence in Indonesia and South Korea has been integrated into the legal regulations under health law, although the term of "malpractice" is not expressly regulated. The regulation of plastic surgery is not significantly regulated by both countries, thus the patients are confused by how to initiate complaints or to prove the negligence committed by the doctors in plastic surgery. Both countries already have legal rules with regards to indirect evidence (res ipsa loquitur doctrine) which can be applied by patients in Article 1866 of the Civil Code, Article 1922 of the Civil Code and Article 288 of the Korean Civil Procedure Act. Res ipsa loquitur doctrine should be properly implemented by law enforcers through application in medical malpractice cases decisions.

Reference : 80 (1982-2022)

Keywords : res ipsa loquitur, plastic surgery, medical malpractice.