



## Legal Certainty of Doctor Profession Insurance Claim in Bumiputera Muda 1967 General Insurance, Pekanbaru City

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### **Abstract**

PT. Asuransi Umum Bumiputera Muda 1967 Sells an insurance product called professional medical insurance, which is included in the scope of liability insurance. Liability insurance is a type of insurance that covers material losses due to legal liability to other parties, in this case a mistake or negligence committed by a doctor in carrying out his / her duties. The problems in this thesis are how is the legal certainty in medical profession insurance claims and how is legal certainty in the implementation of medical profession insurance claims at PT. Asuransi Umum Bumiputera Muda 1967, Pekanbaru City. The method used in this thesis is a juridical empiric approach. Sources of data are primary, secondary and tertiary legal materials obtained through literature and information studies, using interview guidelines and field observations. From research done shows that the rule of law in insurance claims medical profession when there is negligence medic was not found in the positive law of Indonesia, therefore, if there had been an agreement between the parties regarding the amount of compensation and payment terms then poured into agreements or agreements made in writing, either under hand or before a notary. This agreed agreement will become the law for the parties in claiming professional insurance. Furthermore, legal certainty in the settlement of medical professional insurance claims as well as implementation and obstacles both from the insurance party, the doctor as the insured or a third party, in this case the Medicolegal team

**Keywords:** *Doctor's Professional Insurance; Claims; Legal Certainty*

### ***I. Background of Research***

Legal certainty is a guarantee regarding the law which contains justice. The norms which promote justice must really function as rules to be obeyed. According to Gustav Radbruch, justice and legal certainty are permanent parts of law. The legal objectives that are closer to realistic are legal certainty and legal benefits for both the government and society. It is also concerned about the guarantees given by the government to the health of society as outlined in the law to protect the product and provide good service to the public or the perpetrator of medical services.<sup>1</sup>

Doctors in carrying out their profession are always required to try their best in treating their patients and every action they take must be in accordance with the standards of the medical profession.

<sup>1</sup> Achmad Ali, *Menguak Tabir Hukum (A Philosophical and Sociological Study)*, Gunung Agung Publisher, Jakarta, 2002, p.82-83

The doctor as a legal subject has legal responsibility for every act he has committed, if the act has caused harm to the patient, then the doctor cannot argue that the action is not his responsibility.<sup>2</sup> Human life, both physical and spiritual, is inseparable from the risks that might occur, both the risks that come from the element of accident or from the carelessness of humans themselves. Likewise in the medical world it is also inseparable from the risks. The transfer of risk to the insurance party is a solution for the hospital to reduce the occurrence of losses arising from legal actions committed by doctors,

The insurance company, in this case, will cover all risks arising from the doctor's medical actions taken against the patient by paying the agreed premium to the insurance company. The legal basis for medical professional insurance itself is regulated in the Decree of the Indonesian Medical Council Number 18 / KK / Kep / IX / 2006 concerning the book on the implementation of good medical practice in Indonesia Chapter VIII Patient Relations with doctors, Paragraph (42) Risk Insurance. Doctors should have insurance for protection self against the risk of work or the risk of patient demands and CHAPTER III Regulation of the Minister of Health of the Republic of Indonesia No 755 / MENKES / PER / IV / 2011 concerning the Implementation of Medical Committees in Hospitals

Indonesia does not have specific regulations regarding professional insurance specifically, however this product is classified in the scope of general insurance in insurance institutions. The product of liability for medical action is not new, in America the issue of medical insurance has long been known in the 1970s to the mid-1980s called medical liability insurance.<sup>3</sup> Doctors cannot guarantee a cure for patients who use their services, therefore all possibilities can occur that cause loss of life or increase in injuries to patients either negligence or deliberately. As is well known, initially the doctor-patient relationship was a paternalistic relationship. This paternalistic relationship is characterized by the patient's belief in any healing efforts made by the doctor. The patient leaves all the effort made on him to the doctor who undertakes the healing effort.

This paternalistic relationship then slowly shifts into a contractual relationship. This contractual relationship is known as *inspanning verbentenis*, the agreement which later became known as the therapeutic agreement does not promise results, but strives for patients as recipients of health services to get maximum health services. If the two parties have agreed to take steps that try to optimally carry out certain medical actions but these are not achieved because the doctor is not careful in the procedures taken through the communication process (informed consent), then one of the parties can take legal remedies in the form of compensation claims loss<sup>4</sup>

With the existence of professional medical insurance, it should have become a back up for the doctor himself if a problem occurs in the future, this can also increase the sense of security for doctors in carrying out their duties. But besides that, in fact, if a problem arises in a doctor's practice and the doctor, as the owner of the insurance, wants to claim this, it turns out that the process is not as easy as imagined. Many things can become obstacles in the claim process, from this problem the authors are interested in conducting research with the title **“Legal Certainty Of Doctor Profession Insurance Claim In Bumiputera Muda 1967 General Insurance, Pekanbaru City”**.

## **II. Research Methods**

The method used in this research is juridical empirical, a legal research method that functions to be able to see the law in a real sense and to examine how the law works in a society. To complete this

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<sup>2</sup> Rosa Elita and Yusuf Shofie, *Malpractice; Dispute Resolution, and Consumer Protection*, Unika Atma Jaya, Jakarta. 2007 p.70

<sup>3</sup> <https://dokumen.tips/documents/asuransi-profesi-dokter-dan-aspek-medikolegalpptx.html>, accessed on Thursday 21 March 2019 at 09.10 WIB.

<sup>4</sup> Freddy Tengker, *Health Law Now and Here*, Mandar Maju, Bandung, 2010 p. 24.

research, the authors complete the materials needed to create and complete this research by examining primary data, secondary data, and tertiary data. In this study using data collection methods by:

1. Literature study, namely by collecting legal materials related to research material such as legal books in the form of written texts and soft-copy editions, such as ebooks, articles in journals, papers, government publications, and others. which can be obtained from the internet which is accessed online as well as reading, analyzing and recording reviews of library materials related to the object under study.
2. Field studies, namely by conducting observations and interviews with respondents at PT. 1967 Bumiputera Muda General Insurance in Pekanbaru City regarding the implementation of professional Doctor Insurance claims.<sup>5</sup>

The data analysis method used in this study is a qualitative method so that the research report will contain data quotations to provide an overview of the presentation of the report, the data comes from interviews, field notes, photos, personal documents, notes or memos, other official documents.<sup>6</sup>

### **III. Research Result**

#### ***Legal Certainty In Insurance Professionals Doctors***

Professional legal liability insurance covers any loss arising not only from the risks caused by the insured's professional mistakes, but also for mistakes made by people for whom according to law the insured person is responsible for these people during the period. validity of the policy. The doctor's responsibility also includes actions taken by the person given the delegation, namely: a medical student who is doing a co-schap, a nurse who is seconded to him, and other doctors who help him in the event that the other doctor is studying with him as a specialist.<sup>7</sup>

This responsibility is based on the provisions of Article 1367 paragraph (3) of the Civil Code. In carrying out his profession, if a doctor makes mistakes or mistakes in carrying out his professional duties, causing harm to the patient, the patient can file a lawsuit against the doctor concerned to pay compensation suffered by the patient.<sup>8</sup>

Regarding medical negligence, this is closely related to the term medical malpractice. Mudakir explained that medical malpractice is the negligence of a doctor or medical personnel to use their skill level and knowledge. The form of negligence can be in the form of deviation from medical profession standards and / or standard operating procedures. Medical malpractice is not formulated in a written legal code, but this term is often associated with Article 359 of the Criminal Code. One of the elements of offense that must be proven in the formulation of article 359 of the Criminal Code is negligence. The element of negligence has at least two conditions: in committing an act the defendant was not careful and the consequences arising from negligence must be imagined in advance.<sup>9</sup>

Medical professional insurance can be categorized as preventive legal protection because the nature of this insurance provides protection or protection for a doctor before an alleged negligence by making efforts to increase legal awareness, ethics and safe practice for doctors through medicolegal counseling in the form of clinic risk management to prevent claims and techniques for dealing with true claims and claims. It is hoped that this can minimize the occurrence of a complaint or an allegation of negligence by a doctor because legal awareness, ethics and safe practice have been achieved properly.

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<sup>5</sup> Adi Rianto, *Social and Legal Research Methodology*, Granit, Jakarta, 2004, p. 31.

<sup>6</sup> Lexy J Moleong, *Qualitative Research Methodology*, Youth Rosdakarya, Bandung, 1989, p. 18.

<sup>7</sup> Husein Karbala, *Ethical and Juridical Aspects of Informed Consent*, Cet. 1. Pustaka Sinar Harapan, Jakarta, 1993. p. 38

<sup>8</sup> *ibid*

<sup>9</sup> Vironika Komalasari, *Law and Ethics in Medical Practice*, 87

This insurance can also be called repressive protection because the legal protection provided by this insurance is in the form of self-protection of a doctor after a complaint and an alleged negligence by a doctor. The form of legal protection provided is in the form of providing legal assistance to doctors by paying compensation filed by patients who have been harmed and also advocacy by the Medicolegal team when a claim occurs.

The medical professional insurance product is a new product under insurance liability so that there is no legal certainty in detail explaining the implementation of this. The concept of legal certainty includes a number of interrelated aspects. One aspect of legal certainty is the protection given to individuals against the arbitrariness of other individuals, judges, and administration (government). It is a belief in legal certainty that should be attributed to individuals with regard to what individuals can expect the ruler to do, including belief in the consistency of judges' or administrative (government) decisions.

There are few rules that explain in detail the legal certainty of medical profession insurance, therefore for legal certainty this insurance returns to the principle of insurance according to Indonesia's positive law regarding general insurance. When there is medical negligence or malpractice, the Medicolegal Team will conduct a medical analysis, if it is proven that malpractice has occurred, the amount of insurance claiming funds will be discussed with the patient. Legal certainty regarding the claiming process for Professional Doctor Insurance follows the rules of the OJK (Financial Services Authority) in which the insurer must pay the agreed compensation at the latest 30 days after an agreement is made between the doctor, patient, medicolegal team and the hospital, then the agreement set forth in a written agreement which later becomes law for the parties.

#### ***Professional Medical Insurance Claim Settlement In. Bumiputera Muda General Insurance 1967, Pekanbaru City***

Professional liability insurance is insurance that protects a person or persons against third party losses caused by activities in the context of carrying out or in connection with their profession. The definition of the profession in insurance is limited to experts such as doctors, pharmacists, accountants, lawyers, architects and other professions. This insurance is sometimes referred to as malpractice insurance, although malpractice is not properly used for mistakes, mistakes, negligence, negligence, carried out by experts in carrying out their profession.<sup>10</sup>

Payment of compensation in the doctor's profession liability insurance agreement, namely the insurer will compensate the insured for a number of damages, as a result of the medical practice carried out by the insured against the patient while carrying out his insured profession, which is legally responsible for paying compensation. from damages arising from bodily injury to the patient caused by medical action of the insured which occurs in the area of coverage.

PT. Bumiputera Muda 1967 General Insurance, Pekanbaru city in running medical insurance products is assisted by a third party, because for medical problems it requires a special study which can only involve parties who are members of the realm of medicine itself. Therefore, PT. 1967 Bumiputera Muda General Insurance, Pekanbaru city, involves a medicolegal team in case investigations in the event of a doctor's claim. Medicolegal is an applied science that has two aspects of medicine and law. Medicolegal is used in a legal case that requires medical assistance to solve it.<sup>11</sup>

PT. Directions to the Great Nation is a medicolegal team from PT. Bumiputera Muda 1967 General Insurance, Pekanbaru city, which functions as an analysis team and companion for doctors in the event of a lawsuit. When there was a lawsuit against the doctor, PT. The direction of the Great Nation of

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<sup>10</sup> Sonni Dwi Harsono, Insurance Economics, Jakarta, Faculty of Economics, University of Indonesia, 1996, p. 13

<sup>11</sup> The results of the interview with Dedi Afandi as the Medicolegal Team of PT. 1967 Bumiputera Muda General Insurance Pekanbaru city on Tuesday 16 December 2019, at 10.30

Pekanbaru City which will assist in its completion. PT. 1967 Bumiputera Muda General Insurance Pekanbaru City prioritizes the way to resolve its cases by non-litigation or outside the court. This is aimed at safeguarding the privacy and reputation of a doctor and media publications and the problem is not complicated because a peace agreement is reached even though there are several conditions that must be met, for example by compensation in the form of a claim.

Dedi Afandi as the Medicolegal Team of PT. The 1967 Bumiputera Muda General Insurance, Pekanbaru city, explained that it is not easy to determine whether a medical malpractice doctor acts or not, it requires deeper examination and analysis than medical records. Doctors must first explain the process of services provided to patients and ensure the contents of the informed consent. Not all mistakes can be called malpractice, doctors often neglect the delivery of their services, because negligence is different from malpractice. The terminology of medical malpractice and medical negligence are two different things. Medical negligence is indeed a medical malpractice. However, in medical malpractice there is not only an element of neglect, it can also be due to deliberate action.<sup>12</sup>

Submission of claims in insurance is made if the insured has committed an action or things that fall within the scope of insurance responsibility. For example in the doctor's profession liability insurance, the insured (doctor) is sued by a patient who is dissatisfied with the doctor's service and thinks that the doctor has committed malpractice. Then the doctor as the insured of the professional liability insurance in the event of such a claim can make a claim to the insurance, because his action falls under the responsibility of the insurance. Settlement of medical profession liability insurance claims can be done in two ways:

a. Peaceful Way

Settlement of claims in a peaceful manner is pursued by means of deliberation or negotiation to make an agreement on the amount of claim reimbursement to the patient. Insurance companies always use peaceful means to resolve the case. The role of the Medicolegal team in settling claims in a peaceful manner in settling claims is very large. Because one of the tasks of the medicolegal team is to be able to as much as possible resolve cases through the peace or conciliation process. If peace is achieved, the medicolegal team will make a peace agreement with the legality of a notary, this is made so that neither party takes other legal remedies in the future. After an agreement is made, the deed of the peace agreement is registered by one of the parties to the court so that it has permanent legal force, so that the agreement binds both parties, namely the doctor and the patient.

b. Through the Court Process

Settlement of claims through court processes is taken if consensus is not reached in a peaceful process or deliberation, so the last way that each party can take is through litigation or the court to make a decision. This step usually comes from a third party (patient) to file a claim against the insured (doctor), because the patient is not satisfied with the existing agreement. However, it does not rule out that this step also comes from the doctor's initiative, where peace steps with patients have failed to be taken. In terms of settlement of cases in court, the insurer, namely the insurance company, will fulfill its obligation to bear the costs of dispute resolution processes, and provide a lawyer whose services will be used to defend the insured (doctor) as a form of guarantee provided by the insurance company.<sup>13</sup>

The obstacles faced by PT. 1967 Bumiputera Muda General Insurance, Pekanbaru city in the implementation of insurance claims which often slow down the claim settlement process, including:

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<sup>12</sup> Results Interview with Dedi Afandi as the Medicolegal Team of PT. 1967 Bumiputera Muda General Insurance Pekanbaru city on Tuesday 16 December 2019, at 10.30

<sup>13</sup> Results Interview with Dedi Afandi as the Medicolegal Team of Bumiputera Muda 1967 General Insurance Pekanbaru city on Tuesday 16 December 2019, at 10.30

1. Incomplete Documents
2. Medicolegal Analysis
3. Loss of Policy or Premium Payment Receipt.
4. Disbursement of Old Claim Funds
5. Large Request for Compensation
6. Policyholders outside the city
7. Waiting List<sup>14</sup>

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### **Interview**

- Interview with Dedi Afandi as the Medicolegal Team of PT. 1967 Bumiputera Muda General Insurance Pekanbaru city on Tuesday 16 December 2019, at 10.30
- Interviews with Yuni Asri Fera as a staff of PT. 1967 Bumiputera Muda General Insurance Pekanbaru city on Tuesday, 11 December 2019, at 14:15

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<sup>14</sup> The results of interviews with Yuni Asri Fera as a staff of Bumiputera Muda 1967 General Insurance Pekanbaru city on Tuesday, 11 December 2019, at 14:15