



Medical Professional Protection Insurance as One of the Equitable Media for Medical Dispute Resolution

Reinhard John Devison¹, Teguh Prasetyo², Kartina Pakpahan³, Tommy Leonard⁴

^{1,3,4}Fakultas Hukum Universitas Prima Indonesia

²Fakultas Hukum Universitas Pelita Harapan
reinhardhutahaean@gmail.com

Abstract. In reality, doctors in the field carry out medical procedures, there is no guarantee that things will go according to plan and expectations. Events that may arise in patients after medical treatment are beyond the control of any party. As long as doctors carry out medical procedures according to the Standards of Medical Profession and Standard Operating Procedures, the doctor cannot be held responsible for the patient's losses. However, if a medical dispute has indeed occurred where after being examined and it is proven that the doctor made an oversight, then the claim for compensation filed by the patient against the doctor can be paid by the professional protection insurance company. The result obtained is about the existence of professional protection insurance is intended to provide legal protection to doctors so that doctors can carry out their medical service functions properly, and as effort to protect the medical profession. This research is a normative legal research using a statutory approach, conceptual approach to address legal issues in research.

Keywords: Doctor, Patient, Doctor Profession Insurance

1. Introduction

A doctor who has undergone medical training both domestically and abroad, recognized by the government of the Republic of Indonesia, where his work is carried out in accordance with knowledge and skills through training at multiple levels and has a code of ethics serving all levels. of society. While a patient is anyone who directly or indirectly consults their health problems with a doctor. One of the rights of patients is to receive medical services according to their medical needs. This right is enshrined in Clause 1, Article 28H of the Constitution of the Republic of Indonesia 1945 (Constitution of the Republic of Indonesia 1945) which states that everyone has the right to live in material and spiritual affluence, having a place to live. live. have the right to live, have a healthy and good living environment and have the right to enjoy medical services.

In addition to being regulated by the 1945 Constitution of the Republic of Indonesia, the medical profession is currently regulated by Law No. 17 of 2023 on Health (UU 17/2023), which is the legal basis for regulation of medical practice. and other issues that are always included. under medical law. Indeed, doctors in the conduct of their profession are based on the scope of medical law. Meanwhile, the

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legal protection related to the legal certainty of doctors in practicing is provided for in Law 17/2023. Doctors practice their profession primarily in hospitals, although in practice doctors can practice anywhere as long as they meet the requirements required by law and regulation. bridge. Mention the opinion **Hermien Hadiati Kuswadji** stipulates that a doctor's liability is the doctor's "commitment" to the laws of the practice of medicine. The responsibilities of doctors in the field of law are divided into 3 (three) parts, namely the responsibilities of doctors in the field of civil law, criminal law and administrative law.[1]

The regulation of the medical profession in various laws and regulations indicates the importance and urgency of the position of doctors in society. Before carrying out their professional duty's doctors are required to take an oath or promise so that doctors always make this oath or promise a guideline for behavior. The form of an oath or doctor's appointment is as follows:

- a. I will devote my life to the cause of humanity;
- b. I will maintain with all my might the dignity and lofty traditions of the medical office;
- c. I will carry out my duties in an honorable and ethical manner in accordance with the dignity of my work as a doctor;
- d. I will carry out my duties by prioritizing the interests of the community;
- e. I will keep everything I know secret because of my work and my knowledge as a doctor;
- f. I will not use my medical knowledge for something that is against humanity, even under threat;
- g. I will always prioritize the patient's health;
- h. I will make every effort so that I am not influenced by considerations of religion, ethnicity, gender differences, party politics, or social position in fulfilling my obligations to sufferers;
- i. I will respect every human life from the moment of conception;
- j. I will give my teachers and fellow teachers the respect and thanks they deserve;
- k. I will treat my colleagues as I would like to be treated myself; and
- l. I will obey and practice the Indonesian Code of Medical Ethics.

Doctors and patients have a legal relationship in health services that is a type of contractual relationship. Physicians as service providers or qualified service providers in the medical world have the right to treat patients in their field. However, in the process of health management, the physician must gain the consent and trust of the service recipient or the patient. In a word, if the patient has the right to see a doctor for treatment, then a contractual relationship already exists in him.[2] Based on the provisions of Article 1233 of the Indonesian Civil Code, it basically stipulates that a commitment can come from an agreement or law. Furthermore, according to Article

1313 of the Civil Code, an agreement is understood as a contract between one or more persons with one or more other persons. Subekti provides an understanding of agreement as an event when one person makes a promise to another or when 2 (two) people make a promise to another or when 2 (two) people promise to do something. [3]

Before a doctor makes an agreement with a patient, the doctor must first give an honest and verbal explanation so that the patient can understand the illness they are suffering from, as well as the medical action options available. can be performed to treat a patient's disease. Therefore, patients should actively capture as much information as possible about the disease they are suffering from so that they can make treatment decisions. Before starting a medical treatment with a doctor, the patient must first agree to this therapeutic agreement with all possible consequences. [4] **Joseph H King** gave the following opinion: *Analytically, the subject of the patient's right of self determination can be divided into several dimensions, First, there is the threshold question of when a person will be deemed to have consented to a medical procedure..., Second, there is the question whether the patient's choice of a medical course of action was sufficiently informed... Third, the effects of misrepresentation and nondisclosure of information on the patient's right to informed decision making must be considered...".*[5]

Even though the therapeutic agreement can be interpreted as an agreement, this therapeutic agreement has specificities and characteristics so that not all rules in the Civil Code can be applied in this therapeutic agreement. Based on the Regulation of the Minister of Health of the Republic of Indonesia Number 290/MENKES/PER/III/2008 Concerning Approval of Medical Treatment it is regulated in Article 1 number 7 Permenkes 290/2008 that competent patients are adult patients according to laws and regulations or have been married before, are not physically disturbed, are able to communicate normally, are not experiencing a setback in mental development and are not experiencing mental illness so that they are able to make decisions freely.

Doctors in the performance of their profession may perform a number of medical acts according to their specialty. Article 26 of Law 17/2023 provides that the different types of medical services that a doctor can provide are:

- a. Basic health services, inclusive, including promotion, prevention, treatment, rehabilitation and/or palliative services for each stage of life.
- b. Advanced medical services are specialized and/or subspecialty medical services that prioritize curative, rehabilitative and palliative services without neglecting promotion and prevention.

Pursuant to the provisions of Article 274 of Law 17/2023, when providing medical examination and treatment services, doctors who are medical staff must satisfy the following conditions:

- a. Provide medical examination and treatment services in accordance with professional standards, professional service standards, standards of operating

procedures, professional ethics standards and meet the needs of patient's health care;

- b. Obtain consent from the patient or family for the action to be taken;
- c. Keep the patients' health confidential;
- d. Establish and maintain records and/or documentation regarding examination, care and action been taken; and
- e. Refer the patient to a healthcare professional or other healthcare worker with appropriate skills and authority.

Doctors who provide services to patients by treating patients, sometimes the results are not as expected. Undesirable results can take many forms. In this regard, the patient and/or the patient's family do not accept and do not feel upset about the medical procedure performed by the doctor. On the other hand, in some cases, it was found that the doctors accused by the patient had medical malpractice that harmed the patient. In this regard, the patient submits to the doctor a claim (both material and immaterial) for the damages he has suffered. In other cases, patients even reported the doctor to the Indonesian National Police because they were alleged to have committed medical malpractice. Therefore, in this case, a medical dispute arises between the doctor and the patient and/or the patient's family.

The term malpractice itself comes from the Greek words that include "shopping mall" and "practice", which is understood to mean poor quality work. As such, medical malpractice can be understood as the negligence or failure to use the usual level of skill and knowledge of a doctor's or medical personnel to treat a patient or injured person in accordance with the standards in the same environment.[6] Regarding the meaning of the fault or negligence principle in the theory of liability based on the presence of an element of fault, it has traditionally been composed of 2 (two) things, namely, who caused the loss. If they cause damage to others through their own fault, they are obliged to compensate the damage sufferers, and in case of causing damage to others without fault, they will not compensate the damage sufferers.[7]

On that basis, the medical profession is very vulnerable to criminalization, so in order to achieve legal protection for the medical profession against the risk of sanctions that could unfairly harm doctors and/or other healthcare workers, There should be a legal instrument that can meet the goal of protection of the law, on the one hand, the tool can also benefit the patient and/or the patient's family who feel harmed by the acts. medical doctor. The doctor, as a noble profession, must be treated with dignity. Everything about it must be based on a justice that truly reflects justice. For example a case that occurred in Mojokerto in September 2023 where the police summoned doctors and nurses at Gatoel Hospital who were suspected of committing malpractice. An incident like this would not have happened if there was a private dispute esolution mechanism between doctors and their patients.

In this regard, Teguh Prasetyo initiated the dignified theory of justice using a legal approach such as legal philosophy, legal theory, legal dogma and legal practice. The main goal of dignified justice theory is to interpret justice as the implementation

of laws that humanize people.[8] The Dignified Justice Theory as a Grand Theory of law based on Pancasila as the highest basic postulate, namely as the source of all sources of juridical inspiration to make political ethics (democracy) the most concrete manifestation of democracy which can create a dignified society, so that law is able to humanize humans.[9]

This tool can be in the form of a doctor's occupational insurance. Regarding occupational health insurance, this has been stipulated in Article 46 of Law 44/2009 in the Regulation of the Minister of Health of the Republic of Indonesia No. 755/MENKES/PER/IV/2011 on organization of medical councils. Hospital health regulations stipulate that doctors are entitled to occupational protection. insurance. The hospital shall be liable for any loss arising from the negligence of the medical staff in the hospital. There is also a decision of the Supreme Court No. 515PK/Pdt/2011 in the case that the doctors in this case had insurance, but because they realized their responsibility for their mistake, the doctors had to equally responsible, this shows that the jury did not consider itself at all. Each physician's error rate should be used as the primary basis for consideration when making decisions.[10]

2. Problems

Doctor is a noble profession whose terms are regulated this way in various legal regulations. When a doctor declares a medical action, there are only 2 (two) options, either the medical action has been successful (in the sense that the patient has recovered) or the medical action has failed (the patient has recovered). not successfully cured). disease, the patient is permanently disabled, the patient dies). In the event that medical treatment is unsuccessful, the patient and/or their family immediately declare that this was due to the professional negligence of the physician. The position of doctors is so vulnerable that a legal breakthrough was needed to make doctors feel safe practicing medicine, one of which is to enforce occupational insurance. However, professional insurance for doctors has not yet become an obligation in the sense of laws and regulations and is still widespread. Based on the explanation in the previous introduction, there are several problems as legal issues that will be discussed in this study about the nature of professional insurance as an effort to protect the law for the medical profession and the limitations of coverage in medical professional insurance in medical disputes.

3. Method

This research is a normative legal research. Legal research which essentially starts from human curiosity expressed in the form of problems or questions where each of these legal problems and questions requires an answer and will gain new knowledge that is considered correct, as stated by Morris L Cohen who stated that "*Legal Research is the process of finding the law that governs activities in human society*". This research was conducted using a statutory approach, concept approach.[11] Legal

research using primary legal materials and secondary legal materials, primary legal materials include statutory regulations related to the discussion.[12]

The main source of secondary legal material is textbooks (literature). Because the textbook contains the basic principles of law and the classical views of scholars who have high qualifications. In selecting textbooks, it should be noted that it is highly recommended if the textbooks used are textbooks written by authors from Continental Europe.

4. Discussion

4.1. The Nature of Professional Insurance as an Effort to Protect the Law Against the Doctor Profession

The true medical profession is a noble profession, whose basic nature is to save people on the basis of nobility and nobility, reflected in the characteristics of keeping the divinity, the pure and noble mind, and serving the sick with compassion. humility and sincerity. - seriousness in the performance of work, as well as scientific and social integrity. The noble values of the medical profession are reflected in the guideline on health services, thereby distinguishing the medical profession from other professions in other professional fields.

Every profession must have risks, from small risks to large risks, including the involvement of third parties. Occupational risks can lead to financial and non-financial losses such as reputational damage. Of course, the occurrence of losses suffered by patients after medical acts performed by doctors is debatable. According to the characteristics of medical disputes arising between doctors and patients as follows:

- a. Disputes occur in the relationship between doctors and patients;
- b. The object of dispute is the healing efforts made by doctors for patients;
- c. The aggrieved party in the dispute is the patient, whether the loss is in the form of injury, disability and death; and
- d. Losses suffered by patients are caused by alleged negligence or medical errors by doctors which are often referred to as medical malpractice.

Technically, in order to know the extent of error of the doctor and other medical personnel on the medical team performing medical procedures if it is determined that he is negligent, one must perform an analysis medico legal. Medicolegal analysis is performed by the medicolegal team consisting of doctors with experience in their field. The analysis performed by the medicolegal team in medical disputes arising between doctors and patients is as follows:

- a. Medicolegal analysis in depth to obtain the real causes of problems in terms of professional discipline;

- b. Analysis about *cost-effectiveness* dispute resolution;
- c. Analysis about *lesson-learned* and *risk management* to prevent similar incidents in the future;
- d. Determine the steps (*contingency plans*). This step is highly individual and varies in nature;
- e. The Medicolegal Team concludes its opinion in writing which states material facts, considerations and conclusions regarding the matters above.[13]

It's not easy for doctors in medical procedures to be suspected of errors or omissions, especially when it comes to the process of proving them. Medical malpractice can only be proved by medical audit as prescribed in Article 304 of Law 17/2023 which provides: In the context of preserving professional discipline, the Minister established a council to exercise powers in the field of professional discipline. The Congress found that there was a violation of professional discipline by medical staff and medical staff. If the medical audit proves that the doctor has misapplied medical disciplines to a patient which causes the patient to be injured, disabled, even to the point where the patient dies, then criminal law as public law that protects the legal interests of society, can demand criminal responsibility, because medical action has met the elements of error and against the law. If the opposite is found, then the Doctor may not be subject to persecution and coercion in any way.

Insurance etymologically comes from the Dutch language, namely "*insurance*" which in Dutch law is referred to as "*Insurance*" which means coverage. Opinion **Mark R. Greene** insurance matters are stated as "*an economic institution that reduces risk by combining under one management and group of objects so statuted that the aggregate accidental losses to which the group is subject become predictable within narrow limits*". By **Robert I More** Insurance is defined as a tool for reducing risk by combining a number of risky units so that individual losses can collectively be predicted. The predictable losses are then divided and distributed proportionately among all the units in the mix.[14]

The definition of insurance in the original law set out in Article 246 of the Indonesian Commercial Code defines insurance as a (reciprocal) arrangement whereby an insurance company binds itself to the insured. insurance by receiving premiums, to reimburse them for any loss or damage. or expected loss of profits that may be incurred due to an uncertain event. The provisions of the law relating to insurance are governed by Article 1, point 1 of the Law on Insurance No. 40 of 2014 which stipulates that insurance is an agreement between two (two) parties, an insurance company and a party. buy insurance, as the basis for insurance. receive insurance company premiums in exchange for:

- a. Provide reimbursement to the insured or policyholder due to loss, damage, costs incurred, loss of profit, or legal responsibility to third parties that may be suffered by the insured or policyholder due to an uncertain event; or
- b. Providing payments based on the death of the insured or payments based on the life of the insured with benefits whose amount has been determined and/or based on the results of fund management.

For Articles 1, 4, Law 40/2014, regulations on insurance activities, specifically all activities related to hedging or risk management services, risk reinsurance risk, marketing and distributing Shariah insurance or insurance products, consulting and brokerage insurance, Shariah insurance, Shariah reinsurance or reinsurance, or insurance loss assessment or Shariah insurance. Based on the risk management mechanism, the health insurance business and the human accident insurance business are classified more appropriately into the non-life insurance business. However, since the subject matter insured in the two branches of activities mentioned above are related to people, the branch of health insurance and the branch of human accident insurance can also be an insurance business. life. In fact, both insurance businesses are owned by both non-life insurers and life insurers.

Even if a doctor is experienced and tries his best to cure the disease, there is always a chance that such effort will fail. Many patients have sued the doctor or the hospital where they treat. This is where the role of occupational insurance can be to replace the cost of a doctor's loss that may result from the failure of his business. Coverage for the medical industry (professional liability insurance), including the possibility of third-party physical injury, mental injury or death due to physician or employee negligence other medical. Occupational insurance also covers reimbursement of attorneys' fees, in the event that a physician is legally proven and liable to a third party (limited to civil cases) and insures the doctor's negligence when performing duties outside the permitted scope. daily practice due to emergency or urgent situation.[15]

This type of occupational protection insurance may also be called liability insurance (personal-professional liability insurance). Liability insurance is coverage in which the insurance company will pay an indemnity up to the amount due to the insured who is legally obligated to pay for financial losses suffered by a person. that (third party) suffers due to negligence of the insured. Claims will be paid by the insurance company only on the basis of a court decision and not on the basis of a joint decision between the insured and other parties. There is no limit to the subject of this insurance, whether rich or poor, public servants or workers, natives or foreigners. The action must be an accident although, within certain limits, it may be brought to claim non-accidental claims. The basis of liability insurance is no longer based on "accidental cause" but on "because of any event" leading to litigation.[16]

Currently, there are many insurance companies that provide professional indemnity insurance services. There is an Allianz Insurance Company that has been doing business in Indonesia since 1981. Allianz Insurance Company Occupational Insurance is a type of general insurance product of Allianz. Allianz Occupational Insurance is intended for general practitioners, medical professionals and doctors who practice in hospitals/clinics/companies, in this case, the doctors represent not only themselves but also their representatives. represent their subordinates whether nurses, staff or certain persons authorized by a physician to assist in the provision of medical services under their supervision. In professional liability insurance (professional protection insurance) at Allianz, the classification of guarantees is divided into 4 (four) groups according to each profession as follows:

- a. Group 1, consisting of: general practitioners, allergists, skin disease specialists, essential disease specialists, psychiatrists or psychologists, psychosomatic specialists, pharmacology specialists, clinical microbiologist specialists, clinical parasitology specialists, medical specialists occupational, andrology specialist, forensic specialist, marine medicine (hyperbaric) specialist, medical nutrition specialist, general dentist;
- b. Group 2, consisting of: ENT specialists, cardiologists, gastrointestinal specialists, pediatricians, neurologists, internal medicine specialists, ophthalmologists, acupuncture specialists (not for beauty and have official certificates), medical rehabilitation specialist, pediatric dentist, dental conservation specialist dentist, orthodontist specialist dentist, periodontist specialist dentist, prosthodontist specialist dentist, and radiology specialist dentist;
- c. Group 3, consisting of: general surgeons, ophthalmologists, cardiac surgeons, pediatric surgeons, neurosurgeons, orthopedists, urinary tract specialists, dentists who specialize in oral surgery; and
- d. Group 4, consisting of: specialist doctors and obstetricians (*obsgyn*), anesthesiologist.[17]

4.2. Limitations of Coverage in Doctor's Professional Insurance in Medical Disputes

Insurance as a product is essentially an agreement. Insurance as a product of the agreement binds the parties based on the legal terms of the agreement as stipulated in Article 1320 BW. When the legal conditions for binding an agreement are met, then the legal consequence is that the provisions of Article 1338 BW apply, namely an agreement made legally becomes a law for those who make it and cannot be withdrawn other than by agreement of the parties or for reasons stated by law. stated sufficient for that.[18] Thus, the insurance agreement can be said to have been born since there was an agreement between the insured and the insurer. Therefore, even if the policy has not been accepted by the insured, the rights and obligations of the parties have existed since the agreement was made.

As explained earlier, insurance is a form of risk management and transfer based on uncertain events. In insurance, the term "event or event" is often understood as an uncertain event. event is understood as an event that occurs based on human inference that such event or event cannot happen although such event can happen but the time of occurrence of the event cannot be determined. is determined and not expected by people, especially policyholders. Just like the physician when performing medical procedures, of course, the physician's desire in the 'career' of the physician. they are to provide medical services for their patients to recover, but if it happens beyond the doctor's expectations it will cause controversy. So, events are not products (Events), Incident Uncertain) is included in the contract of insurance because the event is not used as an element of the contract of insurance, if applicable to the nature of the insurance policy of the nature of the Aletair contract and also the conditional contract.[19]

Insurance as a product of an agreement expires generally due to 2 (two) things, namely ending due to deadlines and/or accomplishments that have been completed and ending due to cancellation. Cancellations that can occur on insurance policies can be influenced by several factors, including:

- a. There is dishonesty related to material facts that are not conveyed or conveyed incorrectly by the insured (violating the principle of *utmost good faith*).
- b. Absence "*insurable interest*" or goods and/or interests insured;
- c. There are deviations from the provisions of the policy, such as premiums that are not paid according to the time provisions in the policy;
- d. There is a violation of statutory provisions, such as for example: "*double insurance*" to the same interests;
- e. There was a cancellation by the police officer before the deadline "*cooling of period*" ends in which at that time frame the customer who holds the policy is given the right to study the provisions of the policy carefully. practice "*Colling of Period*" is the application of the principle of proportionality in business contracts, considering the nature of insurance as a form of agreement has the nature of adhesion (*take it or leave it*);
- f. There is an agreement in which the parties terminate and/or cancel the insurance policy.

Doctors and/or other medical personnel can face very serious legal action regarding their duties and obligations, so professionals really need the protection of indemnity insurance. usually profession. Indonesia in general does not have specific regulations on occupational protection insurance in particular, so it is included in Law 40/2014 as general insurance. Pur-wosutjipto's opinion holds that insurance arrangements cannot be called contingent arrangements this is due to the striking difference between insurance and gambling. If an uncertain event is imminent or the probability of an uncertain event is far away, the insurer may refuse or increase the premium. Meanwhile, in gambling, it is impossible to predict the relationship between the ability to generate profit and loss with uncertain events that depend on certain situations and conditions.

Doctors in carrying out their duties cannot guarantee recovery for patients who use their services, therefore all possibilities can occur which cause loss of life or increase in injuries experienced by patients, either in the form of negligence or intentional. The malpractice itself can be categorized into 3 (three) types, namely:

- a. Criminal Malpractice, related to crimes that cause patients to die, commit decency violations, disclose doctor secrets, falsify certificates, agree to commit criminal acts, intentionally not providing assistance to people in a state of danger;
- b. Civil malpractice, related to a lack of accuracy in carrying out a doctor's surgery who is not careful or who unknowingly makes a mistake leaving a tool in the stomach of a patient who has been operated on so that he has to make a

diagnosis in doubt and does not consult a doctor who is more skilled, causing the disease to get worse; and

- c. Ethical malpractice, relating to violations of the Medical Code of Ethics.

Insurance is implicitly related to the delegation of responsibility to bear the risk burden. Not all risks can be borne by insurance companies such as medical profession liability insurance products. The insurer does not necessarily bear the sanction resulting from a medical malpractice victim lawsuit committed by a doctor, but only helps to offset the payment of compensation.

There are factors that limit indemnity in paying compensation, namely:

- a. Sum Assured; is the maximum limit of the responsibility of an insurer for the value of the loss that occurs;
- b. *Under Insured*, is a liability said *Under Insured* if the insured value of the insured object is less than the actual value of the insured object at the time the loss occurs;
- c. *Over Insured*, is a liability said *Over Insured* if the insured value of the insured object is greater than the actual value of the insured object at the time the loss occurs;
- d. *Excess, Deductive, Own Risk*, is the insurer will not provide compensation, if the value of the loss is still below or equal to the amount of a certain value that is the liability;
- e. *Franchise*, is when the value of the loss is smaller than the value *Franchise* stipulated, then the loss is not guaranteed in the policy (burden borne) when the value of the loss is greater than the value *Franchise* stipulated, then the loss is paid 100% of the loss value;
- f. *Limit*, is a certain limit that becomes the responsibility of an insurer in terms of losses that occur.[20]

5. Conclusion

Doctors in practicing medical services are held based on Medical Professional Standards and agreements between doctors and patients in an effort to maintain health. The causes of disputes that occur between doctors and patients are often caused by an allegation that medical malpractice has occurred by doctors. As a suggestion, the implementation of medical professional insurance so that it is regulated in related laws and regulations to provide legal certainty. through medical professional liability insurance, doctors can transfer all risks of a patient lawsuit against themselves to the insurer by paying a certain premium.

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