

## ORIGINAL ARTICLE

# Prudential Principle in Professional Indemnity Insurance of Nurses

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## ABSTRACT

**Introduction:** Nurses are professionals today seen as equal partners with doctors. The authority of the nurse in the exercise of their professional functions is governed by the Regulation of the Minister of Health no. 148/2010 so that nurses can carry out their professional activity. Every job has quite a significant risk, taking up the profession of a health worker or nurse. The authority and duties applied by nurses also have a heavy burden, so they must be covered by insurance. The importance of professional indemnity insurance or professional indemnity insurance for nurses in protecting unwanted risks of infected disease, and anything related to work accidents. **Methods:** This research using normative legal research methods, using normative legal is case studies in the form of legal behavior products, for example reviewing draft laws. The main subject of the study is law which is conceptualized as a norm or rule that applies in society and becomes a reference for everyone's behavior. In this research also using a conceptual legal approach that includes Burgerlijk Wetboek (BW), to analyzing the insurance law, nursing law, health law, hospital law, and related implementing regulations. **Results:** It is essential to get coverage from professional indemnity insurance as they only run errands in the hospital. Professional indemnity insurance protects against claims resulting from losses from actions related to nurse profession. **Conclusions:** Healthcare nurses must be covered by professional indemnity insurance. Hospitals are required to pay premiums.

**Keywords:** Insurance, Professional Liability, Nurse, Healthcare, Claims

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## INTRODUCTION

Everyone has the right to live in physical and spiritual prosperity, to have a place to dwell, to have a pleasant and healthy living environment, and to have access to health services, according to Republic Indonesia Constitutional Law 1945 Article 28H (1). Likewise, in Law no. 36 of 2009 on the subject of health, it is emphasized that everyone has the right to health (2). Especially in the conditions of the Covid-19 Pandemic that has hit Indonesia since the beginning of 2020 and will continue until 2021 (3), were people affected by Covid-19 need health services from health workers (4). The Covid-19 pandemic requires health service facilities

and additional staff to care for Covid-19 patients, which is now a top priority (5). One of the health workers at the forefront of managing Covid-19 patients is a nurse and doctor (6). Aside from doctors, nurses are those who play a crucial role in the delivery of healthcare in hospitals (7). The enhanced profession is regulated by Law of the Republic of Indonesia no. 38 of 2014 on Nursing (Indonesian Nursing Law) (8).

- A. improving the quality of nurses
- B. improvement of service quality
- C. Provide protection and legislation for nurses and clients
- D. Public health promotion placement

Healthcare professionals or employees who serve every patient in a hospital are known as nurses (9). A legally binding agreement between the hospital, which serves as their employer, and the nurses, who work there as

employees, establishes the nurses' relationship with the facility (10). This employment contract gives rise to rights and duties for the parties who do so because, as regulated by article 1338 Burgerlijk Wetboek (BW), it states: "All agreements are made legally as the law for those who make them". Each party has rights and duties agreed upon through an employment contract (11).

The nurses are accountable for their work as licensed nurses. The work that nurses do carries possible dangers that could be harmful to patients who are using the healthcare services offered by hospitals through medical staff (12). Nurses as healthcare workers are likely to receive compensation from patients for independent medical actions or actions ordered by doctors (13). As a professional, nurse are obligated for patients to perform at the level of experience that is expected of someone in their profession(14). Nurses do not need to have the highest level of knowledge, but they do need to demonstrate the usual standard of competence in their work (15). This is the case in some cases, such as Bolam vs. Frieden Hospital Management Committee in 1957 (16), and Bolitho vs. City and Hackney Health Authority in 1997 (17). As an employer interested in the health services it provides to patients, the hospital must protect every health worker who does their job (health services) for their benefit (18). In this case questioning about nurses insurance to claims their compensation with liability insurance for nursing.

The hospital acts as the policyholder and the insurance company as the insurer. Hospitals have to pay insurance premiums as insurers and insurance companies to cover the liability burden or occupational risks of nurses as workers to benefit the hospital as the insured. The responsibility of the nursing profession, also for the insurance risk deriving from the choice of disadvantaged consumers for health services, does not eliminate the caution of nurses in the performance of services.

## MATERIALS AND METHODS

This research using a normative legal methods with a legal approach that includes Burgerlijk Wetboek. The Burgerlijk Wetboek is Indonesia Civil Law Code, this research concerning on insurance law, nursing law, health law, hospital law, and related implementing rules. This study also uses a conceptual approach to analyze the concept of nursing liability insurance and the precautionary principle. Primary legal materials and secondary legal materials are both used. To find solutions to the issues in this research, all of the legal materials that have been gathered are analyzed.

## RESULTS

**The principle of prudence in transferring risks to the responsibilities of property insurance professionals in their profession**

cannot ignore making mistakes, whether they are committed or not (19). The explanation refers to many things depending on each person's profession, the occupation itself is a job that necessitates specialized training and knowledge mastery. Typically, a domain has a professional association, an ethics code, and specialized certification and licensing procedures (20). Examples of careers are doctors, nurses, lawyers, notaries, prosecutors, judges, accountants, architects and others (21). An effort that can be used to get around problems is insurance possible losses due to uncertain events. The insurance contract can transfer to the insurance company the risk of events causing damage that threaten the insured's interests (hospital). As an unequivalencing, the policyholder pays the agreed premium. With insurance, the hospital, as interest-bearing insured, feels safe from the threat of loss due to a patient's legal action.

The hospital has a special interest in commercial activities (providing healthcare services) for the general public as users of hospital services because it is an insured person. The interest in question is accountable for the acts of medical professionals (nurses) who hurt patients by making individual and collective mistakes. One of the guiding principles of an insurance contract is curiosity; an insurance contract must have an interest that does not have to exist at the time the insurance contract is signed but only if an unpredictable event occurs.

The transfer of liability from nurses to hospitals through this insurance can be achieved as legal protection for nurses in the exercise of their profession of providing healthcare to patients. Legal protection of nurses in their functions under Article 36 of the Indonesia Nursing Law No. 38 of 2014, which declares that nurses are entitled in the performance of their duties (22): Obtain legal protection while carrying out their responsibilities in accordance with the law, service standards, professional standards, and standard operating procedures.

- a. Obtain legal protection while carrying out their duties in accordance with the law's regulations, service standards, professional standards, and standard operating procedures.
- b. Obtain accurate, open-minded, and truthful information from clients or the families of those clients.
- c. Obtain compensation for services provided.
- d. Rejecting requests from customers that are in conflict with the code of ethics, service standards, standard operating procedures, legal requirements, and obtaining standard work.

Facilities Nurses in performing their duties are entitled to legal protection for everything from health service recipients as long as health service standards perform the health services provided by nurses, standard operating standards and procedures, and are not in conflict with applicable laws and regulations (23).

Acting nurses in hospitals have limitations in acting or providing help, and this is because acting nurses must be on doctor's orders (24). However, in reality, the patient can blame the nurse for the assistance, the administration of drugs, and so on. Therefore, justice is the basis for nurses and patients to work together without blaming the medical staff, in this case the nurses (25).

For instance, if a nurse is performing her duties negligently and causes harm to the patient or causes them to lose anything, the patient's family may file a lawsuit. The hospital is responsible for the incident's negligence. It may be made legal. The terms of Article 46 of the Indonesia Hospitals Law No. 44 of 2009 specify the hospital's duty to supervise medical personnel, in particular nurses (26), which states: "Hospitals are legally responsible for any damage caused by the negligence of healthcare workers to the hospital".

The term "liability" was recently coined to describe holding someone liable for negligence that results in harm to third parties. Liability in the healthcare industry results from the contractual arrangement between patients and medical personnel (doctor, midwife, and nursing personnel). as specified in the Agreement (Patient). Empowerment can be seen as a way for nurses to take part in making decisions and assessing the repercussions. Because nurses have obligations, they must be prepared and courageous to deal with lawsuits from parties, particularly those involving their professional duties. Nurses must be able to describe the tasks or procedures they carry out.

Professional indemnity insurance shields from lawsuits alleging damages from conduct connected to nurse line of work. Because of their commitments, one must be cautious when engaging in work-related activities. Another insurance product that covers damage resulting from the practice of a profession is professional indemnity insurance. In this case, for instance, the paramedics are legally responsible for paying damages for bodily injury brought on by environmental factors, and this liability is guaranteed for as long as the insurance policy is in effect.

Professional indemnity insurance aims to protect professionals from legal liability to pay damages to people who have suffered financial losses due to their negligence. For their responsibilities to care for sick patients, nurses have a lot of responsibility. As a result, nurses must exercise caution when providing care for patients. Legal action against nurses is a possibility if they fail to take action that endangers the patient's life. The term "Policy" in the Cambridge dictionary means to wise or prudence. The definition of "prudence contains a mandate that, within the state administration, each state apparatus in the field of disasters must carry out its duties and functions in a serious manner and with full responsibility for the interests of the state and society

based on applicable laws and regulations so that it can be insinuated that the principle of Prudence can be interpreted as the basis of the truth which is the basis for thinking and acting very carefully so that nothing happens in the future (27).

The use of information technology and electronic transactions is based on legal certainty, advantage, caution, good faith, and freedom of choice, according to Article 3 of the Electronic Transaction Information Act. Technology or to be technologically neutral. The precautionary principle is one of the bases that parties must pay attention to because they have the potential to harm themselves and other parties using information technology and electronic transactions. Suppose it is associated with the field of health services. In this case, the precautionary principle is the basis that health care professionals must consider in carrying out their duties as it can cause harm both to themselves and to others in health services.

The embodiment of the precautionary principle for nurses as health care professionals is contained in several articles of the Health Law and Nursing Law, as follows:

1. That health care workers must have a minimum qualification
2. Health care workers must work according to their field of expertise in the healthcare sector.
3. Healthcare workers must have a permit from the government.
4. Healthcare workers are required to adhere to the code of ethics, professional standards, rights of health service consumers, service standards, and standard operating procedures..
5. To improve the quality of health professionals through education and/or training.
6. Healthcare professionals must develop and improve their knowledge and skills to provide quality services following the development of new sciences and technologies.

In particular, nurses who perform nursing practices are required to have a certificate of enrollment in the Register of Nurses (STRP) issued by the Nursing College after having satisfied the following requirements:

- a. Have a Higher Education Diploma in Nursing;
- b. Have a Certificate of Competence or Professional Certificate;
- c. Have a physical and mental health certificate;
- d. Have a letter of statement that nurse have taken the professional oath/promise; and
- e. Make a statement to respect and implement the provisions of professional ethics.

Furthermore, in implementing the precautionary principle, the STRP is valid only for five years and can be re-registered every five years. Nurses practicing nursing care must have a form of a Nursing Practice License

(SIPP) permit. The issuance of a permit by the Regency / City Government at the suggestion of the competent health officer in the Regency / City where she practices the nurse. Permanent donation is a manifestation of the precautionary principle in minimizing legal risks, particularly for nurses, and as a means of supervision and guidance carried out by the government, provincial government, Regency/city government, and nursing councils for nurses. This is done to protect the public receiving health services and to improve the quality of health services provided by nurses.

Hospitals can take a tiny proportion out of the income of healthcare employees to pay insurance premiums to insurance firms for professional indemnity insurance. Since the nurses' interests have been moved to the insurance companies, they feel safe working as medical service providers because the payment they receive from the insurance company supports them in carrying out the tasks allocated to them (insurers). The parties' agreement and the scope of the insurer's obligation to verify that the insurance premium provided by the hospital complies with it will determine the terms about the amount of insurance premium that the hospital must pay to the insurance company. by the insurer accepted

## DISCUSSION

### **Risk Transfer of Nursing Liability to Hospitals through Professional Indemnity Insurance**

Healthcare workers are employed by hospitals as businesses to deliver medical services to the public. For instance, medical staff may delegate hospital to doctors or health care experts for medical actions. Health services run the danger of making mistakes or omissions that cost patients money. In this instance, it can entail risk liability. As was previously stated, nurses who provide health services to patients who utilize hospital services are legally protected by the obligation transfer from nurses to hospitals through insurance. For instance, a nurse may be careless in the course of his work, harming the patient who is receiving care. In this instance, the family will file a lawsuit as a result which can be transferred to the insurance company through professional civil liability insurance.

The hospital's responsibility for the negligence of health workers, especially nurses, is strengthened by the provisions of Article 46 of Law No. 44 of 2009 regarding hospitals that confirm that:

1. Hospitals are legally responsible for all losses caused by negligence committed by healthcare workers in hospitals.
2. Hospitals can be held accountable by patients who suffer losses due to nursing actions performed as part of an employment relationship. The risk of the nurse's liability being transferred to the hospital through professional indemnity insurance.

In accordance with Article 65 of Indonesia Healthcare Worker Law No. 36 of 2014 on Healthcare Workers of Juncto, Article 35 Paragraph 6 of Indonesia Nursing Law No. 38 of 2014 on Nursing of Law No. 44 of 2009 on Hospitals, and Article 46 of Law No. 44 of 2009 on Hospitals, Hospitals are legally liable for any damages brought on by the negligence of the Hospital's Health Workers. This provision gives a legal interpretation in accordance with which risk aansprakelijkheid is specialized in Article 1367 paragraph (3) BW in the legal aspect of health (8). As a result, risk accountability calls for oversight of the mandate giver, in this case, doctors who employ nurses in hospitals as mandate recipients. One of the reasons there is culpability for misbehavior perpetrated by organizations is management health professionals while performing work.

The principle of risk liability in telemedicine medicine relates proportionately to the professional responsibility among telemedicine physicians (28). Its theoretical legitimacy is founded on connections between professionals who delegate medical actions under the direction of ethical norms, professional standards, service standards, and standard operating procedures. Therefore, according to the vicarious liability paradigm, the implications of culpability are not always attributable to the primary care physician (PCP) or primary care nurse as a subordinate. What does the term "proportional" mean when it comes to risk liability and the allocation of professional rights and obligations based on the relative amounts of errors committed by each party in accordance with the principles of justice, fairness, and correctness?

As stated by Sidharta, based on the principles of legal responsibility, which are generally defined as follows (9).

1. Liability based on error is a general principle of civil and criminal law, which states that a person can be generally liable if an element of fault is found;
2. The presumption of responsibility is the principle by which the accused is always held responsible until he can prove his innocence, in the sense that the burden of proof is borne by the accused;
3. The presumption of irresponsibility, which is known only in the context of minimum consumer transactions, disappears and leads to the principle of responsibility with the limitation of compensation in the form of money;
4. Strict responsibility is the principle of responsibility that defines guilt, not as a determining factor;
5. Limitation of liability is the principle of liability, usually combined with other liability codes.

In civil law, the principle of liability is known, including:

- a. Contractual obligations.

This kind of responsibility results from a broken promise, i.e., the failure to perform a duty or the failure to uphold another party's rights as a result of a contractual

arrangement. The duties or accomplishments that healthcare professionals must carry out in the context of the therapeutic relationship take the form of efforts (efforts), not results (results). Doctors and other healthcare workers are solely accountable for medical procedures that fall short of standards or for medical conduct that fall under the category of civil negligence.

b. Liability

This kind of liability is an obligation that is based on a criminal act rather than a contractual commitment. The term "against the law" includes not only deeds that are against the letter of the law, one's own legal obligations, or those of others, but also deeds that are against decency and decency toward others.

c. Strict Liability

Since a person must be liable even if they have not committed acts of willful, grossly negligent, or grossly negligent behavior, this type of liability is frequently referred to as no-fault liability. Unless the manufacturer has given a warning about a potential risk, this type of liability typically applies to the sale of goods or products, where the manufacturer must pay for the damage caused by an accident brought on by the product.

d. Vicarious liability

The concept of transferred liability is this. This kind of accountability results from errors committed by subordinates. When it comes to health services, the hospital (as an employer) is liable for any errors made by medical staff members holding lower-level positions). In nursing liability insurance, the hospital is liable for damage caused by negligence committed by nurses as health care workers. This can be seen in the case of *Nelson vs. Trinity Medical Center* 1988 (10). There is a transfer of responsibility from the nurse to the hospital where the nurse is on duty. To this end, nursing liability insurance uses the principle of representative liability. The discipline of vicarious liability is also governed by article 1367 BW, which states: "The man is not only responsible for the damage caused by his actions, but also for the damage caused by the acts of persons against him or caused by goods, which it's in his hands. under his control. " The principle of transferred responsibility requires that a person be accountable for the actions of others or also called calculated obligations.

The transfer of responsibility from nurses to hospitals where nurses work, because hospitals as companies act as supervisors of hospital staff, one of which is a health worker nurse acting as a subordinate. The hospital's legal responsibility for the duties and responsibilities of health care workers is governed by article 46 of law no. 44 of 2009, as mentioned above, the hospital is legally liable for damage caused by negligence committed by healthcare workers in hospitals. Hospitals are accountable based on the doctrine of representative accountability.

The doctrine of representative liability is another doctrine of corporate criminal liability adopted by civil law. In civil law, there is the doctrine of superior reactivity, where there is a relationship between an employee and an employer or a principal and an agent, and the saying *qui facit per alium facit per se* means someone who acts through another person. It is believed that he committed the act himself. This doctrine is usually applied to the law of tort (29). According to Romli Atmasmita, vicarious liability is a criminal liability imposed on a person for the actions of others (a person's legal responsibility for the wrongdoings of others). Barda Nawawi Arief also stated that vicarious responsibility is the concept of a person's responsibility for mistakes made by others, for example, actions committed that are still within the scope of his or her job (a person's legal responsibility for wrong actions of others, for example, if the act is performed in the context of work). ). In the implementation of vicarious responsibility, according to Barda Nawawi, a person cannot be held accountable for actions committed by others (30):

- a. not included in the scope of work or authority;
- b. the actions taken by employees are acts of assistance/assistance (welfare and aiding and abetting), and
- c. what employees do is an attempt to commit violations.

In acts of medical negligence, the hospital can be held directly liable for negligence and "representationally" liable for the employee's bankruptcy. Representative responsibility means that one party is responsible not for its own negligence but for the other party's negligence (31). Under the Representative Liability Act, every employer (including hospitals) is liable for the negligence of their employees. Therefore, the hospital is legally liable for any negligence by doctors, nurses, or other healthcare workers (31).

As was previously stated, as long as nursing actions are carried out within the scope of their health tasks, the principle of vicarious liability can be employed as a means of providing legal protection to nurses working in hospitals who make mistakes (neglect). both employees and unintentional In other words, it was a careless mistake (negligence).

The transfer of the nurse's responsibilities to the hospital through professional indemnity insurance on a representative liability basis is possible without a contract. Professional indemnity insurance coverage covers the level of pecuniary damage for loss suffered by the victim due to unintentional errors and omissions by doctors, qualified and ineligible insured employees and staff. It also covers the costs of defending yourself in court (Decision Fee). The plan provides liability for one year from the time of subscription. However, the policy does not cover criminal acts (31).

In the context of the employment relationship between a hospital and its healthcare professionals, particularly nurses and doctors, the principle of risk responsibility (risk aansprakelijkheid) is based on the doctrine of representative responsibility. The legal basis is article 1367 paragraph (3) BW and article 46 of law no. 44 of 2009 regarding hospitals.

In the event of a transfer of liability, the hospital becomes the policyholder and the insurance company becomes the insurer. The insured agrees to bear all consequences and liabilities of the work of nurses as medical personnel for the benefit of the hospital as a company on the basis of agency liability. Hospitals are liable for care providers' negligence (32). In this case, the nurse works for and on behalf of the hospital as long as the actions are performed in accordance with the standards regulated by the profession, institution and government. Articles 29 and 36 of the Act. 38 of 2014 on Nursing. There is a clear working relationship based on established rules between nurses and hospitals. Hospitals may be responsible for the insurance coverage of nurses who carry out nursing activities in hospitals because they fall under the obligation to perform service duties bound by an agreed employment relationship to provide legal protection to the nursing profession. Furthermore, in article 36 of law no. 38 of 2014, hospitals are held liable for the losses of patients due to the negligence of healthcare professionals, which follows the provisions of article 46 of law no. 44 of 2009 on hospitals.

## CONCLUSION

Professional indemnity insurance is required for nurses in the healthcare industry. The hospital is the policyholder in this instance, and the insurance provider is the insurer. Hospitals are compelled to pay insurance companies' premiums. In order to safeguard nurses as healthcare professionals working in hospitals from patient requests for medical intervention, it is crucial to transfer responsibility for nurses to hospitals through nursing liability insurance.

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