



## **Legal Protection and Liability of Anesthesiologists in High-Risk Medical Procedures: A Normative Juridical Study**

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### **Abstract**

Medical complications in anesthesiology frequently create legal disputes due to the unclear distinction between inherent medical risks and medical negligence in Indonesian healthcare practice. Previous studies generally discuss medical malpractice broadly, while limited research specifically examines legal protection and proportional liability for anesthesiologists in high-risk medical procedures. This study aims to analyze the forms of legal protection for anesthesiologists and determine the limits of their legal liability within the Indonesian healthcare legal system. This research uses a normative juridical method with statutory, conceptual, and case approaches. Primary legal materials include Law Number 17 of 2023 on Health, the Civil Code, and the Criminal Code, supported by legal doctrines and scholarly literature. The analysis applies qualitative legal reasoning through systematic interpretation and doctrinal analysis. The findings show that legal protection for anesthesiologists consists of preventive and repressive mechanisms. Preventive protection is implemented through professional standards, standard operating procedures, informed consent, medical records, and patient safety systems. Repressive protection is conducted through mediation, medical audits, disciplinary proceedings, and litigation as a last resort in resolving medical disputes. The study also finds that legal liability in anesthesiology only arises when unlawful conduct, fault, damage, and causality are cumulatively proven. The novelty of this study lies in positioning anesthetic complications as inherent medical risks rather than automatically categorizing them as malpractice. The research contributes to the development of proportional medical liability theory and strengthens a standard-based approach in Indonesian health law.

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## **INTRODUCTION**

Anesthesiologists are medical professionals with a central role in ensuring patient safety across various clinical settings. In the operating room, anesthesiologists are responsible for conducting pre-anesthetic assessments, determining the safest type of anesthesia, managing the airway, monitoring vital functions during surgery, and providing postoperative pain management (Wilkinson, 2016). In the Intensive Care Unit (ICU), anesthesiologists play a critical role in managing critically ill patients, including hemodynamic stabilization, mechanical ventilation, sedation, analgesia, and making life-saving clinical decisions (Vincent, 2017). In resuscitation rooms, anesthesiologists are also involved in handling cardiac arrest, major trauma, respiratory emergencies, and other urgent conditions requiring rapid, precise, and high-risk interventions (Levitan, 2019).

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In carrying out their duties, anesthesiologists frequently encounter high-risk medical procedures, defined as interventions with a significant likelihood of causing serious complications, permanent injury, or even death, despite being performed in accordance with established standards. These procedures include general anesthesia, difficult airway management, endotracheal intubation, mechanical ventilation, resuscitation in critical conditions, sedation for high-risk patients, as well as invasive procedures such as nerve blocks, central venous catheter insertion, and pain management using epidural and spinal techniques (Cousins, 2012). These risks are not only clinical in nature but also relate to the legal safety of the responsible physician.

The complexity of anesthetic procedures places anesthesiologists in a vulnerable position with respect to legal claims in civil, criminal, and administrative law, especially when severe complications or patient deaths occur. Patients or their families often assume that the anesthesiologist bears the greatest responsibility, even when medical procedures have been performed in accordance with professional standards (Yani, 2017; Poernomo, 2019). In fact, many adverse outcomes are not caused by negligence but represent inherent risks of medical procedures themselves, such as respiratory failure, cardiac arrest, or severe allergic reactions to anesthetic drugs (Saks & Landsman, 2021). These complications may arise despite proper clinical management, yet patients and families frequently perceive them as medical errors. Public misunderstanding regarding the limits of professional standards and inadequate medical documentation can further weaken the legal position of medical practitioners. This situation illustrates the ongoing difficulty in distinguishing unavoidable medical risks from professional negligence, particularly in high-risk procedures where adverse outcomes cannot always be prevented.

Several cases in Indonesia demonstrate this problem. In the anesthesia case at RSUP Dr. Sardjito Yogyakarta, a patient died following an anaphylactic reaction to anesthetic drugs during surgery. Although a criminal complaint was filed against the anesthesiologist, the Indonesian Medical Discipline Honor Council (MKDKI) concluded that the procedure had been conducted in accordance with professional standards and that the patient's death constituted an unavoidable medical complication rather than negligence (Suparlan, 2012). A similar situation occurred in the "Dr. Ayu et al." case at RSUP Prof. Dr. Kandou Manado, where physicians, including an anesthesiologist, were accused of negligence resulting in death. However, the Supreme Court ultimately determined that the medical procedures had complied with professional standards and that the complications represented unavoidable medical risks. These cases indicate that legal uncertainty persists regarding the distinction between medical negligence and inherent medical risk, creating challenges for determining the scope of legal protection and liability of anesthesiologists. Differences in understanding between medical negligence and medical risk continue to be debated in both civil and criminal law. Anesthesiologists work under high pressure and complex clinical conditions, where the outcomes of medical interventions cannot always be fully predicted.

Within the Indonesian healthcare legal system, legal protection for medical personnel, including anesthesiologists, has been regulated under Law Number 29 of 2004 on Medical Practice, Law Number 36 of 2009 on Health, Law Number 36 of 2014 on Health Workers, and Law Number 17 of 2023 on Health. These regulations generally provide guarantees regarding professional standards, patients' rights, informed consent, disciplinary mechanisms, and legal protection for healthcare workers in performing medical services. Nevertheless, the normative construction of these regulations still leaves several legal uncertainties, particularly concerning the distinction between inherent medical risk (*risk of treatment*) and medical negligence in anesthesiology practice (Wardiyah, 2020).

The legal problem examined in this study originates from the absence of clear normative boundaries between inherent medical risk (*risk of treatment*) and medical negligence in high-risk medical procedures, particularly in anesthesiology practice. This issue creates legal uncertainty because Indonesian healthcare regulations have not comprehensively formulated the parameters for determining when medical complications may be categorized as unavoidable clinical risks and when they constitute negligence. As a consequence, complications or patient deaths occurring during anesthetic procedures are frequently interpreted inconsistently by patients, hospitals, professional organizations, and law enforcement authorities. This condition reflects a theoretical problem concerning the proportional limits of medical liability, as well as a juridical problem regarding legal certainty and legal protection for anesthesiologists.

Normative ambiguity can be identified in several regulatory provisions. Article 273 and Article 308 paragraph (1) of Law Number 17 of 2023 on Health require healthcare personnel to comply with professional standards, service standards, and standard operating procedures, yet the law does not explicitly define the legal criteria distinguishing unavoidable medical complications from negligent conduct. Likewise, Article 46 of Law Number 44 of 2009 on Hospitals places liability on hospitals for losses caused by healthcare workers' negligence without providing clear indicators for assessing negligence in emergency or high-risk procedures such as anesthesiology. Although Article 310 of Law Number 17 of 2023 on Health prioritizes mediation in resolving medical disputes, the absence of detailed procedural standards regarding medical dispute assessment has resulted in inconsistent legal interpretations in practice.

Studies on legal protection and medical liability have been widely conducted at both national and international levels. Existing research has primarily focused on medical malpractice, professional accountability, patient rights, dispute resolution mechanisms, and legal responsibility arising from professional negligence (Vitrianiingsih et al., 2024; Haryono et al., 2024; Purwanto et al., 2025). In the field of anesthesiology, previous studies have largely examined patient safety, clinical risk management, adverse events, informed consent, and ethical issues associated with anesthesia practice (Bielka et al., 2023; Brook et al., 2024; Samara et al., 2023). International studies have also emphasized patient safety systems, incident reporting, and the prevention of medical errors in anesthesiology and surgical care (Gaba, 2000; Haynes, 2009). Although these studies provide important insights into medical malpractice, patient safety, and medico-legal issues, they generally focus on clinical and managerial aspects rather than the normative legal protection of anesthesiologists.

Furthermore, limited scholarly attention has been devoted to examining the legal implications of anesthetic complications that occur despite compliance with professional standards, standard operating procedures, informed consent requirements, and patient safety principles. Existing literature has not sufficiently distinguished inherent medical risks from medical negligence as the basis for determining legal liability in anesthesiology practice. Consequently, the legal protection and proportional liability of anesthesiologists remain insufficiently explored, particularly within the Indonesian healthcare legal framework. This gap highlights the need for a comprehensive legal analysis that integrates preventive and repressive legal protection mechanisms with the principles of civil, criminal, and administrative liability in order to provide greater legal certainty for anesthesiologists operating in high-risk medical environments.

This study introduces a standard-based legal framework for assessing anesthesiologists' liability by distinguishing inherent medical risks from medical negligence through the integration of professional standards, informed consent, patient safety principles, and proportional liability doctrines. By establishing clearer parameters for differentiating unavoidable medical complications from negligent conduct, this study contributes to strengthening legal certainty, professional accountability, and patient protection within the Indonesian healthcare legal system. Based on the identified legal issues and research gaps, this study aims to analyze the forms of legal protection for anesthesiologists and determine the limits of their legal liability within the Indonesian healthcare legal system.

## METHOD

The type of research employed in this study is normative legal research (juridical-normative) with a qualitative analytical design. The research focuses on examining legal norms governing legal protection for anesthesiologists in performing high-risk medical procedures, as well as the limits of legal liability in cases involving medical complications or patient death. In order to strengthen the contextual relevance of the study, the normative analysis is supported by a limited socio-legal approach through the examination of healthcare service practices at RSUD Patut Patuh Patju Lombok Barat. The study primarily positions law as a normative system (*law in books*) while also considering its practical implementation in healthcare services (Amiruddin, 2020).

This study is conducted at RSUD Patut Patuh Patju Lombok Barat because the hospital represents a regional public hospital that handles emergency, surgical, and referral services with significant anesthesiology involvement in high-risk medical procedures. As a public healthcare

institution serving a broad community in West Lombok Regency, the hospital reflects practical challenges commonly faced by anesthesiologists in regional healthcare services, including limited resources, emergency case management, and the potential emergence of medical disputes related to complications or patient death. Therefore, the hospital provides a relevant context for examining how legal protection and legal liability are implemented in healthcare practice. Based on these considerations, this study focuses on analyzing the construction of legal protection for anesthesiologists and determining the limits of their legal liability in high-risk medical procedures. The objectives of this study are: (1) to identify the forms of legal protection available for anesthesiologists, and (2) to analyze the scope of their legal liability in cases involving complications or patient death.

This research applies three legal approaches, namely the statutory approach, conceptual approach, and case approach. The statutory approach is used to identify and analyze regulations related to healthcare services, medical practice, patient safety, legal protection for medical personnel, and medical liability, particularly those regulated under Law Number 17 of 2023 on Health, the Civil Code, and the Criminal Code. The conceptual approach is utilized to examine doctrines and legal concepts concerning legal protection, medical negligence, inherent medical risk (*risk of treatment*), professional standards, informed consent, and proportional liability theory. Meanwhile, the case approach is conducted through the analysis of relevant court decisions, disciplinary cases, and medical dispute cases involving healthcare services in order to understand the application of legal norms in practice.

The legal materials used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include legislation, court decisions, and official legal documents relevant to healthcare law and medical liability. Secondary legal materials consist of books, scientific journals, legal doctrines, and Scopus- or Web of Science-indexed articles discussing anesthesiology, patient safety, and medical liability. Tertiary legal materials include legal dictionaries, encyclopedias, and supporting reference sources used to clarify legal terminology and concepts. The selection of these legal materials is based on their relevance, academic credibility, and consistency with the research issues examined.

The collection and processing of legal materials are conducted through literature study, document classification, and systematic legal inventory. All legal materials are then analyzed qualitatively using prescriptive and argumentative legal reasoning. The analysis process includes identifying relevant legal norms, interpreting statutory provisions systematically, comparing legal doctrines, and constructing coherent legal arguments to answer the research problems. This analytical method is intended to produce a comprehensive understanding of legal protection and liability for anesthesiologists, while also formulating recommendations for strengthening legal certainty and the development of Indonesian health law (Marzuki, 2021).

## RESULTS AND DISCUSSION

### **Forms of Legal Protection for Anesthesiologists in the Implementation of High-Risk Medical Procedures at Patut Patuh Patju Regional Public Hospital, West Lombok**

Based on this framework, preventive legal protection for anesthesiologists in healthcare practice in Indonesia can be classified into several interrelated main forms.

#### ***Preventive Legal Protection***

Indonesia, as a state based on the rule of law, guarantees that every citizen has the right to recognition, protection, and fair legal certainty. This guarantee is expressly affirmed in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that every person has the right to recognition, guarantees, protection, fair legal certainty, and equal treatment before the law. This provision does not merely place law as an instrument for regulating state life, but also as a means of protecting individual rights, including medical personnel who perform their professional duties in health services. Anesthesiologists, as part of medical personnel, have an equal position as legal subjects who are entitled to protection, particularly because their duties are directly related to the safety of human life (Negoro, 2023).

The principle of legal protection is rooted in the concepts of *rechtsstaat* and the rule of law, which place law as an instrument to guarantee justice and prevent abuse of power (Istiqamah et al., 2024). In health service practice, legal protection has two inseparable dimensions. On the one hand, the law must ensure that patients receive safe, high-quality services in accordance with professional standards. On the other hand, the law must also protect medical personnel from unfounded legal claims, provided that the actions taken have complied with professional standards, service standards, and standard operating procedures (Hartati et al., 2023).

In anesthesiology practice, the need for legal protection becomes increasingly important due to the high-risk nature of anesthetic procedures. Anesthetic procedures are not only related to the administration of drugs to eliminate pain, but also involve controlling the patient's vital bodily functions, such as respiration, blood pressure, and consciousness. Possible risks include severe allergic reactions such as anaphylactic shock, respiratory disorders, cardiovascular disturbances, and death. These conditions show that anesthetic procedures are never entirely free from risk, making it necessary to establish legal protection mechanisms that can anticipate possible complications without immediately blaming medical personnel (Sherliyanah & Romadhon, 2026).

From a theoretical perspective, legal protection for medical personnel is not only repressive in nature but must also be implemented preventively. According to Hadjon, (2000), preventive legal protection is an effort to prevent disputes through regulations that provide limitations, guidelines, and legal certainty before an action is undertaken. This approach is highly relevant in anesthesiology practice, as medical disputes generally arise from differing perceptions between inherent medical risks and alleged medical negligence. Therefore, the existence of clear legal norms, measurable professional standards, and standardized operational procedures becomes the primary instrument in preventing disputes from the outset.

An analysis of preventive legal protection indicates that the healthcare legal system in Indonesia has, in principle, established a normative framework to prevent legal conflicts between medical personnel and patients. This framework is reflected in regulations concerning the obligation to adhere to professional standards, the requirement to obtain informed consent, and the obligation to maintain medical records as a form of accountability for medical actions. These three instruments function as mechanisms for controlling legal risk by providing clear boundaries regarding what medical personnel are permitted and not permitted to do. Accordingly, if an anesthesiologist has performed a procedure in accordance with the established standards, such action should legally be regarded as part of an acceptable medical risk rather than as negligence.

Based on this framework, preventive legal protection for anesthesiologists in healthcare practice in Indonesia can be classified into several interrelated main forms. This classification is intended to provide a more systematic understanding of the legal mechanisms in preventing medical disputes from the stage prior to the performance of medical procedures. These forms of protection can be outlined as follows:

### *Protection through Compliance with Professional Standards, Service Standards, and Standard Operating Procedures*

Preventive legal protection for anesthesiologists is fundamentally grounded in compliance with professional standards, service standards, and standard operating procedures (SOPs) as regulated under Law Number 17 of 2023 on Health. Article 273 paragraph (1) stipulates that medical personnel are required to practice in accordance with applicable standards. This provision indicates that every medical procedure, particularly high-risk anesthesia, must be performed based on scientific guidelines and measurable procedures, thereby precluding arbitrary actions without legal and professional foundations.

In anesthetic practice, these standards encompass pre-anesthetic assessment, selection of appropriate techniques, intraoperative monitoring, and post-anesthetic management. Such standards serve as essential instruments to ensure patient safety while simultaneously providing legal protection for medical personnel. At Patut Patuh Patju Regional Public Hospital, West Lombok, the implementation of these norms is reflected in the use of anesthesiology Clinical Practice Guidelines (CPGs) and SOPs established by the hospital. These guidelines function as operational frameworks to ensure that medical actions are carried out systematically and are legally accountable.

Where a physician acts in accordance with these standards, they are, from a legal standpoint, in a protected position.

Furthermore, Article 271 paragraph (1) letter (a) of the Health Law affirms that medical personnel are entitled to legal protection insofar as they perform their duties in accordance with professional and service standards. This indicates that legal protection is conditional and largely dependent on adherence to such standards. This approach demonstrates that Indonesian health law adopts a standard-based approach, whereby legal assessment is not solely based on outcomes but also on the process and conformity of actions with established standards.

Within this framework, professional standards function as a “legal shield” for anesthesiologists. As long as medical procedures are performed in accordance with established protocols and supported by complete medical documentation, any resulting complications should not automatically be construed as negligence. Accordingly, compliance with standards constitutes a primary requirement for legal protection, while also ensuring patient safety and legal certainty in medical practice.

### *Protection through Licensing, Registration, and Clinical Authority*

Preventive legal protection for anesthesiologists is not only realized through compliance with professional standards, but also through the system of registration and licensing of medical personnel as regulated under Law Number 17 of 2023 concerning Health. This system functions as an initial mechanism to ensure that every practicing medical professional has met the qualifications, competencies, and ethical standards established by the state.

This provision is affirmed in Article 263, which stipulates that every medical professional must possess a Registration Certificate (Surat Tanda Registrasi – STR). The STR constitutes official state recognition of a medical professional’s competence and, therefore, serves not merely as an administrative document but as professional legitimacy to provide healthcare services. Furthermore, Article 264 regulates that medical professionals are also required to obtain a Practice License (Surat Izin Praktik – SIP) in accordance with their place of practice. The SIP functions as an operational legal authorization that restricts medical practice to specific healthcare facilities. Accordingly, preventive legal protection is constructed through a two-tier mechanism, namely the recognition of competence through the STR and the recognition of legal practice authority through the SIP.

In practice at Patut Patuh Patju Regional Public Hospital, West Lombok, this system is reinforced through internal mechanisms in the form of clinical privileges granted by the Medical Committee. These privileges are conferred through a credentialing process that involves the assessment of the anesthesiologist’s competence, experience, and technical capabilities. This process serves as an additional safeguard to ensure that physicians performing high-risk procedures possess adequate qualifications.

The implementation of the STR, SIP, and clinical privilege system has significant implications for legal accountability. Anesthesiologists who have fulfilled all these requirements can demonstrate that their medical actions were conducted in accordance with professional standards and legal provisions, thereby strengthening their legal position in the event of a dispute. Conversely, the absence of an STR or SIP, or the performance of actions beyond granted clinical privileges, may be categorized as administrative violations that could lead to further legal consequences.

### *Protection through Informed Consent*

One of the most fundamental forms of preventive legal protection in high-risk medical procedures, including anesthesia, is the implementation of informed consent. Informed consent should not be understood merely as an administrative procedure, but rather as a legal instrument that reflects respect for patient rights while simultaneously providing legal legitimacy for medical personnel in performing medical actions (Sastrani, 2025).

The obligation to obtain consent for medical procedures is explicitly regulated in Article 293 paragraph (5) of Law Number 17 of 2023 concerning Health, which states that “medical procedures that involve high risk must obtain written consent from the patient or their family.” This provision emphasizes that any medical procedure with the potential to cause serious risks, including anesthesia, cannot be performed without clear and properly documented written consent from the patient or an authorized representative.

The normative meaning of this provision demonstrates the state's strong emphasis on the principle of patient autonomy, namely the patient's right to determine the medical treatment they will receive after obtaining adequate information (Arthanti, 2025). In the context of anesthesia, this principle is particularly important because anesthetic procedures directly affect the patient's vital functions, including consciousness, respiration, and cardiovascular stability. Therefore, patients must be provided with comprehensive explanations prior to giving consent.

In practice, informed consent in anesthetic procedures must encompass several essential aspects. These include an explanation of the patient's diagnosis or medical condition, the purpose of anesthesia, the type of anesthetic procedure to be used whether general, regional, or local anesthesia potential risks such as allergic reactions (anaphylaxis), respiratory complications, hypotension, or cardiac arrest, available alternatives including the option to refuse treatment, and the prognosis or expected outcomes of the procedure.

The regulation of informed consent is not limited to the Health Law but is further reinforced by Minister of Health Regulation Number 290 of 2008 concerning Consent for Medical Procedures. This regulation stipulates that consent must be preceded by the provision of complete, honest, and comprehensible information to the patient, including diagnosis, purpose, alternatives, risks and complications, and prognosis. Written consent is particularly required for high-risk procedures such as anesthesia.

From a civil law perspective, informed consent is closely related to the concept of agreement as regulated in Article 1320 of the Indonesian Civil Code, which sets out four requirements for a valid contract: mutual consent, legal capacity, a specific subject matter, and a lawful cause. In the context of medical procedures, informed consent constitutes a concrete manifestation of agreement between the doctor and the patient. In the absence of valid consent, a medical procedure may be classified as an unlawful act (Lintang, 2021).

If a medical procedure is performed without valid consent, it may be considered a violation of patient rights and may give rise to legal liability for medical personnel. This is consistent with Article 1365 of the Indonesian Civil Code, which provides that any unlawful act causing harm obliges the responsible party to compensate for the loss. Therefore, informed consent functions as a crucial preventive legal protection mechanism to avoid potential legal disputes.

In practice at Patut Patuh Patju Regional Public Hospital, West Lombok, the implementation of informed consent must be carried out systematically and properly documented in medical records. Anesthesiologists are obligated to ensure that patients or their families fully understand the information provided, rather than merely signing consent forms. Effective communication between the doctor and the patient is therefore a key factor in the implementation of informed consent.

In addition to protecting patient rights, informed consent also provides legal protection for anesthesiologists. Through valid consent, doctors can demonstrate that the medical action performed was authorized by the patient following an adequate information process. This becomes particularly important in the event of complications or unfavorable outcomes, as the doctor can establish that such risks had been clearly explained beforehand (Rohman & Syafruddin, 2019).

### *Protection through Medical Records*

Medical records constitute an essential instrument in healthcare services, serving not only as clinical documentation but also as a legal mechanism that provides preventive protection for medical personnel, including anesthesiologists (Berutu et al., 2020). The obligation to maintain medical records is expressly stipulated in Article 296 of Law Number 17 of 2023 concerning Health, which states that every healthcare facility is required to maintain medical records. This provision affirms that medical records are a legal obligation and form an integral part of an accountable and reliable healthcare system.

This requirement is further elaborated in the Minister of Health Regulation Number 24 of 2022 concerning Medical Records, which mandates that medical records must contain complete and systematic data, including patient identity, examination results, diagnosis, treatment plans, and outcomes of care. Accordingly, medical records serve a dual function, both as medical documentation and as valid legal evidence.

In anesthetic procedures, medical records assume an even more critical role, as anesthesia is categorized as a high-risk procedure. Therefore, documentation must be comprehensive and

chronological, covering the pre-anesthetic phase (assessment of the patient's condition and risk factors), the intra-anesthetic phase (type, dosage, technique, and patient response), and post-anesthetic monitoring in the recovery room. The completeness of such records serves as an indicator that the procedure has been conducted in accordance with professional standards and standard operating procedures.

Medical records function as primary evidence in medical disputes, whether in civil, criminal, or administrative proceedings. Complete medical records can demonstrate that the physician has acted in accordance with established standards, whereas incomplete records may give rise to presumptions of negligence. For this reason, medical records are often referred to as a "legal shield" for medical personnel, as they can provide protection against potential legal claims. At Patut Patuh Patju Regional Public Hospital, West Lombok, the implementation of medical record systems, particularly electronic medical records, plays a significant role in ensuring patient safety while simultaneously providing legal protection for anesthesiologists.

### *Protection through Patient Safety and Risk Management Systems*

Preventive legal protection for anesthesiologists in the implementation of high-risk medical procedures is not solely grounded in compliance with professional standards and operational procedures, but is also strengthened through the implementation of patient safety systems and integrated risk management within the healthcare system (Larasati & Dhamanti, 2021). This approach constitutes part of a systemic effort to prevent medical errors that may result in harm to patients as well as legal risks for medical personnel.

The obligation to implement patient safety systems is regulated under Government Regulation Number 28 of 2024 as an implementing regulation of Law Number 17 of 2023 concerning Health. This provision affirms that healthcare facilities, including hospitals, are required to deliver services oriented toward quality and patient safety. Substantively, this norm embodies the principle that every medical action must be carried out with due regard to risk prevention, hazard control, and continuous quality improvement.

The regulation mandates the implementation of patient safety systems that include risk identification, incident reporting, analysis of adverse events, and corrective follow-up actions. It further stipulates that healthcare facilities are required to document, report, and learn from patient safety incidents in order to prevent recurrence. This reflects that patient safety is a responsibility of the healthcare system as a whole, rather than solely that of individual medical personnel.

In anesthetic practice, the implementation of patient safety systems is particularly critical due to the high risk of complications that may occur rapidly. Risk management is therefore conducted continuously, beginning with the pre-anesthetic phase through patient assessment, including medical history, physical condition, allergies, and other risk factors, with the aim of identifying potential complications at an early stage.

During the intra-anesthetic phase, anesthesiologists are required to continuously monitor the patient's vital functions, supported by appropriate medical equipment and team readiness to manage emergencies. In the post-anesthetic phase, strict monitoring is maintained in the recovery room (Post-Anesthesia Care Unit/PACU) to ensure that no further complications arise. These stages collectively demonstrate that risk management is an integral component of the patient safety system.

The implementation of this system, including at Patut Patuh Patju Regional Public Hospital, West Lombok, plays a significant role in improving service quality while simultaneously providing preventive legal protection for anesthesiologists. In the event of a medical dispute, the patient safety system may serve as evidence that medical actions were performed in accordance with established standards, thereby minimizing potential legal liability.

### ***Repressive Legal Protection***

Repressive legal protection refers to a form of protection provided after a dispute or legal issue has arisen, aimed at resolving the conflict while ensuring justice for all parties involved, including anesthesiologists as medical professionals performing high-risk procedures (Dewi, 2015). In healthcare practice, particularly in anesthesiology, repressive protection plays a crucial role given the inherent nature of anesthetic procedures, which carry the possibility of complications even when they are performed in accordance with professional standards and standard operating procedures.

Therefore, the presence of law in this context does not merely function as an instrument to assess and punish wrongdoing, but also as a means to protect medical personnel from disproportionate criminalization, especially in cases that actually constitute unavoidable medical risks (*risk of treatment*).

From a theoretical perspective, the concept of repressive legal protection as proposed by Hadjon, (2000) emphasizes that legal protection after a violation or dispute is realized through dispute resolution mechanisms, both through judicial institutions (*litigation*) and outside the courts (*non-litigation*). This protection aims to correct actions deemed unlawful, restore the rights of the injured party, and ensure that the law enforcement process operates in a fair and proportional manner. In the context of medical personnel, including anesthesiologists, the repressive approach must be able to clearly distinguish between professional error (*malpractice*) and inherent medical risk, thereby preventing the misuse of legal instruments that could hinder healthcare practice.

Repressive protection for anesthesiologists is comprehensively regulated under Law Number 17 of 2023 on Health, and is further supported by provisions in the Civil Code, the Criminal Code, and other implementing regulations. This legal framework provides various dispute resolution mechanisms, ranging from civil lawsuits based on unlawful acts, criminal liability in cases involving gross negligence, to professional disciplinary mechanisms through ethical and medical disciplinary bodies. The existence of these mechanisms demonstrates that repressive legal protection is not solely oriented toward punishment, but also toward the enforcement of substantive justice, professional protection, and legal certainty for medical personnel.

For ease of understanding, repressive legal protection can be classified into several main forms as follows:

#### *Protection through the Right to Legal Assistance and Hospital Responsibility*

One significant form of repressive legal protection in healthcare practice is the guarantee of medical personnel's right to obtain legal assistance from the institution in which they are employed. This protection is not merely individual in nature but also reflects the institutional responsibility inherent in hospitals as providers of healthcare services (Wardiyah, 2020).

In the context of high-risk medical procedures such as anesthesia, the relationship between physicians and hospitals cannot be rigidly separated, as medical actions are fundamentally carried out within an integrated healthcare system. Consequently, when medical disputes arise, whether in the form of civil claims or criminal charges, liability should not be attributed solely to the physician as the executor of the procedure, but must also be examined within the framework of institutional responsibility.

Normatively, this principle is affirmed in Article 193 of Law Number 17 of 2023 on Health, which states: "Hospitals are legally responsible for all losses resulting from negligence committed by Medical Personnel and Health Workers within the hospital." This provision carries significant legal implications, as it emphasizes that hospitals cannot disclaim legal responsibility for the actions of medical personnel operating within their institutional framework. In other words, where harm arises from negligence in healthcare services, the hospital as an institution shares legal responsibility.

This provision reflects the application of the principle of *vicarious liability* in health law. This principle denotes that a legal entity or institution may be held accountable for acts committed by individuals under its supervision, provided such acts are performed within the scope of their assigned duties or authority (Sudjana et al., 2026). In the hospital context, medical personnel, including anesthesiologists, operate as part of an organizational system governed by clinical authority, standard operating procedures, and institutional policies. Therefore, where anesthesiologists perform medical procedures within the scope of their duties and in accordance with applicable standards, the resulting legal consequences cannot be imposed entirely upon them in their personal capacity.

#### *Protection through Non-Litigation Dispute Resolution Mechanisms*

The development of health law in Indonesia in recent years indicates a significant paradigm shift, particularly in the resolution of medical disputes. Whereas dispute resolution was previously directed toward litigation through criminal and civil court proceedings, there is now a strong tendency to prioritize non-litigation dispute resolution mechanisms (Tungga, 2023).

This shift is driven by the need to establish a legal system that is more just, proportional, and capable of accommodating the unique characteristics of healthcare practice, which is inherently associated with risk and uncertainty. In this context, the law is no longer positioned solely as an instrument of punishment, but also as a means of restoring social relationships and ensuring the continuity of high-quality healthcare services.

This policy direction is normatively affirmed in Law Number 17 of 2023 concerning Health, particularly Article 310, which provides that: "In the event of a dispute in the health sector, dispute resolution shall first be pursued through alternative dispute resolution mechanisms outside the court." This provision is of considerable importance, as it explicitly establishes non-litigation mechanisms as the primary step to be undertaken before the parties bring the dispute before a court. Accordingly, litigation is no longer regarded as the primary avenue, but rather as a last resort (*ultimum remedium*) when amicable settlement cannot be achieved.

Article 310 reflects the state's recognition of the importance of a more humane and party-oriented approach to dispute resolution. The alternative dispute resolution mechanisms referred to in this provision include mediation, negotiation, and restorative justice approaches. Mediation, for instance, provides a forum for the parties to engage in open dialogue with the assistance of a neutral third party in order to reach a mutual agreement. Negotiation allows the parties to resolve disputes directly without judicial intervention, while restorative justice emphasizes the restoration of social relationships disrupted by the dispute (Ananda & Afifah, 2023).

The application of non-litigation mechanisms is particularly relevant given that anesthetic procedures are classified as high-risk medical interventions. Complications that arise, including the possibility of patient death, are not always attributable to fault or negligence on the part of medical personnel, but may instead constitute inherent medical risks associated with such procedures. Therefore, in cases of disputes arising from anesthetic complications, resolution through dialogue and mutual agreement is more appropriate than immediately resorting to litigation, which tends to be adversarial in nature.

In practice at Patut Patuh Patju Regional Public Hospital, West Lombok, the implementation of non-litigation dispute resolution can be carried out through several mechanisms embedded within the hospital's service system. One such mechanism is the patient complaint unit, which serves as the initial gateway for the public to submit complaints or objections regarding the services received. In addition, the hospital may facilitate internal mediation involving hospital management, relevant medical personnel, and the patient or their family in order to achieve the most appropriate resolution.

### *Protection through Professional Disciplinary Mechanisms*

Repressive legal protection for medical personnel, particularly anesthesiologists, is not only realized through litigation mechanisms in courts, but also through dispute resolution mechanisms based on professional discipline, which are specifically regulated under Indonesian health law. Law Number 17 of 2023 concerning Health provides a strong normative foundation for this mechanism, notably through Article 304, which states that "violations of professional discipline by medical personnel shall be examined and decided by the Professional Disciplinary Council." This provision affirms that any alleged violation committed by medical personnel should not be immediately categorized as a criminal or civil offense, but must first undergo examination within a professional forum that possesses the competence and authority to assess the technical and ethical aspects of medical practice.

The existence of the Professional Disciplinary Council as an authorized body to assess disciplinary violations of medical personnel holds a highly strategic function within the health law system. This body is established to ensure that any medical action contested by patients or the public is evaluated objectively based on professional standards, service standards, and applicable standard operating procedures. In this context, the disciplinary mechanism aims to clearly distinguish between actions that constitute genuine disciplinary violations and those that remain within the scope of unavoidable medical risk.

If the Professional Disciplinary Council determines that the anesthesiologist's actions have been carried out in accordance with professional standards and standard operating procedures, such determination carries significant legal implications. The decision may serve as a basis for the doctor's

defense in subsequent legal proceedings, whether in criminal or civil matters. In other words, the Council's decision functions as evidentiary support demonstrating that the medical action was performed within proper professional boundaries and, therefore, cannot be classified as legal negligence.

Conversely, if the Council finds that there has been a violation of professional standards, the concerned doctor may be subject to disciplinary sanctions in accordance with the severity of the violation. Such sanctions may include warnings, mandatory additional training, restrictions on clinical authority, or recommendations for the revocation of the practice license. Nevertheless, this mechanism continues to place professional assessment as the primary basis, ensuring that the sanctions imposed are proportional and aligned with the nature of the violation committed.

### **Forms of Legal Accountability of Anesthesiologists in the Event of Complications or Patient Death in High-Risk Medical Procedures at Patut Patuh Patju Regional Public Hospital, West Lombok**

Legal liability constitutes one of the fundamental concepts in legal science, as it is directly related to the consequences that must be borne by every legal subject for the actions they undertake (Marzuki, 2021). From a theoretical perspective, Hans Kelsen asserts that a person can be held legally responsible when legal norms provide a basis for imposing sanctions for violations committed (Kelsen, 2008; Medar, 2020). Accordingly, legal liability cannot be separated from the existence of a breach of norms established within the legal system.

In both civil and criminal law constructions, legal liability may only be imposed when certain elements are fulfilled. These elements include the existence of an unlawful act, fault (*schuld*), damage, and a causal relationship between the act and the resulting harm. These four elements serve as the primary parameters in determining whether a particular event can give rise to legal liability. The absence of any of these elements implies that there is no sufficient legal basis to impose responsibility on the concerned legal subject.

The relevance of this concept becomes increasingly complex in the context of healthcare services, particularly in anesthesiology practice, as anesthetic procedures inherently involve a high level of risk. Such risks may include severe allergic reactions, respiratory disorders, hemodynamic instability, and even patient death. This condition demonstrates that not every adverse outcome arising from medical treatment can automatically be classified as an unlawful act, given the possibility of inherent medical risks (*risk of treatment*).

The assessment of legal liability in anesthesiology practice cannot be based solely on the final outcome, such as complications or patient death. Legal evaluation must first examine whether there has been any deviation from professional standards, service standards, and standard operating procedures. Article 274 of Law Number 17 of 2023 on Health stipulates that medical personnel are obliged to carry out their practice in accordance with professional standards, service standards, and standard operating procedures. The provision also guarantees legal protection for medical personnel as long as their actions comply with the established standards. This indicates that the basis of anesthesiologists' legal liability lies not merely in the resulting outcome, but in the medical process and the presence or absence of professional fault.

Based on this framework, the legal liability of anesthesiologists within the Indonesian healthcare legal system can be classified into three main forms: civil liability, criminal liability, and administrative liability. Each form of liability has distinct characteristics, objectives, and mechanisms, yet they complement one another in ensuring justice and legal certainty. Civil liability focuses on compensating patients for damages through mechanisms of restitution. Criminal liability focuses on the imposition of sanctions for acts that fulfill the elements of a criminal offense. Administrative liability emphasizes the enforcement of discipline and compliance with administrative regulations in medical practice (Rohadi et al., 2024). A more detailed analysis of these three forms of liability is presented as follows:

#### **Criminal Liability**

Criminal liability in medical practice, including anesthetic procedures, is fundamentally grounded in the principles of legality and fault. The principle of legality affirms that an act may only

be punished if it has been previously regulated by statutory law (Abidin, 2005). In this context, an anesthesiologist cannot be held criminally liable solely because a patient experiences complications or death; rather, it must first be established that the act fulfills the elements of a criminal offense and is accompanied by fault. Accordingly, criminal law does not merely assess the final outcome, but evaluates whether there has been an unlawful act, the presence of intent or negligence, the capacity for responsibility, and the absence of justifications or excuses. This principle is essential to prevent the excessive use of criminal law in medical disputes.

In essence, criminal liability constitutes a legal mechanism designed to respond to violations of norms established by the state. In criminal law doctrine, liability does not automatically arise from every harmful event. Liability only emerges when fault attributable to the perpetrator can be legally established (Arief, 2018). In healthcare practice, this concept is particularly important because medical procedures, especially anesthesia, inherently involve risks that cannot always be scientifically avoided.

Adverse outcomes such as severe allergic reactions, respiratory failure, hemodynamic instability, and even patient death may occur despite the anesthesiologist having acted with due care and in accordance with professional standards. Therefore, criminal assessment cannot be based solely on the outcome, but must examine whether there has been any deviation from professional standards, service standards, and standard operating procedures. Under Indonesian positive law, the basis of criminal liability for negligence is regulated in Law Number 1 of 2023 on the Criminal Code, particularly Article 474, which distinguishes levels of consequences resulting from negligence. Paragraph (1) addresses negligence resulting in minor injury with a maximum penalty of one year imprisonment or a Category II fine; paragraph (2) regulates serious injury with a maximum penalty of three years imprisonment or a Category III fine; and paragraph (3) governs cases resulting in death with a maximum penalty of five years imprisonment or a Category V fine. These provisions demonstrate that criminal law assesses fault in relation to the severity of the consequences. Furthermore, Article 475 of the Criminal Code aggravates penalties when negligence occurs in the exercise of a profession, including an increase of one-third of the sentence and the possibility of additional sanctions such as public announcement of the judgment and revocation of certain rights. This underscores that negligence within the medical profession is regarded as more serious by law.

In addition to the Criminal Code, Law Number 17 of 2023 on Health also regulates specific criminal provisions. Article 438 establishes the obligation to provide assistance in emergency situations, with penalties of up to two years imprisonment or a fine of IDR 200 million, which may increase to ten years imprisonment or a fine of IDR 2 billion if it results in disability or death. Article 440 stipulates that medical personnel whose negligence causes serious injury may be punished with up to three years imprisonment or a fine of IDR 250 million, and if it results in death, up to five years imprisonment or a fine of IDR 500 million. These provisions indicate that negligence constitutes the primary basis of criminal liability in healthcare services, but it must be proven as a clear deviation from professional standards, rather than merely an undesirable outcome. Therefore, the element of fault becomes central to the analysis, such as failure to conduct pre-anesthetic assessment, incorrect drug dosage, or failure to perform emergency interventions.

Conversely, when a physician has acted in accordance with applicable standards, complications or death are more appropriately classified as medical risks. In this context, the existence of professional disciplinary mechanisms through the Disciplinary Council, as well as regulatory frameworks under Government Regulation Number 28 of 2024 and Minister of Health Regulation Number 3 of 2025, becomes essential to assess professional conduct before entering the criminal domain. In line with the principle of *ultimum remedium*, criminal law should be employed as a last resort in medical disputes. Accordingly, the criminal liability of anesthesiologists is personal in nature and may only be imposed when there is clear fault, a causal relationship, and the absence of justifications or excuses.

### **Civil Liability**

Civil liability is commonly referred to as *tort liability*, namely an obligation attached to an individual or legal entity to compensate for losses arising from their actions. In the context of healthcare services, liability may arise either from breach of contract or from unlawful acts (Laily et al., 2022). The relationship between a doctor and a patient is fundamentally a legal relationship that

imposes an obligation on the doctor to provide the best possible medical efforts in accordance with professional standards, rather than to guarantee a specific outcome. Accordingly, this legal relationship is more appropriately classified as an *inspanning verbintenis* (obligation of best efforts), rather than a *resultaatsverbintenis* (obligation of result), which requires the achievement of a specific outcome such as patient recovery (Kurniawan, 2017).

Civil liability in the form of an unlawful act is based on Article 1365 of the Indonesian Civil Code, which provides that any unlawful act causing damage obliges the wrongdoer to compensate for such loss. This provision establishes four elements that must be proven: the existence of an unlawful act, fault, damage, and a causal relationship between the act and the damage. In the context of anesthesiology practice, the patient or their family must demonstrate that the anesthesiologist deviated from professional standards or failed to exercise due care, and that such conduct directly caused the complication or death. If any of these elements cannot be established, the civil claim cannot be upheld.

In addition to individual liability, the law also recognizes vicarious liability as regulated under Article 1367 of the Indonesian Civil Code, which stipulates that a person or entity may be held responsible for the acts of those under their supervision. In healthcare services, hospitals as institutions bear the responsibility to regulate, supervise, and ensure the quality of medical services. Therefore, if an anesthesiologist commits negligence in the performance of their duties, the hospital may also be held legally liable. This principle is reinforced by Law Number 17 of 2023 concerning Health, particularly Article 193, which affirms that hospitals are legally responsible for losses arising from the negligence of medical personnel.

Based on the foregoing, hospitals cannot evade liability on the grounds that the fault is purely personal. Hospitals retain institutional responsibility as providers of healthcare services, facilities, and oversight of medical personnel. In evidentiary practice, the existence of informed consent does not automatically eliminate legal liability if negligence is proven. Consent merely indicates that the patient has understood the risks, but it does not justify professional misconduct. Conversely, if the doctor has acted in accordance with professional standards and procedures, informed consent, medical records, and evidence of compliance may support the conclusion that the complication constitutes a medical risk rather than negligence. Accordingly, liability may be either individual or institutional, depending on the evidence presented in each case.

### ***Administrative and Professional Disciplinary Liability***

The third domain of legal liability for anesthesiologists is administrative and professional disciplinary liability, which arises when there are violations of administrative obligations or professional standards, even though such violations do not necessarily result in criminal or civil consequences. This form of liability functions as a mechanism of control and supervision to ensure that medical practice remains within the boundaries of the law and established professional standards. Examples of administrative violations include the absence of a valid Registration Certificate (*Surat Tanda Registrasi / STR*) or Practice License (*Surat Izin Praktik / SIP*), performing medical procedures beyond one's clinical authority, failure to document medical records, and non-compliance with healthcare governance standards.

Normatively, Article 263 of Law Number 17 of 2023 on Health affirms that all medical personnel are required to possess valid registration and practice licenses and to perform their duties in accordance with professional standards, service standards, and operational procedures. This provision indicates that administrative compliance extends beyond formal legality to include adherence to professional standards. Further regulations are provided under Government Regulation Number 28 of 2024, which governs the implementation and supervision of medical personnel, including the obligation of hospitals to ensure that their medical staff meet all administrative requirements. Accordingly, responsibility is not borne solely by the individual physician but also by the hospital as an institution.

In addition, Minister of Health Regulation Number 3 of 2025 stipulates that violations of professional discipline may be subject to graduated administrative sanctions, ranging from written warnings and mandatory retraining to restrictions on clinical privileges and recommendations for revocation of practice licenses. Disciplinary enforcement is carried out by the Professional Disciplinary Council, as regulated under Article 304 of Law Number 17 of 2023, through mechanisms

involving complaints, examination, and the imposition of sanctions. This system ensures that the evaluation of medical conduct is based on professional and scientific standards.

In practice at Patut Patuh Patju Regional Public Hospital, West Lombok, administrative violations may occur when anesthesiologists fail to perform pre-anesthetic procedures, neglect proper medical record documentation, or breach patient safety standards. These violations are addressed through internal evaluation, medical audits, and administrative sanctions. This mechanism demonstrates that the healthcare legal system is not solely punitive in nature but also oriented toward guidance, quality improvement, and the protection of medical personnel.

Based on the foregoing discussion, it can be affirmed that the legal liability of anesthesiologists in cases of complications or patient death at Patut Patuh Patju Regional Public Hospital, West Lombok, does not reside within a single legal domain but is distributed across three principal domains, namely criminal, civil, and administrative as well as professional disciplinary law. This classification demonstrates that Indonesian health law adopts a comprehensive approach in assessing the actions of medical personnel, while consistently upholding the principles of justice and legal certainty.

## CONCLUSION

### Conclusion

This study demonstrates that the legal construction of liability in anesthesiology cannot be approached solely through the conventional paradigm of medical malpractice. Instead, anesthesiology must be understood as a high-risk medical field in which adverse outcomes may arise as part of inherent medical risk (*risk of treatment*) despite compliance with professional standards and patient safety procedures. By integrating normative legal analysis with empirical findings from RSUD Patut Patuh Patju Lombok Barat, this research offers a more proportional and standard-based framework for assessing medical liability in Indonesian health law.

The findings reveal that legal protection for anesthesiologists operates through two interconnected dimensions. Preventive protection is reflected in compliance with professional standards, standard operating procedures, informed consent, medical records, and patient safety systems that function not only as clinical governance instruments but also as mechanisms for legal certainty. Meanwhile, repressive protection is implemented through mediation, medical audits, disciplinary proceedings, and litigation as the last resort in resolving medical disputes. Empirical findings further indicate that the quality of documentation and procedural compliance significantly determine the legal defensibility of anesthesiologists when disputes arise.

This study also confirms that legal liability in anesthesiology is multidimensional, encompassing civil, criminal, and administrative aspects. However, liability may only be imposed when unlawful conduct, fault (*schuld*), damage, and causality are cumulatively proven. Therefore, medical complications or patient death cannot automatically be categorized as malpractice without examining whether there has been a deviation from applicable professional standards.

Theoretically, this study contributes to the development of proportional medical liability theory in Indonesian health law by reinforcing the distinction between inherent medical risk and professional negligence. The research also contributes to the reform of healthcare law by emphasizing the importance of standard-based legal assessment, stronger patient safety governance, and the prioritization of non-litigation dispute resolution mechanisms in medical disputes. These findings support the development of a more balanced legal framework that protects both patient rights and the professional integrity of healthcare workers.

### Recommendations

Hospitals should strengthen clinical governance systems through regular audits of standard operating procedures, improvement of medical record documentation, and mandatory training on informed consent and patient safety practices. Healthcare policymakers are encouraged to formulate more specific technical regulations distinguishing inherent medical risks from medical negligence in order to reduce legal uncertainty in healthcare services. In addition, professional organizations should enhance legal advocacy and assistance mechanisms for medical personnel facing medical disputes.

Future research should expand the scope of analysis by comparing legal protection mechanisms for anesthesiologists across different healthcare institutions and jurisdictions. Further interdisciplinary studies integrating health law, bioethics, and patient safety are also necessary to develop a more adaptive legal framework for high-risk medical practices in Indonesia.

### AUTHOR CONTRIBUTIONS

DPH contributed to the conceptualization of the study, formulation of the research problem, development of the theoretical framework, and preparation of the original manuscript. FMP contributed to the normative juridical analysis, collection and interpretation of statutory legal materials, and development of the discussion on legal protection mechanisms for anesthesiologists. AHR contributed to the analysis of legal liability, validation of legal arguments, manuscript review, and refinement of the final article.

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