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Legal Protection for Physicians in Cases of Patient Contributory Negligence Under Health Law

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ABSTRACT

Failures in medical treatment are often perceived as malpractice or negligence that is entirely attributable to physicians. However, patient harm is not always solely caused by medical personnel, but may also be influenced by patient conduct, such as failure to provide accurate health information, non-compliance with medical advice, or refusal of necessary medical procedures. This condition is known as contributory negligence. This study aims to analyze the legal framework governing medical treatment failures under Law Number 17 of 2023 concerning Health, as well as to examine legal protection for physicians when patient losses are influenced by contributory negligence. This research employs a normative juridical method with statutory and conceptual approaches. The data used consist of primary, secondary, and tertiary legal materials obtained through literature study and supported by interviews.The results of the study indicate that the regulation of medical treatment failure is governed by provisions concerning the rights and obligations of patients and healthcare providers, the implementation of healthcare services in accordance with professional standards, service standards, and standard operating procedures, as well as provisions on informed consent and medical records under Law Number 17 of 2023 concerning Health and Government Regulation Number 28 of 2024. Furthermore, contributory negligence may influence the determination of physicians' legal liability and, in certain circumstances, may serve as a basis to reduce, share, or even eliminate such liability. Legal protection for physicians is provided through preventive and repressive measures to ensure legal certainty in the delivery of healthcare services.

Keyword: *Contributory Negligence, Medical Treatment Failure, Legal Protection for Physicians, Medical Disputes*

ABSTRAK

Kegagalan tindakan medis sering kali dianggap sebagai bentuk kelalaian atau malapraktik yang sepenuhnya menjadi tanggung jawab dokter. Padahal, kerugian pasien tidak selalu disebabkan oleh tindakan tenaga medis, tetapi juga dapat dipengaruhi oleh perilaku pasien, seperti tidak memberikan informasi kesehatan secara jujur, tidak mematuhi anjuran medis, atau menolak tindakan medis yang diperlukan. Kondisi tersebut dikenal sebagai *contributory negligence* atau kontribusi kesalahan pasien. Penelitian ini bertujuan untuk menganalisis pengaturan hukum terkait kegagalan tindakan medis menurut Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan serta perlindungan hukum bagi dokter

apabila kerugian pasien turut dipengaruhi oleh kontribusi kesalahan pasien. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan perundang-undangan dan pendekatan konseptual. Data diperoleh dari bahan hukum primer, sekunder, dan tersier yang didukung oleh studi kepustakaan.Hasil penelitian menunjukkan bahwa pengaturan mengenai kegagalan tindakan medis diatur melalui ketentuan hak dan kewajiban pasien dan tenaga medis, pelaksanaan pelayanan kesehatan sesuai standar profesi, standar pelayanan, standar prosedur operasional, serta pengaturan *informed consent* dan rekam medis dalam Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan dan Peraturan Pemerintah Nomor 28 Tahun 2024. Selain itu, *contributory negligence* dapat memengaruhi penentuan tanggung jawab hukum dokter sehingga dalam kondisi tertentu dapat menjadi dasar untuk mengurangi, membagi, bahkan meniadakan tanggung jawab dokter. Perlindungan hukum bagi dokter diberikan melalui perlindungan preventif dan represif guna menjamin kepastian hukum dalam penyelenggaraan pelayanan kesehatan.

Keyword: *Contributory negligence, Kegagalan Tindakan medis, Perlindungan Hukum Dokter, Sengketa Medis.*

1. Introduction

Every individual is born with inherent dignity, freedom, and equal standing before the law and within society. This equality forms the basis for recognizing the rights inherent in every individual as inalienable rights. These rights play an important role in promoting justice, protection, and well-being for all individuals (ICCE UIN Jakarta, 2003). One of these fundamental rights is the right to health, which is closely connected to human survival and quality of life. The right to health encompasses the right to a healthy physical and mental condition, a healthy environment, and access to adequate and quality healthcare services. The right to health has received universal recognition through various international legal instruments, including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which affirm that every individual has the right to the highest attainable standard of health (Najla & Kansil, 2024).

The recognition of the right to health in various international legal instruments has provided a foundation for many countries, including Indonesia, to establish legal guarantees for this right. In Indonesia, the constitutional guarantee of the right to health is provided under Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which affirms that everyone has the right to live in physical and spiritual prosperity, to reside in and enjoy a good and healthy environment, and to receive healthcare services (Japar, 2024). This provision demonstrates that the right to health constitutes a human right that must be respected, protected, and fulfilled by the state. Consequently, the state bears a constitutional responsibility to establish a healthcare system that is equitable, accessible, and sustainable in order to ensure the fulfillment of every individual's right to health.

As part of the state's responsibility to fulfill the right to health, the Government enacted Law Number 17 of 2023 on Health as the legal basis for reforming and strengthening the national health system. This Law regulates various aspects of the healthcare system, including the rights and obligations of patients, health workers, medical professionals, and other supporting personnel (Maulidyanti et.al, 2024). Through this regulation, the legal relationship between medical professionals, particularly physicians, and patients is provided with greater legal certainty concerning their respective rights, obligations, and standards of care (Secillia *et al,* 2025).

In healthcare practice, this relationship arises when patients require the professional expertise and skills of physicians to obtain medical treatment, while physicians provide their medical competence and knowledge as part of healthcare services. This relationship establishes a legal bond that gives rise to rights and obligations for both parties. Physicians are required to provide medical services in accordance with professional standards and applicable laws and regulations, while patients have the right to receive adequate healthcare services and the obligation to provide accurate information regarding their health condition (Triana, 2023).

Since this relationship is based on an agreement, its validity must satisfy the requirements set out in Article 1320 of the Indonesian Civil Code, namely the parties' consent, their legal capacity to enter into an agreement, a clearly defined subject matter, and a lawful cause (Anita & Siregar, 2025). The element of consent is reflected in the provision of consent after receiving adequate information (informed consent), which involves a communication process between the physician and the patient regarding the medical treatment to be performed. Such consent is given after the physician has provided the patient with sufficient information concerning the planned medical treatment (Irfan, 2018).

Through informed consent, patients express their agreement to the proposed medical treatment while also gaining an understanding of the risks and potential consequences that may arise from it. The doctor–patient relationship serves as the foundation of medical practice, from the diagnostic stage through the performance of medical treatment, and is built upon mutual trust (Setyawa, 2017).In principle, the purpose of this relationship is to ensure that physicians provide the best possible care in accordance with applicable professional standards. Therefore, the resulting legal obligation does not constitute a resultaatverbintenis, which requires the achievement of a specific outcome as agreed upon by the parties (Flora, 2024).

Rather, the doctor–patient relationship falls within the category of an inspanningverbintenis, which emphasizes the obligation to make the best possible effort (Siregar, 2021). This means that physicians are required to provide optimal medical care in accordance with applicable professional standards and medical ethics. However, this obligation does not amount to a guarantee of a particular outcome, including a guarantee that the patient will recover. Accordingly, the failure of a medical treatment cannot automatically be regarded as a physician's negligence or fault. Instead, it must be assessed based on whether the physician has complied with the applicable professional standards.

In practice, however, the legal relationship between physicians and patients does not always operate as intended. Patients' failure to follow medical instructions, transfers between healthcare facilities without proper coordination, or incomplete disclosure of medical information may give rise to various legal issues. Such circumstances may lead to disputes concerning unsuccessful medical treatment, including disagreements over who should bear responsibility for the deterioration of a patient's condition (Putra *et al,* 2025). In legal scholarship, this situation is associated with the principle of contributory negligence, which refers to the contribution of the injured party to the harm suffered. The principle applies where a person who suffers a loss has also contributed to the occurrence of that loss through their own act or omission. In the context of medical treatment, a patient's contribution to the harm may take the form of failing to follow a physician's advice or instructions, discontinuing treatment without prior consultation, refusing recommended medical procedures or interventions, or failing to provide complete, accurate, and truthful information regarding their medical history or existing medical condition.

The application of the principle of contributory negligence involves assessing whether the patient has acted negligently in a manner that may serve as a basis for reducing or even relieving the physician of legal liability for losses arising from medical treatment (Haris, 2013). Under the common law system, contributory negligence is recognized as a form of defense that allows responsibility to be apportioned when the harm cannot be attributed entirely to one party. The assessment focuses on the extent to which the patient's conduct contributed to the resulting harm, with liability then allocated proportionally according to the degree of fault attributable to each party. This principle reflects the idea that, within a reciprocal legal relationship, both parties have a role in preventing harm from occurring or becoming more severe (Kale & Mali, 2023).

The occurrence of unsuccessful medical treatment resulting from contributory negligence has become an important issue in healthcare practice in Indonesia (Andrianto, 2026). Such negligence or conduct may not only worsen a patient's health condition but may also expose physicians to significant legal risks, even where they have fulfilled their professional obligations in accordance with applicable standards. Physicians may face legal consequences in the form of civil claims, administrative disputes, as well as potential impacts on their professional reputation and careers. The need for legal protection for medical professionals has gained a stronger legal basis following the enactment of Law Number 17 of 2023 on Health. This Law affirms that physicians may be protected from legal claims when unsuccessful medical treatment results from external factors, including the patient's contribution to the harm (Fibrini, 2021).

Several previous studies have examined issues relating to liability and legal protection in healthcare practice. Research conducted by (Lubis, 2024) focuses on the civil liability of physicians and hospitals for malpractice under Law Number 36 of 2009 on Health, while (Simbolon, 2024) examines the liability of hospitals and physicians for unlawful acts resulting in losses to patients. In addition, (Azizah, 2017) discusses the legal protection of physicians in providing medical treatment and the mechanisms for resolving alleged malpractice. However, these studies primarily focus on the liability of physicians and hospitals and on mechanisms for resolving medical disputes. They have not specifically examined contributory negligence, or the patient's contribution to the harm, as a factor that may affect the failure of medical treatment and its implications for physician liability and legal protection under Law Number 17 of 2023 on Health. Against this background, this study seeks to address this research gap by analyzing the legal framework governing unsuccessful medical treatment under Law Number 17 of 2023 on Health, the legal consequences for physicians when unsuccessful medical treatment results from contributory negligence or the patient's contribution to the harm, and the forms of legal protection available to physicians in such circumstances.

Although the contribution of patients to the failure of medical treatment has increasingly emerged as an issue, academic research and legal scholarship on the subject in Indonesia remain limited. Existing literature and court decisions have largely focused on physician negligence or hospital liability, while the patient's contribution as an external factor affecting the outcome of medical treatment has rarely been examined in depth. The limited body of research indicates that a knowledge gap remains. The absence of a comprehensive understanding of the role and contribution of patients in unsuccessful medical treatment may leave physicians legally vulnerable, even when they have provided medical treatment in accordance with applicable standards and regulations.

2. Method

This study employs a normative legal research method that focuses on examining legal materials through library research, particularly legislation and court decisions relevant to the research issues (Soemitro, 1999). The study is descriptive in nature, aiming to systematically describe and explain the applicable legal framework (Sahir, 2021), particularly in relation to unsuccessful medical treatment and *contributory negligence* in healthcare services.

The approaches used in this study include the statutory approach, which examines relevant legislation (Sahir 2021), particularly Law Number 17 of 2023 on Health, and the conceptual approach, which is carried out by examining relevant theories, expert opinions, and legal doctrines related to the research issues (Marzuki, 2013). The legal materials consist of primary legal materials, including legislation and court decisions; secondary legal materials, including books, journals, legal publications, and expert opinions; and tertiary legal materials, including dictionaries and other relevant reference sources (Saptto, 2020).

Legal materials were collected through library research by reviewing relevant literature and written documents (Rahmadi, 2011). Data collection was conducted through documentation by identifying and recording legal materials obtained from books, archives, official reports, institutional documents, and electronic sources relevant to the study (Nilamsari, 2014). The collected legal materials were then analyzed qualitatively by examining and interpreting relevant legal provisions and concepts to address the research issues (Sembiring, 2023). Conclusions were subsequently drawn using a deductive approach, namely by applying general legal provisions and principles to the specific issues examined in this study (Sriati, 2013).

Based on the foregoing discussion, this study focuses on three main questions: how is unsuccessful medical treatment regulated under Law Number 17 of 2023 on Health what are the legal consequences for physicians when unsuccessful medical treatment results from contributory negligence or the patient's contribution to the harm; and what forms of legal protection are available to physicians in such circumstances. To address these questions, this study aims to analyze these three aspects and contribute to the development of health law scholarship, particularly concerning the position of contributory negligence within the framework of physician liability and legal protection in Indonesia. Ultimately, this study is expected to provide a more comprehensive understanding of the legal framework, legal consequences, and forms of legal protection available to physicians when unsuccessful medical treatment results from patient contributory negligence.

3. Result and Discussion

3.1 Legal Provisions Governing Medical Treatment Failure by Physicians in Healthcare Services under Law Number 17 of 2023 on Health

Medical treatment failure can be understood as the failure to achieve the intended objective of a planned medical treatment, whether due to errors in the planning stage or errors during its implementation (Mahendra, 2025). Such failure may result from various factors. These include the patient's medical condition or medical history, which may have no direct connection to the treatment provided, as well as unavoidable circumstances that may be either unforeseeable or foreseeable but nevertheless cannot be prevented because the treatment represents the only available course of action. In addition, medical treatment failure may result from negligence in performing the treatment, intentional conduct, or contributory negligence, namely the patient's contribution to the harm, which may also play a role in causing the failure of medical treatment (Limbong, 2022).

The failure of medical treatment often raises questions as to whether the resulting consequences constitute a medical risk, malpractice, or medical negligence (Wicaksono, 2026). These concepts differ fundamentally in terms of their nature, underlying causes, and legal implications. It is therefore important to clearly distinguish between medical risks and medical negligence when determining whether legal liability arises from a particular medical treatment.

a. Medical risk
   Every medical treatment inherently carries a certain degree of risk (inherent risk of treatment). Such risks may arise even when a physician has performed the treatment carefully, in accordance with professional standards, and with the patient's consent. Therefore, physicians cannot automatically be held liable for every failure of medical treatment that occurs (Kholib, 2020). This is because risk is an inherent and inseparable part of medical treatments and procedures.
b. Medical Malpractice
   Etymologically, the term malpractice derives from the word mal, meaning bad or improper, and practice, referring to the practice or performance of a profession. Accordingly, malpractice may be understood as an act or practice carried out improperly or in an inappropriate manner in the course of performing a professional duty (Siregar, 2023). In healthcare, medical malpractice refers to conduct by medical professionals that fails to comply with standard operating procedures or the principles of due care in the provision of healthcare services, resulting in harm to the patient (Dananjaya, 2019). In general, medical malpractice may take the form of an error (medical error) or negligence (medical negligence) (Salwa, 2022).

An error refers to a mistake in the performance of medical treatment that causes healthcare services to deviate from what should have been provided. Negligence, on the other hand, occurs when a medical professional fails to exercise the level of care that should reasonably be expected when providing healthcare services, taking into account their competence, professional standards, and applicable regulations. The existence of negligence in medical practice cannot be determined automatically. Rather, it must be established based on the fulfillment of certain elements that serve as the basis for assessment, namely Duty of care, Deriliction/Breach of duty, Damage/Injury, and Direct Causation (Putra & Yustia, 2025).

Within Indonesia's healthcare system, Article 4 paragraph (1) of Law Number 17 of 2023 on Health affirms that everyone has the right to attain the highest possible standard of health, both physically, mentally, and socially. To realize this right, individuals are granted various rights in the provision of healthcare services, including the right to receive health information and education, the right to safe and quality healthcare services in accordance with applicable standards, the right to give consent after receiving a complete explanation (informed consent) regarding medical treatment, the right to confidentiality of health data and information, the right to receive information concerning their health condition, and the right to protection from various health risks (Sari, 2025).

In addition to regulating individual rights, Law Number 17 of 2023 on Health also establishes the obligations of every person, as provided under Article 5 paragraph (1). These obligations include maintaining and improving one's own health, adopting a healthy lifestyle, respecting the rights of others to a healthy environment, complying with measures to control disease outbreaks, and participating in the implementation of the national health insurance program (Sari, 2025). These provisions demonstrate that the provision of healthcare services is not solely the responsibility of the government and healthcare professionals, but also represents a shared responsibility among all parties.

In the provision of healthcare services, one of the most important legal relationships is the relationship between patients and medical professionals. Accordingly, the regulation of their respective rights and obligations is an important aspect that must be taken into consideration. Patients' rights are regulated under Article 276, including the right to receive medical explanations, the right to consent to medical treatment, and other related rights. Meanwhile, Article 277 sets out patients' obligations, including the obligation to provide truthful information regarding their health condition and to comply with physicians' instructions. On the other hand, the rights of medical professionals are regulated under Article 273, which include, among others, the right to obtain information regarding the patient's health condition, the right to obtain consent for medical treatment, and the right to legal protection in carrying out their professional practice. Correspondingly, Article 274 sets out physicians' obligations, including the obligation to perform medical treatment in accordance with applicable standards, professional codes of ethics, and the patient's needs. Furthermore, in the event of a medical dispute, Article 310 of Law Number 17 of 2023 on Health provides that the resolution of medical disputes must first be pursued through alternative dispute resolution mechanisms before the matter is brought before the courts.

a. Professional Responsibility
   Professional responsibility refers to the physician's obligation to practice medicine in accordance with their competence, professional authority, and applicable professional standards. The Health Law and the Indonesian Medical Code of Ethics regulate the obligations and professional conduct that medical professionals are required to observe in carrying out their duties. Medical professionals are therefore expected to maintain professional standards and act in accordance with applicable scientific and ethical principles (Syariffudin, 2024).
b. Moral Responsibility
   Moral responsibility refers to an individual's awareness of and accountability for their actions, while taking into consideration ethical values and the consequences that may arise from those actions (Ulum, 2026). In medical practice, this responsibility requires physicians to go beyond professional considerations and uphold humanitarian values when providing healthcare services to patients.
c. Legal Responsibility
   Legal responsibility refers to the obligation imposed on every individual to perform or refrain from performing an act in accordance with applicable laws, so that their conduct does not conflict with established legal provisions (Mahendra et.al, 2025). Accordingly, medical professionals are required to conduct their practice in compliance with applicable laws and regulations. Where a violation occurs in the course of providing medical services and causes harm to a patient, the physician may be held legally accountable (Farisa, 2025).

3.2 Legal Consequences for Physicians When Medical Treatment Failure Results from Contributory Negligence or Patient Contribution to the Harm

Contributory negligence is a principle originating from the common law system. It generally refers to the contribution of the injured party's own fault to the harm they have suffered (Dongen & Verdam, 2016). In England, this principle is regulated under the Law Reform (Contributory Negligence) Act 1945, particularly Section 1. The provision establishes that when a patient or claimant has contributed to the harm they have suffered, such contribution may be taken into account in determining the extent of liability to be borne by the parties (Kale & Mali, 2023).

This principle applies when a patient's act or omission contributes to the deterioration of their health condition or becomes one of the causes of the harm suffered. Although the concept of contributory negligence has not been expressly regulated under Indonesian law, the principle can, in essence, be identified through various legal provisions governing the rights and obligations of the parties involved in healthcare services. This principle is reflected in provisions concerning professional standards, the legal responsibilities of healthcare professionals, and patients' obligations in the provision of healthcare services. Under Law Number 17 of 2023 on Health, healthcare professionals are required to provide healthcare services in accordance with professional standards, professional service standards, standard operating procedures, and professional ethics, as provided under Article 274 letter a (Rahmadhani, 2024).

Furthermore, Article 280 provides that healthcare services must be carried out based on the best possible efforts in accordance with applicable standards. This provision indicates that the obligations of medical professionals

constitute an inspanningverbintenis, meaning that they are directed toward making the best possible effort rather than guaranteeing a particular outcome (Tsan & Nasser, 2024). Therefore, the failure of medical treatment cannot automatically be attributed to the fault of a medical professional, as the outcome of healthcare services may also be influenced by various other factors, including the patient's health condition and the patient's own conduct.

Although contributory negligence has not been specifically regulated under Indonesian legislation (Lindawati, 2025), the patient's contribution to the harm in medical disputes may nevertheless be assessed based on the elements of negligence recognized in legal doctrine, while taking into account the patient's position and role in the healthcare process. These elements include:

a. Duty to use due care
   This duty does not rest solely with medical professionals but also extends to patients as recipients of healthcare services. Medical professionals are required to apply their knowledge, skills, and expertise in providing healthcare services, whether to cure or to alleviate the patient's suffering (to cure and to care), in accordance with professional standards, service standards, standard operating procedures, professional ethics, and the patient's needs (Lesmonojati, 2020).
b. Dereliction (Breach of duty)
   A breach of duty occurs when a person fails to comply with a standard or obligation that should be observed, either by taking an action that should not have been taken or by failing to take an action that should have been taken (Fitry, 2024).
c. Damage
   Damage is an important element because the harm must be demonstrable and sufficiently connected to the healthcare services provided. Therefore, even where a medical professional is alleged to have acted negligently, if the conduct does not result in harm such as injury, physical impairment, or other adverse consequences to the patient, there may be insufficient grounds to impose legal liability (Rokayah & Widjaja, 2022).
d. Direct causation
   This causal relationship demonstrates that the harm suffered was not caused by other factors outside the conduct in question, but was in fact a consequence of the failure to fulfill the relevant duty (Shakilla, 2025).

Patient contribution to harm in healthcare services may be reflected in various acts or omissions that interfere with the process of diagnosis, treatment, or medical procedures provided by medical professionals (Prameswari & Andrianto, 2021). The common forms of contributory negligence include the following:

a. Failure to Provide Accurate or Complete Medical Information
   This form of contributory negligence is reflected in Decision Number 23/PDT/2018/PT.DKI, in which the patient, who was initially treated for cardiac and gastric complaints, failed to undergo follow-up examinations as advised by the physician and did not disclose important information concerning their health condition. When the patient subsequently experienced a severe reaction in the form of Stevens Johnson Syndrome (SJS), which was suspected to have been caused by medication, the physician had previously conducted an anamnesis, performed an examination, and asked about the patient's history of allergies. However, the patient stated that they had no known allergies (Putusan Pengadilan Tinggi Jakarta No.23/PDT/2018/PT.DKI, 2018).
b. Failure to Comply with Medical Advice or Prescribed Treatment
   An example can be found in Decision No. 225/Pdt.G/2014/PN Bdg jo Putusan No. 369/Pdt/2015/PT Bdg. In this case, the patient sustained an injury and underwent treatment and orthopedic surgery. During the course of treatment, the physician did not provide any guarantee of recovery but instead made every reasonable effort in accordance with professional standards and obtained the patient's consent. Nevertheless, because the patient felt that they had not recovered, the patient unilaterally decided to transfer to another healthcare facility, namely Pondok Indah Hospital Jakarta, without a referral from the previous physician, and subsequently underwent repeat surgery (Putusan Pengadilan Negeri Bandung No. 225/Pdt.G/2014/PN Bdg, 2014).
c. Refusal of Necessary Medical Treatment
   This form of contributory negligence is reflected in Decision Number 11/Pdt.G/2019/PN Sgt jo Putusan Nomor 152/PDT/2019/PT SMR. During the course of treatment, the patient developed a complication in the form of glaucoma triggered by an infection. The infection was closely associated with inadequate hygiene practices, which were beyond the supervision of medical professionals because the patient's

hospitalization lasted only a few days (Putusan Pengadilan Negeri Sangatta, No.11/Pdt.G/2019/PN Sg, 2019). In its decision, the panel of judges considered that these circumstances demonstrated a contribution to the negligence on the part of the patient, particularly in relation to delayed follow-up and inadequate maintenance of cleanliness following the medical treatment (Lindawati, 2025).

The assessment of whether a physician has committed negligence must be conducted comprehensively by examining the entire course of healthcare services provided. This assessment includes whether medical professionals have complied with professional standards, service standards, standard operating procedures, professional ethics, and the patient's healthcare needs. These standards serve not only as technical guidelines but also as an ethical foundation for the practice of medicine (Sihotang & Hoesein, 2025).

Over time, the doctrine of contributory negligence was initially applied as a complete defence, whereby the contribution of fault by the injured party resulted in the loss of their entire right to claim compensation (UK Law Refrence, 2021). However, this approach was considered less consistent with principles of fairness because the injured party could lose their right to compensation even where their contribution to the harm was relatively minor. Consequently, a more flexible approach developed through the concept of apportionment of liability, which involves allocating responsibility according to the degree of each party's contribution to the harm. Through this mechanism, the court may impose a reduction of liability, whereby liability is reduced proportionally according to the degree of fault established (Statutes UK, 2026).

Overall, the legal liability of medical professionals is significantly influenced by the manner in which physicians and patients exercise their respective rights and fulfill their obligations. Where a patient fails to fulfill their obligations and such failure contributes to the harm suffered, the patient may be considered to have acted negligently as well. In such circumstances, the resulting legal consequences may include the reduction, apportionment, or even elimination of the medical professional's liability (Osmond & Kucheran, 2017).

3.3 Legal Protection for Physicians in Cases of Medical Treatment Failure Resulting from Contributory Negligence or Patient Contribution to the Harm

Legal protection refers to the guarantees provided by the legal system to legal subjects, whether through preventive or repressive measures, based on both written and unwritten legal provisions. In essence, legal protection reflects the function of law as a means of promoting justice, legal certainty, utility, and order in social life (Fibrini, 2021).

Preventive legal protection refers to protection provided before a dispute arises, with the purpose of preventing violations and establishing clear boundaries for the exercise of the rights and fulfillment of the obligations of the parties (Darmin et.al, 2024). In the healthcare sector, preventive protection is provided through various legislative provisions, particularly Law Number 17 of 2023 on Health. One form of such protection is the requirement for medical professionals to obtain a Registration Certificate (STR) and a Practice License (SIP) before engaging in professional practice (Martiyaningsih et.al, 2025).

Compliance with these requirements not only demonstrates the professionalism of medical professionals but also provides legal protection for the medical treatment they perform (Astutik, 2017). In addition, medical professionals are required to obtain informed consent before performing medical treatment, maintain the confidentiality of patients' health conditions, and document every medical treatment in medical records. Consent after receiving an explanation (informed consent) and medical records are not only integral components of healthcare services but also serve as forms of legal protection for medical professionals in carrying out their professional practice (Amaliah et.al, 2024).

In addition to preventive legal protection, there is also repressive legal protection, namely protection provided after a dispute or violation has occurred, with the purpose of resolving disputes and providing legal certainty and justice for the parties involved (Jaeni & Karsoma, 2025). In the healthcare sector, repressive legal protection is implemented based on applicable laws and regulations and cannot be separated from the role of professional disciplinary bodies. Under Article 308 of Law Number 17 of 2023 on Health, where a medical professional or other healthcare professional is suspected of committing a legal violation that may give rise to criminal or civil liability, the investigation process must first be preceded by a recommendation from the authorized professional disciplinary council or board. This mechanism is intended to ensure that allegations of

violations are examined objectively, systematically, and in accordance with professional standards, so that the assessment of the conduct of medical professionals involves parties with relevant expertise in the healthcare field (Iskandar et.al, 2024).
In addition, the resolution of alleged violations is distinguished based on the type of violation involved. Ethical violations are addressed through the Medical Ethics Honorary Council (MKEK), while violations of professional discipline are handled by the Medical Disciplinary Council (MDP) (Linu et.al, 2025). This mechanism demonstrates that not all medical issues immediately fall within the scope of criminal or civil law but are first assessed within the professional framework (Elizar et.al, 2024). Repressive legal protection serves not only as a means of law enforcement but also as a mechanism for achieving fair and proportionate dispute resolution. In this regard, contributory negligence or patient contribution to the harm may be considered as one of the factors influencing the determination of a physician's legal liability for the medical treatment provided (Felenditi, 2009).

Although the principle of contributory negligence or contribution to fault has not been expressly regulated under Indonesian legislation, the concept may be traced through the legal liability framework established under the Indonesian Civil Code, particularly Articles 1365, 1366, and 1367. Article 1365 of the Indonesian Civil Code provides that any unlawful act causing loss obliges the party whose fault caused such loss to provide compensation. This provision demonstrates that fault constitutes a fundamental basis for determining the existence of legal liability (Widjayanto et.al, 2024).

Accordingly, where the harm suffered is not caused entirely by the medical treatment provided but is also influenced by the patient's negligence, legal liability cannot automatically be imposed entirely on the physician. This is consistent with Article 1366 of the Indonesian Civil Code, which provides that every person is responsible for losses resulting from their own fault or negligence (Rahman, 2026).

This includes circumstances in which the loss arises from the patient's own conduct. Furthermore, Article 1367 of the Indonesian Civil Code demonstrates that civil liability is not necessarily imposed solely on one party. Therefore, in determining liability, consideration should be given to the parties who have contributed to the occurrence of the harm (Sudjana et.al, 2026).

In addition, Law Number 17 of 2023 on Health comprehensively regulates the rights and obligations of medical professionals and patients in the provision of healthcare services (Ginting et.al, 2025). These provisions indirectly reflect a balance of responsibilities between the two parties. Article 273 letter a provides that medical professionals have the right to legal protection insofar as they perform their duties in accordance with professional standards, professional service standards, standard operating procedures, professional ethics, and the patient's healthcare needs. Such protection is important because healthcare is a complex field involving significant risks, meaning that the outcome of medical treatment does not always correspond to the patient's expectations even when the treatment has been performed in accordance with applicable requirements (Amaliah et.al, 2024).

4. Conclusion

The legal framework concerning contributory negligence is reflected in Law Number 17 of 2023 on Health through provisions governing the rights and obligations of patients under Articles 276 and 277, as well as the rights and obligations of medical professionals under Articles 273 and 274. In addition, the obligations of medical professionals to provide healthcare services in accordance with professional standards are addressed in Article 280, which requires the provision of the best possible efforts, and Article 291, which requires medical professionals to provide an explanation and obtain consent before performing medical treatment. Meanwhile, the mechanism for resolving medical disputes is regulated under Article 310, which prioritizes out-of-court resolution before judicial proceedings are pursued. These provisions are further supported by the principle of civil liability, particularly Article 1365 of the Indonesian Civil Code concerning Unlawful Acts, which serves as a basis for assessing legal liability for losses caused by an unlawful act. Therefore, more specific regulation of contributory negligence within healthcare legislation is needed to provide greater legal certainty and serve as a clear guideline for resolving medical disputes.

The concept of contributory negligence or patient contribution to the harm in healthcare services may be identified through the failure of patients to fulfill their obligations under Article 277 of Law Number 17 of

2023 on Health, such as failing to provide accurate and complete health information, failing to follow the advice of medical professionals, or refusing necessary medical treatment. Accordingly, the determination of legal liability in cases of medical treatment failure must take into account the existence of fault, the causal relationship between the conduct and the resulting harm, and the degree of each party's contribution to the occurrence of the loss. Thus, patient contribution to the harm may constitute one of the factors influencing a physician's legal liability. These findings highlight the importance of strengthening the understanding of contributory negligence so that the determination of legal liability can be carried out in a more fair and proportionate manner while contributing to the development of health law scholarship in Indonesia.

Legal protection for physicians in cases involving patient contributory negligence may be provided through both preventive and repressive measures. Preventive protection includes ensuring that medical professionals possess a Practice License and Registration Certificate, providing healthcare services in accordance with applicable professional standards and codes of ethics, obtaining consent for medical treatment based on adequate information (informed consent), and maintaining complete and accurate medical records. Meanwhile, repressive protection is provided through mechanisms for resolving medical disputes, both through out-of-court mechanisms, such as mediation, arbitration, conciliation, consultation, and negotiation, and through judicial proceedings. To support such protection, medical professionals and healthcare facilities need to ensure compliance with professional standards, informed consent requirements, and medical record-keeping obligations, not only as forms of legal protection but also as evidentiary instruments in the event of a medical dispute.

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