

# A Comparative Study of the Social and Law Systems of Medical Doctor Profession between Indonesia and Malaysia

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## Abstract

This Article Analyzes And Compares The Social And Law Systems Of Control, And Contention: Challenges For The Future Of Healthcare Between Indonesia And Malaysia Between Indonesia And Malaysia Due To The Challenges Of Development Of Science And Technology. The Patient Is A No Longer Complaint To Any Medical Practitioner's Treatment Especially If The Operation It Would Cause The Physical Damage Or Death, But The Relatives Of Patients Sue The Medical Doctors In The Courts. The Aim Problems Of The Research As: (1) How The Medical Practices Are Carried Out As The Profession By The Doctors In Indonesia And Malaysia? (2) Why The Systems Of Law Have Not Dully Reduced The Malpractices Of Doctors In Indonesia And Malaysia, To Compare The Law Systems Which Regulate The Physician Profession, This Research Was Carried Out In Fatmawati Street Jakarta Indonesia, While In Malaysia Was In Kuala Lumpur. A Juridical-Empirical Approach Applied In The Field And Document Analysis. The Items Analysis Of Laws Which Regulate The Practices Of Medical Doctors Ranged From Qualification, Standard Of The Profession, Legality, Medical Record Of Patients, Quality And Cost, Responsibilities For Regulations And Ethic. The Techniques Of Collecting Data Included Interview, Questionnaire, Observation, And The Analysis Of Documents. After The Levene's Test For Equality Of Variances And T –Test Of Variable Differences Applied For The Scrutinized And Tested Data. It Found That Obtained Value Of Sig. < 0.05, Which Showing The Six Significant Different Aspects Of The Seven Indicators Of The Legal Systems In Indonesia And Malaysia.

**Keywords:** social and law systems, medical doctor, malpractice, profession

## 1. Introduction.

All countries in the world have always put attention to the medical treatment carried out by doctors in their society. The medical doctor practices a closely related to the quality of the people in a country. Although Indonesia is one of the countries that passed the universal law, rules, and regulation of health sector, the trust crisis of medical services in Indonesia is raising. In fact, more Indonesians went abroad to seek for medical check-up and treatments. This was proven by a report Tarmizi Ahmadun (2006), the General Manager of the National Healthcare Group International Business Development Unit (NHG IBDU) in Singapore confirming that 50% of the international patients in Singapore were Indonesians. Every year, medical travelers in Singapore reached 200,000 patients, and 50% of them are the Indonesian citizens. On a daily basis, 273 Indonesian patients are getting care in Singapore. According to Choi Yee Choong (the territory director of the ASEAN (Islands) International Operations), some 300,000 patients are seeking medical treatment in Singapore every year. Indonesia is one of the "the big three" countries that have the most number of patients in Singapore besides Malaysia. Collect data statistics from the indicated that people of the North Sumatra region who seek for medical treatment in Penang, Malaysia has reached a thousand of people every month in the years. One of the data get, have significant factors that took away the patients from medical services in Indonesia was the lack of good relationship and communication between doctors and patients.

Surya case with R ophthalmologist in decision No. 188 / Pdt.G / 2005 / PN / TNG plaintiff's wife came to a doctor because there is a cataract in the eye, after being examined by the decision of the patient's physician feasible in surgical and eye drops were given medication, then the patient vomiting and unconscious until the end of his life, and cases Mariah bte Mohamad (Pentakbir PESAKA Wan Ibrahim Wan Salleh Bin Abdullah opposed the death (Dr.Lim Kon Eng) and searang more third parties (1990) 1 MLJ 240, because there is no tool CAT ( computer Axial Scan tomogram) in the hospital another option taken by hospital with head patting X, then X died, the family demanded the death by negligence of hospital X (Abdul Aziz Hussin, 2006).

## 2. Research Method

This research employs a qualitative descriptive technique that analyzes the comparison of the social and law systems of medical doctor profession in Indonesia and Malaysia. Data collection was done through interviews, questionnaire and library study. Data have analyzed by using the Levene's Test for Equality of Variances and the t –test of differences was interpreted. The respondents for this present study were those who have associated with malpractice cases; namely the patients, doctors, policemen and judges in the two countries; Malaysia and Indonesia. The number of respondents involved in this study was 512 peoples consisted of 166 patients, 176 doctors, 116 policemen and 54 judges. The locations of research included the major cities in Indonesia and Malaysia, namely Medan, Jakarta, and Surabaya in Indonesia; and Kuala Lumpur, Alor Star and Penang in

Malaysia.

### 3. Research Findings and Discussions

The items of analysis of the regulations of medical practices of doctors in carrying out their profession in Indonesia and Malaysia are shown in Table 1. The mean value of medical practices of doctor in their profession in Indonesia and Malaysia consists of 7 indicators in Table of *Levene's* Test for Equality of Variances.

Table 1 : The Results of the *Levene's* Test for Equality of Variances

No	Parameter	F	Sig.	T	Df	Sig. (2-tailed)
1	Medical doctors have the formal qualificati	4.788	.029	-3.596	521	.000
				-3.606	336.093	.000
2	Accordance with the profession standard	.125	.724	-7.156	521	.000
				-7.962	439.428	.000
3	Medical doctors permitted in the 3 locations	1.360	.244	6.304	521	.000
				6.730	395.879	.000
4	Medical doctors record the patients' medical history	11.007	.001	-6.943	521	.000
				-7.800	449.575	.000
5	Quality control of medical practice & cost	.937	.334	3.339	521	.001
				3.073	272.937	.002
6	Ethic & Laws of Medical Practices	1.133	.288	-1.241	521	.215
				-1.258	345.717	.209
7	the patients' protection of law enforcement	39.985	.000	4.913	521	.000
				4.536	274.963	.000

Data presented in Table 1 indicated that there were 6 significant differences of the 7 parameters included in the study. The p-values of less than 0.05 for the 6 of the 7 parameters indicated a high covariance resembling that there was a significant difference of the medical malpractices of doctor's profession in Indonesia and in Malaysia.

### 4. The t-test of Variable Differences of the Malpractice Laws:

The t-test of variable differences was conducted to find out whether there is a significant difference between the law systems of malpractice cases practiced by the medical doctors in Indonesia and Malaysia. The data of law enforcement for medical doctors in dealing with the malpractice cases in the two countries were presented in Table 2.

Table 2: The Results of the T-test of Variable Differences of the Malpractice Laws

No	Variabel Comparative	Mean	T	Sig(2-tailed)	Legend
1.	Policemen	-0070	-0.770	0.447	Ns
2.	Patients	-0.261	-3.092	0.003	**
3.	Medical Doctors	-0.703	-11.356	0.000	**
4.	Judges	-0.215	-1.795	0.090	*
5.	Medical Assembly Members	-0.450	-3.882	0.018	*

Legend: ns = not significant

\*\* = significant at value  $\alpha$  5%. = 0.05

\* = significant at value  $\alpha$  10%. = 0.10

Based on the p-value shown in Table 2 for policemen (0.447), there was no significant difference of the regulations of malpractice cases in Indonesia and Malaysia. According to the police agencies of Indonesia dan Malaysia, there was no significant difference in handling the medical malpractice cases in the two countries since the mean value for variable difference was not statistically significant (p-value > 0.05).

In contrast, the patients' responses were significantly different from the policemen responses in which the variable difference was recorded significant with a p-value of less than 0.05 with a mean score 0.261. The patients' responses revealed that the law enforcement for the malpractice cases in Indonesia was lower than the enforcement in its counterpart, Malaysia.

### 5. Analysis of Medical Practices of Doctors Profession in Indonesia and Malaysia

#### 5.1 Doctors must have a permit in carrying out their profession

There were significant differences in the mean values of each of the doctors who obtained the practice permit in carrying out their profession in Indonesia and Malaysia. The mean score recorded for Indonesian doctors was

4.47% lower than that of in Malaysia (4.67%). This result indicated that the respondents in Malaysia demanded that doctors must have a permit to carry out their profession.

Based on the Indonesia Medical Practice Rules No.29 2004, permit is a legal document which displays a doctor with a skill and capability, as stated in the rule, in doing the professional performance. In Indonesia, the doctor's permit is a written evidence given by the Medical Council of Indonesia to registered doctors. Doctors' permit in Medan is valid for a period of 5 years. In Malaysia, the doctor's permit is valid for only one year, and the permit needs to be renewed every December 31 on the same year. Every requests in getting an annual permit must be attached with a result from a competency test.

In Malaysia, the Medical Act 1971 (Act 50) which is different to that in Indonesia, a temporary registration is obtained to gain experience and a requirement to acquire a full registration. The temporary registration for non – Malaysian doctors in the Medical Act 1971 (Act50) 24/2012 is for 3 months period since it is put into effect. Full registration is for an individual with a sufficient ability and approved by the Council. The doctor's registration fee is determined by the MMC article 16 (1c) formally set by the Rule 1974 (a) temporary registration fee is RM20 (b) full registration fee is RM100 (c) annual permit fee.

In Indonesia, according to the Law of Practice of Doctors No. 29 year 2004, doctors who practice in Indonesia must be registered with the Council of Indonesia Doctors with the following requirements; (a) possess a medical certificate (b) possess a letter of statement of having sworn (c) possess a letter of physical and mental health and (d) possess a competency certificate (e) write a letter of statement of obeying and performing the profession stipulated on the profession ethics. Letter of Registration is valid for 5 years of time.

## 5.2 Standard Profession of Doctors

The study reveals that the common profession of doctors in Indonesia and Malaysia indicated a significant difference. The mean value recorded for the Indonesian doctors was 3.93% which was lower than the average value of the Malaysian doctors (4.42%). This result indicated that the Malaysian doctors have a higher standard of profession compared to the Indonesian doctors.

Veronika (2002) stated that the health care standard often makes significant changes, and it evolves towards having more expertise, sophisticated technology developments, facilities and resources including hospital medical services.

There are some rules of the profession for doctors, they are knowledgeable, skillful, they have the professional attitude in which all those standards are the essential competencies for physicians. According to the Medical Practice Act No, 29 The year 2014 Article 51, all of the doctors have an obligation to carry out their profession with the standards of professional and procedure and anyone who violates this section will imprison for one year or a maximum fine of Rp. 50.000.000 (fifty million Rupiah).

In the Malaysian Code of conduct year 2001 case: 1(b) anyone who violates the code of conduct will punish according to the medical practice act year 1971 Article 50 amendment 24/2012 article 4A (b) MMC has the right to supervise the doctor's profession standard and in the section 33 (a), the first doctor error will not be fined more than fifty thousand Malaysian Ringgit or not be imprisoned more than two years and the second even subsequent error will not be fined more than one hundred thousand Malaysian ringgit or not be imprisoned more than three years.

## 5.3 Doctor Granted a-Three Different Place of Practice Licence

The regulation of the number of allowed places for the medical practice is vital to control profession. In Indonesia, the practice licence refers to the real written evidence which is given by the government to those who are qualified to do the professional duty (Medical Practice Act No. 29 of 2004 article 37[7]). The findings of this research indicated a significant difference of the mean value for the three different places pertaining to the practice licence between Indonesia and Malaysia. The mean value reported for the Indonesian sample was 3.88% which is higher than the Malaysian sample (3.34%) indicating that the Indonesian practice licence should be improved rather than the Malaysia practice licence.

According to Zulfendri (2006), doctors (from the three different places) were only granted one license to practice their profession. However, based on the Regulation of the Indonesian Ministry of Health No 19 of 2004 Article 37 (2) (3), the specialist doctors have the opportunity to have more than one license to practice their professions at more than one places and the practice license is issued by the Ministry of Health of Medan. The letter of assignment is valid for only three months, and it can be renewed, and even discussed with staff government of Hospital Kuala Lumpur the situation is different in Malaysia, The doctors who work for the Malaysian government will not be allowed to work for private sector, and the kingdom civil who work in hospital will have office hour from 8 am to 5 pm

## 5.4. Doctors Must Have Medical Records for Their Patients

The medical record of patients affects the profession. The study shows that Indonesia and Malaysia have a

significant difference in mean value in the medical record issues. The average value recorded for Indonesia was 3.78% which was lower than the average value for Malaysia (4.28%). This result indicated that the Malaysian respondents were more demanding in the issue of medical records.

The regulation of the Ministry of Health of the Republic of Indonesia No. 269/ Minister of Health / Reg / III / 2008 stated that the medical records are files containing patient's personal record and a document including examination, the treatment which given to the patient.

According to Hanafiah (2008), the medical record is a collection of information about the identity, examination result, and memorandum and any aspects which related to the health care activities from time to time. This memorandum can be in the forms of note-writing, picture, and recently it may also be an electronic record such as; computer, film micro, and voice record.

Unfortunately, the medical record system still has some weaknesses because the primary data exchanging from one hospital to another hospital is not allowed. Each hospital could not have patient's previous personal medical record. Therefore, it is desirable to access the medical records via networks (Joko Lianto Buliali, 2007).

Health institutions concern to keep and save all the medical records in Electronic Medical Record (EMR), in which it is a matter that relates to the patients' confidentiality. For those purposes, vocational experts are needed to work well and reliable because confidentiality protection is associated with the reliable system (Ika Nuhrahanta Budhy, 2007).

In Indonesia, the article No. 46: Medical Practice Act No. 29 of 2004 (1) stated that every doctor is obliged to make a medical record after patients received treatments as well as the name, time, and signature of the person who takes the action and provides the service. Article 46 (1) states that the medical record belongs to the doctor, and the content of the medical record should be kept well by the physician. In article 51(d), the doctor is responsible to maintain the patient's confidentiality. Moreover, Articles 79 and 46(1) stated that if the doctor does not make the medical record, the doctor will be imprisoned for maximum one year or maximum fine Rp. 50.000.000 (fifty million Rupiah). Also, the regulation of the Ministry of Health of the Republic of Indonesia No. 269/Menkes/Per/2008 Article 17 (1) stated that in maintaining the medical records, the Minister.

Chairman of State Health Department, could take the administrative actions of their obligation, and (2) administrative action as referred to no (1) could be done through written and spoken, the last step is the withdrawal of practice permit.

While in Malaysia, the code of conduct 2001 Part II (7) indicates the doctor's obligation, they are; (i) recording everything related to the patient (ii) saving and using the medical record (iii) medical record also belongs to patient (iv) doctor must give the report, delaying information for those are unethical (v) doctor is responsible for patient's confidentiality (vi) the medical record could be given to the third party if the patient's written consent is accepted. Doctors who violate this regulation will be sentenced, by the Medical Law 1971 (Article 50) amendment 24/2012 Section 30 Article

(1) Related to these actions:

(a) Denouncing medical practices.

(b) ordering applicant patient to subject to all requirements including; (i) patients gets the medical records (ii) all (iii) all physician have the course or formal education as defined by councils (iv) physicians report the patient's medical record.

(c) Asking the previous medical history

(d) Making some orders

(e) Considering council's decision.

(2) Boards may also impose a fine as well as the additional punishment (3) doctor who deals with this case is not allowed to run their job

(4) Everyone, who does not comply with the article (1) shall have the sanction, and then.

(5) Councils may decide the reasonable payment.

Shortly, the above laws showed that Malaysian law is fimer than that of Indonesia. It may result to the legal certainty, while Indonesia medial record system may result to a bit doubtful certainty. The wishful expectation is Indonesia will have a more sophisticated technology medical record system so the doctor can keep supervising the patient's medical records towards patients' treatment.

### **5.5. Doctors Must Pay Attention to Quality and Cost**

There were significant differences in the mean values between Indonesia and Malaysia about doctors' attention on the quality and cost of medical services. The mean value of 4.22 % in Indonesia was higher than the mean value of 4.01 % in Malaysia. The result indicates that patients in Indonesia require more of the doctors' attention on the aspects of the quality and costs.

In this case, quality refers to the health care delivery system which is suitable and qualified and meets the needs of patients (Anny Isfandyarie, 2005), while cost is to determine that the financing of ill-health checks

charged to patients who are completely in accordance with the needs of patients based on the set of rates stated by legislation. The most important and significant dimensional qualities of health care are the scientific knowledge possessed by doctors (80 %), doctors' personal attention to the patient (60%), finesse owned by doctors (50%), proficiency in providing health care (45%) as well as the comfort perceived by patients (8%). For patients, the dimensions of service quality that were considered as the most essential qualities of doctors were the proficiency in providing health care (45%), doctor's personal attention to patients (40 %), scientific knowledge possessed by doctors (40%) , finesse owned by doctors (35%), as well as comfort perceived by the patients (Wijono,1999).

The World Health Organization (WHO) introduced the Nine Life Saving Patient Safety reserves in the service quality and costs to promote hospitals in Indonesia and to implement the nine pillars of the safety of the patients, namely: (1) the examination of drug name, appearance and shape, (2) the introduction of the patient, (3) good communication , (4) taking the right and particular action against the patient's body, (5) control of concentrated electrolyte solutions, (6) ensuring the accuracy of drug delivery on the transfer of services , (7) avoiding a wrong line or hospital equipment, (8) using disposable injection tool, (9) improving hands hygiene to prevent infection of nosocomial (Adiwinarno, 2011).

In Malaysia, the Penang Consumers Association (2004) reported that many doctors in government hospitals provide laboratory tests which not required in the examination of patients (CAP, 2004). In Indonesia, the findings of the study indicate that (1) doctors should pay attention to the quality and cost (2) the implementation of section (1) can be held by the medical audit as stated in the Medical Practice Act Section 49 (1). Unlike in Malaysia, the Code of Ethics 2001 Part II (2) states that every cost of medical services should be discussed with the patient prior to medical examination performed, every doctor must comply a list of values which determined by the Malaysian Medical Association and Articles of Medicine 1971 (Act 50) amendments 24/2012 Section 4A (2b) state that Malaysian Medical Council (MMC) supervises doctor's code of attitude and ethics.

#### **5.6. Doctors are in charge of Legal and Ethics**

There are significant differences in the mean values of issues about "doctors are in charge of legal and ethics; between Indonesia and Malaysia. The average value of this statement for Indonesia was reported to be 4.06 % lower than the mean value in Malaysia (4.15%). The result indicated that the respondents agreed that the legal consciousness of doctors in their profession in Malaysia is higher than that of Indonesia.

In Indonesia, the doctor is in charge of the legal terms which set in Chapter X of the Law Practice Doctoral in Articles 75 to 80 and Article 359 of the Criminal Law declares that negligence that resulting in a death of another person will be sentenced to five years in prison. The Civil Code of Article 1365 states that any unlawful acts that bring harm to others require that the fault of causing the loss is to replace the losses. Whereas in Malaysia, the Code of Ethics 2001, Article 2 (9) regulates the ethics of doctors to patients while the Medical Act 1971 (Act 50) governs the rules for doctors who practice without temporary practice certificate and Article 30 (1) to (5) is about the codes of conduct run by MMC.

#### **5.7. Ineffective Legal Protection against Patients**

There are differences in the mean value between Indonesia and Malaysia to the claim of ineffective legal protection for patients in which the average value in Indonesia 4.03 % higher than the average value in Malaysia to 3.51 %, according to the respondents weak legal protection for patients in Indonesia rather than in Malaysia.

Legal protection is the protection provided to the subject of law in the form of legislation both protective and preventive, which written or inscribed. In the Indonesian Government Regulation No.2 of 2002 on Procedures for the Protection of Victims and Witnesses states that the legal protection is an overview of the legal function, based on the concept that the law gives the Justice, peace in society, certainty, usefulness and peace. The increasing awareness of the rights of patients will also bring its influence on the patient's perspective in finding a settlement of the case against him. In this case, the government has tried to keep the interest of patients to obtain legal protection, but it is not beneficial to the patient. The existence of Acts No. 29 of 2004 on Medical Practices is also not able to answer the question of the rights of patients in case of malpractice doctors who harm patients (Yuliati, 2005: 4-5)

Legal protection for patients is not done well in Indonesia because the firm influence of doctoral Indonesia Institute (IDI). Sometimes the institution is on higher position rather than the government.

This proof of the Indonesian government which has no authority in enforcing the law. If there is a claim against the doctors in court, it 's hard to present expert witnesses to the court, because of the tendency of doctors to protect the fellow profession.

Whereas in the case of a patient if it proven in court, doctor is imprisoned due to negligence or careless in their profession which causes death or disability of the patient, the patient or his family receives compensation, and government has liable for tort which performed by the doctor, based on Article 34 (b) of the Medical Act

1971 (Act 50).

Furthermore, to determine whether the difference above is significant or not, it is known that there are six of the seven parameters that have the sig. <0.05, it shows that the differences are significant. Thus, there are a different implementation of the obligations of doctors to their profession in Indonesia and Malaysia.

## 6. Conclusions

The results of this present study indicate that there were six significant differences out of the seven indicators. The six significant differences based on the mean values of each of the indicators between Indonesia and Malaysia that were recorded significant at 5% significance level. These six significant differences are:

- a) Doctors in their profession must have prior authorization.
- b) Doctors perform their duties by the professional standards.
- c) Doctors are granted a license to practice in the three areas.
- d) Doctors should make the medical record after reviewing the patients.
- e) Doctors should pay attention to the aspects of quality and cost.
- f) There are legal protections for patients.

## REFERENCES

- Abdul Aziz Hussin. (2006). *Kelakuan dan Tata Tertib Awam-Hak dan TangungJawab*. Kuala Lumpur: Dewan Bahasa dan Pustaka.
- D,Veronika,Komalawati. (2002). *Peranan Informed Consent Dalam Transaksi Terapeutik Persetujuan Dalam Hubungan Pengamal perubatan dan Pesakit Suatu Tinjauan Yuridis*. Bandung: Citra Aditya Bakti.
- Hargianti Dini Iswandari. (2008). Aspek Hukum Penyelenggara Praktik Dokter. *Jurnal Management Pelayanan Kesehatan Tahun*. (3), 1-11.
- Jokolianto Buliali. (2007). *Sistem Pencatatan Informasi Medis Berbasis Teknologi Mikrossoft.net*. Surabaya: Institut teknologi Sepuluh November.
- M.Yusuf, Hanafiah. (2008). *Etika Dokter dan Undang-undang Kesehatan*. Jakarta: EGC.
- Panduan Persatuan Pengguna Pulau Pinang (CAP). (2004) *Bolehkah Dokter Dipercayai*. Pulau Pinang: Persatuan Konsumen Pulau Pinang
- Yulianti. (2005). *Tinjauan Yuridis Perlindungan Hukum Bagi Pasien Dalam Undang-undang Republik Indonesia No 29 Tahun 2004 tentang Praktek Dokter dan Hubungannya Dengan Malpraktek Dokter*. Semarang: Universitas Diponegoro.
- Zulfendri. (2006). Regulasi Dokter Spesialis Studi Komperasi Regulasi Pelayanan Kesehatan Di Kota Medan Indonesia dan Negeri Pulau Pinang Malaysia. *Jurnal Pengurusan Perhidmatan Kesihatan*, (3), 156 - 162.

## ACTS

Undang-undang No 29 Tahun 2004 Tentang Praktek Kedokteran  
Peraturan Menteri Kesehatan Republik Indonesia No 269/MENKES/PER/III/2008 tentang rekaman medis  
Akta Perubatan 1971 (Akta 50)  
Kod Etika 2001

## Internet

- Adiwinarno. (2011). Keselamatan Pasien dari Konsep Menuju Implementasinya *Resume Jurnal I.II*. 27  
Mareth<http://jurnal.pdii.lipi.go.id/admin/jurnal/3255413.pdf>.
- Tarmizi Ahmadun, Malaysia Medical Expo. Hotel Hollyday Inn Bandung”, <http://www.pikiran-rakyat.com/cetak/2006/23/0205.htm> Ogus23, 2006)