

**RATIO DECIDENDI HAKIM TERHADAP PEMBUKTIAN KASUS
PERBUATAN MELAWAN HUKUM DALAM GANTI KERUGIAN
TERHADAP TINDAKAN MALPRAKTIK MEDIS**

(Studi Kasus Putusan Nomor : 312/Pdt.G/2014/PN.JKT.Sel)

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ABSTRAK

Rumah sakit merupakan institusi yang memberikan layanan kesehatan kepada masyarakat. Dalam pelayanannya rumah sakit terdapat dokter yang berperan dalam penanganan medis. Dokter dalam melakukan tugasnya tidak jarang ditemui kasus-kasus yang merugikan pasien, salah satunya malpraktik. Suatu pembenaran hukum dalam malpraktik dokter yang menyebabkan pasien merasa dirugikan, sehingga sisi korban mengajukan gugatan. Karena ada gugatan maka pembuktian dilakukan terhadap barang siapa mendalilkan terhadap suatu hak atau peristiwa. Sehingga menjadi menarik mengenai penerapan hukum pembuktian perdata positif dan pertimbangan hukum hakim dalam kasus. Metode pendekatan yang digunakan dalam penelitian ini adalah metode pendekatan undang-undang (*statute approach*), pendekatan kasus (*case approach*), pendekatan konseptual (*conceptual approach*). Data penelitian bersumber dari data sekunder. Metode pengumpulan data dilakukan dengan studi kepustakaan. Metode analisa yang digunakan dalam penelitian ini adalah normatif kualitatif. Berdasarkan hasil penelitian dan pembahasan didapati bahwa penerapan hukum pembuktian Pasal 163 HIR/283 RBg/1865 BW jo Pasal 164 HIR/284 RBg/1866 BW dimana penggugat mengajukan alat bukti surat dan saksi. Kemudian terhadap *ratio decidendi* hakim dalam pemberian ganti rugi mengacu tanggung jawab perdata RS Asri, Sammarie FH, dr. Tamtam OS, PT. Rashal Siar CM, PT. Sammarie Purnafiat dalam hal terjadinya malpraktik medik dilihat dari perspektif hukum perdata yaitu tanggung jawab atas Perbuatan Melawan Hukum dengan memberi ganti rugi dan hal tersebut juga didukung bukti konkrit mengenai besaran kerugian yang diderita penggugat. Dalam pertanggungjawaban pada kasus *a quo* mendasar pada Pasal 1365 jo 1367 KUHPerdata.

Kata Kunci: Malpraktik Medis, Perbuatan Melawan Hukum, *Ratio Decidendi*

*RATIO DECIDENDI JUDGE AGAINST PROVING CASES OF
UNLAWFUL ACTS IN DAMAGES AGAINST ACTS OF
MEDICAL MALPRACTICE*

(Case Study Verdict Number: 312/Pdt.G/2014/PN. JKT. Sel)

ABSTRACT

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Medical services were originally a trusting relationship between doctors and patients. Patients who come always entrust to the doctor about the condition of the disease, his health and hope that the doctor can overcome and help the health problems of the patient concerned. But it is not uncommon for doctors who in doing their duties have done the wrong thing (medical malpractice). A legal justification in the malpractice of doctors that causes patients to feel aggrieved, so the victim's side filed a lawsuit. Because there is a lawsuit, proof is made against who postulates a right or event and to confirm his rights or to dispute the rights of others must be proven the existence of rights. The approach methods used in this study are statute approach methods, case approaches, conceptual approaches (conceptual approaches). Research data is sourced from secondary data. The method of data collection is done with literature studies. The analytical methods used in this study are qualitative normative. Based on the results of research and discussion it was found that the application of the law of proof in case a quo refers to Article 163 HIR/283 RBg/1865 BW jo Article 164 HIR/284 RBg/1866 BW where the plaintiff submits evidence of letters and witnesses. Then against the judge's decidendi ratio in awarding damages refers to the civil liability of doctors in the event of medical malpractice seen from the perspective of civil law, namely responsibility for unlawful acts by providing compensation so that it proves the existence of errors and it is also supported by concrete evidence about the amount of losses suffered by plaintiffs. In the accountability of the doctor in the case of a quo fundamental in Article 1365 jo 1367 Kuh Civil.

Keywords: Medical Malpractice, Unlawful Acts, Decidendi Ratio