



## Legal Liability for Doctors' Malpractice Through Liability Insurance

Mela Lavenia<sup>1</sup>, Moh.Luay Khoironi<sup>2\*</sup>, Widiastuti<sup>3</sup>, Serlin Peda Ngura<sup>4</sup>  
Wisnuwardhana University

**Corresponding Author:** Moh.Luay Khoironi [mohluayk@gmail.com](mailto:mohluayk@gmail.com)

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### ARTICLE INFO

*Keywords:* Legal Liability,  
Doctor's Malpractice,  
Professional Liability  
Insurance

*Received :* 02 October

*Revised :* 25 October

*Accepted:* 28 November

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### ABSTRACT

This research discusses the problems faced by doctors in Indonesia regarding their responsibility to patients as third parties for their negligence resulting in medical malpractice against patients who are believed to have caused harm to patients. By using the Normative Legal Research Method with the Legislation Approach Method, this research analyses the legal framework that regulates the urgency of doctors to obtain professional liability insurance, this research obtained the results that the requirements that must be met by doctors to submit liability insurance claims, and what obstacles doctors often face when applying for liability insurance. By considering different legal perspectives, this research aims to provide a deeper understanding of the legal solutions faced by doctors when committing medical malpractice or medical disputes that can later be delegated to a Third Party, namely being insured.

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## **INTRODUCTION**

Health services are efforts carried out individually or together in an organisation to maintain and improve health, prevent, treat and restore one's health carried out by doctors who have the knowledge and skills, Health services in Indonesia are still not optimal, even though health is very important for every person. Health is not only a fundamental right of every individual, but also an important element in achieving prosperity in accordance with the ideals of the Indonesian nation, as described in Pancasila and the 1945 Constitution. It is also the duty of the government.

In carrying out its duties, the government has 4 (four) main functions that must be carried out, namely:

1. public service function;
2. development function;
3. empowerment function; and
4. regulatory function.

Health Fulfilment Efforts are regulated in Chapter V, part one, Article 23 of Law Number 17 of 2023 concerning Health Efforts (Health Law). The implementation of health service efforts is carried out in a responsible, safe, qualitative, fair, non-discriminatory and equitable manner. Conducted in accordance with health service standards including important matters that must be maintained or improved in accordance with applicable service delivery standards, so that the community can benefit from the health services provided. Health services at health care institutions involve several legal entities, including doctors and patients. From the law, these standards are regulated in Article 51 of Law Number 29 concerning Medical Practice (Medical Practice Law) which stipulates that in providing medical services, doctors must refer to professional standards and standard operating procedures, as well as professional standards for doctor. Where every action or action must be based on rules or rules and procedures (regels).

The relationship between doctors and patients often leads to conflict because patients feel harmed due to the negligence of doctors in carrying out their profession, which is then called medical negligence. As a victim of negligence and loss, the patient certainly demands his rights. Patients who are victims of negligence will ask for compensation for their responsibility to the doctor concerned, the request can be in the form of a compensation claim contained in a civil case, but can also be in the form of revocation of administrative law claims. Business licence or revocation of practice licence. Negligence and carelessness in providing health services lead to malpractice and harm to patients, so patients often sue doctors to take responsibility for their negligence in providing health services.

As the number of claims filed against healthcare professionals increases every year, there is an urgent need for healthcare professionals to be adequately covered to mitigate the risk of legal liability. The insurance sector has taken this opportunity to consider the need for protection of the medical profession by offering civil liability insurance products for the medical profession. This

research addresses the need for protection of the medical profession by offering professional liability insurance products.

## LITERATURE REVIEW

Insurance itself is a conditional agreement, in which case the insurer compensates the insured party for losses determined or dependent on events that cannot be ascertained in advance. Another understanding of insurance is that insurance is a reciprocal agreement where the insurer is conditionally bound to the insured to pay compensation, but on the other hand from the insured side there is an unconditional bond to pay premiums.

Currently, the number of lawsuits for compensation or criminal reports from patients against patients suspected of malpractice raises fear of doctors when they want to perform medical actions, because it is not uncommon even though the medical actions that have been carried out by doctors are in accordance with the provisions, they are still prone to lawsuits or criminal reports to doctors. Lawsuits and criminal reports made by patients are certainly due to the losses suffered by the patient, so that when the patient gets compensation, the patient already feels his rights are fulfilled and is willing to revoke the lawsuit or criminal report.

Lawsuits or Criminal Reports arising from losses from patients in this case are to be delegated to third parties, where patients can get compensation through insurance that has been held by the doctor with the insurance, so that doctors can focus on providing medical services. However, there are weaknesses in the writing of this article because it is limited to Normative research with a statutory approach that only discusses at the theoretical stage not in field data so that it is hoped that in further research there must be supporting data on the situation in the field about the plan to use insurance against alleged losses that cause a lawsuit from the patient against the doctor.

## METHODOLOGY

This type of research uses normative juridical research. Normative juridical research itself is research that discusses doctrines or principles, this research is often referred to as theoretical research. In normative juridical research, it is usually described in three areas, namely:

- a. Research on Legal Principles.
- b. Legal systematics research.
- c. Research on the level of synchronisation of law.

The method of approach used in this research is a statutory approach (Statute approach), in normative research of course must use a statutory approach, because what will be examined there are various rules of law that are the focus and are the central theme of a research.

The legal materials that will be used in this paper can be divided into two parts, namely as follows:

1. Primary Legal Materials:
  - a. Constitution of the Republic of Indonesia Year 1945.
  - b. Law Number 17 of 2023 Concerning Health
  - c. Law Number 29 on the Practice of Medicine

- d. Law Number 40 of 2014 concerning Insurance.
2. Secondary Legal Materials  
The secondary legal materials used in this paper are:
  - a. Textbooks that discuss one and/or several legal issues, including theses, theses and legal dissertations,
  - b. Legal materials,
  - c. Legal journals and
  - d. Commentaries on judicial decisions.

## RESULT AND DISCUSSION

### The Urgency of Professional Liability Insurance for Doctors

Moegni Djodirdjo combines the responsibilities of the two disputing parties because one party feels aggrieved by the unlawful act of the other party, so that the party causing the loss according to the lawsuit filed in court is obliged to pay compensation. The loss will be borne by the injured party. Therefore, compensation is a form of the perpetrator's responsibility towards the victim. This responsibility arises because of an unlawful act (*onrechtmatige daad*). Article 1365 BW regulates that every unlawful act that causes loss to another person requires that person to pay compensation for the loss caused by his/her mistake that caused the loss. Regarding this matter, JH Nieuwenhuis, stated that the conditions for responsibility based on Article 1365 BW are that a person is responsible for the loss of another person if:

1. An act that causes loss is an unlawful act (an act that violates the law).
2. Damage arises as a result of actions (cause and effect relationship),
3. The perpetrator is guilty (of the crime), and
4. The standards met will be subject to "stretching" to avoid losses (relativity).

Unlawful acts, mistakes, causation and relativity are each necessary (*noodzakelijk*) and together sufficient (*veldoende*) conditions for liability under Article 1365. This article opens up the possibility of filing various claims, in particular:

1. Compensation,
2. Declaration (as) law,
3. Commands or prohibitions of the law.

In criminal law, especially in the field of civil law, it is known as the principle of responsibility, including:

1. The principle of liability for error (liability for error),
2. The principle of responsibility based on the presumption of guilt (rebuttable, the principle of presumption of responsibility, presumption of responsibility),
3. The principle of vicarious liability,
4. The principle of absolute liability or strict liability (strict liability, strict liability, principle of absolute liability).

JH Nieuwenhuis' opinion divides responsibility into three types, as mentioned above.

1. First, strict responsibility (schuldaansprakelijkheid) is essentially Article 1365 of the Civil Code concerning unlawful acts. |
2. Second, responsibility with the reversal of the burden of proof (schuldaansprakelijkheid met om dry van bewijlast) is based on Article 1367 paragraph (2) in conjunction with paragraph (5) of the Civil Code, where the burden of proof lies with the defendant.
3. Third, risk responsibility (risk liability) is based on Article 1367 paragraph (3) of the Civil Code regarding the transfer of responsibility for minor errors to the employer.

Losses due to subordinate errors can be borne by the employer under the following conditions:

1. First of all there is the relationship between subordinates and superiors.
2. Second, the violation was committed while the subordinate was carrying out a job, even though the employer had expressly prohibited such action or even though the action occurred outside of working hours.
3. Third, mistakes and errors on the part of subordinates are bound to occur.
4. Fourth, liability does not depend on violation of regulations or fault on the part of the employer.

If Article 1367 paragraph (3) is applied to medical practice, then if a doctor provides health services to a patient, there is negligence or carelessness in health services which results in losses suffered by the patient. The doctor, both as employer and customer, is responsible for the losses suffered by the patient, whether or not he made a mistake.

Marcia M. Boumil and Paula A. Hattis, limit this responsibility by stating that as long as the agency relationship is consistent with the function and purpose of indirect responsibility, which is based on three elements, namely:

1. The principal's statement of consent for the agent to act on his behalf;
2. Acceptance of such obligations by the agent; and
3. An agreement between the parties that the agent's activities are subject to the direction or control of the principal.

The relationship between doctors and patients often causes conflict because patients feel disadvantaged by the doctor's negligence in carrying out his profession, which is then called medical negligence. As victims of negligence and loss, patients of course demand their rights. Patients who are victims of medical errors will demand compensation or responsibility from the doctor concerned. This claim can be in the form of a claim for compensation in a civil lawsuit and in administrative law regulations can be in the form of revocation of a business license or revocation of a professional license. Negligence and carelessness in providing health services lead to malpractice and losses for patients, so patients often demand that doctors be held accountable for their negligence in providing health services.

As the number of lawsuits filed against healthcare workers increases each year, there is an urgent need for healthcare workers to have adequate protection

to anticipate the risk of legal liability. The insurance sector takes this opportunity to consider the need for protection for the medical profession by offering insurance products. Professional responsibility of doctors. Based on these phenomena and facts, the author would like to write in a scientific journal entitled "Legal Liability of Doctors' Malpractice Through Liability Insurance".

### **Condition Doctors To File Professional Indemnity Insurance Claims**

To reduce the doctor's responsibility for risks that may arise, the doctor can transfer the risk by making an insurance contract. The definition of insurance is an agreement between two parties, namely an insurance company and a policyholder, which regulates the receipt of premiums by the insurance company in return for:

1. Provide compensation to the insured or policyholder for losses, damages, costs incurred, loss of profits or legal liability to third parties that may be suffered by the insured or policyholder due to the occurrence of a certain event;
2. Provision of benefits if the insured dies or benefits based on the life of the insured with benefits of a fixed amount and/or based on the results of fund management.

Based on these provisions and in its development, insurance companies have developed service products where insurance companies or guarantors offer professional liability insurance for doctors, meaning that doctors can transfer to the guarantor all risks related to the occurrence of legal acts against them a certain amount, premiums and the insurance party will reimburse the costs of patients who file lawsuits. If a doctor is found guilty by a judge who has made a final decision (execution) and meets the requirements set out in the professional liability insurance for doctors.

Here are the terms and steps filing a liability insurance claim:

1. If the doctor files a claim, prepare the necessary documents to submit to the billing service team incident reports from related staff, police reports, witness statements and correspondence with third parties, including letters of request or demand. Quotes, photos, or other evidence that supports the type of claim.
2. Complete the insurance company form or claim form.
3. After submitting the relevant documents along with supporting documents to the insurance company, obtain a stamp and signature from the insurance company or doctor.
4. We are waiting for confirmation from your insurance company to provide further information regarding your claim status.

Benefits covered by professional liability insurance:

1. Legal defense against medical malpractice and malpractice claims
2. Early legal health checks and support for injured doctors
3. Increase awareness of laws, ethics and professional practices
4. Court-ordered damages for patient disputes
5. Claim processing fees

## 6. Defense tips

In the case of medical malpractice in Indonesia, it can be concluded that insurance companies can be held liable if patients sue doctors and their legal responsibility is transferred to the insurance company based on the insurance contract. It is hoped that with this insurance, doctors can help their patients without having to go through a long replacement process.

### **Common Barriers Doctors Face When Seeking Professional Liability Insurance in the Medical World**

Doctors certainly want to provide the best service according to medical professional standards, but as humans we cannot avoid mistakes or shortcomings, whether small, moderate, or serious in this medical practice, all medical actions and actions always contain risks. Doctors try to ensure that these risks do not exist. Here, the role of effective communication before the doctor takes medical action is very important. This is called informed consent. A common mistake is not providing accurate information to patients or ensuring that patients understand what they are agreeing to and what is being done. Unfortunately, when these unnecessary risks occur, patients complain about what happened to them and doctors believe that the treatment was wrong.

It is necessary to prove first the fact of intentional negligence, but it is different if the negligence is intentional by a doctor (*dolus*). The insurance company has no obligation to provide compensation for any damage that occurs. This is in accordance with the provisions of Article 276 of the Criminal Code which states that losses caused by the intention of the insured. This is in accordance with the nature of the insurance contract which is based on uncertain events, because it is not clear whether the insured is at fault.

Professional standards are determined by continuing training, the quality of services offered, licensing requirements (permits) to participate in professional activities by competent bodies, the existence of a professional code of ethics and self-control. The quality of service failure to meet certain standards of medical expertise and knowledge expected in a specialty creates potential liability.

The time interval between the known uncertain event and litigation is relatively long compared to other insurance, the amount of compensation offered is relatively large, and the amount is somewhat difficult to predict, and there is no complete statistical data on the total amount of losses and the difficulty of identifying and classifying high- and low-risk health care providers.

Medical professional liability insurance is known in insurance practice as a type of long-term insurance. This is because when suspected medical malpractice, patients take longer to recognize or identify injuries or wounds, even years after receiving treatment. In addition, the investigation process is very long, the insurance company involves several experts (medical and legal) to evaluate the case and then determine the amount of loss and compensation to the victim. The professional indemnity insurance system is generally based on claims made on the date of the incident and on the date of police submission. And it is very difficult to predict the amount of compensation that will be paid.

## **CONCLUSIONS AND RECOMMENDATIONS**

This study draws the following conclusions. (1) As victims of medical negligence, patients automatically demand their rights by demanding compensation or prosecuting the suspect through a civil lawsuit or compensation claim based on administrative law provisions. As the need for medical professionals increases every year, ensuring that doctors have adequate protection to anticipate the risk of legal liability becomes increasingly urgent. Our main goal is to help resolve medical disputes. (2) In the event of medical negligence in Indonesia, it can be concluded that if the patient sues the doctor and the legal responsibility is transferred to the insurance company based on the insurance contract, the insurance company can be held accountable. It is hoped that with this plan, doctors can serve their patients without having to go through a time-consuming cost reimbursement process. (3) The time interval between an unknown event and the filing of a lawsuit is relatively long, the amount of compensation given is relatively large, the amount is rather difficult to estimate, and there is no complete statistical data regarding the total amount of compensation. There is a reduction and difficulty in identifying and grouping high and low risk health care providers. This is because suspected medical errors take longer to find out or detect injuries and injuries. Professional indemnity insurance systems are generally based on claims made on the date of the incident and on the date of police referral. And it is very difficult to predict how much compensation will be paid.

Recommendations, including: insurance doctors and professional knowledge, including insurance goals, insurance goals, insurance goals and long-term doctors (medical procedures after a few minutes). Prizes that we can assume; This is related to the danger and all medical first. The insurance sector of the courts and institutions must regularly verify medical losses, which must collect complete statistics to reject the legal behavior of professional patients, and the victims were successfully given to the victims. This serves to ensure that doctors can later secure equipment that meets their needs in the event of a medical dispute when choosing a device provided by the insurance company. We also apply the principles of actuarial and social justice.

## **ADVANCED RESEARCH**

In writing this article the researcher realizes that there are still many shortcomings in terms of language, writing, and form of presentation considering the limited knowledge and abilities of the researchers themselves. Therefore, for the perfection of the article, the researcher expects constructive criticism and suggestions from various parties.

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