

THE AUTHORITY OF MEDICAL ORGANIZATIONS IN DETERMINING THE OCCURRENCE OF MEDICAL MALPRACTICE

Andi Aulia Panangngari^{1*}, Audyna Mayasari Muin², Hijrah Adhyanti Mirzana³

¹Universitas Hasanuddin. E-mail : auliasrf17@gmail.com

²Universitas Hasanuddin. E-mail: audynamayasari@gmail.com

³Universitas Hasanuddin. E-mail: adhyantihijrah@gmail.com

*corresponding author

Abstract

This study aimed to examine and analyze the authority of medical organizations in determining the occurrence of medical malpractice and to examine and analyze the judge's consideration of Decision Number 1441/Pid/Sus/2019/PN Mks. This study used a normative juridical research method with a statute approach and a case approach. The data analysis employed descriptive qualitative analysis, which was correlated with concepts and theories from various literary sources. The results of the study revealed that the Indonesian Medical Association (IMA), through Honorary Council for Medical Ethics (HCME), was authorized to determine the occurrence of medical malpractice. This authority was manifested through the revocation of the license of the doctor who became the defendant, even though the judge's decision stated that no malpractice was found by the defendant. Regarding Decision Number 1441/Pid.Sus/2019/PN. Mks, the acquittal for Mrs. Dr. Elizabeth Susana M. Boing was right. Many opinions confirmed that the incident was a result of medical risks rather than medical malpractice committed by Mrs. Dr. Elizabeth. However, it was considered a work accident that resulted in a medical risk, which basically did not result in criminal sanctions.

Keywords: Authority, Medical Organization, Medical Malpractice

INTRODUCTION

Health is a human right that must be protected by the state. Indeed, health is the main axis for creating a welfare state.¹ Health is very important, even the Preamble of the 1945 Constitution of the Republic of Indonesia concerning the state's obligation to protect

¹ Bungaran Antonius Simanjuntak, *Konsepku Mensukseskan Otonomi Daerah: Membangun Indonesia Berkeadilan Sosial-Ekonomi* (Jakarta: Yayasan Pustaka Obor Indonesia, 2017).

the entire nation and all of Indonesia's homeland contains this matter.² Therefore, the equipment and configuration of health services should meet service elements that meet standards to create a positive climate and perspective on health services. This includes serving as a medium for preventing and treating various diseases that have an impact on public health and welfare.

This certainly requires comprehensive regulations and policies, good synergy between the government, institutions, and the community, as well as facilities and infrastructure that meet health service standards.³ However, along with the development of an increasingly complex era and the emergence of new problems in the world of health that are not previously found in everyday life, it cannot be denied that there are mistakes that even reach the degree of negligence, violations, and crimes against health services. As a result, medical issues that are originally only in the realm of civil law have now become part of the field of criminal law, both involving patients and hospitals, as well as doctors and patients.⁴

One of the medical disputes that often occur and drag the case to court is the crime of medical malpractice. Even though Law Number 29 of 2004 concerning Medical Practice and Law Number 36 of 2009 concerning Health do not recognize the term malpractice, on the contrary, only a definition of medical risk is found. Basically, doctors and dentists cannot be prosecuted or blamed. However, malpractice is often equated with the term negligence, in which doctors and dentists are deemed to have committed negligence if it results in a disability or death of the patient. However, negligence must fulfill the elements of negligence, if no elements of negligence are found, then the consequences arising from the patient are considered as medical risks beyond the power of a doctor and dentist by not abandoning their professional skills and expertise.

In this study, the authors found a case involving suspected malpractice committed by a doctor who was a member of the Indonesian Medical Association (IMA), which

² Moch Thariq Shadiqin et al., "Vaksinasi Covid-19: Hak Individu Atau Kewajiban Publik Dalam Civil Society?," *Masalah-Masalah Hukum* 51, no. 02 (2022): 106-16, <https://doi.org/https://doi.org/10.14710/mmh.51.2.2022.106-116>.

³ Tri Rini Puji Lestari, "Pendidikan Keperawatan: Upaya Menghasilkan Tenaga Perawat Berkualitas," *Aspirasi: Jurnal Masalah-Masalah Sosial* 5, no. 1 (2014): 1-10, <https://doi.org/https://doi.org/10.46807/aspirasi.v5i1.452>.

⁴ Ely Walima, *Manajemen Pengembangan Sumber Daya Manusia Kesehatan* (Pekalongan: Penerbit NEM, 2021).

congregated under the Indonesian Anti-Aging, Wellness, Aesthetic and Regenerative Doctors Association (IAWARDA). The defendant allegedly committed malpractice for patients who wanted to have beauty treatments at their clinic. This allegation, which ultimately led to a court case, cannot be separated from the adverse effects experienced by patients after following the defendant's actions, especially resulting in permanent disability (blindness) in the patient's left eye. Based on this case, the patient then decided to pursue legal action by pressing charges of malpractice against the doctor in question.

However, during the process of this case, there were differences in views and attitudes between the IMA Branch Makassar and IAWARDA. The IMA Branch Makassar issued a letter stating that the defendant should be suspected of having committed a malpractice crime, which resulted in the patient experiencing permanent blindness in her left eye. However, the results of an audit by IAWARDA on the doctor in question stated that the doctor had carried out her duties in accordance with the Standard Procedures and Professional Standards.

In addition, the judge finally decided that the defendant was found not guilty and acquitted because the elements of negligence were not fulfilled in the case. This certainly raises many perceptions about the decision, especially considering the condition of the patient (victim) who has to endure permanent blindness in her left eye.

METHOD

This study included normative juridical research, or also called normative legal research. The law is studied as a norm or rule that existed in society and served as a reference for one's actions. In relation to this study, the author used a statutory approach by considering the research needs that required reviewing and analyzing all sets of laws and regulations relevant to the legal issues under study. The statutory approach was vital in assessing the consistency and suitability of each hierarchical statutory regulation, as well as the application of legal principles related to the position of each statutory regulation in this study. Additionally, this study also employed a case approach, in which excavation and analysis were carried out on Decision Number 1441/Pid.Sus/2019/PN Mks regarding alleged cases of medical malpractice that were in accordance with the title

and problems addressed in this study. These two approaches were interrelated and crucial for formulating answers to the formulated problems.

RESULT AND DISCUSSION

1. The Authority of Medical Organizations in Decision 1441/Pid.Sus/2019/PnMks

The medical organizations referred to in this study are the Indonesian Medical Association (IMA) and the Indonesian Anti-Aging, Wellness, Aesthetic and Regenerative Doctors Association (IAWARDA).

1.1. Indonesian Medical Association (IMA)

The Indonesian Medical Association (IMA) is based on Belief in the One and Only God, humanity, deliberation, justice, partnerships, and professionalism inspired by the doctor's oath and the Indonesian medical code of ethics. The IMA is a national, independent, and non-profit medical professional organization.⁵

a. Organizational Decision Making

1. Organizational Decision Making at the central level is carried out by the General Manager, at the regional level by the Regional Manager, and at the branch level by the Branch Manager.
2. The General Manager, Regional Manager, and Branch Manager make decisions through an IMA decision-making mechanism.
3. The mechanism for making organizational decisions is through deliberations for consensus, if no consensus is reached, voting can be used as an alternative.
4. In an urgent situation, the head of IMA, according to the level, can make decisions without following the IMA decision-making mechanism described in point (3), as long as the decisions do not conflict with the Bylaws, and is accountable to the Conference for PB IMA, Regional Deliberations for IMA Regions, and Branch Conference for IMA Branch.

1.2. Indonesian Anti-Aging, Wellness, Aesthetic and Regenerative Doctors Association (IAWARDA)

⁵ Pitono Soeprto, *Etik Dan Hukum Di Bidang Kesehatan* (Surabaya: Airlangga University Press, 2006).

IAWARDA was established in Jakarta on November 11, 2013, for an unspecified period of time, domiciled in Jakarta as the capital city of the unitary state of the Republic of Indonesia. IAWARDA is a national, non-profit, and independent medical seminary organization.⁶

a. Organizational decisions

1. Organizational decision-making at the central level is the responsibility of central management, while at the branch level, it falls under the responsibility of branch management.
2. The mechanism for making organizational decisions is through deliberations to reach a consensus. If no consensus is reached, a voting process may be used.
3. All organizational decisions taken must not conflict with the statutes, bylaws, and other decisions made by the national congress.
4. In certain circumstances, the head of the central board can make decisions without following the IAWARDA decision-making mechanism as referred to in point 2, as long as these decisions do not conflict with the statutes and bylaws and are accountable to the national congress.

In making decisions, IAWARDA has its own hierarchy, as follows:

- a) Decisions of the national congress;
- b) Articles of association;
- c) By-laws;
- d) Decision of the head of the central management;
- e) Decision of the branch meeting;
- f) Decision of the head of the branch management.

2. The Concept of Authority

Authority is a very important and initial part of administrative law because the administration can only carry out its functions based on the authority obtained. This implies the legitimacy of governmental acts in accordance with authority regulated in laws and regulations (*legalitetbeginselen*). The term authority actually cannot be equated with the term *bevoegdheid* in Dutch legal literature because the two terms have

⁶ Regeneratif Indonesia Perhimpunan Dokter Anti Penuaan, Wellness, Estetik, "Perwaderi," Situs Resmi Perwaderi, 2023.

fundamental differences, especially with regard to their legal character. Based on its character, *bevoegdheid* is used in concepts of both public and private law, while authority only applies in concepts of public law.⁷

According to S.F Marbun (1997:154-155), authority means the ability to carry out a public legal action, or, juridically, it is the ability to act given by applicable law to carry out legal relations.⁸ Thus, government authority has the following characteristics: (1) express implied; (2) clear aims and objectives; (3) bound at a certain time; (4) subject to written and unwritten legal restrictions; and (5) the content of authority is general (abstract) and concrete.⁹

In order to clarify the fundamental differences between the types of authority, namely attribution, delegation, and mandate, the following scheme of these differences is presented, as follows:

	Attribution	Delegation	Mandate
Method of acquisition	Legislation	Delegation	Delegation
The binding strength	Remains attached before there is a change in laws and regulations	Can be revoked or withdrawn if there is a conflict or deviation (<i>contrarius actus</i>)	Can be withdrawn or used at any time by the authority (<i>mandans</i>)
Responsibilities and accountability	The recipient of authority is absolutely responsible for the consequences arising from the authority	The giver of authority (<i>delegans</i>) delegates his/her responsibilities and accountability to the recipient of authority (<i>delegates</i>)	Being on the mandate giver (<i>mandans</i>)

⁷ NomensenSinamo, *Hukum Administrasi Negara Suatu Kajian Kritis Tentang Birokrasi Negara* (Bekasi: Jala Permata Aksara Jakarta, 2016).

⁸ I Kadek Setiawan, "Inkonsistensi Pengaturan Dalam Pelaksanaan Kewenangan Dan Biaya Pemberian Izin Usaha Mikro," *Jurnal Legislasi Indonesia* 14, no. 03 (2017): 337-44, <https://doi.org/https://doi.org/10.54629/jli.v14i3.134>.

⁹ Zaqiah Darojad, "Penggunaan Diskresi Oleh Pejabat Pemerintahan Dalam Kaitannya Dengan Kerugian Keuangan Negara Yang Mengakibatkan Tindak Pidana Korupsi," *Jurnal MP (Manajemen Pemerintahan)* 5, no. 2 (2018): 125-40, <https://ejournal.ipdn.ac.id/JMP/article/view/435>.

Authority relationship	The legal relationship between legislators and government organs	Based on the attribution authority delegated to the delegates	Internal relationships between subordinates and
------------------------	--	---	---

Scheme: The differences in ways of acquiring and responsibilities of governmental authority

In a separate publication, Philipus M. Hadjondkk, in his review of *Algemene Wet Bestuursrecht* (AWB), defines the terms “mandate” and “delegation”. A mandate refers to the authority given by an organ of government to another individual to make whistleblowers on its behalf.¹⁰ On the other hand, delegation is the transfer of authority from an organ of government to another organ to be able to make decisions regarding the responsibility of that organ (which receives the delegation).¹¹

Regarding this attribution, delegation and mandate, H.D. van Wijk/Willem Konijnenbelt defines it as follows:¹²

- a. *Attributie: toekenning van eenbestuursbevoegheid door eenwetgeneaaneenbestuursorgaan*, (attribution is the granting of governmental authority by legislators or lawmakers to government organs).
- b. *Delegatie: overdracht van eenbevoegheid van het enebestuursorgaanaaneenander*, (delegation is the delegation of government authority from one government organ to another government organ).
- c. *Mandaat: eenbestuursorgaanlaatzijnbevoegheidnamenshemuitoefenen door eenander*, (a mandate occurs when an organ of government permits its authority to be exercised by another organ on its behalf).

In the case of malpractice with Decision Number 144/Pid.Sus/2019.PN. Mks, in which dr. Elisabeth Susana, M. Biomed as a defendant charged with committing “a criminal act of practicing medicine and negligently causisng serious injury to another

¹⁰ Udiyo Basuki, “Merunut Konstitusionalisme Hak Atas Pelayanan Kesehatan Sebagai Hak Asasi Manusia,” *Jurnal Hukum Caraka Justitia* 1, no. 1 (2020): 21–41, <https://doi.org/http://dx.doi.org/10.30588/jhcj.v1i1.699>.

¹¹ Erikson Sihotang, *Prinsip Hukum Dalam Tata Kelola Rumah Sakit* (Menara Madinah, 2014).

¹² Ridwan HR, *Hukum Administrasi Daerah* (Jakarta: Raja Grafindo Persada, n.d.).

person", as stipulated and punishable under Article 79 Letter c Jo Article 51 Letter a Law of the Republic of Indonesia Number 29 of 2004 concerning Medical Practice, and Article 360 Paragraph (1) of the Criminal Code and sentenced the defendant, dr. Elisabeth Susana, M. Biomed, with imprisonment for 4 (four) years and a fine of Rp. 30,000,000.- (thirty million rupiah) with the provision that if the fine is not paid, it will be replaced by imprisonment for 3 (three) months.

In the proof, the statement of the experts witness who were present at the examination of witnesses at the trial was attached. The public prosecutor also attended expert witnesses, namely:

1. Expert witness, drg. Nasruddin, M.H, Kes., under oath in essence stated that:
 - The Defendant has a personal practice license registered with the Makassar City Health Office, and the Defendant is also registered as a member of the Indonesian Medical Association (IMA);
 - A general practitioner may open a practice in accordance with the competency certificate they possess;
 - If a doctor has obtained a special certificate and has been recognized by their organization, then they can open a practice according to their expertise;
 - There is a recommendation from IMA Branch Makassar to the Health Service regarding the Defendant's problem in the form of a recommendation to revoke the Defendant's license to practice. Subsequently, the Makassar City Health Office followed up by issuing the revocation of the Defendant's practice doctor license;
 - Upon the revocation of the practice permit, Defendant then submitted an objection to the Central AMI. If the Defendant's objection is accepted, the revocation of the practice permit from the Makassar City Health Office must be withdrawn;
2. Expert witness, dr. Hj. Kasmawati T. Z. Basalamah, M.HA., under oath basically stated that:
 - The expert witness is the head of the Indonesian Anti-Aging, Wellness, Aesthetic and Regenerative Doctors Association (IAWARDA) of South Sulawesi from 2014 until now;

- The injection of filler in the nose refers to a medical procedure performed by a doctor to improve the appearance of the nose by injecting a special gel of hyaluronic acid into a certain part of the nose;
- A general practitioner may inject filler in the nose after having the required certification, and before doing fillers, there must be a diagnosis first;
- Before injecting a filler, the injection patient must be informed about the drug and its side effects, both written and oral approval are needed.
- A general practitioner or nurse can inject filler into their patients as long as they have a competency certificate;
- The defendant already has a competency certificate in the field of aesthetics and is registered with IAWARDA. In addition, Defendant has also learned from manufacturers who produce products and has attended workshops related to their competence, both at home and abroad;
- In providing medical services through nasal filler injections, the defendant already has a medical aesthetic competency certificate from IAWARDA;
- IAWARDA has conducted an audit of Defendant regarding the legal issues faced by Defendant. As a result, the Defendant did not commit an ethical violation as stated in the audit result letter issued by the Central IAWARDA;
- The attitude of IAWARDA after IMA Branch Makassar, which recommended revocation of the Defendant's license to practice, is to realign back to IMA and make objections to IMA Makassar and Central Branches;
- After IAWARDA filed an objection with the Central IMA, the Central IMA then writes to the defendant himself.

The defendant has testified at trial in substance as follows:

- The Defendant is examined by IMA Branch Makassar regarding the Defendant's actions against witness Agita Diora Fitri. As a result of this examination, the Makassar City Health Office revoked the Defendant's license to practice;
- After learning the Honorary Council for Medical Ethics (HCME) letter issued by IMA Branch Makassar, IAWARDA then advocated for the Defendant, namely making and sending objections to the IMA Center regarding the results of HCME of IMA Branch;

- After an objection or appeal was made against HCME from the IMA Branch, the Defendant was then notified by the head of the IMA Branch who said that there was a recommendation letter from the Central IMA, which contained the Defendant's practice permit to be issued again;

The testimony of expert witnesses presented by legal counsel is as follows:

1. Dr. Sabir Alwi, SH.MH., under oath basically stated that:

- There is only one officially recognized organization for doctors in Indonesia, namely IMA, but there are also other associations or organizations;
- The existence of the IAWARDA is still recognized because it falls within the scope of AMI and has administrators at the central and regional levels;
- It cannot be said that IAWARDA is on the same level as AMI, but AMI recognizes the existence of IAWARDA as a separate group;
- The statement from AMI Branch Makassar, which claimed that the Defendant's actions violated the SPO, was inappropriate. Defendant's medical actions were carried out within the domain of IAWARDA since Defendant is a member of IAWARDA. AMI should have first summoned IAWARDA to inquire whether the actions were in accordance with the SPO or not;
- The results of the HCME of AMI Branch Makassar can be appealed or objected to by the central AMI regarding the audit or HCME findings;
- IAWARDA is part of the organization and is affiliated with AMI;

2. Expert witness, Prof. Dr. dr. ABDUL RAZAK THAha, MSc, Sp.GK, under oath basically stated that:

- The status of IAWARDA is part of the Indonesian Medical Association (AMI), which is ratified at the conference, and structurally IAWARDA is under AMI;
- The examination is carried out on the defendant by a team appointed by the Central IAWARDA management, and the team is assigned three people to go to Makassar. However, only one person came to Makassar, and then the results were brought to Jakarta;
- The basis for carrying out a medical audit is that there is a report that one of the members has a problem and is being investigated by the police. In the IAWARDA

procedure, if you are a member, you proactively carry out an audit properly, and IAWARDA conducts an audit at its own will;

- According to the expert witness, the certificate meets the requirements to serve as evidence of the results of a medical audit;
 - Within the limits of the authority of the head of IAWARDA, the only letter issued is by the Central IAWARDA;
 - On August 8, 2018, a medical audit was carried out on the defendant;
 - The difference is that the trial at AMI stated that they do not give informed consent. However, we said that informed consent is not needed because, in medical law, written informed consent is only required for risky operations or actions. The applicable laws and regulations of the Honorary Council for Medical Ethics (HCME) state that this decision cannot be used in that way. There are rules that apply in the management of the AMI organization. When an AMI member is in trouble with the law, the Court cannot act in that manner, as it would be against justice and illegal.
3. Expert witness, dr. Rudi Sapoelete, under oath in principle stated that:
- The expert witness heard that the defendant is being brought to trial in connection with the HCME report to police investigators, one of which is declared a suspect;
 - The expert witness as coordinator chairman of the field of statutory advocacy in the management of the Central AMI;
 - The results of an audit from the Medical Ethics Court of AMI Branch Makassar stated that there is medical negligence committed by the defendant because she does not make a written consent;
 - The expert witness knows because there is a copy of the Honorary Council for Medical Ethics (HCME) letter from AMI Branch Makassar to Center AMI;
 - The Central AMI's response is that decision made by the Honorary Council for Medical Ethics (HCME) in AMI Makassar is not for public disclosure or publication without a written order from the Central PB AMI;
 - This means that the branch has the authority, but prior to publication, there must be approval from the central AMI.

- Central AMI orders the expert witness as the coordinator to provide assistance in communicating with related parties due to an error that must be reported within the framework of the HCME decision product of AMI Makassar;
- There is an objection by the defendant to the results of the HCME audit of AMI Branch Makassar to PB AMI Center;
- According to the Decree of the Honorary Council for Medical Ethics (HCME), AMI Branch Makassar is allowed to submit an appeal or objection within 14 days. The appeal can be submitted directly to PB AMI Center or to the Provincial level;
- The decisions of AMI Branch Makassar by the HCME are not *projusticia*, so there is no correlation with medical audits. In HCME, sanctions are given to members, and they have the right to defend or appeal to the region or directly to PB AMI center, as long as the doctor has carried out quality control and appropriate health services. It can be stated that a medical audit can be considered correct when it is in accordance with the requirements of the profession being carried out;
- The HCME decisions of AMI Branch Makassar cannot be used as evidence in a case because they regulate ethical issues. Ethics deals with special rules for members, which are regulated in a code of ethics. Therefore, it does not involve negligence;
- SOP (Standard Operating Procedure) is an act of procedure, a standardized standard in the context of carrying out certain activities. This means that an activity is carried out according to agreed rules and regulations, and in accordance with professional standards. If it is practiced at the personal level, there is no need for an SOP. However, if it is practiced at the hospital level, it is mandatory to use an SOP. The SOP is made by non-private means, so the HCME could not justify the SOP because it falls under a different field.

With the expert testimony presented by the public prosecutor and legal advisors, the panel of judges made the following considerations:

- Considering that, based on a letter from the Indonesian Medical Association of Branch Makassar Number: 489/IDI-CAB/MKS/5/2019, on May 8, 2019, regarding notification of the alleged malpractice report by dr. Elisabeth Susana, addressed to the Director of Criminal Investigation of the South Sulawesi Regional Police regarding

the results of the Honorary Council for Medical Ethics (HCME) of AMI Branch Makassar meeting, which basically concluded that the Defendant should be suspected of committing negligence in the form of not making written informed consent (submission of procedures and approval of medical action) from the patient. Subsequently, the letter of HCME of AMI Branch Makassar is used as the basis for the Makassar City Health Office as in its letter Number: 440/889/DKK/VII/2019, on July 29, 2019, which essentially revoked the defendant's practice license;

- Considering that before AMI Branch Makassar issued the HCME result letter Number: 489/IDI-CAB/MKS/5/2019, on 8 May 2019 mentioned above, the IAWARDA Central Management has previously conducted an audit of the Defendant as stated in letter Number: 088/E/ 08/18, on August 8, 2018. The results of the audit showed that the medical action carried out by the Defendant against the witness, Agita Diora Fitri, is in accordance with the Standard Procedures and Professional Standards so with the issuance of the HCME of AMI Branch Makassar results, IAWARDA and the Defendant then filed an objection/ appeal to the HCME of AMI Branch Makassar and to the objection/appeal the HCME of AMI Branch Makassar provided a response as in its letter Number: 0087/PB/MKEK/12/2019, on December 16, 2019, which principally stated that the HCME of AMI Branch Makassar decision do not yet have permanent ethical force (*inkracht*) because there has been an appeal from the Defendant. Thus, the HCME of AMI Branch Makassar decision cannot be used as a basis for determining anything, both within the internal scope of AMI and outside AMI including the Health Service and its staff;
- Considering that, based on the above considerations, the Panel of Judges concludes that the action taken by the Defendant against the witness, Agita Diora Fitri is a medical action. Thus, based on Article 67 Law Number 29 of 2004, the violation of the medical disciplinary action must be examined and decided by the Honorary Council for Medical Discipline, in this case, HCME of AMI and even though HCME of AMI Branch Makassar has decided that the medical action carried out by the Defendant should be suspected as negligence against the witness, Agita Diora Fitri. However, based on Article 28 paragraph (10) Organizational and Procedure Guidelines

Honorary Council for Medical Ethics (HCME) of the Indonesian Medical Association (AMI), the Defendant made an appeal and until the examination of this case has been completed, there has been no decision from the HCME of AMI Branch Makassar declaring that the Defendant has violated professional standards and standard operating procedures as well as the patient's medical needs.

- Because there is no decision from HCME of AMI stating that the Defendant has violated professional standards, standard operating procedures, and the patient's medical needs, then the intentional element in carrying out medical practice does not fulfill the obligation to provide medical services in accordance with professional standards, and standard operating procedures, and the patient's medical needs legally not fulfilled. Considering that one of the elements of Article 79, letter c, Jo. Article 51, letter a of Law Number 29 of 2004 concerning Medical Practice is not fulfilled, the Defendant must be declared legally and convincingly not proven to have committed a crime as charged in the first indictment, and the Defendant must be acquitted of the charge.

The verdict has not been legally proven, and the panel of judges acquitted the defendant, taking into account expert testimony and corroborated by the circular letter from the Honorary Council for Medical Ethics (HCME) Number 489/IDI-CAB/MKS/5/2019. The circular states that the defendant, dr. Elisabeth Susana, M. Biomed., is not proven to have committed malpractice against the witness, Agita Diora Fitri, but is negligent in carrying out the nose filler procedure. As a result, the HCME of AMI Branch Makassar and the Makassar City Health Office has revoked the defendant's license to practice of dr. Elisabeth Susana, M. Biomed.

CONCLUSION

Medical organizations that have the right and authority to determine the occurrence of medical malpractice cases are the organizations that directly supervise doctors who are in litigation. The Indonesian Anti-Aging, Wellness, Aesthetic, and Regenerative Doctors Association (IAWARDA) is responsible for auditing its members and issuing the results of the audit to the Honorary Council for Medical Ethics (HCME)

of the Indonesian Medical Association (IMA). The HCME functions as a court assembly within the AMI institution by making decisions as a disciplinary committee. The HCME circular letter, originally issued by the IMA Branch Makassar Management, contained a letter containing the alleged negligence that causes the victim witness, Agita Diora Fitri, to go blind. As a result, the defendant's sister's license to practice is revoked. However, the circular letter does not state that the defendant commits the crime of malpractice, so it cannot be used as evidence. The defendant and IAWARDA make an appeal to the Central HCME, the circular letter is declared not to have permanent legal force (*inkracht*). In the legal considerations of Decision Number 1441/Pid.Sus/2019/PN.Mks, it can be understood that, based on the expert's statement and related literature, the acquittal of dr. Elizabeth Susana M. Boing is correct. This is because there are many opinions emphasizing that in this case, it is absolute because of the medical risk, not because dr. Elizabeth committed medical malpractice. The medical risk resulted from a work accident, which basically does not lead to criminal sanctions.

REFERENCES

- Basuki, Udiyo. "Merunut Konstitusionalisme Hak Atas Pelayanan Kesehatan Sebagai Hak Asasi Manusia." *Jurnal Hukum Caraka Justitia* 1, no. 1 (2020): 21-41. <https://doi.org/http://dx.doi.org/10.30588/jhcj.v1i1.699>.
- Darojad, Zaqiah. "Penggunaan Diskresi Oleh Pejabat Pemerintahan Dalam Kaitannya Dengan Kerugian Keuangan Negara Yang Mengakibatkan Tindak Pidana Korupsi." *Jurnal MP (Manajemen Pemerintahan)* 5, no. 2 (2018): 125-40. <https://ejournal.ipdn.ac.id/JMP/article/view/435>.
- HR, Ridwan. *Hukum Administrasi Daerah*. Jakarta: Raja Grafindo Persada, n.d.
- Lestari, Tri Rini Puji. "Pendidikan Keperawatan: Upaya Menghasilkan Tenaga Perawat Berkualitas." *Aspirasi: Jurnal Masalah-Masalah Sosial* 5, no. 1 (2014): 1-10. <https://doi.org/https://doi.org/10.46807/aspirasi.v5i1.452>.
- NomensenSinamo. *Hukum Administrasi Negara Suatu Kajian Kritis Tentang Birokrasi Negara*. Bekasi: Jala Permata Aksara Jakarta, 2016.
- Perhimpunan Dokter Anti Penuaan, Wellness, Estetik, Regeneratif Indonesia. "Perwaderi." Situs Resmi Perwaderi, 2023.

- Setiawan, I Kadek. "Inkonsistensi Pengaturan Dalam Pelaksanaan Kewenangan Dan Biaya Pemberian Izin Usaha Mikro." *Jurnal Legislasi Indonesia* 14, no. 03 (2017): 337-44. <https://doi.org/https://doi.org/10.54629/jli.v14i3.134>.
- Shadiqin, Moch Thariq, Muhamad Azhar, F C Susila Adiyanta, and Siti Rohani. "Vaksinasi Covid-19: Hak Individu Atau Kewajiban Publik Dalam Civil Society?" *Masalah-Masalah Hukum* 51, no. 02 (2022): 106-16. <https://doi.org/https://doi.org/10.14710/mmh.51.2.2022.106-116>.
- Sihotang, Erikson. *Prinsip Hukum Dalam Tata Kelola Rumah Sakit*. Menara Madinah, 2014.
- Simanjuntak, Bungaran Antonius. *Konsepku Mensukseskan Otonomi Daerah : Membangun Indonesia Berkeadilan Sosial-Ekonomi*. Jakarta: Yayasan Pustaka Obor Indonesia, 2017.
- Soeprto, Pitono. *Etik Dan Hukum Di Bidang Kesehatan*. Surabaya: Airlangga University Press, 2006.
- Walima, Ely. *Manajemen Pengembangan Sumber Daya Manusia Kesehatan*. Pekalongan: Penerbit NEM, 2021.