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## SETTLEMENT OF MEDICAL NEGLIGENCE CASES IN MALAYSIA

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### ABSTRACT

The issue of medical negligence is not a new phenomenon in the doctoral profession, and even medical negligence has become a global issue. Although Malaysia is one of the few countries where medical emergencies occur, but the number of medical negligence increases each year. The *Bolam v Friern Hospital Management Committee* 1957 case has long been a measure of cases in medical negligence in Malaysia. However, after the Federal Court's decision in the case of *Foo Fio Na v Dr. Foo Sook Mun & Anor* 2007, there was a change in the approach taken by a Malaysian court, which showed that the courts in Malaysia now no longer prioritize the Bolam test in medical negligence cases. In Civil Act 1956 and the Medical Act 1971, medical negligence is only regulated in a civil aspect so that the guilty physician will be punished to pay compensation to the patient. Generally, medical negligence cases are resolved through the court. However, it is difficult to prove the negligence done by the doctors and the length of time needed to take the case of medical negligence through the court has prompted physicians and patients to bring their case through the mediation forum.

**Keywords:** *Medical Negligence, Malaysia, Legal Perspective*

## 1. INTRODUCTION

The Malaysian legal system is influenced by two forms of legal system namely Islamic law influenced by the sultanate of the late 15th century, which Islamic law has begun to be applied (Z, 2004). While the British expanded its territorial powers to the land of Malaya, the British brought together the concept of the European constitutional government and common law principles (Rusnadewi Abdul Rashid, 2013).

The English law is brought into the Malay states drafted in accordance with British law model and Indian law. Some of these statutes include the Printing Presses and Publications Act, the Sedition Act, the Criminal Procedure Code and the Penal Code. Almost all law makers and judges at that time were trained and received education in the field of English law so that the use of this law was given priority over Islamic law and custom which was more appropriate to the culture of the local people.

After the country became independent, Malaysia established federal constitutional law, which formed the basis of all subsequent laws. Malaysia's federal constitution is the ultimate parent law and law. This means there is no other law made in this country that can be recognized legally unless the law that does not conflict with any provision contained in the federal constitution. Furthermore, in addition to applying British law, the Malaysian legal system re-establishing Islamic law which is considered more appropriate to the culture of the local community so Malaysia is one of the countries with a legal framework that combines or adopts a dual system approach i.e. civil law with Islamic law (ER, 2010).

In the aspect of medical negligence, the law used to handle medical cases in Malaysia is the Civil Act 1956 and the Medical Act 1971. Both of these laws put the physician's fault in a civil aspect only until a physician who proved guilty was punished by paying compensation only. However, Zahidul said there is no special Act for medical negligence in Malaysia. Currently, the tort system is used to regulate medical negligence in Malaysia. This system provides compensation only. The job of the court is to do fair dealing based on the available evidence and the law (Islam, 2013).

In handling cases of medical negligence in court, judges are still using medical negligence cases from various countries that deal with common law systems. For example, the approach used in determining that the doctor has done medical negligence is the case of *Bolam v. Friern Hospital Management Committee* [1957, 2All ER 118]. The case of Bolam has long been used as a benchmark in medical negligence cases in Malaysia. However, there have been changes after the Federal Court's decision in the case of *Foo Fio Na* in 2007 whereby after that decision the courts in Malaysia no longer used the approach that was decided in the case of Bolam in medical negligence cases. The Bolam test was considered to be the protector of the medical profession and was paternalistic. The changes can also be contributed to the current development in the world regarding the doctrine of informed consent that shows the influence of the concept of patient autonomy. This doctrine aims to protect the rights of patients to receive full information particularly the risk inherent in a medical treatment before consent is given.

The objectives of this study was to introduce and expose the development of health law in Malaysia especially the various instruments relating to the handling of medical negligence cases in Malaysia. In addition, this article exposed the various mechanisms of handling medical negligence cases in Malaysia and any detention found in resolving medical negligence cases in Malaysia.

## **2. Research Methodology**

This is a qualitative study using normative juridical approach (McCracken, 1998). This study is a legalistic or doctrinal substance using analytical techniques (content analysis). Content analysis is a research technique that is carried out systematically by analysing legal instruments pertaining to medical negligence cases (Maanen, 1979). The purpose of legalistic or doctrinal research is to find, explain, examine, analysis and propose in a systematic way of facts, principles, concepts, theories, certain laws and law enforcement institutions to find knowledge and new ideas to be a change or renewal (Yaqin, 2007). This type of research is also known as pure theoretical research and all material derives from library, archive and other database.

## **3. Definition of Medical Negligence**

Medical negligence is one of the branches in the field of professional negligence. These medical negligence cases are often discussed under tort carelessness laws. The Tort Law is based on an offense (fault) which refers to the failure of a party to perform the duty to be cautious in accordance with the law (Yeoh, 2004). According to Siti Zubaidah Ismail, negligence is considered the biggest tort as compared to other tortions such as defamation, trespassing, nuisance and others (Siti Zubaidah Ismail, 2011).

Medical negligence takes place when the doctor is less cautious and less careful in carrying out medical services until the claim for injuries suffered due to medical negligence becomes one of the personal injury claims which are usually brought into the court by those involved. However, not all failures in medical practice are considered a legal negligence because patients also have the responsibility to cooperate and ensure that doctors' instructions are followed and provide a complete and truthful description of their health status (Buang, 1999). If the patients do not cooperate in medical practice, then this is considered a patient's mistake or it has a role to the extent of a contributory negligence (Harder, 2014).

The House Dictionary defines negligence as an act of caution in making something (Baharom, 2004). This definition is in accordance to a description *not being careful enough; lack of care*, which means that there is no one to do something that is not careful enough (Anonymous, 2006).

According to Norchaya, the term negligence is a concept, and to prove that there is negligence in the law aspect that the Plaintiff must generally indicate that the Defendant had acted as a reasonable person would not, or the Defendant did not act as will be done by a reasonable person (Talib, 2006). Meanwhile, according to Ramdlon, doctors are involved in negligent action in the treatment of either minor or major treatment, a doctor and dentist have failed to utilize the level of

expertise and knowledge common to the same standard in curing the patient resulting in injuries, disabilities and even the patient died (Naning, 2005).

The World Medical Association stated that medical negligence is due to the fact that doctors or other medical practitioners fail to carry out standard medical services against patients, or lack of expertise, or neglect of care for patients so that these are some direct causes of injury to the patient. However, doctors are not responsible for the adverse effects on the medical practices carried out on the patients who are not caused by the effects of the lack of specialist medicine and the lack of knowledge from the doctor (World Medical Association, 2014).

*“...involves the physician’s failure to conform to the standard of care for treatment of the patient’s condition, or a lack of skill, or negligence in providing care to the patient, which is the direct cause of an injury to the patient”.*

Based on the definition given by the court in the case of *Donogue v. Stevenson* [1932, A.C. 562], negligence occurs when a person who has a duty to guard against another party has violated it and has caused the other party to suffer losses. In the case of *Blyth v. Birmingham Waterworks Co* [1998, A.C 332]. Judge Anderson stated that:

*Negligence is the omission to do something that a reasonable person, guided by the usual judgment that controls the human nature of the conduct, will do, or do something that a prudent and reasonable person will not do.*

The negligence as a separate tort has been defined by Lord Wright in the case of *Loghelly Iron & Coal v. M’Mullan* [1934, AC 1: 25], he mentioned that:

*Negligence is not merely a matter of caring or negligent behaviour but presents a complex concept of the obligations, possibilities and losses suffered by many people against the obligation.*

Medical negligence generally occurs when the physician has fulfilled the following three elements, which are the duty of guard duty, violation of the obligation and consequences of damage or injury. Regarding the standard of treatment required by a physician, the applicable principle is based on the Bolam test but the winds of change eventually resulted in the Lord Browne-Wilkinson

decision in the case of *Bolitho v. City & Hackney Health Authority* [1998, A.C 332] and after that in the case of *Penny, Palmer and Cannon v. East Kent Health Authority* [2000, 41]. Bolam tests are seen as protecting the medical profession until the Bolam test is left abandoned. In the case of *Foo Fio Na v. Dr Foo Sook Mun & Anor* [2007, 1 MLJ 593], Federal Court Judge is more likely to accept the principle in cases of *Christopher Roger v. Lynette Whitaker* that emphasizes on reasonable medical practice such as paying attention to patient rights, disease risk, medical treatment and so on (Rogers, 2006).

#### **4. Elements of Medical Negligence**

##### *4.1. Duty of Care*

Precautionary obligation or also known as a cautious obligation is a necessity that must be done by a physician in carrying out medical treatment to the patient. The first measuring stick to make sure the doctor does the medical negligence while it does not observe the obligation to keep medical attention on his / her patient.

Bolam case vs. The Friern Hospital Management Committee has become a standard measure for assessing treatment in claims regarding medical negligence. In this case, plaintiffs who are mentally ill, have been hospitalized and given electro-convulsive therapy (ECT) treatment. He signed the inform consent. Before the treatment was initiated, the plaintiff was not given any sedative and his hands and feet were not tied to prevent possible uncontrolled movements during ECT. He was also not informed about the risks or side effects of the treatment. As a result of ECT treatment, he experienced fractures on his hips. In medical practice at that time, medical practitioners felt there was no need to use sedatives, bind patients or tell patients about the side effects of treatment (Siti Zubaidah Ismail, 2011). Judge McNair is of the opinion that the case is a professional negligence. He mentioned that: (Sappideen, 2010)

*“It is not a physician considered to be guilty of having committed a medical negligence when it has taken action either medical or surgical treatment that has been in line with the doctoral practice generally and has been recognized by the public and the existing doctors' professional organization”.*

The Bolam test defines that the defendant does not have to have the greatest skill, but must have the skills at the usual level that a doctor should have. In addition, the care action must be consistent with the practices that the responsible body considers to be right. However, the problem is how to define proper practice and common competence. The interpretation of the correct practice and common skills is the main issue of debate since Bolam became a benchmark for assessing medical negligence. A professional must meet the reasonable standards of skill like the other professionals in the field as explained by Lord Scarman in the case of *Maynard v. The West Midlands RHA* mentions “a doctor who has certain skills must perform the skills that are common in his field of expertise” (Rogers, 2006).

Winfiel believes that justifiable liability can only be imposed on a reasonable person who is a sane person and has knowledge of the risks involved and is at risk in everyday life (Rogers, 2006). A reasonable person is not seen physically but is

seen to his ability in anticipating the cautious attitude that will take place. A reasonable person will think logically and based on the knowledge, knowledge and experience that has been carried out in medical perophesion.

Bolam's principles and approaches have been tried and have been abandoned, this can be seen in the case of *Ng Eu Khoon v. Dr. Gwen Smith and 2 others* [1996, 4 MLJ 674], *Hor Sai Hong v. University Hospital* [2002, 5 MLJ 167] and *Glasgow Corporation v. Muir* [1943, AC 448.]. Subsequently, the winds of change have begun to be detected when many cases in Australia are mainly beginning to shift from Bolam and reviewing the standard questions and practices of medical personnel. The Bolam principle was first accepted in the case of *Elizabeth Choo v. The Government of Malaysia* [1967, 2 MLJ 45.] asserted that, although a physician chose different steps from the usual steps taken in decision-making, his measure would not necessarily amount to negligence as long as it (the move) in line with what the medical profession. On the other hand, if the doctor's actions are so obviously beyond the usual practice, then he will be liable.

The case that also challenged the Bolam principle is the case of *Dr Soo Fook Mun v. Foo Fio Na and SL* [2007, 1 MLJ 593.]. At a hearing in the Federal Court, Siti Normah Yaakob, more likely to switch from Bolam and accept the principle in the case of Australia *Christopher Roger case v. Lynette Whitaker* [1992, 175 CLR 479.], it is of the view that the practice of a doctor cannot be the only measure of the treatment standard. The determination of the standard must be balanced with good practice such as among others, paying attention to the patient's rights to make their own decisions, be informed about the risks of illness and treatment and so on.

According to the above view, cases of medical carelessness can now be tried using the patient's perspective and no longer in accordance with the Bolam test which is more concerned with the principle of doctors who know the best rule. In carrying out the practice, the doctor is legally responsible to inform the risk of surgical procedures to patients at serious risk and can result in death or injury for life.

#### 4.2. Breach of Duty

Once identified that the defendant had a duty of guard against the plaintiff, the next thing to prove was the breach of the obligation. This element interprets that the effect created by a doctor's act is directly from the obligation as a medical practitioner. The duty of the doctor is the same as the other doctors' obligations under the same conditions and conditions.

Violation of the obligation is said to occur when the defendant is seen to be acting under the minimum standards of the precautionary expectation of the defendant to caution as necessary (Jone, RN & Buston, 1995). This is measured by the standard of the person who is reasonable or sane. The Court shall determine how in a situation the defendant needs to act or act. The standard of the sane person is that one will act reasonably in any situation. Therefore, the duty of duty is said to be infringed when a person is acting improperly regarded as the measure of a sane person under their level of action.

According to Winfield, the expression of a reasonable person means a sane person who has the common knowledge in dealing with the risk of life (Rogers, 2006). Therefore, a reasonable person does not symbolize a person who is perfect, brave, mature, brave and can predict what is likely to happen but it is expected to be wary of the reasonable possibility. If a person performs an act below this expected level which should be on a reasonable person he / she will be negligent.

The interpretation of the element of this breach of duty is evident in the case of *Hor Sai Hong v. University Hospital* [2002, 5 MLJ 167.], where a baby suffered from a brain defect due to the delay in receiving treatment as her mother is in the process of giving birth. The doctors have been found responsible under the Bolam principle, because the evidence presented in the court showed that other doctors will not act like a doctor in this case.

The interpretation of the violation element of the guard duty can be seen in the case of *Bolam v. Friern Hospital Management Committee* [1957, 2All ER 118]. The issue raised in this case was a careless doctor in handling the Electro Convulsive Treatment (ECT) medical treatment method for patients who experienced mental disorders resulting in fractures in the patient's spine. The doctor was considered guilty because the patient was not given a sedative, the doctor did not directly hold the patient's body or instructed the nurse to hold the patient's body.

There is a difference in opinion among physicians regarding the requirements of the third reason. One view mentions that the patient's body should be held during ECT treatment. The second view mentions that the body of the patient should not be held because in general the patient's ECT treatment of the patient does not need to be held. The court finds that the defendant is not liable for having performed the injury treatment method which is in accordance with the reasonable standard of an ordinary doctor. The Defendant does not hold the Plaintiff's body while the treatment is not an improper act.

Doctors will not be considered to be in breach of duty obligations if the doctor has performed general medical treatment where other specialists do the same. In Bolam's test, the decision of medical treatment is on the doctor. A doctor does not commit negligence if his action to disclose or not disclose information to patients are accepted and supported by a group of doctoral organizations as a professional body responsible for overseeing the members. Hence, the Bolam test is further evaluated to protect the interests of medical practitioners and is still maintaining a paternalistic approach.

The issue of risk exposure in medical records is the basis for the refusal of bulbs test for cases of medical negligence. This change of wind was seen in the judgment of *Christopher Roger case v. Lynette Whitaker* [1992, 175 CLR 479.] decided by the Australian High Court of Australia has begun shifting from Bolam's principle or test and has re-evaluated the question of the standards and practices of medical officers.

In the case of Rogers, a forty-eight-year-old plaintiff named Maree Whitaker was almost blind to his right eye because of the wound he had suffered at the age of nine, but his left eye was normal. The plaintiff had been advised by the defendant who was an ophthalmic expert to undergo a surgery on his right eye, which aims to remove scar tissue and improve vision on the eye. The plaintiff had

expressed his intention to the defendant for information and warnings that might occur as a result of the operation. However, the defendant himself did not provide information regarding the adverse effects that could arise on his normal left eye. After undergoing surgery, the plaintiff has lost sight of his left eye due to the formation of ophthalmic symptoms.

In his defense, doctors use the Bolam test where all decisions regarding the medical practice that determine it are the physician including the risk exposures to the patient. Medical practice has been practiced well because the practice was accepted at that time as a proper practice by a group of well-trained doctors in the field as a responsible professional body overseeing its members. The defendant assessed that too far to expose the patient to the risk of the occurrence of sympathetic ophthalmic formation is within 1 to 14,000.

The New South Wales Supreme Court rejected the defense of a defendant's doctor and was found to have committed a negligence. The defendant was assessed to have contravened the duty of duty when failing to disclose information regarding the risks from the surgery resulting in the normal left eye plaintiff being blind and the plaintiff became completely blind because the right eye of the surgery did not heal. If the plaintiff is exposed to the risk then the plaintiff will not agree to undergo surgery. Although the risk of blind likelihood is minimal within 1 to 14,000 but is considered as a real risk if it results in serious implications.

The court ruled that the test to determine the level of awareness were no longer a doctor's decision but the court had more rights to determine what precautions were appropriate and that each individual had the right to make decisions in relation to himself. The patient has the right to make decisions regarding medical procedures, while the doctor must provide sufficient opinions, suggestions and explanations so that the patient can make his own decisions whether to accept the proposed treatment or reject it. Doctors can not force patients, provide incorrect information such as major surgical risk but doctors mention minor surgical risk, or doctors intentionally create a condition in which the patient must approve the treatment proposed by the doctor.

#### *4.3. Damage and Injury*

The next element that also needs to be proven by the plaintiff is the details of the defendant's duties resulting in damage or injury affecting the interests of law-abiding patients. This element looks at the adverse impact of medical treatment performed by a doctor so it can affect the health of the patient. These impacts not only create injuries but also cause the patient to be injured, disabled or bring patient to death.

According to Buang, the damage done by the physician must seriously affect the benefit of the patient or to bring harm to the patient's health (Buang, 1999). In fact, the patient's damage must have been caused by the breakdown of the duty of the doctor rather than by other factors (Talib, 2006). In the case of *The Wagon Mound* [1961, AC 388], it is mentioned that the plaintiff's loss must be directly attributable to the act of the physician who cared for it. If there is any other cause then the doctor is not responsible for the loss of the plaintiff. Doctors cannot be prosecuted because the harm received by the patient is not caused by the



negligence performed by the doctor during the course of surgery or medical treatment.

#### *4.4. Causation*

Causative factor is an important element in cases of medical negligence. Damage or loss suffered by the plaintiff must be caused by the negligence of the defendant's actions and not by other factors. If the plaintiff cannot prove that the damage or injury is due to the defendant's violation, then the defendant cannot be blamed for medical negligence. When the patient wishes to succeed in the case, then the patient must prove that there is a clear relationship between the doctor's action and the injuries suffered by the patient. The patient's failure to prove the causative factor in the trial of the medical negligence case will cause the claim to fail. The causative factor is one of the important elements in medical negligence cases because it will provide information on the extent of injuries sustained during medical treatment.

This causative factor is divided into causative factor of fact and causative factor of law. In the aspect of medical negligence, the causative factor of fact is that the patient's injury occurs because of a violation committed by the doctor in performing medical treatment rather than other factors. When a patient has difficulty in proving that an injury is a result of a doctor's negligence, the patient can use material tests that contribute to damage (Abdul Monir Yaacob, 2009). This test stipulates that although there are two or more contributing factors but if one of them is due to the negligence of the doctor as a defendant that is enough to prove that the accused's negligence contributed materially to the plaintiff's injury.

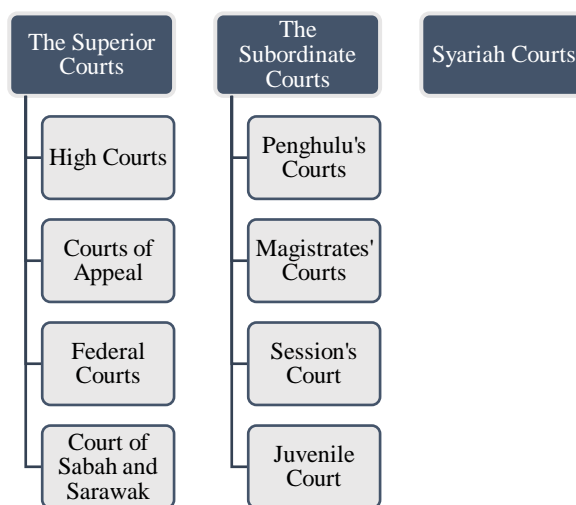
While in the element of law the defendant is defamatory if his act is reasonably shown to cause injury to the plaintiff. This is known as a far-reaching injury of remoteness of damages. However, the cause of the law is rarely raised in medical negligence cases because the reason for a medical treatment can often be demonstrated (Puteri, 2003).

### **5. Settlement of Cases of Medical Negligence through Courts**

From time to time, courts have been used as official institutions in resolving disputes. Each dispute has been referred to the court regardless of whether the dispute is small or large. This awareness is primarily a result of the education received by the community. The community have been educated with an understanding that the court is one of the most legitimate disputes and the court is the ideal place for people who are seeking justice.

In the aspect of solving medical negligence cases, the mechanism used is the mechanism of civil assessment in accordance with their respective modalities. The jurisdiction of the Civil Courts in Malaysia is the jurisdiction that is broken down into sections according to the court hierarchy set by the judiciary. In general, the jurisdiction of civil courts whether civil or criminal jurisdiction is placed in each hierarchy of court. Civil courts can be divided into two categories namely the Superior Court and the Subordinate Court. The High Court consists of the Federal Court, the Court of Appeal and the High Court. The Subordinate Courts consists of session's court and magistrate (Brazier & Miola, 2000).

Gafic: 6.1. Hierarchy of Malaysian Courts



Some issues related to court institutions in resolving disputes include overdue cases, delays in case settlements, high cost discussion expenses and court decisions that do not give satisfaction to the disputing parties. In the process of trial in court, every judge will seek and find evidence to support his argument in deciding the quality so that his decision creates truth and justice for both parties. While the trial has lasted for 16 or 20 years, this situation is not good for any party who comes to court (Puteri, 2003).

Former Chief Justice Tun Zaki Azmi believes that a good judge cannot only be judged from his judgment but covers all aspects. A judge should be fair, patient, handling the case before him correctly and making good and perfect decisions, but not for that reason until the case does not work. While the judge does not care about the time of judgment in the trial in court then there will be other problems that would harm the conflicting parties such as increasing the cost of the trial by collecting the evidence and the witnesses required in his submission.

The main purpose of establishing these courts is to resolve disputes that take place in the community as well as there are many other tasks. The court's position as an institution of dispute settlement still won the trust from the community. Although the solution to the cases of medical negligence has been an alternative dispute resolution channel that is mediation, but does not reduce the role of the court in carrying out judicial functions. Mediation is a challenge for court institutions to work in various ways to reduce weaknesses in the judicial process of medical negligence cases.

## 6. Solving the Medical Negligence Cases through Mediation

An alternative Dispute Resolution method can also be applied to medical negligence cases. According to Puteri, all the methods found in the resolution of alternative disputes can be considered for applying to the resolution of medical negligence cases in Malaysia (Puteri Nemie Jahn Kassim & Khadijah Mohd Najid, 2013). However, Azira is more on mediation methods that are considered more

appropriate to apply for medical negligence cases (Mulcany, 1999). In England, a mediation scheme for medical negligence claims in 1995 resulted from an increase in the number of claims of medical negligence to court (Glenn, 2005).

To implement the mediation method in Malaysia, the government established the Malaysian Mediation Center in November 1999 by the Malaysian Bar Council under the chairmanship of Bar Council's Alternative Dispute Resolution Committee. Currently through Practice Direction on Mediation No. 5 of 2010, the High Court Judge, Sessions Court Judge, Magistrate and Registrar of the High Court have the power to instruct the parties to try to settle their case through the mediation method first. These instructions can be given at the stage of case management at pre-trial levels (Othman, 2002).

To further strengthen the application of the mediation method in Malaysia, the enforcement of the 2012 Mediation Act has been enacted. By this Act, all parties can submit applications for mediation processes to resolve their cases including disputes by medical practitioners with patient and family members of the patient. The Mediation Act 2012 has been approved to ensure the smooth running of the mediation process and this Act detailed the features of recognized mediation (Section 3 of The Mediation Act 2012). This Act does not imply a special body established to advance the mediation process in Malaysia. However, this act stipulated that the parties may request from the institution to appoint a mediator or several mediators on their behalf and the mediation of the intermediary is made through mediation agreements. If there is more than one intermediary, then the intermediaries shall act jointly in mediation (Section 7 of The Mediation Act 2012).

According to Chief Justice Tun Arifin Zakaria, mediation proceeding was taken to help the court reduce delinquent cases. Mediation is carried out in accordance with the agreement of both parties. The court must not urge the parties to choose mediation. Instead, mediation must be done carefully after obtaining approval from both parties (Tun Arifin Zakaria, 2014). Katherine Stone admits that mediation is a procedure in which a third party is neutral, facilitating communication and negotiation between the parties to the conflict in order to achieve resolution with the agreement of the parties. Mediation is not bound by any procedure; there is no format set for mediation. In fact, one of the interesting aspects of the mediation method is that parties can adopt any of the best structure to resolve their conflict (Ware, 2001).

The main advantage of mediation proceeding is to resolve financial and personal issues arising from medical negligence, which in the course of law cannot be justified. To resolve the problem, both parties need a space in which their dissatisfaction can be discussed and resolved in the mediation forum. Through mediation, both parties can speak openly to relieve all the stresses of the dispute. Disputes can be dealt with effectively in mediation as long as the doctor acknowledges that he made a mistake in the treatment by apologizing to the patient. The doctor may feel more comfortable in acknowledging his violation that he has made a mistake because the mediation forum is confidential where only doctors, patients and intermediaries know (Studdert et al., 2004).

In many advantages of the mediation proceeding, there have been no cases of medical negligence using the mediation proceeding. Puteri stated that the Malaysian Mediation Center was open to the public and companies and could be

used for all kinds of disputes but according to the Secretariat of the Malaysian Mediation Center, most of the cases that have come to the institution were about family matters only (Nemie, 2008).

## 7. Conclusion

Malaysia is a British colonial state and most certainly the Malaysian legal system embraces the common law system of law as applied in the United Kingdom. However, in addition to common law systems, Malaysia also applies Islamic law in its national legal system. Islamic law coexists with conventional law dynamically and complements each other with its own authority.

In terms of health law, Malaysia places the fault of a doctor under civil law by only punishing a doctor who is found guilty to pay compensation to the patient. Malaysia also regulates the ethical violation set out in the Malaysian Professional Code of Ethics in 1987. This ethical instrument stipulates that medical practitioners should avoid abuse of authority in their profession or refrain themselves from committing serious violation. According to the Malaysian Professional Code of Ethics in 1987, a person is found guilty of neglecting or ignoring profession's responsibilities, abusing profession privileges and proficiency, the conduct of profiling medical profession and advertising, fraud and other related profession errors.

In resolving medical negligence cases, Malaysia implemented two channels, they are adjudication through court and mediation. Generally, all medical negligence cases are brought to court to be resolved, but various detentions found in court such as patients who have difficulty in proving medical negligence cases in court, the number of cases that have accumulated in court, the length of time it takes by the court to resolve medical cases, the number of cases and the costs required for litigation in the court are several factors that have hampered the settlement of cases through mediation forum.

Mediation is more effective in resolving the conflicts between doctors and patients. The advantage of mediation is that parties can discuss all aspects of the problem in the forum of intervention. Both parties are open to each other and communication between them will take place in a family manner so that both parties can freely communicate whatever desirable or undesirable.

The mediation forum is confidential so those who can attend here are only parties such as patients, doctors and intermediaries. The confidentiality of this mediation forum will bring convenience to both parties because doctors or hospitals are very sensitive to publications so that the reputation of doctors and hospitals will be maintained in the forum.

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