

## **Legal Responsibility of Fetal Diagnosis by Objective Specialists in Hospital**



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**ABSTRACT:** Negligence of health service providers is regulated in Article 58 of Law Number 36 of 2009 concerning Health concerning the right of everyone to claim compensation for a person, health worker, and/or health provider who causes losses due to errors or omissions in the services they receive. Both parties have their own responsibilities. Doctors will consider the medical actions taken, while the hospital is responsible for the health services it provides. The purpose of this study was to analyze the legal liability of specialist doctors related to fetal misdiagnosis. The legal material used in this research is statutory regulations. Secondary legal materials are legal materials obtained from textbooks, journals, legal cases and symposia conducted by legal experts. Tertiary legal materials are legal materials that provide meaningful instructions or explanations for primary and secondary materials such as legal dictionaries, encyclopedias, the Big Indonesian Dictionary and others. Based on the analysis and discussion in determining the criminal legal responsibility of content specialists related to misdiagnosis of the fetus, then based on Article 361 of the Criminal Code (KUHP), it must be explained that the doctor will be responsible for determining the examination actions that occur if an error occurs. The diagnosis made by a doctor must be proven by a doctor who is competent in that field. There is no possibility that the Doctor can argue that he has made the appropriate diagnosis.

**KEYWORDS:** Legal Responsibility, Fetal Diagnosis, Objective Specialists.

### **1. INTRODUCTION**

Since ancient times, the relationship of trust between doctors and patients has been known in the community. This relationship arises because of the patient's need to find solutions to their health problems. The occurrence of a legal relationship between a doctor and a patient is called a therapeutic transaction, namely an agreement or agreement to determine and seek the most appropriate therapy for the patient<sup>1</sup>. In other words, if a patient asks a doctor to treat him and the doctor accepts it, then at that time the contractual relationship between the doctor and the patient has started. This results in the fact that the relationship of giving assistance has the characteristics of the patient being in a weak position and dependent on the doctor. There are two possible types of legal relationships that can be created from the doctor-patient relationship, namely inspanning verbintenis or resultaat verbintenis.<sup>2</sup> However, usually, the legal relationship that is created between a doctor and a patient is an inspanning verbintenis legal relationship, where the doctor has an obligation to provide the best possible medical action in accordance with the standards of medical science that have been proven and tested, while the results of these actions are beyond the control of the doctor. the. As long as the doctor has given medical action according to the standard, then if the expected results are not obtained or are not in line with expectations, for example the results of recovery, then the patient cannot sue or ask for compensation from the doctor because in the inspanning verbintenis legal relationship, the thing that becomes the achievements of a doctor is a medical effort alone. Inspanning verbintenis is different from resultaat verbintenis, where the achievement of a doctor is the final result. In the resultaat verbintenis, even though a doctor has provided the best possible medical action in accordance with the standards of medical science, but if the results obtained are not in line with expectations, the patient can sue or ask for compensation from the doctor. Why is the doctor-patient relationship an inspanning verbintenis legal relationship not a verbintenis resultaat, because doctors are prohibited from giving promises of healing to patients. The doctor can only give an understanding that he will do his best in accordance with medical science for the recovery of the patient. The hospital as a business entity organization in the health sector is one of the places where patients and doctors meet. Hospitals have an important role in realizing optimal public health. Therefore, hospitals are required to be able to manage their activities by prioritizing the responsibility of health workers in carrying out their duties and authorities. However, medical services provided by health workers in hospitals are not always able to provide the results expected by all parties. There are times when

<sup>1</sup> M. Jusuf Hanafiah dan Amri Amir, *Etika Kedokteran Hukum Kesehatan*, Buku Kedokteran EGC, Jakarta, 1999, hlm. 39.

<sup>2</sup> M. Sofyan Lubis, *Konsumen dan Pasien dalam Hukum Indonesia*, ed. 1. cet. 1. Liberty, Yogyakarta, 2008, hlm. 38.

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health workers make negligence to patients which results in disability or even death. This negligence can occur even though a doctor has considered the best possible medical action, but is negligent or does not prepare preventive measures against risks that can pose a danger to his patient<sup>3</sup>. Negligence of health service providers is regulated in Article 58 of Law Number 36 of 2009 concerning Health regarding the right of everyone to claim compensation for someone, health workers, and/or health providers who cause losses due to errors or omissions in the health services they receive. Based on this, the claim for compensation due to intentional or due to negligence in health services is addressed to a health worker or to a health provider (hospital). Meanwhile, in Article 46 of Law Number 44 of 2009 concerning Hospitals, the claim for compensation is only aimed at the hospital, which is specifically caused by the negligence of health workers in the hospital. Therefore, when experiencing losses while undergoing treatment at the hospital, the patient will be faced with 2 (two) parties, namely the doctor and the hospital. Both parties have their own responsibilities.

The responsibility arises from the existence of legal rules that provide an obligation to legal subjects accompanied by the threat of sanctions if these obligations are not carried out<sup>4</sup>.

Doctors will be responsible for the medical actions taken, while hospitals are responsible for the health services they provide. This is sometimes not understood by patients, so they are confused in determining which party should be sued. The reason that makes the author interested in discussing this problem is because of the cases that are uploaded on the [www.rememberaidan.com](http://www.rememberaidan.com) website. The website [www.rememberaidan.com](http://www.rememberaidan.com) writes about the outpouring of a patient at a hospital whose child was a victim of a medical misdiagnosis. The medical misdiagnosis resulted in the patient's child dying at the age of 4 (four) months because the doctor did not know that while in the womb, the patient's fetus was affected by a syndrome which other doctors said was achondroplasia, namely abnormalities in bone growth caused by genetic mutations. Which is rare. After being checked, doctors at other hospitals agreed that the fetus from patient Y had achondroplasia. With this case, the authors are interested in researching the form of responsibility of hospitals and doctors for misdiagnosing patients. In addition, there was also the case of a woman who claimed to be a victim of fraud because she thought the doctor had given inappropriate information about the results of the ultrasound examination. This case began when she arrived at the referral hospital, the woman was checked again and by a different doctor. He was again surprised when the second doctor said that his amniotic fluid was still sufficient and that he did not need a cesarean section. The doctor at the referral hospital then asked the woman to go home and wait until the HPL time. Knowing this, the pregnant woman felt relieved. He also felt grateful for being protected and warned other pregnant women to learn from their experiences, to be careful in choosing obstetricians and hospitals. The upload has so far received the attention of more than 2.2 million netizens.<sup>5</sup>

In addition, if you look at the qualifications that can be included in the criminal category in the health sector as stated in Law Number 36 of 2009 concerning Health in Chapter XX of Criminal Provisions from Article 190 to Article 200, it can be seen that misdiagnosis of the fetus in the womb is not regulated or in the sense that it is not included in the criminal category in the health sector. So that there is a conflict of empty norms/norms here, regardless the error is indeed a human thing, especially with a supporting tool (USG), but from the case exemplified above, it can be seen that there are "persons" who can use this tool to frighten them into taking action. Fast intervention, in which the patient does not undergo surgery after a second opinion from another doctor. Based on the description above, it is interesting to analyze the legal liability of obstetricians related to fetal misdiagnosis

## 2. METHODOLOGY

According to Morris L. Cohen, legal research is a scientific process to find solutions to emerging legal issues with the aim of giving prescriptions about what should be on the emerging legal issues<sup>6</sup>. This type of research is normative juridical, which is a method of research in legal research conducted on library materials or secondary legal materials using deductive thinking methods and coherent truth criteria<sup>7</sup>. Meanwhile, what is meant by coherent truth is that a statement is said to be true if it is coherent or consistent with what is summarized. The types of legal materials used in this research are secondary legal materials. Secondary legal materials are legal materials obtained from library research and documentation, which are the results of other people's research available in the form of books or documentation in public or private libraries. In legal research, the secondary data includes primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials are legal materials contained in a legal rule or authoritative text such as statutory regulations, judge decisions, treaties, contracts, state administrative decisions.<sup>8</sup> The legal material used in this research is statutory regulations. Secondary legal materials are legal materials obtained from textbooks, journals, legal

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<sup>3</sup> J. Guwandi, *Dugaan Malpraktik Medis & Draft RPP: Perjanjian Terapeutik antara Dokter. dan Pasien*, Balai Penerbit Fakultas Kedokteran Universitas Indonesia, Jakarta, 2006, pp 94

<sup>4</sup> Asmuni, Budi Pramono. "Ancaman Sanksi Pidana Bagi Pelaku Pengambilan Paksa Jenazah Pasien Suspek Dan Probable Covid-19" *Jurnal IUS Kajian Hukum dan Keadilan* Volume 9 No 3. <https://jurnalius.ac.id/ojs/index.php/jurnalIUS/article/view/933>

<sup>5</sup> Risna Halidi dan Dinda Rachmawat, "Divonis Air Ketuban Minim, Perempuan Ini Ngaku Jadi Korban Tipu-tipu Dokter", <https://www.suara.com/health/2021/02/08/140810/divonis-air-ketuban-minim-perempuan-ini-ngaku-jadi-korban-tipu-tipu-dokter?page=2>, downloaded 4 Maret 2022

<sup>6</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana, Penada Media Group, Jakarta, 2005, h. 17

<sup>7</sup> Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Rajawali press, Jakarta, 2001, pp. 13-14.

<sup>8</sup> *Ibid.*, h. 181

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cases and symposiums conducted by legal experts. Tertiary legal materials are legal materials that provide meaningful instructions or explanations for primary and secondary materials such as legal dictionaries, encyclopedias, the Big Indonesian Dictionary and others.

### 3. RESULTS AND DISCUSSION

#### Obstetrician's Criminal Legal Liability Regarding Fetal Misdiagnosis

In analyzing the Criminal Legal Liability of Obstetricians Related to Errors in the Diagnosis of the Fetus, then there are legal problems from the legal relationship that was born between the Patient and the Doctor. When a patient demands accountability in Indonesian criminal law, one of the goals is to get justice for the actions of the doctor who is suspected of committing malpractice. However, as a profession with relatively higher standards of knowledge and intellectuality compared to society in general, it will be very difficult for a doctor's medical action to be called an act of malpractice, even though there have been many regulations governing the doctor's actions such as in Law no. 36 of 2009, considering the existence of a code of ethics, standard operating procedures and professional standards without forgetting the existence of ethics and medical discipline enforcement committees such as the Medical Committee and the Indonesian Medical Discipline Honorary Council.<sup>9</sup>

#### 1. Analysis of Fetal Misdiagnosis in General Based on Article 58 of Law no. 36 of 2009

Concerning Health stipulates that every person has the right to claim compensation for a person, health worker, and/or health provider who causes losses due to errors or omissions in the health services they receive. This arrangement gives each patient the right to medical treatment provided by health workers, where a claim for compensation may arise. The patient also has the same rights from the Doctor, who is a doctor at Hospital Z. In the case of a Fetal Misdiagnosis, if the Doctor does not see any abnormal signs, even though doctors from other hospitals who examine the patient's womb can immediately know if there is something wrong with the fetus. Basically there are many factors that can cause doctors to misdiagnose. Starting from the equipment factor, the patient factor and the doctor's own factor, for example the doctor is tired because there are many patients, the examination conditions are in a hurry and so on. However, whatever the factors, if the misdiagnosed action is carried out by health workers who cause harm to the patient, then this action gives the patient the right to claim compensation. However, regarding the fulfillment of the claim for compensation, whether it is granted or not is a very interesting topic to be discussed in more detail.

The action of the doctor who does not see any signs of abnormality in the fetus in the patient's womb, if subsequently causes many adverse consequences for the patient's family, both materially and immaterially. For these actions as regulated in Article 58 of Law no. 36 of 2009 concerning Health Patients have the right to file a claim for compensation.

#### 2. Analysis of Fetal Misdiagnosis as Medical Malpractice

To see if there is an error in the diagnosis of the fetus by an obstetrician, it is necessary to discuss Ultrasonography (USG). This is due to a misdiagnosis that was raised due to ultrasound examination, perhaps in general the tool, its use, the model, the level of accuracy/error of the measurement/interpretation of the instrument. Diagnostics with ultrasound uses sound waves at a certain frequency. Sound is a journey of energy and mechanical waves that require a conducting medium and cannot propagate in a vacuum or a vacuum like in space. Sound is a journey of energy from mechanical waves that requires a conducting medium and cannot propagate in a vacuum or a vacuum like in space. At very high intensities, human tissue can be damaged by heat, but at low intensities real time imaging has not been reported to pose a risk to the fetus. The image shown on the ultrasound screen is produced by sound waves bouncing off the fetus or the structures being imaged. Ultra waves have frequencies above 20,000 Hertz. The wavelength of the sound of an ultrasound device is very important because it will determine the resolution capability of the tool. Ultrasound examination or ultrasound in pregnancy is useful to support precise and accurate clinical assessment of a pregnancy which is assessed from several assessments such as the location of the pregnancy, identifying the number of fetuses being conceived, and assisting in making prenatal diagnosis decisions in cases of congenital abnormalities in the fetus. As we know, pregnancy is divided into 3 periods of pregnancy, namely trimester 1, trimester 2, and trimester 3. During these 3 periods, growth, maturation, and development of the fetus occur, which apart from us value the increase in maternal weight and uterine height at the time of birth. external examination or during palpation of the mother's abdomen or abdomen.

##### a. 1st trimester

A first trimester basic ultrasound is usually done to confirm a pregnancy in the womb. Examination can be done either trans-abdominally or trans-vaginal (through the birth canal). This is ideally done until 13 weeks and 6 days of pregnancy. This examination aids in the clinical assessment of pelvic pain and/or vaginal bleeding in early pregnancy because it can diagnose an extrauterine pregnancy or abnormal pregnancy, such as a hydatidiform mole, anembryonic pregnancy, or complete or incomplete miscarriage. In addition, first-trimester ultrasound is useful for diagnosing "premature miscarriage", which is defined by the American College of Obstetricians and Gynecologists as a non-viable intrauterine pregnancy with an empty gestational sac or a gestational sac containing an embryo or fetus without cardiac activity within 12 6/ The first 7 weeks of pregnancy. First trimester ultrasound is also useful for evaluation of maternal anatomy including assessment of uterus, cervix, and adnexal structures. The presence of adnexal masses, ovarian cysts, and/or leiomyomas should be documented and followed throughout pregnancy.

<sup>9</sup> Sandra Dini Febri Aristya, "Pembuktian Perdata Dalam Kasus Malpraktik Di Yogyakarta", *Mimbar Hukum*, (November 2011), hlm. 180-181.

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### b. 2nd and 3rd trimesters

Second or third trimester ultrasound examinations use fetal biometry to assess fetal growth and can also provide detailed information about fetal anatomy. Standard obstetric ultrasound examinations may also include evaluation of fetal presentation, amniotic fluid volume, cardiac activity, and placentation. Fetal anomaly assessment, also known as fetal anatomy survey, should be performed after 18 weeks of gestation and ideally between 18-20 weeks of gestation. Examination of the basic anatomy of the fetus includes an assessment of the following structures, including the lateral cerebral ventricles, choroid plexus, midline falx, cavum septi pellucidi, cerebellum, cistern magna, upper lip, view of the four chambers of the heart and left and right ventricular outflow tracts, size and location of the stomach, bladder and ureters, anatomy of the spine, extremities, and gender. The placenta should also be further characterized at this time, in particular noting its location and proximity to the internal uterine os and the number of vessels and the site of umbilical cord insertion. Second and third trimester baseline ultrasound can also be used to diagnose or monitor maternal anatomic problems, particularly cervical length in the setting of risk factors for preterm birth or cervical insufficiency. Ultrasonographic monitoring of fibroids and/or ovarian cysts is also important, but this is limited to advanced gestational age because of the size of the gravid uterus. Furthermore, in analyzing a medical misdiagnosis as a criminal offense at the level of Indonesian criminal law, it is necessary to further examine whether the misdiagnosis itself is a medical malpractice. This is because not all medical actions carried out by doctors at certain hospitals can certainly be said to be medical malpractice. Medical malpractice as defined by the existing definition is not a legal formulation regulated by law, but rather a collection of various deviant behaviors that can occur due to an intentional act such as a certain misconduct, an act of negligence (negligence), or a lack of skill. unreasonable incompetence (professional misconduct). Professional misconduct is carried out in the form of violations of ethical provisions, professional discipline, administrative law (Administrative Malpractice), civil law (Civil Malpractice), and criminal law (Criminal Malpractice).<sup>10</sup>

In general, the definition of malpractice as produced by the World Medical Association (WMA) in 1992 as adapted from Sandra Dini Febri Aristya is “*Medical malpractice involves the physician's failure to conform to the standard of care for treatment of the patients' condition, or lack of skill of, or Negligence in providing care to the patient, which is the direct cause of an injury to the patient.*”<sup>11</sup> Based on this definition, medical malpractice can occur if a doctor fails to carry out his professional standards, or is due to his inability, or due to his carelessness in providing care and treatment to patients, where these three things are the direct cause of the harm suffered by the patient.

### 2. Doctor's Criminal Liability Related to Medical Action

As a member of a medical profession, a doctor in carrying out his actions is bound by an ethical responsibility, besides that doctors as members of the community are also bound by legal rules that give the medical profession a legal responsibility as well. Ngesti Lestari and Soedjamiko as quoted by Anny Isfandyarie, also distinguish the types of malpractice into ethical malpractice and juridical malpractice. The different types of malpractice for a medical action reflect the different responsibilities that a doctor has. What is meant by ethical malpractice is a health worker who acts contrary to his professional ethics as a health worker. From a professional perspective, the medical profession has a professional code of ethics that must be adhered to by members of the profession. This medical code of ethics (Codeki) contains rules of behavior and attitudes between members of the profession, issued by the Indonesian Doctors Association which was established in 2012. Kodeki stipulates that professional responsibility is a belief that results from understanding biomedical/medical science and technology, clinical experience, epidemiological calculations, and understanding of humanity as a doctor.

Based on the provisions of Article 7 of the Kodeki, doctors are obliged to provide accurate information and opinions, where doctors are obliged to base their contents on medical facts that are believed to be true in accordance with their professional responsibilities. If the action of the Doctor who declares a misdiagnosis is ultimately proven to have been wrong in reading the patient's symptoms, it must be proven that the Doctor has provided information and opinions that are invalid and contrary to the responsibilities he has in Kodeki. In Kodeki it is also explained that the responsibilities of a doctor's job are to cover healthy and/or sick humans starting from the pre-pathogenesis period to palliative care, individually or in a community/community that requires medical action, both ordinary and interventional types as well as guidance/guidance measures. Individual counseling to public education to change sick behavior to become healthy. The Law on Health also regulates the responsibility of doctors in Article 55 paragraph (1) of Law no. 36 of 2009 which stipulates that everyone is entitled to compensation due to errors or omissions committed by health workers. If it is connected with a case of misdiagnosis of the fetus, the doctor can be asked for criminal liability. Utrecht defines criminal law as the law of special sanctions. For health law, criminal responsibility will arise if it can be proven that there was a professional error, for example a doctor made a diagnosis error or an error was made by a doctor in treatment and care. Errors in criminal responsibility need to be proven by professional wrongdoing, which is usually associated with problems that occur such as: a. Negligence (Culpa) b. Consent of the patient concerned. Negligence in the Criminal Code (KUHP) is stated in article 359

<sup>10</sup> Widodo Tresno Novianto, “Penafsiran Hukum Dalam Menentukan Unsur-Unsur Kelalaian Malpraktek Medik (*Medical Malpractice*)”, *Yustisia*, (Mei-Agustus, 2015), pp. 143

<sup>11</sup> Sandra Dini Febri Aristya, *Mimbar Hukum*, hlm. 185.

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which states: "Whoever because of his mistake causes the death of a person is sentenced to a maximum imprisonment of five years or a maximum imprisonment of one year". In his explanation, R. Soesilo explained that the death of the person here was not intended at all by the defendant, but that the death was only the result of the defendant's carelessness or negligence (*delik culpa*). As for the consent of the patient concerned, this concerns the informed consent that has been carried out between the doctor and the patient. For criminal acts as the main element there must be a certain consequence of the perpetrator's actions in the form of loss to the interests of others, indicating the necessity of a causal relationship (causal verb) between the actions of the perpetrator and the loss of certain interests. If the causal relationship is reached, then the criminal act committed can be held accountable to the perpetrator and can also be sentenced to criminal penalties.

To analyze the act of misdiagnosis carried out by doctors whether it is medical malpractice as a negligence, Kathleen Michon explains several elements that must be met, namely: a. There is a relationship between doctor and patient; b. The doctor was proven guilty, that he did not give treatment according to his expertise and competent attitude; and c. Such action causes real harm to the patient. Further explanation regarding point b, namely that the patient must prove one of two things related to the diagnosis, namely: a. That the doctor did not make the correct diagnosis, which should be made by a doctor who is competent and skilled in the field; or b. The doctor makes the right diagnosis, but does not take the appropriate action on the results of the diagnosis, nor does he ask for the opinion of another doctor who is more skilled in handling patients with that diagnosis. In connection with the above, in the perspective of medical science, fetal abnormalities can be identified through ultrasound examination.

Ideally, ultrasound examinations are performed three times during pregnancy. However, not all types of problems in babies can be detected by ultrasound examination. Because the ultrasound results are not 100 percent accurate. This means that normal results on ultrasound do not necessarily guarantee that your baby will not have birth defects or chromosomal abnormalities. The reason is, there are also defects that are only visible when the baby is born. Here are some birth defects that can be detected by ultrasound:

- a. **Spina bifida** is a fetal abnormality that occurs when the spine and spinal cord are not fully formed. This abnormality is one type of neural tube defect and usually occurs when the fetus is young, which is 3-4 weeks.
- b. **Anencephaly**. Anencephaly is a serious fetal abnormality or birth defect. This condition is a type of neural tube defect that causes babies to be born without a part of the brain and skull. Anencephaly occurs when the top of the neural tube fails to close completely. Then the baby's growing brain and spinal cord are exposed to the amniotic fluid and destroys the nervous system tissue.
- c. **Hydrocephalus**. This condition is characterized by the size of the baby's head that is abnormally enlarged due to a buildup of fluid in the ventricular cavity of the brain. There are quite a lot of hydrocephalus cases in Indonesia, around four in 1000 births.
- d. **Bent legs** (club foot). Club foot or bent foot is a condition where the foot rotates at the ankle inward and makes the soles of the feet facing each other. However, there are some difficulties that you may face, such as the movement of the baby, shoe size, and different leg muscles with other parts.
- e. **Harelip**. Cleft lip or cleft lip is a fetal abnormality in which the upper lip is not fused together. A similar cleft can also occur on the roof of the mouth and can occur at the same time as a cleft lip. Cleft lip occurs early in the formation of the fetus due to genetics or due to the environment during pregnancy.
- f. **Down syndrome**. The next fetal abnormality to watch out for is Down syndrome. This condition occurs when the fetus has an excess of chromosomes. Normally, humans have 46 chromosomes in each cell, 23 from the mother and 23 from the father.

Meanwhile, Down syndrome has 47 chromosomes in each cell. During an ultrasound, the doctor will take measurements to make sure the baby is growing normally. If any of the measurements are abnormal, it could indicate a birth defect. Ultrasound is usually done three times during pregnancy, especially at 18 to 20 weeks of gestation. Because at this age is the best time to check the baby's physical development. However, this ultrasound can also be done earlier from the age of the fetus from six weeks to eight weeks. If any abnormalities are found in the baby, a transvaginal ultrasound examination is mandatory. If an abnormality is detected by ultrasound, you should immediately discuss it with your doctor about the best option to make. This choice of course depends on the type of abnormality detected. Some types of disorders can be treated by doctors, one of which is spina bifida when the baby is still in the womb. UT Southwestern Medical Center says, repairing spina bifida before the baby is born can give better results than having surgery after the baby is born. Some bladder obstructions can also be treated while the baby is still in the womb. However, not all birth defects can be treated before the baby is born.

If it is associated with a medical action with a misdiagnosis when the Doctor has misdiagnosed the fetus in the patient's womb. The first element is that there must be a legal relationship between the doctor and the patient. The start of the doctor-patient relationship is generally very clear and tangible, according to J. Guwandi, the contractual relationship between doctor and patient begins when a patient asks a doctor to treat him and the doctor accepts it. Regarding the second element, as already stated, there are two ways that can be chosen to fulfill the element, where if one of the elements is fulfilled, the second element has been fulfilled. The first is that doctors do not make the correct diagnosis, which should be made by a doctor who is competent and skilled in the field. Regarding this matter, if it is related to a case of misdiagnosis of the fetus, there must be action from a doctor who has made an incorrect diagnosis due to an element of negligence. Misdiagnosis made by a doctor must be proven that it can be carried out by

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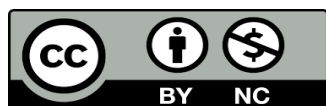
a competent doctor with expertise in the field. In this element there is the possibility that the Doctor may argue that he has made the correct diagnosis. If that happens, the second sub-element can be used, namely, the doctor has made the right diagnosis, but has not taken the appropriate action that should have been taken on the results of the diagnosis, nor has he asked for the opinion of another doctor who is more skilled in handling patients with that diagnosis. (second opinion).

### 4. CONCLUSION

Based on the description of the analysis and discussion in the previous chapter, it can be concluded that: 1. In determining the criminal legal responsibility of obstetricians related to the misdiagnosis of the fetus, based on Article 361 of the Criminal Code (KUHP), it must be proven that the doctor will be responsible for his own medical actions if an error occurs. by a doctor, it must be proven that it can be carried out by a competent doctor with expertise in the field. In this element there is the possibility that the Doctor may argue that he has made the correct diagnosis. If that happens, the second sub-element can be used, namely, the doctor has made the right diagnosis, but has not taken the appropriate action that should have been taken on the results of the diagnosis, nor has he asked for the opinion of another doctor who is more skilled in handling patients with that diagnosis. (second opinion).

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