

## Legal Protection Prospects toward General Practitioners in the Medical Specialist Study Program (PPDS) on Health Services through Third Party Insurance Institutions (Futuristic Review)

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### ABSTRACT

*Over the years, the relationship between doctor and patient has transformed. Initially, the relationship between doctors and patients was based on the principle of father knows best. In other words, doctors knew what was best for the patient, so the relationship that existed between the two was a paternalistic relationship, in which the relationship between doctors and patients was not equal, considering the control and the decision on the patient's treatment is in the hands of the doctor. The patient is subject to the power of the doctor. The relationship between doctor and patient today is more partnership; they have the same position. Changes in the pattern of doctor-patient relationships and the increasing public awareness of their lead rights cause people not to remain silent if there is an error or alleged negligence due to the doctor's actions, leading to the emergence of demands from the patient and/or patient's family. Doctors must work very carefully because they are vulnerable to lawsuits, and medical services are handled by doctors who take specialist programs (PPDS). Lawsuits proposed to doctors can also be submitted to PPDS because PPDS also carries out medical services the same as doctors in charge of medical. One of the demands that can befall the PPDS doctor is a civil lawsuit. Therefore, insurance can be used as a risk transfer institution to overcome this problem. This study focuses on how the legal protection of PPDS doctors in carrying out medical practice services and whether the responsibility of the PPDS doctor in resolving claims against medical services can be transferred to the insurance company. This study uses a normative juridical approach and descriptive-analytical method, which focuses on efforts to find the juridical basis for the use of insurance institutions in protecting PPDS doctors when carrying out medical practice services. The study results show that Indonesia does not have a law that explicitly regulates the transfer of legal responsibility for the medical actions of PPDS doctors to patients through insurance institutions. The responsibility of PPDS doctors in carrying out medical practice services can be transferred to insurance institutions as long as within the scope of the claim for compensation (civil).*

**Keyword:** Doctor's Profession; PPDS; Medical treatment; dare to take risks; Coverage

## **ABSTRAK**

Seiring perkembangan zaman, hubungan antara dokter dan pasien mengalami transformasi dari paternalistic ke partnership memiliki kedudukan sejajar. Bila terdapat dugaan adanya kelalaian pasien atau keluarga dapat melakukan penuntutan. Dokter dituntut bekerja sangat hati - hati karena rentan gugatan, tetapi bagaimana bila pelayanan tersebut dilakukan oleh dokter PPDS (program pendidikan dokter spesialis). Tuntutan juga dapat mengenai PPDS karena secara umum yang dilakukan oleh dokter dilakukan oleh PPDS. Salah satu tuntutan dokter PPDS adalah gugatan keperdataan. Untuk mengatasi persoalan ini dapat menggunakan asuransi sebagai lembaga peralihan risiko. Penelitian difokuskan bagaimana perlindungan hukum dokter PPDS dalam menjalankan pelayanan medik dan apakah tanggung jawab dokter PPDS dalam menjalankan pelayanan medik dapat dialihkan pada pihak ketiga (asuransi). Penelitian ini menggunakan metode pendekatan yuridis normatif dan metode deskriptif analitis, yaitu memfokuskan pada upaya menemukan dasar yuridis digunakannya lembaga asuransi dalam melindungi dokter PPDS saat menjalankan pelayanan medik. Hasil penelitian menunjukkan bahwa sampai saat ini di Indonesia belum memiliki Undang-undang secara eksplisit mengatur mengenai pengalihan tanggung jawab hukum tindakan medik dokter PPDS terhadap pasien melalui lembaga asuransi serta tanggung jawab dokter PPDS menjalankan pelayanan medik dialihkan pada lembaga asuransi sepanjang dalam lingkup gugatan ganti kerugian (keperdataan)

**Kata Kunci:** *Profesi Dokter; PPDS; Tindakan Medis; Pengalihan risiko; Asuransi*

## Introduction

Health is a human right, meaning that everyone has the same rights in obtaining access to health services. The doctor-patient relationship is a professional (doctor) and client (patient) relationship. This relationship underlies all aspects of medical practice, both in establishing a diagnosis and in managing patients. If the patient has decided to choose a doctor to treat his medical problems, it means that the patient completely surrenders the management of his disease and believes that the doctor will not act without his consent.

The relationship is called paternalistic. The current paternalistic relationship has shifted towards a partnership relationship between the patient and the doctor who has an equal position.<sup>1</sup> This relationship gives rise to rights and obligations in the field of health services which creates a legal relationship on both sides.

What is meant by a legal relationship (*rechtsbetrekking*) is a relationship between two or more legal subjects or between legal subjects and legal objects that apply under the rule of law, or are regulated / exist in law and have legal consequences. The legal relationship between the two legal subjects' forms rights and obligations.<sup>2</sup>

There is increasing awareness of the right to national health care and expectations for monetary compensation, doubts for malpractice, distrust of doctors, and the absence of rational steps to deal with medical disputes.<sup>3</sup> Allegations of negligence are a form of problem in public health services. This

problem involves two things, firstly due to allegations of negligence on the patient's health and secondly compensation that is often not in accordance with patient expectations. As an example of a malpractice case at a leading hospital in Tangerang City with suspicion of having malpractice 17 cataract patients, when the operation failed and caused blindness.

After the operation they developed an infection and had to have their eyes removed. It is known that RS M offered compensation for this alleged malpractice of Rp. 170 million which was not in accordance with the patient's demands.<sup>4</sup>

A doctor in his profession there are three responsibilities. First, official law. Second, civil law and third, criminal law responsibility. "The doctor's responsibility towards the patient according to civil law arises based on two things, namely:<sup>5</sup>

1. As a result of the existence of a contractual relationship between the patient and the doctor, where both have agreed on their respective rights and obligations. In this case, the doctor is obliged to strive so that the patient can recover from the illness he is suffering from and is entitled to payment as an honorarium. Meanwhile, the patient is obliged to pay for the services of a doctor and is entitled to the care and treatment provided by the doctor in order to return to health. This responsibility arises if the doctor defaults on the patient and for that default, causes harm to the patient.

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<sup>1</sup> ManojChandra Mathur, "Professional Medical Indemnity Insurance - Protection for the Experts, by the Experts," *Indian Journal of Ophthalmology* 68, no. 1 (2020): 3, [https://doi.org/10.4103/ijo.IJO\\_2279\\_19](https://doi.org/10.4103/ijo.IJO_2279_19).

<sup>2</sup> Andi Hamzah, *Asas-Asas Hukum Pidana* (Jakarta: Rineka Cipta, 1997).

<sup>3</sup> ( Eun-Mi Yang, Ji-Hee Kim, Soo-Myung Bae, Jong Hwa Yum and Hye Jin Kim, "A Study on the Medical Dispute Experience and Educational Needs

*of Dental Hygienists According to Expansion of Health Insurance Coverage for Dental Treatment"*, *International Journal of Bio-Science and Bio-Technology*, Vol. 6, No. 6, 2014, P 129. Eun-Mi Yang, et all 2014)

<sup>4</sup> Bimo Aria Fundrika, "Pasien Katarak Buta Karena Dugaan Malpraktik, RS Mulya Tangerang Digeruduk," *Suarajakarta.Id*, 2020.

<sup>5</sup> R. Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: PT. Intermasa, 1993). P 123

2. Liability arising from the law due to the actions of someone who violates the law (Article 1365 of the Civil Code), where every unlawful act requires paying losses, if due to his fault there has been a loss to another person.

These conflicts of interest have led to conflicts/disputes as well as allegations of criminal and civil acts in medical practice which have subsequently entered the realm of law, both civil and criminal. Regarding civil lawsuits against doctors, namely default or unlawful acts (*onrechtmatige daad*). This fact is a fact that cannot be put down those doctors are vulnerable to legal proceedings without seeing the real problem.<sup>6</sup>

What if the surgery was carried out by a PPDS doctor and got a lawsuit for the money? Insurance is an alternative transfer of risk or loss that a person may suffer, such as: death, illness, accident, and damage or destruction of his property either partially or completely due to an uncertain cause.

The doctor's responsibility arises when there is a lawsuit filed by the patient against the doctor to claim compensation for a negligence by the doctor in carrying out his obligations that are not in accordance with medical professional standards, causing harm and violating the patient's rights. To relieve the responsibility of the doctor in relation to the risks he carries and carrying out his professional duties, it can be done by transferring the risk to another party.

Such an agreement is referred to as an insurance agreement for coverage.<sup>7</sup>

The insurance company or insurer provides medical professional liability insurance, where the doctor can transfer all risks of a patient's lawsuit against him to the insurer by paying a certain premium, and the insurer provides compensation to the patient who filed the lawsuit (if found guilty by the insurer). judge)<sup>8</sup>.

To ensure that the economic value of a person and their property is guaranteed and protected from risks as a result of uncertain events, the person concerned can insure these risks to an insurance company as an alternative. right to take the risk.<sup>9</sup> Can this type of insurance be used in resolving medical disputes that befell the PPDS doctor?

Insurance is currently growing rapidly accompanied by quantity and quality in medical dispute resolution. Rights and interests occur because of a legal relationship between the parties contained in a written contract agreement called an insurance policy.<sup>10</sup> The potential for lawsuits filed by patients against doctors and PPDS is increasing along with the increase in patient understanding of their rights.

As was the case in 2010 the alleged medical error by a final resident in Manado involved three midwifery resident doctors, each dr. Dewa Ayu Sasiary Prawani, dr. Hendry Simanjuntak and dr. Hendry Siagian who was jointly accused of negligence which resulted in the death of another person. Manado District Court Decision No.

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<sup>6</sup> Efa Laela Fakhriah Yussy Adelina Mannasa, "Legal Protection of Doctors as Health Services Providers: Implementing the Balance Principle in Indonesia," *International Journal of Innovation, Creativity and Change* 10, no. 5 (2019), [www.ijicc.net](http://www.ijicc.net).

<sup>7</sup> Sri Rejeki Hartono, *Hukum Asuransi Dan Perusahaan Asuransi*, 4th ed. (Jakarta: Sinar Grafika, 2001). P 15

<sup>8</sup> Wirjono Prodjodikoro, *Hukum Asuransi Di Indonesia*, 9th ed. (Jakarta: Intermasa, 1991). P 43-44

<sup>9</sup> Febrina Lorence Sitepu, "Legal Review Doctor's Professional Liability Insurance To Patients," *Journal of Law Science* 2, no. 1 (January 30, 2020): 34-42, <https://doi.org/10.35335/jls.v2i1.1613>.

<sup>10</sup> Ni Putu Ayu Myra Gerhana Putri, "Asas Proporsionalitas Dalam Pembayaran Ganti Rugi Melalui Asuransi Dalam Kasus Malpraktik Dokter," 2019.

90/Pid.B/2011/PN.MDO said that the three doctors were not legally and convincingly proven guilty of committing the crime that they were charged with.

The decision of the Manado District Court acquitted them of the charges. Decision of the Supreme Court of the Republic of Indonesia No. 365 K/Pid/2012 stated that the three doctors were legally and convincingly proven guilty of committing a criminal act because their negligence caused the death of another person.

The Supreme Court of the Republic of Indonesia imposed a prison sentence of 10 (ten) months. The three doctors submitted a judicial review to the Supreme Court of the Republic of Indonesia and in the judicial review decision no. 79 PK/Pid/2013 stated that the three doctors were not proven guilty and gave their acquittal.<sup>11</sup>

In addition, the similar characteristics of medical services carried out by PPDS are also carried out by the doctor in charge if it is suspected that he has committed an act of negligence or malpractice becomes a legal subject and can be prosecuted.

The relationship between a doctor and a patient in a medical practice, there is a relationship between a doctor and a patient known as a therapeutic relationship, which is a legal relationship because it is carried out by legal subjects and has legal consequences. By paying attention to the existence of a lawsuit against PPDS so that the author is interested in writing about the protection of PPDS doctors against risk transfer against alleged negligence or negligence

malpractice can be transferred by the doctor as the insured with the insurance company and focus on efforts to find the juridical basis for the use of

insurance institutions in protecting PPDS doctors when carrying out medical practice services.

## **Methodology**

This study uses a normative juridical approach, namely focusing on efforts to find the juridical basis for the use of insurance institutions in protecting PPDS doctors when carrying out medical practice services, while descriptive analysis is directed at efforts to describe problems that arise related to the potential use of insurance as a risk transfer institution for PPDS doctors when carrying out their duties. Furthermore, the results of the description will be analyzed to find solutions to problems that arise.

## **Discussion**

From a sociological-juridical point of view, the position of the doctor is higher than that of the patient. Doctors can be said to have dominance in terms of health and in general patients believe in the abilities and skills of doctors so that almost all decisions are in the hands of doctors. This is due to: (1) Patient's trust in the doctor's abilities and expertise. (2) the patient's familiarity with the medical profession. (3) solidarity among medical colleagues and isolation towards other professions.<sup>12</sup>

The existence of medical ethics that applies to medical practice is inseparable from morals. According to the British Medical Association (BMA), "medical ethics" or EM is "the application of ethical reasoning to medical decision making". EM is a rich and varied discipline often involving calls for different perspectives and principles of terms with different types of information and guidance. EM is concerned with

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<sup>11</sup> Yussy A. Mannas, "Penerapan Asas Keseimbangan Dalam Perlindungan Hukum Terhadap Dokter Sebagai Pemberi Jasa Pelayanan Kesehatan Menuju Pembaharuan Hukum Kesehatan Nasional," in *Disertasi Pada Program*

*Pasca Sarjana Fakultas Hukum Universitas Padjadjaran*, n.d.

<sup>12</sup> Soerjono Soekanto, *Aspek Hukum Kesehatan (Suatu Kumpulan Catatan)*, (Jakarta: IND-HILL-CO, 1989). P 149

critical reflection on norms or values, good or bad, right or wrong, and what ought to be done or not done.<sup>13</sup>

Medical ethics is used to refer to the subject of the traditional view as "the standards of professional competence and conduct which the medical profession expects of its members". The rapid development of health and information technology in society, has an influence on the perspective of the dominant relationship between doctors and patients, which is slowly changing.

Because trust is no longer focused on doctors personally, but on the ability of health science and technology. The duty of doctors is not only to heal but also to treat, people say that being healthy is not just a state of being without illness but more about physical, mental and social well-being.

The number of legal protections for patients so that patients increasingly know and understand their rights in relationships with doctors. Thus, in providing services and efforts to help patients, doctors have legal responsibilities. These legal responsibilities can follow professional responsibilities. The basic objective of universal law enforcement in cases of medical disputes between doctors and patients includes also covering professional responsibilities in law enforcement.

Seeing some of the legislation above, doctors or other health workers in carrying out their duties are full of risks,<sup>14</sup> because the possibility of disabled patients and even death after being treated by doctors or staff can occur, even though doctors have performed their duties in accordance with Professional

Standards, Standard Operating Procedures (SOP). SOP) and/or good Medical Service Standards. This kind of situation should be called a medical risk, and this risk is sometimes interpreted by parties outside the medical profession as medical malpractice.<sup>15</sup>

The legal protection of the medical profession includes three legal dimensions, namely administrative, civil and criminal. In the event that a doctor is suspected of committing malpractice, the administrative dimension is placed as a premium ultimatum.

Handling is passed through a medical code of ethics trial. If the doctor works in accordance with the SPK, SOP and IC are communicative, then the Honorary Magistrate of Medical Ethics (MKEK) must declare that the doctor is innocent.

However, if the MKEK declares guilt, it will be sued in a civil manner. If the doctor does not carry out his duties according to the SPK, SOP and IC, then the violation meets the elements of a criminal act, as stipulated in Article 359, Article 361 jo. Article 55 paragraph (1) of the Criminal Code and Article 76 of Law No. 29 of 2004 concerning medical practice.

Doctors can also be charged with criminal penalties if they are suspected of committing gross violations, such as falsifying practice licenses, selling organs, abortion and so on. The trial process at MKEK did not stop the patient's lawsuit from being civil or criminal.

The role of resident/PPDS doctors as participants in specialist doctor education is to carry out education through the process of serving patients in main teaching hospitals and network

<sup>13</sup> British Medical Association, *Medical Ethics Today The BMA's Handbook Of Ethics And Law*, Second edi (London: British Ethics Departement, 2004). P 3

<sup>14</sup> Joe Hannan, *Residents Can Be Sued, Too: Experts Offer Mitigation Strategies*, June 7, 2022 [https://www.mdlinx.com/article/residents-can-](https://www.mdlinx.com/article/residents-can-be-sued-too-experts-offer-mitigation-strategies/5NIS24wclLIYEAbegQAE)

[be-sued-too-experts-offer-mitigation-strategies/5NIS24wclLIYEAbegQAE](https://www.mdlinx.com/article/residents-can-be-sued-too-experts-offer-mitigation-strategies/5NIS24wclLIYEAbegQAE)

<sup>15</sup> Syahrul Machmud., *Penegakan Hukum Dan Perlindungan Hukum Bagi Dokter Yang Diduga Melakukan Medikal Malpraktek* (Bandung: CV. Mandar Maju, 2008). P 1

hospitals.<sup>16</sup> Although the resident/PPDS plays a major role in providing health services, the service process is part of the education process.

In the education process, residents receive multilevel supervision from specialist consultant doctors at teaching hospitals. The consultant specialist doctor is the Patient Responsible Doctor (DPJP) so that all responsibilities including legal responsibility will be in the hands of the hospital and the DPJP.

Resident Competency Certificate is written evidence issued by the head of the collegium or head of the study program on behalf of the head of the collegium of each specialist field which explains that the Specialist Doctor Education Participant/Special Dentist Education Participant has completed certain stages of education and has competence in understanding or implementing certain medical procedures.

On the other hand, the independent stage resident can be given full responsibility in managing the patient according to the assignment he received from the hospital clinical appointment.<sup>17</sup>

### **1) Rights and Obligations of PPDS in Health Services**

Doctors participating in residents/PPDS in their education have two roles, namely as students as well as providers of health services in hospitals. The rights and obligations of PPDS doctors in health services are greatly influenced by the position of PPDS

doctors in teaching hospitals. PPDS doctors in carrying out their education make a major contribution to health services in hospitals. The duty of the PPDS doctor is to study and provide health services. In relation to the resident's role as a health service provider, the resident should also have the right to legal protection.<sup>18</sup>

Different perceptions of criminal law consider that negligence is an individual error, but in the context of saving patients, negligence or negligence is a team error or a system error. Technically, knowing the level of errors made by doctors, especially PPDS doctors who work in a team or in supervising the implementation of medical actions if they are suspected of having committed medical negligence, is to conduct a medicolegal analysis.

A medico-legal audit is needed to find medico-legal problems that may occur and become the responsibility of the hospital so as to prevent negligence by medical personnel. The implementation of a medicolegal audit is carried out as an implementation of the medical management function in improving medical governance.<sup>19</sup>

Medicolegal analysis is carried out by a Medicolegal Team from a third party, namely an insurance company or a designated audit team consisting of doctors who are experienced in their fields. The analysis carried out by the Medicolegal Team in malpractice cases is as follows:<sup>20</sup> (1) In-depth medicolegal analysis to obtain the real cause of the

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<sup>16</sup> Zhao B, Cajas-Monson LC, Ramamoorthy S. Malpractice allegations: A reality check for resident physicians. *American Journal of Surgery*. 2019;217(2):350-355.

<sup>17</sup> Myers LC, Gartland RM, Skillings J, et al. An examination of medical malpractice claims involving physician trainees. *Academic Medicine*. 2020;95(8):1215-1222.

<sup>18</sup> Regina A. Bailey, MD, JD, *Resident Liability in Medical Malpractice*, American College of Emergency Physicians.

<http://dx.doi.org/10.1016/j.annemergmed.2012.04.024>

<sup>19</sup> Fitrianti Yulia Mia, "Peranan Audit Medikolegal Dalam Pelayanan Medis: Studi Pada Kematian Pasien Dengan Fraktur Tulang Panjang Di RSUP Dr. Hasan Sadikin Bandung Periode Tahun 2016 - 2020." (Fakultas Kedokteran Universitas Padjadjaran., 2021).

<sup>20</sup> Ni Putu Ayu Myra Gerhana Putri, "Asas Proporsionalitas Dalam Pembayaran Ganti Rugi Melalui Asuransi Dalam Kasus Malpraktik Dokter," 2019.

problem in terms of professional discipline; (2) Analysis of the cost-effectiveness of dispute resolution; (3) Analysis of lessons learned and risk management to prevent similar events in the future; (4) Determine the steps (contingency plans). This step is very individual and varies; (5) The medicolegal team concludes their opinion orally (and will then publish a written opinion which includes: material facts, considerations and conclusions about the things above).

When an error occurs in hospital management, it can be classified in various levels:<sup>21</sup> (1) patients and society: namely the failure in the relationship between the patient and the doctor, in this case there is no administrative sanction for the doctor who fails to establish a relationship, (2) micro system: no DPJP responsibility in teaching hospitals; (3) organization: no SIP, no anesthesiologist in surgery, no hospital staff to assist with the implementation of informed consent (4) environment:

The Health Office does not monitor the quality of hospital services, does not provide PPDS SIP, does not see a resident work monitoring system by FK and Hospital, the FK does not protect PPDS which are members. In the case of 3 resident doctors who received a lawsuit alleging malpractice caused the death of the victim, the Supreme Court's decision to punish three resident doctors in the main teaching hospital shows that the resident is the weakest party, and this position can be even weaker if it occurs in an educational network hospital.

On that basis, it is necessary to have a policy to strengthen legal protection for resident doctors, especially in educational network hospitals and transfer accountability to the insurance company.

Hospitals are considered as social institutions with impunity based on the doctrine of charitable immunity, because of their consideration, punishing hospitals to pay compensation is tantamount to reducing their assets, which in turn will reduce their ability to help the community at large. This paradigm shift occurred since the case of *Darling vs. Charleston Community Memorial Hospital* (1965), which was the first case that equated hospital institutions as persons (legal subjects) so that they could therefore be targeted for lawsuits for their performance that was detrimental to patients.

The considerations are, among other things, because many hospitals are starting to forget their social functions and are managed like an industry with modern management, complete with risk management and with such risk management, it is appropriate for hospitals to start placing claims for compensation as a form of business risk and take it into account for the risk itself (risk financing retention) or will be transferred to insurance companies (risk financing transfers) through a malpractice insurance program.<sup>22</sup>

If there is a lawsuit for the actions taken by the doctor, the insurance company will replace all the costs of the loss. Provision of loss costs is not only carried out after a permanent judge's decision is made. Even the granting of this loss can be done if there is a settlement outside the law, in other words if the two parties make peace with each other.

This protection includes the protection of doctors and patients. With insurance as a third party doctors and PPDS doctors will work more calmly because the insurance party will provide legal protection. Without insurance, if a doctor is claimed, he will use his personal

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<sup>21</sup> Adnan Murya dan Urip Sucipto, *Etika dan Tanggung Jawab Profesi*, Deepublish, Yogyakarta, 2019, P. 85.

<sup>22</sup> "Malpraktik Dan Tanggung Jawab Korporasi", n.d.

property to replace all losses and his position will be difficult in court. The insurer's role here is because it can represent the client accused of malpractice, and can provide legal assistance.

## **2) Legal Aspects that can be imposed on residents as legal subjects**

One of the examples raised by PPDS received a lawsuit with allegations of negligence causing death which was found guilty by the Supreme Court (MA). The basis for the Supreme Court's cassation decision is Article 359 of the Criminal Code concerning negligence. From the perspective of criminal law, Article 359 of the Criminal Code "...whoever, because of his negligence, causes another person to die and is threatened with imprisonment for a maximum of 5 years or 1 year in prison..." indicates that the word "whoever" refers to a person/human who is not a business entity or corporation (in this case the hospital).

However, to prove the existence of negligence that caused death, there must be evidence that the defendant committed an act that was not in accordance with his authority and or the defendant did an act that was not in accordance with the procedure, where the action caused death.

The quality of health services based on international declarations on human rights and social welfare (UN Charter 1945 and UDHR 1948) was developed on the occasion of the "Declaration of Helsinki 1964" which was later refined or updated by the results of the congress "The 29th of World Medical Assembly, Tokyo 1975" and later known as New Helsinki 1976. One of the results of the 1976 New Helsinki declaration that became very important was "The health

of my patient will be my first consideration".<sup>23</sup>

All health efforts and health facilities, including hospital health services, must carry the 1976 New Helsinki health doctrine. Referring to the developments for the quality of health services (PSRO and JCOAHC) above, it means that hospitals since 1964/1975/1976 must implement the basic philosophy of law and doctrine. development of "Professional Standards and Accreditation of Health Services".

The legal philosophy and doctrine of health care in hospitals later became an international agreement, as contained in the 1964 Declaration of Helsinki (I), the 1975 WMA Tokyo, and Helsinki (II) 1976 which were rooted in the 1945 United Nations Charter and the 1948 UHDR.

"Hospital Patient's Charter, 1979 Regarding the relationship between patients and doctors or hospitals, it includes three moral norms: respecting patient rights, professional standards, and social functions or responsibilities for health services, especially health services in hospitals.<sup>24</sup>

Health services are realized in the form of organizing medical practice. Regarding Medical Practice, it is regulated in Law Number 24 of 2009 concerning Medical Practice (hereinafter referred to as the Medical Practice Law), where Article 1 number 1 states that medical practice is a series of activities carried out by doctors and dentists for patients in carrying out health efforts.

The implementation of medical practice consists of several interrelated components such as health facilities, the medical profession and patients. Medical practice is carried out for the benefit of the patient. Doctors and patients have equal status with binding rights and obligations. The obligation in question is

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<sup>23</sup> Nusye KI Jayanti, *Penyelesaian Hukum Dalam Malapraktik Kedokteran* (Yogyakarta: Pustaka Yustisia, 2009). P 57-58

<sup>24</sup> Nusye KI Jayanti.P 59-60

dealing with professional doctors and patients in accordance with the norms of the medical profession.<sup>25</sup>

Based on this research, the following results were obtained: First, Indonesia does not yet have a law that explicitly regulates the transfer of legal responsibility for medical actions of doctors against patients to insurance companies. The provisions that become the legal umbrella are only Minister of Health Regulation No. 755/MENKES/PER/IV/2011 concerning the Organization of Medical Committees in Hospitals, number 12 point D which lacks coercive power. Law Number 24 Year 2009 concerning Medical Practice and Medical Education Law.

### **3). Efforts to Strengthen Legal Protection for Resident Doctors and Insurance**

Before the author explains about the potential use of insurance institutions to protect PPDS doctors in carrying out their duties as well as the protection provided to doctors, first of all, the legality of PPDS in carrying out medical services will be described. This is important as a basis for reference in providing an overview that PPDS doctors have the same responsibilities as doctors. As for the basis of legality, among others:

- a. The hospital where the PPDS doctor is assigned must ensure that all doctors sent are equipped with a Resident Competency Certificate from their respective KPS (according to Permenkes No. 2052 of 2011 concerning Practice Permits and Implementation of Medical Practices Article 3 paragraph (4) and Article 12 paragraph (3) and Permenkes No. 9 of 2013 concerning Special Assignments for Health Workers Article 15) Resident's Certificate must contain a list of competencies possessed.

- b. Dokter residen yang bertugas di RS Partner or local must bring a Registration Certificate (STR), IDI Membership Card (KTA) or IDI Certificate.
- c. The local District Health Office must issue a Practice Permit (SIP) for all resident doctors on duty at Mitra B Hospital according to the assignment period (in accordance with Permenkes No. 2052 of 2011 concerning Practice Permits and Implementation of Medical Practices Article 3 paragraph (4); and Permenkes No. 9 of 2013 concerning Special Assignments for Health Workers Article 15), SIP management must be assisted by Mitra B Hospital
- d. Mitra B Hospital must issue a Director's Decree regarding Clinical Assignments (clinical appointments) for all resident doctors on duty after the Medical Committee of Mitra B Hospital conducts the credentialing process (in accordance with Minister of Health Regulation No. 755 of 2011 concerning the Organization of Medical Committees in Hospitals Article 3).
- e. Mitra B Hospital must stipulate that resident doctors act as DPJP for cases according to their competence. If the case is beyond competence and is not an emergency condition, the resident doctor needs to refer to another hospital or ask a consultant who handles it directly..
- f. Mitra B Hospital must prepare all Standard Operating Procedures (SPO) for all types of diseases/cases that will be handled by resident doctors (in accordance with Minister of Health Regulation 1438 of 2010 concerning Medical Service Standards). The SOP must be specially prepared for Mitra B

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<sup>25</sup> Chrisdiono M. Achadiat, *Bunga Rampai Hukum Kedokteran (Tinjauan Dari Berbagai Peraturan*

*Perundangan Dan UU Praktik Kedokteran)* (Jakarta: EGC, 2007). P 3

Hospital, not just using the SOP owned by Mitra A Hospital. It is hoped that Mitra A Hospital can assist the process of preparing the SOP.

- g. The resident doctor on duty must comply with the SPO from Mitra B Hospital and complete the required documents, especially the completeness of the medical record including notes if there are actions outside of the SPO (according to the rules in Permenkes 1438 concerning Medical Service Standards 2010 article 13)
- h. Mitra B Hospital is obliged to protect and provide legal assistance for resident doctors on duty in the form of providing legal advice and funds (in accordance with Law 44 of 2009 concerning Hospitals article 29)
- i. The local government needs to develop a mediation mechanism in the case of a resident case involving the support of Mitra A Hospital and Mitra B Hospital, DPRD and professional organizations at the provincial and district levels
- j. Mitra B Hospital is required to carry out patient safety and risk management programs

Taking into account the description above, of course, the obligations of PPDS in carrying out medical service duties have similarities with doctors. The juridical consequence of this same obligation is that the rights attached to the PPDS doctor are actually the same as the rights of a doctor.

One of the rights attached to doctors is the right to obtain legal protection as regulated in Article 50 of Law no. 29 of 2004 concerning the practice of medicine, namely that doctors obtain legal protection as long as they carry out their duties in accordance with professional standards and standard operating procedures. Second, article 27 of Law no. 36 of 2009 concerning health, namely that health workers are entitled to

compensation and legal protection in carrying out their duties in accordance with their profession and the third article 24 of PP No. 32 of 1996 namely legal protection is given to health workers who carry out their duties in accordance with professional standards of health workers whose rights are to obtain legal protection is manifested in the form of providing protection through insurance institutions.

As stipulated in the Regulation of the Minister of Health of the Republic of Indonesia No. 755/MENKES/PER/IV/2011 concerning the Organization of Medical Committees in Hospitals, among others, states that "Doctors have Professional Indemnity Insurance. Another thing that allows the provision of insurance to the medical service provider profession is implicitly mandated by Law Number 44/2009 Article 46, "Hospitals are legally responsible for all losses incurred due to negligence committed by health workers in hospitals".

In comparison, in the United States the obligation to have a protective instrument in the form of insurance is also given to medical students, either in the form of elective clinical, rotation or just observing, considering that medical students are also possible to make demands from patients and or their families.

Therefore, by considering the similarity of responsibilities borne by PPDS doctors in carrying out health services, it is necessary to have a risk transfer institution in the form of professional compensation insurance that can provide protection and manage medical risks. This insurance provides protection for disputed liabilities resulting in injury or death of the patient

## Conclusion

Until now, Indonesia does not have a law that explicitly regulates the transfer of legal responsibility for the medical actions of PPDS doctors to patients through insurance institutions and the responsibility of PPDS doctors in carrying out medical practice services can be transferred to insurance institutions as long as they are within the scope of a claim for compensation. (civil).

Therefore, it is recommended that legislation be established as the legal basis for providing legal protection through insurance institutions to PPDS doctors when performing medical services. There needs to be a common understanding that doctors who provide services and doctors of PPDS have the same rights and obligations as doctors

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