

THE ROLE OF FORENSIC EXPERT WITNESSES IN THE PROCESS OF INVESTIGATING THE CASE OF MALPRAKTEK SUSTAINABILITY (ABORTUS CASE STUDY IN LANGSA CITY - ACEH PROVINCE)

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ABSTRACT

Apart from being medical personnel, doctors are also required to provide assistance to law enforcers to reveal and find material truth in a criminal case, sources of legal materials are contained in Article 184 Book of Law Event Criminal (KUHP), namely the expert's statement can be used as valid evidence before a court session, classified into documentary evidence Visum et Repertumbe a substitute for evidence. Dithusing normative juridical legal research methods, constitutes a legal research which limits the existing norms in statutory regulations. From a juridical point of view, every doctor is an expert, whether the doctor is an expert in judicial medicine or not, that's why every doctor can be asked for help to help clarify a criminal case by the competent authorities. The result of the research that the role of expert witnesses, especially expert witnesses in the field of Forensics in determining cases of suspected malpractice, especially allegations of malpractice abortion in Langsa City, states that the cause of patient death in surgery was not due to objects left behind and could not be retrieved at that time, but death was caused by the bleeding that does not stop, has warded off and denied public opinion which considers that malpractice has not been proven legally, thus the investigator has the right to stop the investigation by issuing a notification letter. Pcessation of Investigation (SP3). It is recommended that forensic specialists be given a special room to provide explanations (no longer confidential) for their work, so that there is no longer a public opinion that thinks malpractice has occurred.

Key words: Expert Witness, Malpractice, Evidence

1. BACKGROUND

Apart from being medical personnel, doctors are also required to provide assistance to law enforcers, the role of doctors to find material truth in criminal law cases in particular plays an important and decisive role. In an attempt to settle a criminal case allegedly involving the human body as evidence, the law cannot try the case only with knowledge of the legal field alone. Evidence provided by a doctor as an expert can assist a court or alternative dispute resolution process in making fair decisions. Expert witnesses have the objective of providing assurance to judges and providing objective and impartial information, so expert witnesses are often used by judges to prove a case which they do not know about. In the large Indonesian dictionary, an expert witness is "a person who is made a witness because of his expertise, not because he is involved with a case that is being tried". Apart from that, in giving his testimony an expert witness also only conveyed what was his area of expertise which had to do with the case being examined. Opinion witnesses are independent expert witnesses who are asked to give an independent opinion based on the facts of certain existing cases. The main role of expert witnesses (including doctors) is to help the parties obtain evidence or arguments that corroborate the lawsuit or refute the lawsuit. In this case the doctor will provide an opinion according to his relevant experience and expertise. As independent expert witnesses, doctors can assist the court in two ways, namely by providing expert opinion based on their knowledge and experience of the facts and informing the court of matters relating to their specific expertise. An expert witness must have the following qualities: 1. Knowledge and practical experience of the material discussed in the case. 2. Ability to communicate findings or opinions that will be conveyed clearly, concisely and can be understood by lay parties involved in the trial. 3. Flexible in terms of thoughts and self-confidence to modify opinions as new evidence or opposing arguments. 4. The ability to think from different sides in order to be able to master any situation that could occur in court. 5. A convincing attitude and appearance in court. The ability to think from different sides in order to be able to master any situation that may occur in court. 5. A convincing attitude and appearance in court.

Denature of the malpractice trial medical expert testimony is almost always required, expert statements also serve to provide input to investigators in placing or clarifying a criminal case that is being examined or to position the facts of the case whether or not it has been fulfilled or not regarding the articles imposed on the suspect. In a criminal case that causes a victim, the doctor is expected to be able to find abnormalities that occur in the victim's body, how the abnormality arises, what causes it and what consequences it has on the victim's health. In the case of a death victim, the doctor is expected to be able to explain the cause of death concerned, how the mechanism of the death occurred, and assist in estimating the time of death and estimating the mode of death. According to Government Regulation no. 18 of 1981 Chapter II Article 2, clinical autopsy may only be performed in the following circumstances: a. With the written consent of the patient and / or his / her closest family after the patient has died, if the cause of death cannot be determined with certainty. b. Without the consent of the patient or his closest family, if it is suspected that the patient is suffering from a disease that can endanger other people or the surrounding community. c. Without the consent of the patient or his closest family, if within 2 x 24 hours, none of the immediate family of the deceased comes to the hospital.

According to Coughlin's Law Dictionary, malpractice is the wrong professional attitude of someone who has a profession, such as doctors, nurses, lawyers, accountants, dentists, veterinarians and so on. Malpractice can be caused due to indifference, negligence or lack of skill or caution in carrying out professional obligations, deliberate wrong actions or unethical

practices (negligence). To understand what is meant by malpractice, there can be confusion of understanding between malpractice, violation of the code of ethics or violation of the law. Etymologically, malpractice contains the word mal which means bad or wrong, so that malpractice is interpreted incorrectly by performing a procedure that results in the loss of the patient or even fatal. *Malpractice* Medicine is a process that involves the wrong handling of a patient by a doctor, the errors in question include errors in diagnosis, errors in administering drugs, errors in administering therapy or mistreating patients by doctors. G. accusations against doctors for professional errors of doctors (Medical Malpractice) are still carried out by patients. Lawsuits against doctors are still being filed, because patients think that nowadays a doctor is seen as a person who has the ability of medical science who can always resolve and cure any disease problems suffered by patients that are confronted by doctors. Therefore, when there is a failure of medical treatment against the patient, the failure is no longer accepted as a risk but the failure is seen as a medical error. Here it is necessary to have a communication process between doctors and patients, the communication process begins with the doctor delivering information or explanations to the patient (informed consent). Ideally, the contents of this information should be conveyed honestly and completely to patients, whether requested or not. In Article 45 paragraph (3) Law no. 29 of 2004 concerning Medical Practice, it is determined that the contents of the information described at least include: 1. Diagnosis and procedures for medical action, 2. The purpose of medical action, 3. Other alternatives and risks, 4. Risks and complications that may occur, 5. Prognosis of the actions taken. Based on the explanation / information, the patient can in turn convey his will, namely approving or rejecting the medical action to be performed. Diagnosis and procedures for medical action, 2. Purpose of medical action performed, 3. Alternative measures and risks, 4. Risks and complications that may occur, 5. Prognosis of the actions taken. Based on the explanation / information, the patient can in turn convey his will, namely approving or rejecting the medical action to be performed. Diagnosis and procedures for medical action, 2. Purpose of medical action performed, 3. Alternative measures and risks, 4. Risks and complications that may occur, 5. Prognosis of the actions taken. Based on the explanation / information, the patient can in turn convey his will, namely approving or rejecting the medical action to be performed.

Law enforcement is very difficult to understand medical records or other data relating to patient operating procedures or other stages of medical care that doctors administer to their patients. Science Medicine Forensic is a specialized branch of medical science that studies the use of medical science for the benefit of law enforcement and justice. In a case of suspected medical malpractice, the expert's testimony has a very decisive role, because from the information it provides, it can be determined whether the doctor has carried out his obligations correctly or not. For that matter materially, expert statements in criminal cases should have binding evidentiary power. An expert witness is someone who can conclude based on his experience of expertise about the facts or data of an incident, either discovered by himself or by others, and is able to convey his opinion (Franklin C, A). In article 1 point 28 of the Criminal Procedure Code, expert testimony is information provided by a person who has special expertise on matters needed to make light of a criminal case for the purpose of examination. Article 1 point 28 of the Criminal Procedure Code, specifically there are 2 requirements from an expert's statement, namely that what is explained must be about everything that falls within the scope of his expertise and that what is explained regarding his expertise is closely related to the criminal case being investigated. Because it is a condition,

The theory used in this research is the theory of legal protection and the theory of authority. According to Satjito Rahardjo, legal protection is an effort to protect someone's interest by allocating a human right to power to him to act in his interest. While authority is born because of legal power, legitimate power creates law, on the other hand, law legitimates power so that it can be said that a power is legitimate. Juridically, the definition of authority is the ability granted by laws and regulations to cause legal consequences.

In this thesis the authors describe the cases handled by the authors who performed the autopsy on corpse young mother post curettage above report from the victim's husband, done by a dokter kandungan which caused the victim to die. By chronology of events, a 24-year-old young mother underwent curettage surgery for her third child to miscarry, the suspicion of malpractice began when the victim experienced bleeding at one month of gestation, for this condition husband the victim brought to the gynecologist's practice. Safter receiving medical treatment, the doctor refers the victim to a private hospital where the dock is locatedter is in charge of and performs curettage surgery for the bleeding. After the medical action, the victim's condition was getting weaker, based on the results Ultrasound It is known that there is something like a foreign object in the victim's uterus which is suspected as a medical waste the size of a finger left during the previous curettage operation. The victim's husband does not accept it and the doctor promised to re-operate to retrieve the suspected object left in the victim's womb. However, before the operation was carried out, the condition of the victim was getting weaker and finally the victim died, not accepting death his wife site husband reported this incident to the police on charges of malpractice.

This case requires the assistance of a forensic specialist to provide medical information about the cause of death of the alleged malpractice victim, which in turn is quite influential for the investigators' actions. This means that medical science plays a very important role in assisting investigators, prosecutors and judges in matters that can only be resolved by medical science. Furthermore, medical science also has a role in determining the causal relationship between an act and the consequences that will result from that action, whether it results in injury to the body, or which results in the death of a person, where these consequences should reasonably be suspected of having occurred a criminal act. Based on the results of the forensic expert's examination, it is then possible to know whether a person's injury,

This study explains the existence of how strong a doctor's statement is as an expert witness in solving cases conjecture medical malpractice and DI it is hoped that this research will provide some solutions or suggestions for improvement in solving cases of medical malpractice.

2. RESEARCH METHODS

The method used in this research is the normative juridical method, from a juridical point of view, every doctor is an expert, therefore every doctor can be asked for help to help explain a criminal case by the competent authorities and the results of the examination are contained in a *visum et repertum*, by gathering facts and linking them. logically to each other and then draw conclusions, therefore when giving a report on the news of the *vism et repertum* it must be true about what was seen and found at the time of the examination. In Article 7 paragraph (1) letter (h) of the Criminal Procedure Code, it can be seen the importance of

the role of the *Visum et Repertum* itself, in this case the state police officers of the Republic of Indonesia and certain civil servants who are given special authority by law because of their obligation to have the authority to bring in experts, required in connection with a case examination. In general, *visum et repertum* or expert statements can be accepted as valid evidence, but that does not mean that the substance of the information can be directly accepted as evidence. According to Johnny Ibrahim, normative legal research is a scientific research procedure to find the truth based on scientific logic from its normative side.

The type of research used in this research is juridical empirical, that is, research on the effectiveness of legal provisions, especially between the laws governing expert witnesses, which discusses how the implementation of the duties of an expert witness must be in line with applicable legal provisions. A doctor who is involved in the case because of his expertise, knowledge and special area he has to provide medical evidence and the doctor plays an important and inseparable role in the lawsuit.

The source of legal data used in this research is secondary data, namely through field research and study of documents, to obtain the required data is the primary legal material used in this research, including the Criminal Procedure Code (KUHAP), namely Article 170 of the Criminal Procedure Code (KUHAP). It is stated that a doctor because of his job, dignity, or position can exercise the right to resign to ask to be exempted from the obligation to testify as a witness regarding the medical secret entrusted to him by giving reasons to the judge. The judge will determine whether or not the reasons for the request are valid. Article 179 paragraph (1) of the Criminal Procedure Code states that "Any person who is asked for his opinion as an expert in judicial medicine or a doctor or other expert is obliged to provide expert testimony for the sake of justice". It should be noted that not only a medical expert can be an expert witness, in the sense that the other expert is an expert related to the needs of an investigation. Article 183 Law number 8 of 1981 which states that a judge may not impose a sentence on a person unless with at least two valid evidences he is convinced that a criminal act actually occurred and that the defendant was guilty of committing it. The procedure for requesting a *visum et repertum* for a corpse (dead victim) has been regulated in article 133 KUHAP and article 134 KUHAP, referring to the two articles, it can be interpreted that a request for a post mortem et *repertum* is in the form of a funeral, so the law is "absolute" or cannot be refused. Article 184 KUHAP, namely expert statements will be used as valid evidence before a court session, and can be given orally before a court session (article 186 KUHAP). Article 224 paragraph (1) of the Criminal Code contains a maximum penalty of 9 months for anyone who refuses to be summoned as a witness, Article 522 of the Criminal Code whoever according to the law is summoned as a witness, expert or interpreter, does not come unlawfully, shall be punished with a fine, a maximum of nine hundred rupiahs. Secondary legal materials, namely those that can help analyze and understand primary legal materials such as books related to research, results of interviews with parties, results of seminars, the work of law circles and literatures. Tertiary legal materials, namely those that provide instructions and explanations such as legal dictionaries, newspapers, encyclopedias, and papers related to the object of research. Data collection techniques are carried out by conducting field research, namely information interview techniques by directly asking the respondents who have been determined such as investigators, expert doctors, victims' families and doctors in charge of the patient. The type of interview used is an unstructured interview, that is, it is not limited by time and a list of sequences of questions but holds on to the important points of the problem in accordance with the purpose of the interview. encyclopedias, as well as papers related to the object of research. Data collection techniques are carried out by conducting field research, namely information interview techniques by directly asking the respondents who have been determined such as investigators, expert doctors, victims' families and doctors in charge of the patient. The type of interview used is an unstructured interview, that is, it is not limited by time and a list of sequences of questions but holds on to the important points of the problem in accordance with the purpose of the interview. encyclopedias, as well as papers related to the object of research. Data collection techniques are carried out by conducting field research, namely information interview techniques by directly asking the respondents who have been determined such as investigators, expert doctors, victims' families and doctors in charge of the patient. The type of interview used is an unstructured interview, that is, it is not limited by time and a list of sequences of questions but holds on to the important points of the problem in accordance with the purpose of the interview. the victim's family and the doctor in charge of the patient. The type of interview used is an unstructured interview, that is, it is not limited by time and a list of sequences of questions but holds on to the important points of the problem in accordance with the purpose of the interview. the victim's family and the doctor in charge of the patient. The type of interview used is an unstructured interview, that is, it is not limited by time and a list of sequences of questions but holds on to the important points of the problem in accordance with the purpose of the interview.

The data collection tools used were document studies, namely by reading, studying and analyzing literature, laws and regulations and other sources related to thesis writing. The interviews were guided by interview guidelines and used as supporting data in research. Analysis of the data in this study uses qualitative methods, namely starting from assumptions and realities or complex social phenomena then deductive conclusions are drawn, namely from things that are general in nature to things that are specific.

3. RESEARCH RESULT

The field of law and medicine cannot be separated for law enforcement, especially in the context of proving allegations of a person's wrongdoing, as previously reported due to allegations of malpractice committed by an obstetrician who made a woman die, it is suspected that the remains of the medical action (laminaria) were left behind during the curettage. carried out by a gynecologist so that the victim's family did not accept the incident until there was a long debate and the victim's family made a police report and made a request for a post mortem for an autopsy on the case. The request letter must be received by the witness at the latest three days before examination of the corpse was carried out. Those entitled to request a *visum et repertum* are investigators, criminal judges, civil judges and religious judges. The request must be in writing, not justified verbally, by telephone or by post. The victim is evidence, so the application for a *visum et repertum* must be submitted by the police officer together with the victim, suspect or other evidence, prequest submitted to the doctor of juridical medicine.

As a follow-up to a written Application Letter from investigators from the Indonesian Police Resort Langsa addressed to a Forensic Specialist *autopsi/post mortem et repertum* for a woman who is two months pregnant who is suspected of being a victim of Malpractice: Number: B / 153 / III / RES.1.24 / 2020 / RESKRIM, dated March 26, 2020, the Forensic Expert

Witness delivers the results of the post mortem et repertum to the investigator with the conclusion that the cause of death of the victim is due to bleeding from the injured uterine wall, and this is a medical risk and not due to malpractice.

From the results of an autopsy performed by a forensic doctor, a piece of laminaria was found in the victim's uterus and a 1 cm fetus that had not been successfully curetted due to previous bleeding. The role of expert witnesses, especially expert witnesses in the field of Forensics in determining cases of suspected malpractice, especially allegations of malpractice abortion in Langsa City namely from the results of the autopsy performed states that the cause of death of the patient in the operation is not due to an object left behind inside the patient's uterus and cannot yet be retrieved at that point, however due to a tear in the uterine wall, causing profuse bleeding and this can be due to the medical risk of the curettage which is then poured into a post mortem et repertum. have fended off and denied public opinion which considers that Malpractice has not been proven legally, thus the parties penidik has the right to stop the investigation by issuing a notification letter Pcessation of Investigation (SP3). That is why the investigators summoned the reporting party to explain the true condition and facilitate to make peace between the reporter and the doctor who is suspected of having committed malpractice.

4. CONCLUSION

1. By using the normative legal research method, the basis of forensic law is contained in the Criminal Code in relation to expert testimony including forensic experts as stipulated in article 170 of the Criminal Procedure Code, Article 179 paragraph (1) of the Criminal Procedure Code, Article 133 paragraph (1) and Article 134 of the Criminal Procedure Code. Article 224 and article 522 of the Criminal Code. The role of the forensic doctor can be carried out at the investigation stage, namely during the examination at the scene of the crime (TKP) and analysis of the data found, then at the investigation stage, namely the making of *visum et repertum* and examination report (BAP) of expert witnesses. Expert witnesses in the field of forensics are a way to prove or reveal cases in order to get the real truth.
2. The results of the doctor's examination of the victim or the evidence stated in the *visum et repertum* of the corpse, must be stated as the cause of death of the victim and for that the corpse absolutely must be dissected to find out the cause of death. The doctor who performs the autopsy acts as an expert so that what he does must be according to the best of his knowledge in determining the cause of death
3. With the results of the post mortem et repertum accompanied by an opinion from docher ahli fOrensic, it is clear and obvious that the conjecture malpraktek is not legally proven, therefore the Investigator from the Indonesian Police, Langsa Resort has the right to summon the Reporting Party to explain. aCheck the actual conditions and facilitate the peace between the reporter and the Doctor who is suspected of committing malpractice. The role of expert witnesses is very decisive in denied public opinion that thought had happened *malpractice* by a doctor womb. With the results of the autopsy and post mortem et repertum. Sso that the Investigator has the right to stop his investigation by issuing a Notification of Termination of Investigation (SP3).
4. In everyday reality it is not easy to distinguish professional error from medical risk. This is because the results of a medical service are not only based on medical action, but are also influenced by other factors such as the possibility of complications, unequal immunity, patient compliance in following doctor's instructions and the environment. If a doctor has acted accordingly in accordance with ethics and medical service standards even though he has failed and even the failure has resulted in death, then what happens is not a professional mistake but a risk that must be accepted by the patient and his family.
5. In line with technological developments and the increasing rate of incidents requiring autopsy and forensic expert opinion, it is recommended that both the Government and the Legislature provide adequate legal protection in specific laws and regulations for that with adequate facilities and contributions as well. Witness protection guarantees that in providing testimony, witnesses and victims are not overshadowed by concerns that if their testimony is deemed untrue, they can bring them to court on charges of giving false testimony, slander and other things which in the end are afraid of being blamed.
6. Doctor ahli fOrensic is given a special room to provide an explanation (no longer confidential) for the results of his work, so that public opinion that always thinks there has been malpractice will no longer occur. Pinvestigators, both the Indonesian Police and other parties who need it docher ahli forensic can collaboratemutually beneficial as well as mutual respect and give appreciation appropriately.

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