

Legal Protection For Patients Who Are Harmful Due To Medical Actions In The Installation Of Braces Without Medical Records (Study Decision Number 557/PK/PDT/2017)

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Abstract: Doctors carrying out medical practice are required to keep medical records which are regulated in the Medical Practice Law. In dentistry, records play a very important role, mistakes made by doctors and dentists by not making medical records are a form of unlawful action. This research aims to examine the form of legal protection for patients if they are harmed due to the actions of a dentist who in practice does not keep medical records and to see how responsible the doctor is for these actions. The method used in this research is normative juridical with a statutory approach, case approach, and conceptual approach. This research discusses forms of legal protection which consist of internal and external forms of legal protection, then discusses the responsibilities of medical personnel based on the absolute principle. The legal protection provided to patients who are harmed by the installation of braces without medical records consists of internal and external legal protection. The principle of absolute responsibility is used basically because of the losses experienced by patients due to the negligence of medical personnel or doctors, which is called negligence in this case as a health service provider so that Article 60 (2) of the Consumer Protection Law is imposed. In addition, the Judge's Law consideration (ratio decidendi) in Decision Number 557/Pk/Pdt/2017 is very wrong and not based on law because in this case the complainant has attached evidence of disciplinary sanctions.ciple and the principle of error and discusses the legal considerations of judges.

Keywords: Legal Protection; Patients; Medical Records.



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I. INTRODUCTION

Humans have teeth which consist of 4 types, each type of tooth has its own role. The types of human teeth are incisors which play a role in biting food, canines which play a role in crushing food, premolars which play role in chewing and grinding food into small pieces, and molars which play a role in chewing and grinding food until smooth. As teeth grow, some grow in a mess or are crowded together.¹

Factors that can cause crowding of teeth are not only caused by heredity (genetics), injury and even bad habits are also causal factors. Messy teeth are caused by bad habits, one of which is the habit of sucking your fingers, sticking out your tongue, and breathing through your mouth, which often affects tooth growth. Sticking out your tongue is one of the most common causes of messy teeth during the teething process in childhood. This habit can affect tooth growth because it greatly interferes with the function of the temporomandibular joint itself.²

Maloculism or *Macollusion* is a morphological variation that can be interpreted as a deviation from the best obstacle norm in a person. Malocclusion can cause several problems related to the face, for example disturbed facial style which is related to the patient's psychosocial and dental problems such as difficulty in moving the jaw, temporomandibular problems, problems with contemplation, mastication and then speech.³

The authority regulated by the Indonesian Medical Council through the Dentist Competency Standards in Indonesia 2015 explains that general dentists also have the authority to install dental braces which is also supported by the standard limits of authority made by the Dentist Collegium/KKI/PDGI, which is within their authority. General dentists are only allowed to install braces with light occlusion and without extraction, where the treatment is in the form of removable *non-brace fixed devices*, and also removable-fixed combination devices.⁴

A doctor's skill in installing braces, common mistakes are also often factors that cause patients to suffer losses. One of the common mistakes that also causes losses from installing braces is making medical records that are not correct and complete. Medical records are very important in installing braces. Medical records are the main benchmark in controlling the installation of braces and initial diagnosis and what actions must be taken in carrying out orthodontic treatment. It is very

¹ Sri Rahayu, "Odontektomi, Tatalaksana Gigi Bungsu Impaksi," *E-Journal WIDYA Kesehatan Dan Lingkungan* Vol 1, No (2014): 81–89, <http://e-journal.jurwidyakop3.com/index.php/kes-ling/article/download/181/159>.

² Rere Gathi Asdika Elly Rusdiana, Sianawati Gunharto, "Variasi Fixed Tongue Crib Untuk Mengatasi Kebiasaan Menjulurkan Lidah," *Journal of Vocational Health Studies* 1 (2018): 132.

³ Dinda Chesya, Diana Wibowo, and Aulia Azizah, "Hubungan Antara Kebiasaan Buruk Bernafas Melalui Mulut Dengan Tingkat Keparahan Maloklusi Pada Anak Sekolah Dasar," *Dentin* 5, no. 3 (2021): 118, <https://doi.org/10.20527/dentin.v5i3.4346>.

⁴ Zanti Arbi Sutan and Ardhana Wayan, *Rancangan Penelitian Kebijakan Sosial* (Jakarta - Indonesia: Pustekkom Dikbud dan CV Rajawali, 1984).

unfortunate if dentists make common mistakes in making medical records that are not complete and correct.

The changes mentioned by the doctor were not felt by the patient, but rather the patient's teeth, in this case the plaintiff, became increasingly messy, so the patient felt disadvantaged and chose to move to an orthodontist. In his lawsuit, the orthodontist whom the patient met stated that the general dentist did not have the right to install braces and remove them, and this was the reason the patient filed the lawsuit.

Decision Number 557/Pk/Pdt/2017 is an example of mistakes made by doctors by not making medical records. This decision contains a lawsuit by a patient named Wisda Wati as the Plaintiff who installed braces at a general dentist named Drg. Yenni. In Decision Number 557/Pk/Pdt/2017, it is explained that Wisda Wati suffered losses due to the braces being installed by the dentist. In medicine, there is an agreement known as a Therapeutic Agreement, which is an agreement between the doctor and the patient, explaining that the results of installing the braces will be visible after use within 2 years.

At the first instance court at the Padang District Court, the plaintiff lost, in his decision the judge thought that the doctor had the authority to install the braces. The plaintiff filed an appeal, the decision of which also upheld the first decision. However, when submitting an appeal, the plaintiff took the appeal. He thought that the first-level judge was not careful, where the defendant should have been proven to have committed an unlawful act because he did not work by the SOP by never making and showing medical records, proven by the imposition of disciplinary sanctions. to the accused by the Indonesian Medical Disciplinary Honorary Council.

The recommendation for the revocation of the registration letter became the basis for the plaintiff to take an appeal, but the high court's decision upheld the decision of the first instance, for this reason, the plaintiff again took the legal action of cassation, but this effort was again rejected, and with that, the plaintiff also took PK but returned to PK was rejected. This is what makes researchers want to discuss further what happens if this happens to a patient, resulting in losses due to the dentist's actions where the doctor does not make a medical record and how the judge considers it so that he concludes that the defendant has worked by the Standard Operating Procedure (SOUP). For this reason, the researcher will discuss these problems which are outlined in this article and entitled "Legal Protection Of Patients Who Are Harmed Due To The Installation Of Braces Without Medical Records".

II. METHODS

This research uses normative juridical research methods. This research emphasizes research on written legal norms where secondary data is the

source/material of legal information.⁵ Normative juridical itself is a type of research whose object of study is legal reports, and statutory regulations and then the library materials in this research will provide presentations related to Legal Protection for Patients Who Experience Losses Due to the Installation of Braces Without Medical Records (Study Decision Number 557 PK/Pdt/2017). The approach used in this research is a legal approach and a conceptual approach with the method of collecting legal materials being a literature study in which the analysis of legal materials uses a deductive method, namely a method that proceeds from general principles to specific principles to produce objects that will be studied later.

III. ANALYSIS AND DISCUSSION

Form Of Legal Protection For Patients Who Are Harmful Due To Installing Bracelets Without Medical Records

In Law Number 36 of 2009 concerning Health there is a relationship between a Doctor or Medical Personnel and a patient which is called a Therapeutic Agreement. This agreement contains the relationship between doctor and patient in professional medical services based on competence by certain expertise and skills in the field of medicine. A therapeutic agreement is a form of internal legal protection because the conditions for a therapeutic agreement to occur are not sufficient to fulfill the legal requirements of the agreement as regulated in Article 1320 of the Civil Code, but some conditions must be fulfilled so that a therapeutic agreement can occur, one of which is *informed consent*.⁶

Informed Consent is intended to provide and ensure that patients receive as clear an explanation as possible from medical personnel regarding the diagnosis and actions to be taken as well as the consequences of these medical actions. This is stated in Article 8 of Law Number 36 of 2009 concerning Health which states “Every person has the right to obtain information about their health data, including actions and treatment they have received or will receive from health workers”.

In article 2 of the Minister of Health Regulation Number 290/Menkes/PER/II/2008 concerning Approval of Doctor's Actions, it is explained that all doctor's actions that will be carried out on patients must obtain approval where the approval is received after the doctor provides a complete explanation both in writing and orally. This is by Article 56 of the Health Law which states that “Every person has the right to accept or reject some or all of the assistance measures that will be given to him after receiving and understanding the information regarding these measures in full”.

In article 56 of the Health Law, it is explained that every person has the right to accept or reject some or all of the assistance measures that will be given to him. This article explains the Therapeutic Agreement described above. The purpose of

⁵ Abdurrahman Soejono, *Metode Penelitian Hukum* (Jakarta: Rineka Cipta, 2003).

⁶ Anggun Rezki Pebrina, Johni Najwan, Evalina Alissa, *Fungsi Penerapan Informed Consent Sebagai Persetujuan Pada Perjanjian Teraupetik*, *Zaaken Jurnal Of Civil and Bussines Law* Vol. 3 No. 3 Oktober 2022, h. 470.

this article is to protect patients from losses resulting from actions that are undesirable or do not receive an explanation d ith completely.

When *Informed Consent* has been fulfilled, it does not necessarily mean that a therapeutic agreement will occur. As with the conditions for the validity of an agreement specified in Article 1320 of the Civil Code, these conditions must also be fulfilled. Conditions for the validity of a therapeutic agreement as regulated in Article 1320 of the Civil Code include, among other things, the fulfillment of agreement or consensus, authority, a certain subject matter (fixed object), halal, or legal reasons. A therapeutic contract or agreement can be canceled if the terms of the agreement and authority are not followed, and a therapeutic contract is null and void if the terms of the object and certain legal causes are not followed.⁷

Informed Consent requirements and the conditions for the validity of the agreement as regulated in Article 1320 of the Civil Code cannot be carried out immediately. In its implementation, some principles must be given and must be implemented so that the Therapeutic Agreement is considered fulfilled. In Bioethics there are 4 principles to create and fulfill therapeutic agreements, including;⁸ v(1) *Beneficence*. Namely, doctors in carrying out their practice must have the enthusiasm to provide the best to patients according to their abilities. (2) *Nonmaleficence*. Namely, if the doctor is unable to provide the best in terms of healing, don't make the patient's condition worse. (3) *Justice*. When carrying out practices, you must be fair, honest and speak the truth, and not consider SARA. (4) *Autonomy*. Namely the doctrine of *informed consent* which must provide a complete and clear explanation to the patient.

In a therapeutic agreement, the characteristic of the engagement is *panning*, meaning that it is not based on the final result but is based on genuine effort. *Ispanning verbintenis* (based on effort) so healing is a maximum effort to provide healing to the patient. This is not the same as obligations that are based on achievements or *results* in results engagements (*resultatverbintenis*), where promises made by medical personnel are not assessed against what they have produced, but medical personnel are obliged to provide all their competence to patients maximally and in line with professional standards medical.⁹

Then, through the legal relationships that arise, rights and obligations arise for medical personnel and patients as well as obligations. The reciprocal relationship between patients and medical personnel regarding requests for treatment and consultations which are then given and carried out by doctors, gives rise to an

⁷ Achmad Busro, "Aspek Hukum Persetujuan Tindakan Medis (Inform Consent) Dalam Pelayanan Kesehatan," *Law, Development and Justice Review* 1, no. 1 (2018): 4, <https://doi.org/10.14710/ldjr.v1i1.3570>.

⁸ Henky Henky, "Pelayanan Etika Klinis," *Jurnal Etika Kedokteran Indonesia* 2, no. 2 (2018): 59, <https://doi.org/10.26880/jeki.v2i2.17>.

⁹ Fayuthika Alifia Kirana Sumeru and Hanafi Tanawijaya, "Inspanning Verbintenis Dalam Tindakan Medis Yang Dikategorikan Sebagai Tindakan Malpraktek," *Jurnal Hukum Adigama* 5, no. 2 (2022): 496.

agreement to provide several services (*overeenkomst tot het verrichten van enkele diensten*). This therapeutic agreement is included in *inspanningverbintenis*, which means an agreement in which one party is committed to making maximum efforts.

Legal protection for patients is also regulated in Law Number 29 of 2004 concerning Medical Practice, where in Article 2 it is explained that medical practice is carried out based on Pancasila which is based on scientific values, benefits, humanity, balance as well as patient protection and safety. The meaning of patient protection and safety in this article is that the implementation of medical practice, which in this case is health services received by patients by medical personnel, must not only provide services but must provide an increase in health status while still paying attention to patient protection which is regulated in law. The law itself is to provide legal certainty to patients that guarantees their rights.

The guarantee and protection of the rights and interests of patients in question can be seen in article 66 of Law Number 29 of 2004 concerning Medical Practice, which explains that “Any person who knows that their interests have been harmed by the actions of a doctor or dentist in carrying out a Medical Practice can complain in writing to the chairman of the Indonesian Medical Discipline Honorary Council”. This article provides a direct explanation regarding the form of legal protection for patients resulting from medical practice actions provided by law with the establishment of the Medical Discipline Honorary Council (MKDKI).

The Honorary Council for the Discipline of Indonesian Doctors is autonomous and evaluates every medical action that is deemed to conflict with the applicable code of ethics and SOPs and has the potential to harm the rights and interests of patients in carrying out medical treatment or services. The sanctions imposed by the MKDKI do not immediately end legal efforts for violations committed by medical personnel. Disciplinary sanctions are only administrative sanctions apart from criminal sanctions or civil lawsuits

Doctor's Responsibilities in Making Medical Records

One of the principles of responsibility is the principle of absolute responsibility. The principle of absolute responsibility is indeed used as a way to understand business actors whose products or services harm consumers. This is what is called the principle of *product liability*, where this principle provides the understanding that producers must be responsible if consumers experience losses due to the use of the product/service.¹⁰

The claims that can be made based on this principle are divided into 3 things, namely; (1) Violating the guarantee (*breach of warranty*) such as the benefits or functions provided for the use of the product/service are not by its marketing. (2) There is an element of negligence (negligence) by producers or business actors in providing their products or services which do not comply with applicable quality standards. (3) Application of absolute responsibility. Specifically, in this case, the

¹⁰Celina Tri Krisyanti. S.H.,M.Hum, Hukum Perlindungan Konsumen, 2017, Jakarta; Sinar Grafika, h. 96.

application is imposed on risk liability, where compensation is borne by the provider of the product or service, but the consumer or injured party is required to provide proof, namely the application of whoever sues, he who proves.

The element of loss is the main element in filing a lawsuit.¹¹ In civil law, it is known that the principle of compensation has been regulated in the Civil Code, where if an Unlawful Act (PMH) occurs, compensation is mandatory. Article 1365 of the Civil Code, provides conditions that can be categorized as an unlawful act occurring, including the existence of an act, the act must be against the law, there is loss as a result of the act, there is an error in committing the act and there is a cause and effect relationship or causality.¹²

Absolute Liability imposes an obligation on the doctor to provide compensation to the patient for losses caused by the doctor's negligence. where the negligence does not provide products or services by applicable standards. In the case of Decision Number 557/Pk/2017, it is known that there were losses suffered by the patient due to errors made by medical personnel. Patients as consumers of health services by medical personnel or doctors experience losses due to doctors' mistakes that do not provide satisfaction to the patient. The patient experiences a loss where as a result of installing braces, the condition of his teeth does not improve, on the contrary, his teeth become more and more misshapen.

In this position, doctors are subject to the principle of absolute responsibility, not the principle of responsibility for mistakes, this is because the principle of responsibility for mistakes only applies to mistakes in an agreement or temporary action. In this case, it is not the factor that is the line, namely the standardization of medical personnel who are incompetent due to a lack of skills in making braces which is the result of exceeding the limits of their authority. This is what is called negligence, namely dentists as business actors who provide services that do not comply with standards due to a lack of skills because they exceed the limits of their authority. The principle of absolute responsibility is also fulfilled due to the doctor making a promise or promising to the patient that installing braces for 2 years will have a positive impact on the patient. However, after installation for more than 2 years, the teeth did not improve, this was not by the function and benefits promised by the doctor. So that the principle of *breach of warranty* or breach of guarantee is fulfilled.

If you look at Article 60 paragraph (1) of the Consumer Protection Law, it is emphasized that "the consumer dispute resolution body has the authority to impose administrative sanctions on business actors who violate Article 19 paragraph (2)

¹¹ Sodikin Sodikin, "Perkembangan Konsep Strict Liability Sebagai Pertanggungjawaban Perdata Dalam Sengketa Lingkungan Di Era Globalisasi," *Al-Qisth Law Review* 5, no. 2 (2022): 275, <https://doi.org/10.24853/al-qisth.5.2.261-298>.

¹² Sri Redjeki Slamet, "Tuntutan Ganti Rugi Dalam Perbuatan Melawan Hukum," *Lex Jurnalica* Volume 10, no. Nomor 2 (2013): 117, <https://www.neliti.com/publications/18068/tuntutan-ganti-rugi-dalam-perbuatan-melawan-hukum-suatu-perbandingan-dengan-wanp>.

and paragraph (3), Article 20, Article 25 and Article 26". Article 19 of the Consumer Protection Law states that "Business actors are responsible for providing compensation for damage, pollution and/or loss to consumers resulting from consuming goods and/or services produced or traded". Article 26 of the Consumer Protection Law states that "Business actors who trade in services are obliged to fulfill the guarantees and/or warranties agreed upon and/or promised".

In this lawsuit, medical personnel who trade services are responsible for losses caused by the use of services, and in trading services, doctors or medical personnel are also obliged to fulfill them by the agreement so that in this case they have violated Article 19 and article 26 of the Consumer Protection Law which will be subject to sanctions as regulated in article 60 paragraph (2) which imposes administrative sanctions in the form of determining compensation of a maximum of Rp. 200,000,000 (two hundred million rupiah). For Article 19, compensation is also applied in the form of return of goods and/or services of the same or equivalent value or health care and/or provision of compensation by statutory regulations.

Responsibility based on the principle of fault is a fairly general principle that applies both in civil and criminal law. This principle is upheld as a form of responsibility based on articles 1365, 1366, and 1367 of the Civil Code. The application of this principle is carried out if the elements as regulated in 1365 are met, including;¹³ (1) there is an action, (2) there is an error. The error in question is the presence of an element that is contrary to the law or regulations that regulate it. Not only is it limited to that, it is against the law, it also means that it is not by propriety and decency in society. (3) There are losses suffered. (4) There is a relationship between the error and the loss suffered, or in other words, the loss exists because of the error.

In the application of *common sense*, this principle is accepted because it provides justice which requires compensation by the person who made a mistake to the person who was harmed, in other words, it is impossible for someone who did not make a mistake to compensate for someone else's mistake.

According to Hoekema, errors in health services are defined as '*acting outside the norm of what was expected on average in terms of reasonableness and of professional-similar situations and locations*'. Negligence according to Hamman and Catawba Memorial Hospital is formulated as follows: "*The lack of ordinary care is negligence. It is the failure to act in a way that a reasonable person would have done or to act in a way that a reasonable person would not have done in the given circumstances*".

The standards used to assess whether the actions carried out by the doctor are illegal or not are the Code of Ethics, Professional Standards, Service Standards, and Standard Operational Procedures (SPO). This is by Article 24 paragraph (1) of Law

¹³ Yudha Hadian Nur and Dwi Wahyuniarti Prabowo, "Penerapan Prinsip Tanggung Jawab Mutlak (Strict Liability) Dalam Rangka Perlindungan Konsumen," *Buletin Ilmiah Litbang Perdagangan* 5, no. 2 (2011): 177.

Number 36 of 2009 concerning Health which reads: “Health workers as intended in Article 23 must comply with the provisions of the Code of Ethics, Professional Standards, Rights of Health Users, Service Standards and Standard Operational Procedures”.

In the case of decision Number 557/Pk/2017, it is explained that the patient suffered losses as a result of errors by medical personnel. The mistake made by medical personnel is not making medical records for patients. Even though medical records are mandatory documents and requirements that must be carried out by medical personnel in providing health services and taking medical action on patients. The dentist's action of not making a medical record is a mistake that causes harm to the patient. This is because medical records are a very important reference in seeing the development and process of every action taken by a dentist. Medical records are also a reference for looking back at the history or history of actions that have been carried out, so it is very important to make a medical record yourself. In this way, the element of responsibility is fulfilled based on the principle of *liability based on fault*, where there is a relationship between error and loss, the result of which is that the error results in loss.

Responsibility for these errors can be seen in Article 2 of Law Number 29 of 2004 concerning Medical Practice, which states that doctors or dentists are obliged to keep medical records. Responsibility for doctors and dentists who do not make medical records will be subject to criminal sanctions or fines as regulated in article 79 letter b which reads sanctioned with a maximum imprisonment of 1 year or a maximum fine of IDR 50,000,000 for each doctor or dentist. dentist who deliberately did not produce medical records as intended in Article 46 paragraph (1). In this case, it is known that the dentist, in this case, the defendant, was proven not to have produced medical records as evidenced by the recommendation letter for revoking the Registration Number by the Indonesian Doctors Disciplinary Honorary Council.

The Indonesian Medical Discipline Honorary Council (MKDKI) is an autonomous body formed by the Indonesian Medical Council which aims to uphold the discipline of doctors and dentists in carrying out medical practice. The duties of the MKDKI are to receive complaints, examine and decide cases of disciplinary violations of doctors and dentists, and prepare guidelines and procedures for handling cases of disciplinary violations of doctors or dentists. So the evidence that the dentist, in this case the defendant, was proven to have committed a violation by not producing medical records is proven by a letter issued by the MKDKI.

Judge's Legal Considerations in Deciding Cases on Doctor's Obligations in Installing Braces Without Medical Records

In Decision 557/Pk/Pdt/2017 the decision handed down by the Judge at the first court which determined that the defendant had carried out his duties by the SOP can be studied as follows. In carrying out their duties, doctors should carry out

their work by their competency standards. Dentist competency standards are regulated in Indonesian Medical Council Regulation Number 14 of 2015 which regulates the limits of work carried out by each dentist. In the article in the chart, we can see the division of competence and expertise of each dentist, where dentists can only install ortho or fixed appliances for simple cases. In an interview conducted by researchers with Drg Chandra Sp. Ort, explained that only specialist doctors have the right to carry out orthodontic treatment. The brave stance taken by general dentists to carry out orthodontic treatment, especially in serious cases, is based on the absence of clear and firm regulations prohibiting this. The orthodontic bond requires that general practitioners only carry out orthodontic treatment in mild cases and without extractions.

The judge's legal considerations are neither completely right nor completely wrong. This is because, in the law itself, there is no clear prohibition that general dentists who are not specialists cannot install fixed appliances on patients. General dentists can still install braces on patients by taking the patient's policy, this is what is called a therapeutic agreement. Prof Dr Adi Sp.Bm. in the explanation, says that when a doctor and patient agree to act, a therapeutic agreement is also established.

Muhamad Rizky in his journal interviewed Drg. Dipo Kencono, Sp.BM and Drg. Yuniwati Adang, Sp. Ort said that every general dentist in terms of installing dental braces has the authority but there are limitations, meaning that installing dental braces is divided into two classifications, namely light class treatment and heavy class treatment or what is called mild malocclusion. Mild cases, for example, where there is a mild gap that does not involve bone damage, either vertical or horizontal, as long as the degree is mild, may undergo orthodontic treatment by a general dentist. However, if the case is difficult and involves bone the extraction of permanent teeth must be carried out by a specialist orthodontist.¹⁴

This information and explanation were reinforced in the expert's statement in this decision itself, where at the first trial the plaintiff presented an expert witness, namely Prof. Dr. Dr. Bergman Thahar, Sp. Ort (K) DTT who serves as a Specialist Doctor and Professor of Orthodontics as well as Chair of the Indonesian Collegium of Orthodontics, stated that general dentists may only treat patients with mild occlusion without extraction with removable instruments. Installation of braces or fixed appliances may not be carried out by a general dentist. If you look at the doctor's statement above, in general, it can be seen that general dentists can only install orthodontic treatment for mild cases and without extractions, this is also comparable to the competence specified in the articles of the Indonesian Medical Council.

In Decision Number 557/Pk/Pdt/2017 on page 15 based on the testimony of the expert witness presented, namely Prof. DR, Drg Bergman Thahar, Sp. Ort

¹⁴ Husni Syam Mochamad Rizky Kusumah, "Penyalahgunaan Wewenang Dokter Gigi Umum Yang Melakukan Kewenangan Dokter Gigi Spesialis Ortodonti Dikaitkan Dengan Undang Undang Praktik Kedokteran," *Jurnal Ilmu Hukum* 2, no. 1 (2016): 190.

explained that the action taken by the defendant should have been carried out by an orthodontist because it was not the defendant's authority as a general practitioner. The reason why the defendant dared to carry out the act of installing fixed braces on a patient was because until now there were no clear and legally enforceable regulations prohibiting this. The prohibition is only given by the collegium, especially the Indonesian Orthodontic Collegium. So, in the absence of clear and firm regulations governing this matter, the actions of the dentist, in this case, the defendant, cannot be said to have violated the law.

The judge's decision in deciding this case is no longer based on the law but is taken through the judge's policy or the judge's interpretation. This is because on several occasions when faced with the situation of having to try a case where the legal basis for the case is unclear or there are no clear statutory regulations regarding this matter, the judge may not refuse to try the case. This is by Article 10 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power which states "The court is prohibited from refusing to examine, try and decide on a case submitted on the pretext that the law does not exist or is unclear, but is obliged to examine and judge him". As well as Article 5 paragraph (1) which reads "Constitutional judges and justices are obliged to explore, follow and understand legal values and the sense of justice that lives in society".

In this case, the judge's consideration of the point which stated that the dentist had done it according to his competency standards was indeed not completely wrong and he was correct in using his policy which is because there are no clear rules governing this matter so it cannot be said that general dentists are prohibited from putting on braces. The point that is of concern to researchers is that when the plaintiff asked the judge to determine that the defendant had committed a legal act by carrying out practices that were not by Standard Operating Procedures (SOP), it was not only limited to the authority of the dentist to install braces but also to the existence of unlawful acts committed by the doctor. make a mistake. The error in question is that the plaintiff has committed an unlawful act by not making medical records for the patient, in this case, the plaintiff. Even though it was known that the defendant had committed an unlawful act by not producing medical records as proven by the attachment of a recommendation letter for the revocation of the defendant's registration number as a dentist for 6 months.

Article 46 paragraph 1 of the Medical Practice Law requires Doctors and Dentists to make medical records when carrying out medical practice, which if violated is a form of unlawful act as regulated in Article 1365 of the Civil Code. The unlawful act committed by the defendant by not making medical records should be a matter for the judge's legal consideration because making medical records is an obligation that must be carried out by a doctor when practicing medicine. The absence of medical records can be classified as administrative malpractice. Administrative malpractice is a violation committed by medical personnel against applicable state administrative law, for example, medical records.

Medical records are state administrative law that applies to health services. Failure to produce medical records violates state administrative law, thereby proving that malpractice has occurred.

At this point, the judge does not need to use the principle of an active judge who uses legal interpretation. Judges should use principles that emphasize that judges' considerations must be based on statutory regulations. Regarding medical records, it has been regulated very clearly in the Health Law and the Medical Practice Law which requires doctors and dentists to make medical records. By not making a medical record that violates an article of the Health Law, the judgment of the judge at the first level who decided that the doctor had worked according to Standard Operating Procedures (SOP) was wrong and had no legal basis.

Apart from administrative malpractice, there is also civil malpractice, namely malpractice which occurs when the contents of the agreement (default) in the therapeutic agreement are not fulfilled, causing harm to the patient himself.¹⁵ In this report, it is known that the doctor promises changes after installing braces. Changes will be visible after installing the braces for approximately 2 years. However, after installation for 3 years, there was no change as promised by the doctor to the patient and it actually resulted in the plaintiff's molars being embedded inward.

The existence of losses experienced by patients and also errors or violations committed by medical personnel have proven that there have been acts of misconduct in which the doctor did not carry out his duties according to existing SOPs. In his decision, the judge also considered that the dentist or defendant had followed the SOP by the applicable laws and regulations. So, by not making a medical record, it will raise the question of what laws and regulations are being used so that the consideration is by the applicable laws.

VI. CONCLUSION

The form of legal protection provided to patients who are harmed by installing braces without medical records consists of internal and external forms of legal protection. The form of internal legal protection is a therapeutic agreement whose terms include *informed consent* as regulated in Article 8 of Law Number 36 of 2009 concerning Health. External forms of legal protection are provided through the establishment of regulations in the form of laws and regulations, including Law Number 36 of 2009 concerning Health, Law Number 29 of 2004 concerning Medical Practice, and Law Number 8 of 1999 concerning Consumer Protection.

The responsibility of medical personnel who cause harm to patients due to their medical actions and the decisions they take is included in the principle of responsibility. The application of the principle of responsibility in the case of Decision Number 557/Pk/Pdt/2017 includes the principle of absolute responsibility and responsibility based on the principle of fault. The principle of absolute

¹⁵ Dimas Cahyo Widhiantoro, "Aspek Hukum Malpraktik Kedokteran Dalam Perundang-Undangan Di Indonesia," *Lex Privatum* IX, no. 9 (2021): 103.

responsibility is used basically because of the loss experienced by the patient due to the negligence of medical personnel or doctors, which is called *negligence* in this case as a provider of health services, so Article 60 (2) of the Consumer Protection Law is imposed with a fine of Rp. 200,000,000. The principle of responsibility for mistakes is used due to an error made by the dentist by not making a medical record, proven by the sanctions given by the MKDKI in the form of disciplinary sanctions which can be given a maximum imprisonment of 1 year or a maximum fine of Rp. 50,000,000 as regulated in Article 79 b paragraph (1) of the Medical Practice Law.

The Judge's Legal Considerations (*ratio decidendi*) in Decision Number 557/Pk/Pdt/2017 are very wrong and not based on law because in this case, the plaintiff has attached evidence of disciplinary sanctions given by the Indonesian Medical Disciplinary Honorary Council to the defendant due to violations he committed recklessly. create medical records in carrying out orthodontic treatment. This reason is based on the medical practice law which requires doctors and dentists to keep medical records when carrying out medical procedures. By not making a medical record, the dentist has also carried out his work not by Standard Operating Procedures (SOP) thereby fulfilling the elements of an unlawful act. For this reason, the judge's reasons and considerations in deciding the case are wrong and not based on the law, and are not careful in assessing the existing evidence.

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