

MEDICAL LAW IN INDONESIA: ITS HISTORY AND DEVELOPMENT

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ABSTRAK

The attention upon the medical law in Indonesia increases in line with the emergence of the medical malpractice issue. Medical law grows hand in hand with Health Law. Since the Indonesian legal system is very much influenced by the European Continental Legal System, the source of Medical Law and Health law are mainly in the form of legislation. The Medical Practice Act 2004 (Undang-undang Nomor 29 Tahun 2004 Tentang Praktik Kedokteran) and The Health Act 2009 (Undang-undang Nomor 36 Tahun 2009 Tentang Kesehatan) are the most important sources of both Medical Law and Health Law in Indonesia. The Medical Practice Act 2004 governs the rule of the medical practice. This Act was enacted in responding the medical malpractice crisis taking place in Indonesia in 2003. This Act basically aims to establish good medical practice and to avoid malpractice accordingly.

This paper will elaborate the history and the development of the medical law especially in connection with the issue of medical practice in Indonesia. A normative legal research has been conducted in finding out all necessary and relevant data (legal materials) to support the writing of this paper.

Keywords: medical law, health law, medical practice, Medical Practice Act 2004, and Health Act 2009

A. INTRODUCTION

Medical law in particular or health law in general, is a new subject matter of the legal study in Indonesia. Even though the

practice of medicine and the regulation on medical practice has existed since the colonization era¹, however the term medical law was just known in nineteen eighties. During

¹ Indonesia as a nation state was established in 1945 through a proclamation of independence on August 17th, 1945. During colonization, this region was named Nederlands Indie or Hindia Belanda in local term.

colonization, the practice of medicine was governed by *Het Reglement de op Dienst der Volksgezondheid – Staatsblad 1882 Nomor 97*, a regulation on public health enacted by the colonial regime in 1882, and its operational rules. It seems that it was the most important rule governing the medical practice available in that time. Beside relied on the mentioned rule, to some extent the practice of medicine was also under control of the penal code as well as the civil code².

There are several provisions in the Indonesian Penal Code (IPC) related to medical profession, such as:

- a) Section 267 of the Indonesian Penal Code prohibits the doctor to issue a false health information letter;
- b) Section 294 point (2) of the Indonesian Penal Code prohibits the doctor to commit indecency against his patient;
- c) Section 322 of the Indonesian Penal Code rules the prohibition of the disclosure of the patient's secrecy;
- d) Section 344 of the Indonesian Penal Code rules the prohibition of euthanasia;
- e) Section 349 of the Indonesian Penal Code rules the prohibition of the involvement in illegal abortion;
- f) Section 351 of the Indonesian Penal Code prohibits anyone causing harm to another which is applicable for doctor who exercised medical treatment without his patient's consent;
- g) Section 359 of the Indonesian Penal Code provides the criminal sanction upon a negligent act causing death of another. This law is applicable to doctors who cause death of their patients due to negligent conduct; and
- h) Section 360 of the Indonesian Penal Code provides the criminal sanction upon a negligent act causing injury of another. This law is applicable to doctors who cause injury of their patients.

On the other side, there are several provisions in the Indonesian Civil Code which are relevant to medical profession, for instance Section 1239 of the Indonesian Civil Code. Section 1239 of the Indonesian Civil Code provides the basis of contractual liability which is also applicable for particular medical treatment, such as plastic surgery for esthetical purpose. Section 1365 governs the obligation to compensate those who suffered from harm because of a negligent act of the wrongdoer. This rule is applicable for doctor-patient relationship.

After 1945 independence, regulation

² By virtue of the concordance principle, the Dutch Penal Code (*Wetboek van Strafrecht*) and the Dutch Civil Code (*Burgerlijk Wetboek*) were made applicable since colonization era. Both have been endorsed by the Indonesian government to remain prevail after 1945 independence, and even they still prevail up to now with a little amendment, the former is known as *Kitab Undang-undang Hukum Pidana* and the latter is known as *Kitab Undang-undang Hukum Perdata*.

on medical practice in particular and health issue in more general developed. It began in 1951 where the Indonesian government enacted several legislations such as *Undang-undang Nomor 8 Tahun 1951* (Act Number 8 Year 1951) governing the suspension of the license delivery for doctor and dentist, *Undang-undang Nomor 9 Tahun 1951* (Act Number 9 Year 1951) concerning the rational distribution of doctor, dentist and midwife, and *Undang-undang Nomor 10 Tahun 1951* (Act Number 10 Year 1951) regarding the empowerment of private medical doctor in emergency situation. To make sure that all new doctors would initially work for the government, a regulation on the registration of medical doctor and dentist certificate was issued in 1958.³

Important development took place two years later. In order to implement the task to promote social welfare upon the society, including the health service for the public, the Indonesian government was of the opinion that it was necessary to lay down the legal basis of the social welfare program in health matter⁴. This idea was then realized by enacting *Undang-undang Nomor 9 Tahun 1960 Tentang Pokok-pokok Kesehatan* or simply called *Undang-undang Kesehatan 1960* (the Health Act 1960). The Health Act 1960 emerged to respond the development of medicine in

particular and the development of health service in general. Following this Act, some other legislations were also enacted such as Government Decree on the Formulation of the Medical Profession Oath (*Peraturan Pemerintah Nomor 26 Tahun 1960 Tentang Lafal Sumpah Dokter*), the Mental Health Act 1963 (*Undang-undang Nomor 3 Tahun 1963 Tentang Kesehatan Jiwa*), the Health Manpower Act 1963 (*Undang-undang Nomor 6 Tahun 1963 Tentang Tenaga Kesehatan*), Government Decree on Registration of Certificate and the Issuance of Practicing License for Doctor/Dentist/Pharmacist (*Peraturan Pemerintah Nomor 36 Tahun 1964 Tentang Pendaftaran Ijazah dan Pemberian Izin Melaksanakan Pekerjaan Dokter, Dokter Gigi, dan Apoteker*), and the Government Decree on the Protection of Medical Confidentiality 1966 (*Peraturan Pemerintah Nomor 10 Tahun 1966 Tentang Wajib Simpan Rahasia Kedokteran*). Up to this step, the term medical law was still unknown.

The term medical law (*hukum kedokteran*) was formally used for the first time in 1982 when the Indonesian Medical Law Study Club was established in Jakarta on November 1st, 1982. The member of this study club consisted of both medical doctors and law scholars interested in medical law issue. The establishment of this

³ Peraturan Pemerintah Nomor 58 Tahun 1958 Tentang Wajib Daftar Ijazah Dokter dan Dokter Gigi.

⁴ CST. Kansil, *Penqantar Hukum Kesehatan Indonesia*, Jakarta: Rineka Cipta, 1991, p. 4.

study club was stimulated by the emergence of the first medical malpractice case occurred in 1980.⁵ It was about a general practitioner who has caused her patient died due to anaphylactic shock after given several injections.⁶ The mentioned unlucky doctor was alleged of having negligently caused somebody died as intended by Section 359⁷ of the Indonesian Penal Code and hence was held criminally liable both in the court of first instance (*Pengadilan Negeri Pati*) as well as at the court of appeal (*Pengadilan Tinggi Semarang*). Even though, the accused was finally released from criminal liability based on the decision of the Supreme Court (*Mahkamah Agung Republik Indonesia*) in 1983, this case has attracted public attention, especially those from medical profession anyway. The Indonesian Medical Law Study Club became the embryo of the establishment of the Indonesian Medical Law Association (*Pehimpunan Hukum*

Kedokteran Indonesia/PERHUKI) on July 7th, 1983.⁸

The following development took place in nineteen eighties when the Government and the Minister of Health of the Republic of Indonesia produced several decrees concerning various related issues such as: medical service by private sector⁹, the issue of the hospital establishment¹⁰, the issue of Mandatory Work and the Professional Practice of Medical Doctor and Dentist¹¹, the issue of the Implementation of Mandatory Work and Practicing License for Medical Doctor and Dentist¹², the issue of the Implementation of Mandatory Work for New Medical Doctor and Dentist Working at the Department of Security and Defense and Indonesian Army¹³, the issue of the Implementation of Mandatory Work for New Medical Doctor and Dentist Working at the Department of Education and Culture¹⁴, the issue of informed consent¹⁵, and the issue of medical record¹⁶. In

⁵ Amri Amri, "Upaya Kesehatan dan Hukum", lecturer material, unpublished, retrieved from http://ocw.usu.ac.id/_/dms146_sap_upaya_kesehatan_dan_hukum.pdf, on August 2nd, 2013.

⁶ Verdi Ferdiansyah, "Kasus Dokter Setyaningrum", retrieved from: http://verdiferdiansyah.wordpress.com/_/kasus-dokter-setyaningrum on August 2nd, 2013.

⁷ Eko Soponyono, "Malpraktek dalam Kajian Hukum Pidana", retrieved from: <http://eprints.undip.ac.id/20768/1/2380-ki-fh-98.pdf>, on August 02nd, 2013.

⁸ On January 28th, 1993 PERHUKI held a national congress in Yogyakarta in which the name of the organization was changed into the Indonesian Health Law Association or *Perhimpunan Hukum Kesehatan Indonesia* and the acronym *PERHUKI* remained there.

⁹ Peraturan Menteri Kesehatan Nomor 920/Menkes/Per/XII/1986 Tentang Upaya Pelayanan Kesehatan Swasta di Bidang Medik

¹⁰ Peraturan Menteri Kesehatan Nomor 159b/Menkes/Per/II/1988 Tentang Rumah Sakit

¹¹ Peraturan Pemerintah Nomor 1 Tahun 1988 Tentang Masa Bhakti dan Praktek Dokter dan Dokter Gigi.

¹² Peraturan Menteri Kesehatan Nomor 385 Tahun 1988 Tentang Pelaksanaan Masa Bhakti dan Izin Praktik bagi Dokter dan Dokter Gigi.

¹³ Peraturan Menteri Kesehatan Nomor 360 Tahun 1989 Tentang Pelaksanaan Masa Bhakti bagi Dokter dan Dokter Gigi di Lingkungan Departemen Pertahanan Keamanan dan ABRI.

¹⁴ Peraturan Menteri Kesehatan Nomor 343 Tahun 1989 Tentang Pelaksanaan Masa Bhakti Bagi Dokter dan Dokter Gigi di Lingkungan Depdikbud RI and Surat Edaran Sekretariat Jenderal Departemen Kesehatan Republik Indonesia Nomor 0210 Tahun 1989 Tentang Petunjuk Teknis Pelaksanaan Masa Bhakti dan Izin Praktik Bagi Dokter dan Dokter Gigi.

¹⁵ Peraturan Menteri Kesehatan Nomor 585 Tahun 1989 Tentang Persetujuan Tindakan Medik.

¹⁶ Peraturan Menteri Kesehatan Nomor 749a Tahun 1989 Tentang Rekam Medis.

the same period, the Minister of Health also endorsed the Indonesian Code of Medical Ethics proposed by the Indonesian Medical Association (*Ikatan Dokter Indonesia/IDI*).¹⁷ This development has promoted the term medical law (*hukum kedokteran*) to become more popular in the country.

In 2003 what so-called medical malpractice crisis took place in Indonesia and massive publicity upon medical malpractice cases was made during that time and several years after accordingly. Medical malpractice really became a hot issue both in newspapers and televisions and people started questioning and discussing medical malpractice cases. This issue has transformed from academic discourse into public discourse. This situation has made the attention upon medical law increased and many books were written to deal with this 'relatively' new legal issue.

Medical law in Indonesia grows hand in hand with the growth of the health law. Since the Indonesian legal system is very much influenced by the European Continental Legal System, the source of both Medical Law and Health law are mainly in the form of legislation (written law). Medical Practice Act 2004 (*Undang-undang Nomor 29 Tahun 2004 Tentang Praktik Kedokteran*) and Health Act 2009 (*Undang-undang Nomor 36 Tahun 2009 Tentang Kesehatan*) are the most impor-

tant sources of both Medical Law and Health Law in Indonesia. Different from the Medical Practice Act which was enacted for the first time in 2004, the first Health Act was enacted in 1960 (*Undang-undang Nomor 9 Tahun 1960 Tentang Pokok-pokok Kesehatan*). In 1992 the Health Act 1960 was replaced by the Health Act 1992 (*Undang-undang Nomor 23 Tahun 1992 Tentang Kesehatan*) and the later had been invalid since the enactment of the Health Act 2009.

The emergence of the Medical Practice Act 2004 followed by the emergence of its subordinate legislations became the basis of the development of medical law in Indonesia. As its name implies, the Medical Practice Act 2004 governs the practice of medicine in Indonesia. As the enactment of the Medical Practice Act was to respond the medical malpractice crisis in 2003, this Act basically aims to promote good medical practice and to avoid malpractice accordingly.

B. The Issue of Good Medical Practice as suggested by the Medical Practice Act 2004

It is mentioned in the consideration of the Medical Practice Act 2004 that as the core of health service, the establishment of medical service must be carried out by doctor and dentist who have high standard

¹⁷ Keputusan Menteri Kesehatan Nomor 434 Tahun 1983 tentang Pemberlakuan Kode Etik Kedokteran Indonesia.

of ethic, supported by skill and competence which are continuously developed in order to comply with the development of science and technology. It is also mentioned at that part that specific regulation on the establishment of medical practice is necessary to provide legal protection as well as legal certainty for health care receivers, doctors and dentists.

Section 3 of the Medical Practice Act 2004 states that the purposes of regulating the medical practice are as follows:

- a. To provide legal protection upon the patient;
- b. To maintain and to improve the quality of medical service provided by the doctor and the dentist; and
- c. To provide legal certainty upon the society, the doctors and the dentist.

From the above quotation we can simply conclude that what intended by the Medical Practice Act as 'good medical practice' is medical practice conducted by professional, ethical and competent doctors and dentist. Professionalism relates to the possession of medical knowledge and skill and the compliance with the standard of care, ethical relates to the compliance with medical ethics, and competence relates to the fulfillment of the government requirements on the standard of practice.

a. The Issue of Professionalism

As already mentioned, the issue of

medical professionalism relates to the possession of medical knowledge and the acquirement of medical skills. Both medical knowledge and medical skills are obtained from medical education and training at the medical faculty. Medical education and training requires an intensive involvement for at least six years. The first four years is to complete clinical theory where in the end of the study a degree called *Sarjana Kedokteran* (bachelor of medicine) will be awarded to the student who have passed all the academic requirements. The last two years is to complete clinical skills where in the end of the study a degree called *Dokter* (medical doctor) will be awarded to the students who have passed all the requirements. While the former conducted mostly in the faculty, the later completely conducted in the hospital.

In order to maintain and to improve the quality of medical service, as intended by Section 28 of the Medical Practice Act 2004 practicing doctors are required to always update their knowledge and skills through their participation in seminar, workshop and training, either held by the Indonesian Medical Association or other institutions which have been accredited by the Indonesian Medical Association¹⁸.

Previously the obligation to update medical knowledge and skill was enforced by the state through a penalty, however later it is enforced by the Indonesian Medical Association through a mechanism of credit

¹⁸ This concept is known as *pendidikan dan pelatihan kedokteran berkelanjutan* (continuing medical education and training).

collection¹⁹. After a license is expired, the license holder is required to renew it. One of the administrative requirements to propose a new license is a recommendation from the Indonesian Medical Association. This recommendation will only be issued by the Indonesian Medical Association if the applicant is able to show particular number of credit having been accumulated during practicing medicine from his or her participation in seminars, workshop or training as already discussed. This is the way the Indonesian Medical Association forces its members to update their medical knowledge and skills.

Indonesian Medical Counsel is also responsible to keep and to promote the quality of medical practice in Indonesia. Basically, Indonesian Medical Counsel runs three tasks namely registration, treatment and education.²⁰ Indonesian Medical Counsel controls the quality of medical practice through these three mechanisms. Indonesian Medical Counsel prepares and updates the national standard of medical education, administers the regular registration of doctor and dentist, and enforces the disciplinary rules of medical practice.

Regular registration is considered as the most direct mechanism to promote and to control doctor's professionalism. As already mentioned, one of the administrative requirements to obtain license is

Registration Letter issued by the Indonesian Medical Counsel. A Registration Letter is valid only for five years. Once it has been expired, the holder is required to renew it. The renewal procedure requires the doctor beside to show the possession of a valid Certificate of Competence, also to show the possession of recommendation letter from the Indonesian Medical Association for which the mentioned doctor has to collect a particular accumulation of the credit of participation or known as *Satuan Kredit Partisipasi (SKP)*. This credit is collected from the participation in workshop, seminar, training in medical field and from serving the patients.

b. The Issue of Ethic

Legal norm stands side by side with ethical norm in controlling doctor's professional conduct. Doctors are bound by both medical law as well as medical ethics. Attachment to the medical ethics starts when the mentioned doctors obtaining their medical doctor certificate. The certificate will be awarded in a ceremony where all of the new doctors are required to declare a promise or a professional oath. The substance of oath is modified from the Hippocratic Oath. Besides, the mentioned doctors are also required to sign the declaration to observe the Indonesian Code of Medical Ethics. Requirement to observe the

¹⁹ This change is based on the amendment made by the Constitutional Court of the Republic of Indonesia in 1997 which has abrogated the criminal sanction from such an administrative provision.

²⁰ See Section 7 point (1) of the Medical Practice Act 2004

code of medical ethics is also applied by the Indonesian Medical Council for those pursuing the Registration Letter.

The latest version of the Indonesian Code of Medical Ethics is which was issued by the National Board of the Indonesian Medical Association in 2002.²¹ It consists of 17 articles covering four issues, namely duty in general, duty upon the patient, duty upon the fellow doctor, and duty upon himself. Under the category of general duty, the doctor is required among other things to observe the professional oath²² and to present high quality of medical service²³.

To strengthen the attachment to the ethical norms, some provisions of the Indonesian Code of Medical Ethics have been adopted in the Medical Practice Act 2004 such as the duty to protect patient's confidential information²⁴ and the duty to provide emergency care²⁵. Hence, violation against the medical ethics may render the doctor to an ethical accountability held by the Indonesian Medical Association through a panel forum called *Majelis Kehormatan Etika Kedokteran/MKEK*.

c. The Issue of Competence

To make sure that medical practice carried out by a competent person, the fresh

graduate doctors are required to take national examination on clinical competence known as *Ujian Kompetensi Dokter Indonesia (UKDI)*. This examination is set to ensure that all medical doctors produced by the medical faculty meet the national standard of clinical competence. Those who passed this exam will be awarded a certificate of competence. This certificate is necessary to pursue what so called Registration Letter (*Surat Tanda Registrasi / STR*) issued by the Indonesian Medical Council (*Konsil Kedokteran Indonesia / KKI*). Both Certificate of Competence and Registration Letter are necessary to pursue the practicing license (*Surat Ijin Praktik / SIP*) issued by Dinas Kesehatan.²⁶ It is valid for 5 years only. The number of license a doctor may obtain is limited only three licenses for practicing medicine at three different places or locations. This limitation is made in order to anticipate the possibility of committing mistake in applying medical treatment due to the lack of doctor's concentration because of the tiredness.

C. The Issue of Doctor's Rights and Obligations

The issue of doctor's rights and obligation is ruled in the Medical Practice Act 2004. According to Section 50, the rights

²¹ Surat Keputusan Pengurus Besar Ikatan Dokter Indonesia Nomor 221/PB/A.4/04/2002 Tentang Penerapan Kode Etik Kedokteran Indonesia.

²² Article 1 of the Indonesian Code of Medical Ethics 2002

²³ Article 2 of the Indonesian Code of Medical Ethics 2002

²⁴ Article 12 of the Indonesian Code of Medical Ethics 2002

²⁵ Article 13 of the Indonesian Code of Medical Ethics 2002

²⁶ *Dinas Kesehatan* is a representative office of the Ministry of Health located in every district (*Kabupaten/Kota*).

of doctor are as follows:

- a. Every doctor deserves legal protection as far as carrying out medical profession complying with the standard of profession and the standard of operational procedure;
- b. To provide medical service in line with standard of profession and the standard of operational procedure;
- c. To obtain complete and true information from the patient or his family; and
- d. To receive service fees.

While the obligations of doctor are as follows:

- a. To set the name board of medical practice;²⁷
- b. To comply with the standard of medical service;²⁸
- c. To obtain patient's consent;²⁹
- d. To provide medical record;³⁰
- e. To protect patient's confidential information;³¹
- f. To provide quality control and cost control;³²
- g. To provide medical service in line with the standard of profession, standard of operational procedure and the need

of patient;³³

- h. To transfer the patient to the more competent doctor in case of incapability to treat;³⁴
- i. To keep the patient's confidential information even after the patient died;³⁵
- j. To provide the emergency care;³⁶ and
- k. To add and to update medical knowledge and skill.³⁷

D. The Issue of Patient's Rights and Obligations

The issue of patient's rights and obligations is ruled in Section 52 and Section 53 of the Medical Practice Act 2004. According to Section 52 the rights of patients are as follows:

- a. To receive complete information about the proposed treatment;
- b. To get second opinion;
- c. To get medical service as necessary;
- d. To refuse particular medical treatment; and
- e. To get the substance of medical record.

According to Section 53 the obligations of patients are as follows:

²⁷ Section 41 (1) of the Medical Practice Act 2004

²⁸ Section 44 (1) of the Medical Practice Act 2004

²⁹ Section 45 (1) of the Medical Practice Act 2004

³⁰ Section 46 (1) of the Medical Practice Act 2004

³¹ Section 48 (1) of the Medical Practice Act 2004

³² Section 49 (1) of the Medical Practice Act 2004

³³ Section 51 point (a) of the Medical Practice Act 2004

³⁴ Section 51 point (b) of the Medical Practice Act 2004

³⁵ Section 51 point (c) of the Medical Practice Act 2004

³⁶ Section 51 point (d) of the Medical Practice Act 2004

³⁷ Section 51 point (e) of the Medical Practice Act 2004

- a. To give complete and true information about his health problem;
- b. To observe doctor's advice and recommendation;
- c. To observe all regulations prevailing in health service institution; and
- d. To pay service fees.

The rights of patients can also be found in the Health Act 2009. According to the Health Act 2009 the rights of patients are as follows:

- a. Right to be healthy;³⁸
- b. Right to get access on health resources;³⁹
- c. Right to get safe, quality and affordable health services;⁴⁰
- d. Right to independently determine the necessary health services;⁴¹
- e. Right to live in healthy environment;⁴²
- f. Right to get balance and responsible health information and education;⁴³
- g. Right to get information about his health condition including the given and proposed treatment;⁴⁴
- h. Right to get emergency care;⁴⁵
- i. Right to accept or to refuse partially or entirely the proposed medical

treatment;⁴⁶

- j. Right to confidential health information;⁴⁷ and
- k. Right to insist on compensation.⁴⁸

E. The Latest Progress of the Indonesian Medical Practice Law

Three years after being enacted in October 6th, 2004, the Medical Practice Act was challenged in the Constitutional Court of the Republic of Indonesia. This judicial review was proposed by a group of doctors, represented by Anny Isfandyarie, an anesthetist. In June 19th, 2007 the Constitutional Court amended the Medical Practice Act 2004. By virtue of this amendment, several criminal provisions have been abrogated such as:

- a. Three years imprisonment for practicing medicine without possessing registration letter as ruled in Section 75 of the Medical Practice Act 2004;
- b. Three years imprisonment for practicing medicine without possessing license as ruled in Section 76 of the Medical Practice Act 2004; and .
- c. One year imprisonment for disobeying the obligation to update the

³⁸ Section 4 of the Health Act 2009

³⁹ Section 5 (1) of the Health Act 2009

⁴⁰ Section 5 (2) of the Health Act 2009

⁴¹ Section 5 (3) of the Health Act 2009

⁴² Section 6 of the Health Act 2009

⁴³ Section 7 of the Health Act 2009

⁴⁴ Section 8 of the Health Act 2009

⁴⁵ Section 32 & 85 of the Health Act 2009

⁴⁶ Section 56 of the Health Act 2009

⁴⁷ Section 57 of the Health Act 2009

⁴⁸ Section 58 of the Health Act 2009

medical knowledge and skill as ruled in Section 79 point c, sub point e of the Medical Practice Act 2004.

In 2008, the Ministry of Health produced two relevant regulations concerning informed consent⁴⁹ and medical record⁵⁰. This new regulations were made to replace the former and outdated regulations on the same issues produced in 1989⁵¹. In 2009, the government enacted the Health Act 2009 (*Undang-undang Nomor 36 Tahun 2009 Tentang Kesehatan*) to replace the former one namely the Health Act 1992 (*Undang-undang Nomor 23 Tahun 1992 Tentang Kesehatan*). By virtue of this new Health Act, an authorized obstetrician may conduct abortion upon a pregnant woman who got her pregnancy from a rape and suffered from psychological trauma accordingly⁵². This rule has enlarged the exception of abortion, not only due to medical indication (to save the life of the pregnant mother) but also due to psychological indication (to save the traumatic rape victim). Beside the Health Act, in 2009 the government has also enacted the Hospital Act 2009 (*Undang-undang Nomor 44 Tahun 2009 Tentang Rumah Sakit*).

In 2010 the Ministry of Health produced regulation on internship program and the placement of post-internship doctor namely *Peraturan Menteri*

Kesehatan Nomor 299 Tahun 2010 tentang Penyelenggaraan Program Internsip Dan Penempatan Dokter Pasca Internsip. In the same year, the Ministry of Health produced another regulation on the empowerment of foreign medical doctor, namely *Peraturan Menteri Kesehatan Nomor 317 Tahun 2010 tentang Pendaya-gunaan Tenaga Kesehatan Warga Negara Asing Di Indonesia*.

Latest progress has been made in 2011 when the Ministry of Health produced a decree on license and the implementation of medical practice, namely *Peraturan Menteri Kesehatan Nomor 2052 Tahun 2011 tentang Izin Praktik dan Pelaksanaan Praktik Kedokteran* (the Health Minister Decree Number 2052 Year 2011). This decree was issued to replace the former one issued in 2007, namely *Peraturan Menteri Kesehatan Nomor 512 Tahun 2007 Tentang Izin Praktik dan Pelaksanaan Praktik Kedokteran* (the Health Minister Decree Number 512 Year 2007) which was issued to elaborate the regulation on the administration of medical practice as ruled in Section 38 point (3) of the Medical Practice Act 2004. This new decree rules among other thing the issuance of license for doctor participating in internship program and in medical specialization program.

⁴⁹ Peraturan Menteri Kesehatan Nomor 290 tahun 2008 tentang Persetujuan Tindakan Kedokteran

⁵⁰ Peraturan Menteri Kesehatan Nomor 269 Tahun 2008 Tentang Rekam Medis.

⁵¹ Peraturan Menteri Kesehatan Nomor 585 Tahun 1989 Tentang Persetujuan Tindakan Medis and Peraturan Menteri Kesehatan Nomor 749a Tahun 1989 Tentang Rekam Medis.

⁵² Section 75 point 2 (b) of the Health Act 2009.

⁵³ See Section 3 of the Health Minister Decree Number 2052 year 2011.

By virtue of this license, both the participant of internship program and medical specialization program have authority to practice medicine as other doctors have.⁵³

Section 7 point (1) of the Health Minister Decree Number 2052 Year 2011 determines that license would be unnecessary for practicing medicine in the following situations:

- a. Incidental and temporary practice of specific medical service;
- b. Medical practice for the purpose of community service or humanity program;
- c. Medical practice for official duty;
- d. Medical service for the victims of disaster or any other category of emergency; and
- e. Incidental medical service for family, neighbor, friend, home visit and care upon the poor.

F. Conclusion

Since the main purpose of this paper is to elaborate the history and the development of medical law in Indonesia, as it has also been explicitly described in the title, in this part all of the most important stages of development of the medical law will be highlighted.

From the above exploration, it can be concluded that there are three important moments signing the crucial stages of the development of the medical law in Indonesia as follows:

1. Criminal liability upon a physician in 1981 which has attracted the public attention toward medical law issue;
2. Medical malpractice crisis taking place in 2003 which stimulated the need to have specific legislation concerning medical malpractice; and
3. The enactment of the Medical Practice Act 2004 on October 6th, 2004 which became the basis of the development of the Indonesian medical law or in particular the medical practice law.

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Government Decree on the Formulation of the Medical Profession Oath 1960 (*Peraturan Pemerintah Nomor 26 Tahun 1960 Tentang Lafal Sumpah Dokter*)

The Mental Health Act 1963 (*Undang-undang Nomor 3 Tahun 1963 Tentang Kesehatan Jiwa*)

The Health Manpower Act 1963 (*Undang-undang Nomor 6 Tahun 1963 Tentang Tenaga Kesehatan*)

Government Decree on Registration of Certificate and the Issuance of

- Practicing License for Doctor/Dentist/Pharmacist (*Peraturan Pemerintah Nomor 36 Tahun 1964 Tentang Pendaftaran Ijazah dan Pemberian Izin Melaksanakan Pekerjaan Dokter, Dokter Gigi, dan Apoteker*)
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- The Health Minister Decree on Medical Service by Private Sector (*Peraturan Menteri Kesehatan Nomor 920/Menkes/Per/XII/1986 Tentang Upaya Pelayanan Kesehatan Swasta di Bidang Medik*)
- The Health Minister Decree on Hospital 1988 (*Peraturan Menteri Kesehatan Nomor 159b/Menkes/Per/II/1988 Tentang Rumah Sakit*)
- Government Decree on Mandatory Work and the Professional Practice of Medical Doctor and Dentist 1988 (*Peraturan Pemerintah Nomor 1 Tahun 1988 Tentang Masa Bhakti dan Praktek Dokter dan Dokter Gigi*)
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- Health Minister Decree on the Implementation of Mandatory Work for New Medical Doctor and Dentist Working at the Department of Security and Defense and Indonesian Army 1989 (*Peraturan Menteri Kesehatan Nomor 360 Tahun 1989 Tentang Pelaksanaan Masa Bhakti bagi Dokter dan Dokter Gigi di Lingkungan Departemen Pertahanan Keamanan dan ABRI*).
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