

ABSTRACT

Alexander Shenjaya (01051180158)

“RES IPSA LOQUITUR DOCTRINE IN RELATION TO THE LAWSUITS ACTION FILED IN AGAINTS ALLEGED MEDICAL MALPRACTICE (CASE STUDY OF DECISION NO. 1366 K/PDT/2017)”

(xii + 120 pages)

The Lawsuit for alleged medical malpractice has been stipulated in Article 1365 of the Indonesian Civil Code as well in Article 66 of Medical Practice Law Number 29 of 2004. *Res Ipsa Loquitor* as a doctrine in a civil field has a role to determine that the party that caused an unlawful act by negligence doesn't have to consider the negligence. Basically, the efforts given by a doctor doesn't necessarily provide healing because there are several risks that may arise and of course doctors in providing medical services will try as much as possible (*in spanning verbintenis*). However, in case where malpractice is indicated, certainly it will be difficult for the victim to prove that there was a mistake made by the perpetrator and in this case, the role of the judge is to provide the aspects of justice for the parties, one of which can be seen in Verdict number 1366 K/PDT/2017. Furthermore, it is therefore necessary to have an in-depth analysis in relations to alleged malpractice and how is it applicable to res ipsa doctrine in cases of alleged medical malpractice in Indonesia. This research that is conducted will utilize normative legal research methodology, in which its results will show that the norms for alleged medical malpractice have been regulated in Article 1365 of Civil Code and Article 44 of Medical Practice Law Number 29 of 2004. Moreover, the implementation of res ipsa loquitor in a unlawful act lawsuit in Verdict Number 1366 K/PDT/2017 has not yet been implemented properly and penal of Judges considers that the lawsuit is premature although further examination has been carried out. Based on these results, it can be concluded that the regulation in regard to suspected medical malpractice in Indonesia has been adequately regulated, but in accordance to Article 66 section 1 and article 66 section 3 still needs observed because it can lead to an inconsistency in regards who is authorized to carry out the examination. Furthermore, if it is related to Verdict number 1366 K/PDT/2017, the res ipsa loquitor doctrine cannot be implemented properly even though it can be proven that the trifecin product does not have a clear identity and does not include the expiration date of the drug, then this doctrine should be able to strengthen the judge's consideration in deciding the case

Keywords: Unlawful acts, res ipsa loquitor doctrine, medical malpractice

Reference: 73 (1993-2021)