



Characteristics of Professional Liability Insurance for Doctors in Indonesia

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Submitted: 2024/08/11

Revised: 2025/01/29

Accepted: 2025/02/03

Published: 2025/03/23

Abstract:

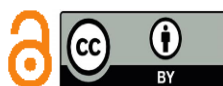
Regulation of the Minister of Health of the Republic of Indonesia Number 755/MENKES/PER/IV/2011 concerning the Organization of Medical Committees in Hospitals in the section on credential mechanisms and granting of clinical authority for medical personnel in Hospitals in number 12 point D states that: "Doctors have Professional Indemnity Insurance ."This provision creates an obligation for hospitals or doctors to have professional liability insurance for doctors to protect their profession. This study aimed to determine the characteristics of professional liability insurance for doctors. The method used in this study is normative juridical with a statutory approach and a conceptual approach. This study indicates that professional liability insurance for doctors is included in loss insurance because what is insured is the risk of compensation for the doctor's profession carried out by the doctor in carrying out his profession. At the same time, the doctor's medical risk is not covered according to what is regulated in the policy. In addition, the characteristics of professional liability insurance for doctors are also related to the grouping of the level of risk of medical negligence in each classification of doctors. This group determines the premium and compensation paid to the doctor as compensation to the patient. Doctors use insurance claims to compensate patients if the doctor commits medical negligence and other costs.

Keywords:

Doctor's profession; Hospital; Insurance; Medical risk

Cite:

I Putu Gde Budhi Setiawan and Huda, Mokhamad Khoirul, 'Characteristics of Professional Liability Insurance for Doctors in Indonesia', *Jurnal Dinamika Hukum*, 25,1 (2025): 25-44
<<https://doi.org/10.20884/1.jdh.2025.25.1.15465>>



DOI: <https://doi.org/10.20884/1.jdh.2025.25.1.15465>

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Introduction

Every person who carries out their profession must face risks in the form of negligence or mistakes. In a profession, one requires training and mastery of specialized knowledge to meet professional standards. An example of a profession

that's interesting to study is that of a doctor.¹ The doctor's profession has received much public attention because the nature of its dedication and service to society is quite diverse. Many factors of change cause the increasing public attention to doctors; among these are advances in medical science and technology, changes in socio-cultural and outlook on life, and the characteristics of society along with human resources involved in the medical field as public service providers. The relationship pattern between doctors and patients, which was previously paternalistic, has changed into a horizontal contractual pattern that requires doctors to have an equal position.² In this relationship, the patient has become a legal subject with the same position as the doctor. Each party equally provides information and communicates everything related to the patient's healing efforts.³ This change in the relationship pattern between doctors and patients in medical services has caused the public to become more aware of their rights and more critical about receiving services, especially health services.⁴

Various activities in organizing health efforts must be carried out by doctors who have high ethics and morals, expertise, and authority. Their quality must be continuously improved through continuous education and training, certification, registration, licensing and coaching, supervision, and monitoring so that medical practice is implemented in accordance with the development of science and technology.⁵ Patients and doctors have a mutually related relationship in health services, in this case, in the form of a legal relationship, which results in a relationship of rights and responsibilities for each party with sueable compliance and responsibility. Legal responsibility consists of responsibility according to civil law, criminal law, administrative law, and regulations or laws determined by the profession itself.⁶ Doctors have a responsibility to provide maximum health

¹ Muhammad Fikri Jauhari, "Urgensi Asuransi Profesi Dalam Perkembangan Bisnis Di Indonesia," *Fairness and Justice: Jurnal Ilmiah Ilmu Hukum* 17, no. 1 (May 25, 2019): 57, <https://doi.org/10.32528/faj.v17i1.2213>.

² Mia Yulia Fitrianti and Elisatris Gultom, "Legal Protection Prospects toward General Practitioners in the Medical Specialist Study Program (PPDS) on Health Services through Third Party Insurance Institutions (Futuristic Review)," *Nurani Hukum* 5, no. 1 (July 2022): 44, <https://doi.org/10.51825/nhk.v5i1.14776>.

³ Prima Maharani Putri and Gregorius Yoga Panji Asmara, "Asuransi Proteksi Medis (Professional Indemnity Insurance) Sebagai Pengalihan Tanggung Gugat Dalam Sengketa Medis Dokter-Pasien," *Kosmik Hukum* 22, no. 3 (September 29, 2022): 195, <https://doi.org/10.30595/kosmikhukum.v22i3.15645>.

⁴ Mokhamad Khoirul Huda, *Prinsip Etikad Baik Dalam Perjanjian Asuransi Jiwa*, 1 (Yogyakarta: FH UII Press, 2016).

⁵ Niru Anita Sinaga, "Penyelesaian Sengketa Medis Di Indonesia," *Jurnal Ilmiah Hukum Dirgantara* 11, no. 2 (2021): 1-22.

⁶ Dian Kristanti Budiastuti, Ardiansah Ardiansah, and Yeni Triana, "Tanggung Jawab Dokter Gigi Atas Kelalaian Terhadap Pasien," *Law, Development and Justice Review* 5, no. 1 (May 2022): 115-27, <https://doi.org/10.14710/ldjr.v5i1.16213>.

services to patients. Doctors are not free from all risks in carrying out their medical duties, such as errors, negligences, or even mistakes. The reason is that patients who are being treated may become disabled or even die after the procedure has been done.⁷ According to Setya Wahyudi, malpractice is misconduct committed by a doctor while carrying out his profession in the medical field. In contrast, medical practice is malpractice in the form of failure to provide medical services to a patient.⁸ In that regard, malpractice done by medical personnel can be criminal, civil, or administrative.⁹ Incidents of malpractice or negligence can happen to any doctor anytime and anywhere.

To provide legal protection for doctors in hospitals, in the Regulation of the Minister of Health of the Republic of Indonesia Number 755/MENKES/PER/IV/2011 Concerning the Organization of Medical Committees in Hospitals, in the section on credential mechanisms and granting of clinical authority for medical personnel in Hospitals, Number 12 letter D states that, "Doctors have professional insurance protection (Professional Indemnity Insurance). With the existence of the doctor's professional liability insurance, doctors have legal protection.¹⁰ So, if a patient suffers a loss, the doctor can file a claim with the insurance company to finance the patient/the family of the patient's claim for compensation and legal assistance in handling the case.¹¹ All costs incurred, including paying for legal services and compensation for the patient/family of the patient's losses, are all borne by the insurance company.¹²

Some previous research about professional liability insurance can be explained as follows by Utama (2024), describes professional liability insurance is an insurance product that covers the insured in practicing their high-risk

⁷ Andreas Wenur, "Tanggung Gugat Tenaga Medis Terhadap Pasien Dalam Transaksi Teraupetikar," *Lex et Societatis* 4, no. 2 (2016): 139–48, <https://doi.org/https://doi.org/10.35796/les.v4i2.11208>.

⁸ Wen-Chen Tsai, Pei-Tseng Kung, and Yi-Ju Chiang, "Relationship Between Malpractice Claims and Medical Care Quality," *International Journal of Health Care Quality Assurance* 17, no. 7 (December 2004): 394–400, <https://doi.org/10.1108/09526860410563203>.

⁹ Setya Wahyudi, "Tanggung Jawab Rumah Sakit Terhadap Kerugian Akibat Kelalaian Tenaga Kesehatan Dan Implikasinya," *Jurnal Dinamika Hukum* 11, no. 3 (September 2011), <https://doi.org/10.20884/1.jdh.2011.11.3.178>.

¹⁰ Silviu Pițuru et al., "Malpractice and Professional Liability of Medical Personnel," *Farmacia* 63, no. 2 (2015): 318–24.

¹¹ Zahry Vandawati Chumaida, Fiska Silvia Raden Roro, and Trisadini Prasastinah Usanti, "Prudential Principle in Professional Indemnity Insurance of Nurses," *Malaysian Journal of Medicine and Health Sciences* 19, no. 9 (2023): 106–12.

¹² Felasufa Noor and Anggraeni Endah Kusumaningrum, "Tanggungjawab Asuransi Profesi Dokter Terhadap Malpraktik Yang Dilakukan Oleh Dokter Bedah," *Jurnal Juristic* 4, no. 2 (December 2023): 126–36, <https://doi.org/10.56444/jrs.v4i02.4262>.

profession.¹³ The object of insurance is a part of the principles of insurance, which are indemnity and proximate cause. The contrasting difference between professional liability insurance for doctors and other insurance lies in the emphasis on intellectual competence and expertise in the field of medicine.

Putri and Asmara (2022), describes medical protection insurance had been regulated in the third chapter of Regulation of the Minister of Health of the Republic of Indonesia Number 755/MENKES/PER/IV/2011 concerning the Organization of Medical Committees in Hospitals in the section on credential mechanisms and granting of clinical authority for medical personnel in Hospitals in number 12 point D states that: "Doctors have Professional Indemnity Insurance," which guarantee people or company has a legal responsibility to a third party that arises from professional medical negligence.¹⁴ Professional Liability Insurance has implications for the relationship between doctors and patients, especially regarding the improvement of medical services given by doctors. There is a need for further development and socialization regarding medical protection insurance as the only insurance that gives legal protection for doctors and other medical personnel to transfer liability that is imposed upon them to the insurance provider.

Widjaya et al. (2023) describes a doctor's liability insurance agreement has a unique characteristic, as compared to other loss insurance, some of them are, the existence of an insured immaterial object, where the object of insurance is legal liability, uncertain event (evenement) being unlawful act in the scope of therapeutic relationship between doctor and patient, which has the nature of long tail and involves a medicolegal team, the amount of compensation that is hard to predict, then the risk exposure and the amount of premium that varies according to the doctor's medical specialization.¹⁵ Contrary to the previous three articles, this article aims to in-depth analyze the characteristics of professional liability insurance for doctors in Indonesia.

¹³ Nanda Utama, "Asuransi Profesi Sebagai Perlindungan Terhadap Dokter Dalam Tindakan Medis," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 4, no. 3 (April 12, 2024): 343-50, <https://doi.org/10.38035/jihhp.v4i3.1932>.

¹⁴ Putri and Asmara, "Asuransi Proteksi Medis (Professional Indemnity Insurance) Sebagai Pengalihan Tanggung Gugat Dalam Sengketa Medis Dokter-Pasien."

¹⁵ Christine Elisia Widjaya, Dinar Kripsiaji, and Zahry Vandawati Chumaida, "Karakteristik Perjanjian Asuransi Tanggung Gugat Profesi Dokter Terhadap Klaim Malapraktik Medis," *Media Iuris* 6, no. 1 (February 28, 2023): 43-60, <https://doi.org/10.20473/mi.v6i1.37260>.

Method

This research uses a normative juridical method, which refers to legal norms contained in laws and regulations. The problem approaches used in this research are the legislative and conceptual approaches.¹⁶ The legal materials that are used in this research are primary legal materials and secondary legal materials. They will be analyzed in stages according to the grouping of problems. The analysis is presented as an analytical description containing activities that describe, examine, systematize, interpret, and evaluate. The next step is to conduct a theoretical analysis of the legal materials to find, understand, and explain the characteristics of professional liability insurance for doctors.

Discussion

1. Professional Liability Insurance Policy

Professional liability insurance is a part of loss insurance. This insurance is used to overcome various risks that may interfere with the profession. According to the third edition of The Official Dictionary of the Indonesian Language, the word liability is better known as responsibility.¹⁷ Meanwhile, the word profession, in the same dictionary, means “a field of work based on certain educational expertise (skills, honesty, etc)”.¹⁸ The word profession was initially only used to refer to jobs for people involved in theology, law, and medicine. For example, for a lawyer, it means that he has received a higher education in law and has acquired practical skills in law. Likewise, for the doctor's profession, after someone has completed medical education, he must continue with the education in the medical profession, and he is obligated to do an internship and then continue with a medical competency examination. Thus, the professional holder can provide their services more satisfactorily to their customers according to their unique skills.¹⁹

Doctor's Professional Liability Insurance has a philosophy of protecting doctors when facing lawsuits.²⁰ This lawsuit is a reaction to losses experienced by

¹⁶ Peter Mahmud Marzuki, *Penelitian Hukum Normatif* (Jakarta: Kencana Prenada Media Group, 2017).

¹⁷ Arman Anwar, “Tanggung Gugat Resiko Dalam Aspek Hukum Kesehatan,” *SASI* 23, no. 2 (April 2018): 149–60, <https://doi.org/10.47268/sasi.v23i2.105>.

¹⁸ Ebta Setiawan, “Kamus Besar Bahasa Indonesia (KBBI) Kamus Versi Online/Daring (Dalam Jaringan),” Badan Pembinaan dan Pengembangan Bahasa, 2021.

¹⁹ Livia V. Pelle, “Peranan Etika Profesi Hukum Terhadap Upaya Penegakan Hukum Di Indonesia,” *Lex Crimen* 1, no. 3 (2012): 23–37.

²⁰ Patricia M. Danzon, “Liability and Liability Insurance for Medical Malpractice,” *Journal of Health Economics* 4, no. 4 (December 1985): 309–31, [https://doi.org/10.1016/0167-6296\(85\)90011-6](https://doi.org/10.1016/0167-6296(85)90011-6).

patients directed at doctors.²¹ In carrying out the profession as a doctor, they face threats to their professional risks, such as allegations of malpractice. For this reason, these risks need to be transferred to an insurance company ready to take over the risks that doctors will face. Risk transfer from a doctor to an insurer is an insurance agreement.²² Insurance agreements need to be made in written evidence or a letter of agreement between the parties agreeing. Written evidence for an insurance agreement is called a policy. The agreement is made in good faith by both parties and firmly and clearly states the matters agreed upon by both parties.²³

Article 255 of the Commerce Code stipulates that insurance is held in writing with a deed, called a policy. Agreeing requires the insurer to sign the policy and submit it to the insurer. Based on Article 255 of the Commerce Code, the policy is an absolute requirement of the insurance agreement. So, the policy is proof of the existence of an insurance agreement. According to Tuti Rastuti (2016), Article 255 of the Commercial Code gives the impression that an insurance agreement must be made in writing. This made a written insurance agreement appear to be an absolute requirement (*vorm vereiste*), even though it is a provision for proof (*bewijs voorschrift*). The policy is also not a requirement for an agreement (*bestaansvoorwaarde van de overeenkomst*). However, it is merely evidence of an insurance agreement as regulated in Article 257 of the Commercial Code.²⁴ This article states that an insurance agreement exists as soon as it is made, and the reciprocal rights and obligations of the insurer and the insured come into effect from that time, even before the policy is signed.

The policy is usually drawn up, neatly arranged, and clearly printed, and the insurer maintains all of this. So, when the insured demands fulfillment of the conditions (*voorwaarden*) stated in the agreement, the policy is the evidence used against the insurer.²⁵ The provisions of the loss insurance policy based on Article 256 of the Commercial Code in paragraph (1) contain: ²⁶

²¹ Widjaya, Kripsiaji, and Chumaida, "Karakteristik Perjanjian Asuransi Tanggung Gugat Profesi Dokter Terhadap Klaim Malapraktik Medis."

²² Mokhamad Khoirul Huda, *Hukum Asuransi Jiwa: Masalah-Masalah Aktual Di Era Disrupsi* 4.o., ed. Dita Birahayu (Scopindo Media Pustaka, 2020).

²³ Tuti Rastuti, *Aspek Hukum Perjanjian Asuransi* (Media Pressindo, 2016).

²⁴ Rastuti.

²⁵ Wiryono Prodjodikoro, *Hukum Asuransi Di Indonesia*, 5th ed. (Jakarta: Jakarta Intermasa, 1979).

²⁶ Abdul Kadir Muhammad, *Hukum Asuransi Indonesia* (Bandung: Citra Aditya Bakti, 2006).

- a. The day the insurance agreement is entered into/closed

The date is important for the risks the insurer must bear.

- b. Name of the Insured.

The insured person is also called “verzekeringnemer or contractant” or insurance taker, meaning the person who enters into an insurance agreement with the insurer. In medical professional liability insurance, the name of the person entitled to receive a certain amount of money from the insurer is called the “beneficiary” (begunstigde). The beneficiary's name written in the liability insurance policy is the doctor who will be used to compensate the patient;

- c. The time when the danger for the insurer starts and ends

It is a certain time within which the risk's start and end is the insurer's responsibility.

- d. The amount for which it is insured.

This needs to be included so that the insurer knows how much insurance money he has to pay to the insured, while the insured also knows how much he is expected to receive from the insurer.

- e. Insurance premium

Premium is an amount of money that must be paid by the insured to the insurer every month or every certain period during the coverage.

- f. Dangers borne by the insurer

Professional liability insurance policies regulate the dangers or risks the insurer bears, such as medical negligence committed by doctors on patients. This policy also regulates the risks that are excluded according to the agreement between the insurer and the insured.

The insurer must submit the policy to the insured within the following period: a. If the agreement is made immediately and directly between the insurer and the insured, the policy that the insurer has signed must be submitted to the insured within 24 hours (Article 259 of the Commerce Code); and b. If the insurance is carried out through an insurance broker, then the policy that the insurer has signed must be submitted to the insured within 8 days (Article 260 of the Commerce Code)

Financial Services Authority Regulation No.69/POJK.05/2016 concerning the implementation of Insurance Business, Sharia Insurance Companies, Reinsurance Companies, and Reinsurance Companies, article 23 regulates that if insurance

coverage or Sharia insurance being carried through an insurance agent, the insurance or sharia insurance is declared to be effective and binding on the parties starting from the time the premium or contribution is received by the insurance agent and/or insurance company, sharia insurance company or sharia unit of the insurance company. Article 24 paragraph (1) Insurance companies, Sharia insurance companies, or Sharia units at the insurance company are obliged to ensure that the policyholder, insured, or participant has received the policy within a maximum period of 10 (ten) working days after the payment of the premium or contribution and the insurance coverage is stated to be accepted.

2. The Scope of Professional Liability Insurance for Doctors

Health is the most basic proper citizens possess and is regulated in the constitution. In the Preamble to the 1945 Constitution, paragraph 4 states: "... Under which, to form a Government of the State of Indonesia that shall: a. Protect the people of Indonesia and the entire homeland of Indonesia; b. Advance general prosperity; c. Develop the nation's intellectual life and d. Contribute to implementing a world order based on freedom, abiding peace, and social justice. Article 28 H paragraph 1 of the 1945 Constitution states that " each person has a right to a life of well-being in body and mind, to a place to dwell, to enjoy a good and healthy environment, and to receive medical care." As a result of this implementation, the government established the Health Law (2023). However, health services in Indonesia have so far not met public expectations. Public complaints about the quality of health services still dominate the public complaint process, which includes attitudes and behavior in health services that are less than humane, complicated mechanisms, excessive requirements, lengthy procedures that affect the speed of the service process, high costs and quality of services.²⁷ These complaints are similar to the relationship between doctors and patients. Some cases that often ensnare doctors who are considered to have committed malpractice include: ²⁸

a. Communication between doctors and patients.

This includes failures because doctors have limited time to explain the disease to patients. And the language used by doctors is not understood by patients. The doctor must explain to the patient the disease he is suffering from, the symptoms, what medicine is given, and whether or not surgery should be performed, including the actions that need to be taken after

²⁷ Ni Putu Ayu Myra Gerhana Putri, "Asas Proporsionalitas Dalam Pembayaran Ganti Rugi Melalui Asuransi Dalam Kasus Malpraktik Dokter," *Jurnal Magister Hukum Udayan*, 2013.

²⁸ Jauhari, "Urgensi Asuransi Profesi Dalam Perkembangan Bisnis Di Indonesia."

surgery. Doctors must explain costs to patients transparently to find out the cost. So, effective communication between doctors and patients is needed

b. Doctors neglect patients

This happens if the doctor does not introduce a substitute doctor, giving the impression that the patient is neglected. Patients are often confused when a medical procedure is performed by a different doctor from the doctor who is supposed to handle the operation (substitute doctor). For example, this happened at a hospital in Jakarta where a 5.5-year-old baby died. The baby initially had a fever accompanied by vomiting for one night and did not receive any treatment from the doctors at the hospital. The first doctor only wrote a prescription, while the second doctor reprimanded the patient's mother, who did not give her child a drink because she vomited every time she was fed. The third doctor only promised to give a prescription without examining the baby, which ultimately resulted in the baby dying.

If a doctor commits medical malpractice or negligence, then he will face a claim for compensation from the patient:

a. Civil Code

Compensation contains aspects that arise due to the failure to fulfill performance (default), unlawful acts (*moedwillige/reach matigedoodslag*), and negligence resulting in physical disability (*het veroorzichtige van chamade-like level*). Default, or breach of contract, is regulated in Article 1243-1289 of the Civil Code, while unlawful acts in Article 1365-1366 of the Civil Code due to negligence resulting in death are regulated in Article 1370. If it results in physical disability, it is regulated in Article 1371 of the Civil Code.²⁹

b. The Health Law (2023)

Article 193 of this law states that the hospital is legally responsible for all losses caused by negligence committed by the Hospital's Health Human Resources. With the enactment of this health law, all responsibilities for compensation for doctors, nurses, and all personnel supporting health services have become the hospital's responsibility. To provide legal protection for doctors by the Regulation of the Minister of Health Number 755/MENKES/PER/IV/2011 Concerning the Organization of Medical Committees in Hospitals in Chapter III concerning the Credentials

²⁹ Man Suparman Sastrawidjaja, *Aspek-Aspek Hukum Asuransi Dan Surat Berharga* (Bandung: Alumnii, 2003).

Subcommittee in point D. number 12 sub 5), then doctors, as professional hospital personnel must have professional liability insurance.

Doctors who commit negligence or errors have legal obligations in civil aspects that patients must fulfill, such as compensation for healing costs, compensation for losses due to health problems, and disability or death.³⁰ If the doctor has professional medical liability insurance, the insurer will cover costs such as compensation that has been determined in civil cases either through mediation or court decisions, and defense costs (defense costs/claim expenses), including attorney fees and other fees with insurance company approval.

3. Characteristics of Doctors' Professional Liability

Insurance is an institution that transfers risk that should be borne by the insured to the insurer as an insurance company. The same applies to the risks faced by doctors in carrying out their profession. If the doctor commits medical malpractice or negligence, the insurance company will take over the risk by compensating the patient. The insurer will compensate the insured in compensation due to the medical practice carried out by the insured on patients while carrying out their profession. The insurer is legally responsible for paying compensation for losses arising from bodily injuries caused to patients by the insured's medical action that occurs within the scope of the guarantee, the validity period of the policy, and the insured is still an insurance participant without interruption (Actions and claims within the policy validation period).

Determining the error level by doctors in carrying out their profession is influenced by professional standards in carrying out medical procedures and standard operational procedures in the hospital where the doctor works. The insurance company uses this error level to determine how much compensation will be given to the patient.³¹ In principle, loss is the amount of money the patient must receive as compensation to return to the original condition before the malpractice occurred. So, based on the theory of responsibility, it is natural for doctors to be responsible for the losses suffered by their patients.

This insurance also applies to authorized health workers other than doctors/dentists who together directly assist the medical procedures of the insured party as mentioned above, but only within the scope of health work provided by the insured, which is carried out based on the instructions, control, and

³⁰ Putri and Asmara, "Asuransi Proteksi Medis (Professional Indemnity Insurance) Sebagai Pengalihan Tanggung Gugat Dalam Sengketa Medis Dokter-Pasien."

³¹ Putri, "Asas Proporsionalitas Dalam Pembayaran Ganti Rugi Melalui Asuransi Dalam Kasus Malpraktik Dokter."

supervision of the insured party in the summary of coverage. This professional liability insurance only applies if a loss occurs and a claim from the patient or the patient's legal representative is made verbally or in writing to the insured (the insured's obligation to report the error). This insurance only applies to compensation for losses determined to be located in the country of the insured party's address, provided that this does not apply to claims that occur in other countries. Compensation payments include the costs of compensation claims, legal costs for settling claims, and a maximum of the insurance price stated in the policy. Meanwhile, doctor's liability insurance is determined by competency / specialization qualifications related to the level of risk faced by the insurer, which will affect the amount of the premium and the value of compensation if a patient demands compensation. Doctors' competencies are divided into four, as shown in the table below.

Table 1. Value of Professional Medical Insurance

| Group | Specialist Doctor | Limit 250 Million | Limit 500 Million | Limit 1 Million |
|-------|--|----------------------|----------------------|--------------------|
| 1 | All medical areas not mentioned in groups 2-4 | 820.000 | 1.021.000 | 1.500.000 |
| | General Practitioner and Family Physician | 820.000 | 1.021.000 | 1.500.000 |
| | Psychiatry Specialist (Psychiatrist) | 820.000 | 1.021.000 | 1.500.000 |
| | Psychosomatic specialist | 820.000 | 1.021.000 | 1.500.000 |
| 2 | Internal Medicine Specialist (internist) | 3.268.000 | 4.084.000 | 6.800.000 |
| | ENT Specialist (Ear, Nose, Throat) | 3.268.000 | 4.084.000 | 5.000.000 |
| | Heart Specialist (cardiologist) | 3.268.000 | 4.084.000 | 5.000.000 |
| 3 | Surgical Specialist (Surgery) | 6.535.000 | 8.168.000 | 18.500.000 |
| | Bone Specialist (orthopaedic) | 6.535.000 | 8.168.000 | 11.400.000 |
| | Urinary Tract Specialist (Urologist) | 6.535.000 | 8.168.000 | 11.400.000 |
| | Oral Surgeon | 6.535.000 | 8.168.000 | 11.400.000 |
| 4. | Specialist in obstetrics and obstetrics (Gynecologist & obstetricians) | 6.535.000 | 8.186.000 | 11.400.000 |
| | Anesthesia Specialist (anaesthesiologist) | 6.535.000 | 8.186.000 | 11.400.000 |

Source: Allianz³²

The insurer of the Professional Liability Insurance policy for the doctor's profession doesn't cover:

- a. Claims that are caused by specific events before the policy comes into effect;
- b. Losses that are planned by the insured;
- c. Losses that are caused by invasion, war, or riot;

³² Allianz, "Asuransi Profesi Dokter (Doctor's Liability)," n.d., <https://asuransibiru.com/asuransi-profesi-dokter-doctors-liability/>.

- d. There is any dishonesty, fraud, act of crime or revenge, or any kind of act/negligence done by the insured that is against the laws and regulations; and
- e. Medical procedures that are done not due to any medical condition, including cosmetics/aesthetics.

To determine the level of error by doctors in medical procedures in carrying out their profession, it is necessary to carry out a medicolegal analysis. The analysis is from an insurance company that consists of experienced doctors. The medicolegal analysis carried out in the event of a medical malpractice case includes:³³

- a. in-depth medicolegal analysis to find out the real causes of problems from a professional discipline perspective;
- b. Calm analysis of the cost-effectiveness of dispute resolution;
- c. learning analysis and risk management to prevent similar incidents in the future;
- d. determine the steps (contingency plan). This step is highly individual and varied; and
- e. The medicolegal team concludes an opinion orally and then issues a written opinion containing material facts and considerations regarding the conclusion of the case.

The insurer, including the medicolegal team, has the right to take over and carry out the settlement of all claims on behalf of the insured and has full discretion in making all efforts to settle claims based on the claim report letter from the insured. The insurer is not responsible for settling claims if the insured acts or promises something to the patient without the insurer's knowledge and consent.³⁴ If the insurer takes over the claim settlement, the insurer can recommend that the insured pay the claim appropriately. The insurance company may refuse to pay the recommended claim that must be paid to the insurance company; however, if the insured party decides to continue issuing the claim out of personal responsibility, then the insurance company is only responsible for the recommended claim value. Additional guarantee clauses in doctor's liability insurance are as follows:

- a. Claim assistance, in the form of: consultation for every incident of patient claim and assistance with claims handling;
- b. Medicolegal analysis, in the form of case investment regarding the demands faced and medicolegal opinions on the demands faced; and
- c. Medicolegal counseling, in the form of medical risk management to prevent claims and techniques for handling claims correctly.

³³ Putri, "Asas Proporsionalitas Dalam Pembayaran Ganti Rugi Melalui Asuransi Dalam Kasus Malpraktik Dokter."

³⁴ Huda, *Hukum Asuransi Jiwa: Masalah-Masalah Aktual Di Era Disrupsi 4.0*.

In the case of claim settlement involving legal counsel, the insurer has the right to determine its choice of claim settlement method. The insurer has the right to determine its choice of claim settlement method, including the following:

- a. Legal advisor appointed or approved by the insurer;
- b. The insurance company makes payment; and
- c. Maximum liability does not exceed the guaranteed price.

The responsibility of the insured in facing demands or claims. The insured knows/is aware of the existence of an error or negligence in the medical action he or she carries out on the patient, so the insured is obliged to carry out medical rehabilitation measures on the patient to minimize the number of claims from the patient. The insured party must immediately notify the insurer verbally and follow up with a written report regarding all incidents that could give rise to a claim. Claim notification includes:

- a. Background and chronology of incidents;
- b. The potential for injury and the names and addresses of persons involved in the incident, including potential plaintiffs;
- c. How did the insured find out about the incident?; and
- d. Why does the insured think there will be a claim from them?

If the insured receives a claim from a patient, the insured must immediately notify the insurer accompanied by documents related to the patient's claim, including

- a. a copy of the claim letter,
- b. a subpoena;
- c. a letter of arbitration order or notice; and
- d. notifications, subpoenas, or other legal documents received in connection with the claim.

At the insurer's request, the insured party must:

- a. Give power of attorney to the insurance company to obtain records or information;
- b. Cooperate with the insurance company in conducting investigations, settlements, or defending judges; and
- c. Assist the insurer in carrying out its rights against a person or organization that may become the insured's responsibility due to losses caused by insurance.

Doctor's professional liability insurance is included in the general liability insurance category because this insurance only provides accomplishment in compensation if the loss arises due to an uncertain event. Doctor's professional liability insurance also uses an incident basis system. An event-based system is a system where the policy only guarantees claims/claims based on events that

arise/occur during the policy coverage period. Claims must be reported as soon as possible when certain events occur, or there are claims, subpoenas, claims processes, and so on.³⁵

This contrasts basic claims, where the policy is responsible for claims against the insured within the coverage period. The events giving rise to these claims may have occurred long ago, although retroactive dates often limit them. Typically used as a pharmaceutical product for product liability and professional indemnification. So from here, it is clear that in professional insurance, we use a basic procedure system and do not use basic claims because every profession, when a problem arises, always wants the problem to be resolved quickly and not become a serious problem. Protracted, on the basis of the incident can help the profession where if an uncertain incident occurs, then a lawsuit is filed when the incident occurs so that it can be resolved quickly. The profession can return to carrying out its profession.³⁶

Professional liability insurance protects the insured in connection with his legal responsibility to other people or parties in connection with the loss or bodily injury arising from the insured's professional negligence. These practitioners may fail to apply their skills and care beyond their expectations and responsibilities. Doctors generally use this type of insurance policy. In arranging a doctor's professional liability insurance policy, the claims process can take a long time and is divided into three stages, namely failure to carry out the profession, realization of losses both material and non-material, which is closed with a claim for compensation.³⁷

In professional insurance, many questions come to us, as explained above, about why a professional needs professional insurance; we will receive lots of answers where professionals are encouraged to work professionally in accordance with their respective professions. Therefore, any violations, negligence, mistakes, or violations of professional duties can cause substantial financial losses and must be held accountable. Nowadays, public legal awareness is increasing so that parties who experience financial losses can demand compensation through legal channels. The possibility of compensation claims from parties harmed due to mistakes made by consultants or advice or services provided could result in the loss of property or

³⁵ Raina Rafika, "Penyelesaian Sengketa Asuransi Melalui Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan," *SALAM: Jurnal Sosial Dan Budaya Syar-I*, 2022, <https://doi.org/10.15408/sjsbs.v9i4.26601>.

³⁶ Jauhari, "Urgensi Asuransi Profesi Dalam Perkembangan Bisnis Di Indonesia."

³⁷ Ni'ma Ulinihayati and Yunus Husein, "Penyelesaian Sengketa Perasuransian Melalui Lembaga Alternatif Penyelesaian Sengketa Sektor Jasa Keuangan (LAPS SJK)," *Masalah-Masalah Hukum* 51, no. 3 (July 2022): 209-21, <https://doi.org/10.14710/mmh.51.3.2022.209-221>.

assets owned by the Professional. The legal process is usually severe, expensive, and draining. With an insurance company that provides professional accountability guarantees, doctors do not need to worry about the possibility of the above errors occurring, which could result in significant compensation claims, because insurance will guarantee both the amount of compensation claims claimed and the costs of the legal process.³⁸ Guarantees in the doctor's professional liability insurance includes:

- a. Legal responsibility for losses suffered by third parties, namely patients, due to the doctor's negligence in carrying out his profession/malpractice, and
- b. Attorney fees in court (legal fees) related to the patient's claim for compensation.

As we know, a doctor's professional liability insurance is a type of insurance that guarantees doctors receive financial compensation paid to third parties, namely patients. Suppose the doctor is proven to be legally responsible for the losses suffered by the third party. In certain conditions, a doctor not only represents himself but also his subordinates, employees, nurses, or people ordered/appointed by the doctor to take care of his interests as well as objects or goods that are under the doctor's insurance supervision or custody, from carrying out the medical profession who are legally responsible for paying compensation for losses arising from bodily injuries caused by events that occur in the coverage area during the validity period of the policy. Suppose it is related to these two things. In that case, the insurer based on the policy is only responsible for paying compensation or claim costs more significant than the compensation and claim costs for the amount that is the insured's responsibility (Amount Retained by the Insured) only if the conditions in the policy have been fulfilled. Apart from compensating third parties, this doctor's insurance also provides case assistance, legal defense for allegations of medical malpractice and negligence, attorney's fees, increasing legal, ethical, and safety awareness, and support for related professional organizations.

From the description above, it can be concluded that medical professional liability insurance has the characteristic that the parties agreeing are doctors as insured who are guaranteed against the risk of negligence/malpractice in carrying out medical procedures that result in harm to patients.³⁹ Meanwhile, the insurer is a loss insurance company that covers the risk of losses experienced by doctors.

³⁸ Patricia M Danzon, "Liability for Medical Malpractice," *Journal of Economic Perspectives* 5, no. 3 (August 1991): 51-69, <https://doi.org/10.1257/jep.5.3.51>.

³⁹ Danzon.

Recipients of compensation are patients who claim compensation due to negligence/malpractice from doctors.

Medical professional liability insurance is included in loss insurance because what is insured is the doctor's professional risk.⁴⁰ The risks covered are medical negligence and medical practice carried out by doctors in their profession. In contrast, medical risks are not covered by what is regulated in the policy. Apart from that, the insurance does not cover several things as exceptions in the policy, such as medical procedures for beauty, insurance claims from medical procedures, and so on. Apart from that, the characteristics of medical professional liability insurance are also related to grouping the risk level of medical negligence from the doctor's specialty. From this group, the premium and the compensation paid to the doctor will be determined as compensation to the patient.

Professional Liability Insurance for a doctor gives legal protection for the doctor's profession if a doctor commits medical malpractice or medical negligence. This insurance is aimed at the doctor's profession to bear the liability of causing an error or negligence when providing medical services to society. This insurance covers the legal amount that is due for the insured doctor to pay compensation to the patients who become disabled and the related legal expense that was made to fight for the case.⁴¹ The elements of professional liability insurance for doctors in Indonesia, Belgium, and France have similarities and differences. The comparable factors are insurable interest, insured risk, and insured premium related to the compensation to the third party.

Insurable interest in Indonesia is regulated in articles 250 and 260 of Wet Boek van Kophandel, which states that if a person insuring for himself or a person on whose a third party makes insurance, at a time when the insurance concerned does not have interests in the form of insured goods, the insuring party shall not be obligated to pay compensation for loss. Insurable interest can be valued with money, threatened with harm, and not exempt from law and regulation. Professional liability insurance for doctors fulfills all the elements of insurable interest. Belgium regulates the insurable interest in Article 91 of the Insurance Law 2014; France regulates it in Article L.171.3. the France's Insurance Law regulates that the insured must have related economic interest with the insured object. In Indonesia, the risk that can be born by the insurer in professional liability insurance for doctors is the uncertain event that can be in the form of medical negligence or malpractice, which usually comes in the form of compensation for

⁴⁰ Danzon, "Liability and Liability Insurance for Medical Malpractice."

⁴¹ S. Yadukul et al., "Medical Indemnity Insurance," *Journal of South India Medicolegal Association* 3, no. 1 (2011): 1-42.

patient/third party and legal fee to bring the case to court, or other expenses that are agreed upon by the parties involved in the insurance policy. This is similar to Article 5.13 of the Belgium Act of 2014, which puts medical negligence or malpractice as the main element the insurance company must bear. Similarly, France considers uncertainty a vital element in professional liability insurance for doctors. The premium for the doctor's professional liability insurance in Indonesia is classified into general practitioner and specialist, affecting the premium and compensation for the parties involved. The stipulation for professional liability insurance for doctors in Indonesia is regulated in the Regulation of the Minister of Health of the Republic of Indonesia, Number 755/MENKES/PER/IV/2011. Belgium and France also have the same regulations as in Indonesia, which require all doctors to have professional liability insurance. Regarding the third party, which is the patient, the amount of compensation depends on the agreement between the doctor and the patient's family.

Meanwhile, the insurance company's compensation comes from the precalculated qualification of the medical personnel in question and is affected by the risk factor and the amount of premium. In Indonesia, the side with the right to file a claim about professional liability insurance is the doctor as the insured, which is different compared to Belgium and France, where the third party has the right to file a claim directly to the insurance company. In Belgium, it is regulated by Article 50 of the Insurance Law (2014).⁴²

Conclusion

Professional liability insurance for doctors has the following characteristics:

1. The parties agreeing are doctors as insured who are guaranteed the risk of negligence/malpractice in carrying out medical procedures that harm patients. Meanwhile, the insurer is a loss insurance company that covers the risk of losses experienced by doctors. Recipients of compensation are patients who claim compensation due to negligence/malpractice from doctors;
2. Medical professional liability insurance is included in loss insurance because what is insured are the risks of the medical profession;
3. The risks covered are medical negligence/medical practice carried out by doctors in their profession, while medical risks are not covered by what is regulated in the policy. Apart from that, the insurance does not cover several

⁴² Nguyen Thi Bao Anh, "Medical Malpractice Liability Insurance: Comparision of Vietnam to Some European Countries," *Can Tho University Journal of Science* 12, no. 3 (November 2020): 73–79, <https://doi.org/10.22144/ctu.jen.2020.026>; Feryal Salih Mahdi, "Insurance From Medical Civil Liability: A Comparative Study," *Asian Journal of Management and Commerce* 5, no. 2 (2024): 231–35.

things as exceptions in the policy, such as medical procedures for beauty, insurance claims from medical procedures, and others, and

4. This grouping of the levels of risk of medical negligence is based on each doctor's expertise. This group determines the premium value and the amount of compensation that will be paid to the doctor to be given as compensation to the patient.

Knowing the characteristics of professional liability insurance for doctors is necessary to regulate it in the Ministry of Health's regulations, which require all doctors to have this insurance as implementers of the Health Law (2023). The financial services authority must create a standard for professional liability insurance policies for doctors, which are used as a submission for insurance companies so that it can reduce disputes between the parties, namely doctors and insurance companies.

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