

Application of Res Ipsa Loquitur to the Medical Negligence Case in Patient Protection Perspective

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ABSTRACT—The doctrine of *res ipsa loquitur* (the things speak for itself) facts that speak for themselves can be applied in cases of medical negligence in court, although this doctrine does not guarantee victory in every case for patients. The formulation of this research problem is: why is the doctrine of *res ipsa loquitur* applied to doctors and hospitals that commit medical negligence in medical disputes in court?

This study uses a normative juridical approach that is qualitative in nature. From the research results obtained: (1) *res ipsa loquitur* must apply to medical cases, because the patient is treated unfairly, if he is deprived of his right to use the doctrine; (2) *res ipsa loquitur* will help the injured patient because he has no medical knowledge about what is happening. If a patient is prohibited from using this doctrine it must be seen as unfair discrimination; and (3) *res ipsa loquitur* can be broadly translated into the highest health standards that can be achieved with reference to the process and results. The Ministry of Health of the Republic of Indonesia in issuing public health policies can implement *Freies Ermessen* (freedom to act on its own initiative) which is realized through the establishment of the Ministry of Health Regulation of the Republic of Indonesia in an effort to achieve substantive justice in cases of medical negligence by applying *res ipsa loquitur* to provide legal protection for the patient.

Keywords: *res ipsa loquitur*, medical negligence, *Freies Ermessen*, substantive justice, legal protection for patients

1. INTRODUCTION

A. Background

The title of this article is actually not pretending to make the image of a doctor fade in the eyes of the public, given that the doctor's profession is a very noble and respectable profession of official (*officium nobile*), as mandated in the provisions of article 1 paragraph (11) of Law Number 29 Year 2004 concerning Practice Medicine that reads:

"The profession of medicine or dentistry is a medical or dental work carried out based on a science, competencies obtained through tiered education, and a code of ethics that is serving the community".

From the formulation contained in the Law on Medical Practice, it is clear that the doctor is the bearer of the medical profession which of course also has the characteristics of the profession as the bearer of the profession in general.

Veronica Komalawati concluded that the nature of the profession is a vocation to devote oneself to humanity based on education that must be carried out with sincerity of intention and full responsibility, so that the medical profession has the following characteristics of the profession:

1) It is a high-level occupation from experts who are skilled and skilled at applying knowledge systematically.

- 2) Have competence exclusively for certain knowledge and skills and skills.
- 3) Based on intensive education and certain disciplines.
- 4) Has the responsibility to develop his knowledge, skills, skills and maintain honor.
- 5) Has its own ethics as a guide for assessing work.
- 6) Tend to ignore the control of society or individuals.
- 7) Its implementation is influenced by the community, certain interest groups, and other professional organizations, especially in terms of recognition of its independence.[1]

Furthermore Parsons, as quoted by Veronica Komalawati, stated some special characteristics of the profession as follows:

- 1) *Disinterestedness*, meaning that it does not refer to strings attached. This value must be used as a normative benchmark for the profession.
- 2) *Rationality*, which means making an effort to look for the best based on considerations that can be scientifically justified. The realization of the system of professional work is carried out based on rationality which is one of the dominant features of science.
- 3) *Functional specificity*, that is, professionals have authority (authority) in a society with a distinctive sociological structure that relies on superior technical competence that is only possessed by the relevant professional. Therefore, a professional is considered as someone who has authority only in his field.
- 4) *Universality*, which is the basis of decision making not on "who", or the personal benefits that can be obtained by decision makers, but based on "what is the problem" .[2]

From the description above, it can be concluded that as a profession bearer, a doctor is a person who has expertise and expertise as well as skills in medical science who are independently able to meet the needs of the people who need their services. In addition, doctors must also be able to decide for themselves the actions that must be carried out in carrying out his profession, and personally responsible for the quality of services provided.

When seen from the authority that relies on the competency of expertise and the skills and skills possessed by doctors who rely on superior technical competence, it is clear that the position of the patient in this expertise competency is inferior position. Patients cannot make an objective assessment of the

The Negligence Case Res Ipsa Loquitur

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The Negligence Case Stuart M. Speiser, 1983 *Res Ipsa Loquitur and Medical Negligence* Pat Van den Heever, P. A.

Carstens, 2011 The purpose and object is the investigation and research of the utility and effect of the application of the doctrine of res ipsa loquitur to medical negligence cases In particular the book endeavours to establish conclusively that the approach of the South African courts that the doctrine should never find application to modern negligence cases is untenable and out of touch with modern approaches adopted in other common law countries Constitutional principles such as procedural equality access to courts access to health care access to information post constitutional legislation medical ethics and policy considerations are also analysed Page 4 of cover Comparative Healthcare Law Peter De Cruz, 2013-03-04 This book provides a comparative and accessible analysis of key areas of healthcare law comparing English law with selected common and civil law jurisdictions within a framework of law and medical ethics and encompassing pivotal cases codes and legislation The introduction examines medical decision making and legal and ethical frameworks in Western and non Western cultures Part I examines healthcare law in England and Wales including abortion consent confidentiality children euthanasia persistent vegetative state patients organ transplantation sterilisation of the mentally incapacitated surrogacy UK cloning proposals and the landmark conjoined twins case Part II covers non English common law jurisdictions such as Australia New Zealand Ireland and certain American jurisdictions Civil law examples focus on France and Germany and where appropriate Scandinavian countries International perspectives on abortion laws and euthanasia are also provided The book concludes with a comparative overview which highlights common healthcare themes across various jurisdictions Comparative Healthcare Law brings together information never previously accessible within the covers of one volume making this unique book indispensable for scholars and practitioners in the field of healthcare law *Reports of Cases Determined by the Supreme Court of the State of Missouri* Missouri. Supreme Court, 1917 Mason and McCall Smith's Law and Medical Ethics Graeme T. Laurie, Shawn Harmon, John Kenyon Mason, Gerard Porter, Alexander McCall Smith, 2016 This classic textbook has provided students of medical law and ethics with a framework for exploring this fascinating subject for over 30 years This book provides extensive coverage and insight into recent judicial decisions and statutory developments across the United Kingdom alongside the authors own opinion on current debates and controversies to help you to formulate your own views and arguments The tenth edition has evolved to reflect changes in the law and shifting ethical opinions In setting the UK context it continues to take a comparative approach including reference to the Scottish position where relevant A specific chapter on the European dimension in health care and the particular importance attached to this shift in influence from transatlantic jurisdictions to those of the EU is included Mason McCall Smith's Law Medical Ethics is essential reading for any serious medical law student or practitioner Book jacket **LEGAL ASPECTS OF HEALTH CARE ADMIN 10E** George

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