

## Civil Legal Liability of Hospitals for Negligence Committed by Medical Personnel Based on Law No. 17 of 2023 Concerning Health

Tri Agus Haryono<sup>1\*</sup>, Hernawati RAS<sup>2</sup>, Yeti Kurniati<sup>3</sup>

Universitas Langlangbuana, Bandung

**Corresponding Author:** Tri Agus Haryono [th.opthal70@gmail.com](mailto:th.opthal70@gmail.com)

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### ABSTRACT

This article aims to determine how the legal responsibility of the Hospital for the negligence of medical personnel in health services and the legal responsibility of medical personnel at the level of negligence in health services in hospitals. Hospitals are health service institutions that provide comprehensive individual health services that provide inpatient, outpatient, and emergency services. This research is a normative legal research with a descriptive legal research type. The problem approach used is a normative legal approach. The data used is secondary data which includes primary legal materials, secondary legal materials, and tertiary legal materials. Data collection through literature studies, and supported by interview results. Data processing is carried out by examining data, tagging data, reconstructing data, and systematizing data. After that, the data is analyzed qualitatively. Medical personnel as one of the parties to the agreement by the hospital do have achievements in trying to cure patients through finding the most appropriate therapy and not promising healing from patients. Therefore, medical personnel have responsibility for the actions they take only as far as the best efforts according to the knowledge and experience they have.

## **INTRODUCTION**

Healthcare services are a vital component in ensuring the well-being of society. These services aim to maintain, improve, and restore an individual's health through competent medical personnel. Health services can be provided in various facilities such as hospitals, public health centers (*puskesmas*), clinics, and community health posts (*posyandu*), and their implementation must adhere to government-mandated service standards.

In hospital practice, a legal relationship exists between doctors and patients, beginning at the point of registration and continuing through anamnesis, diagnosis, and medical action consent. Therapeutic communication is a key element in building this relationship. Patient consent may be given explicitly or implicitly. Medical records are essential documents that must be created by medical personnel, either in printed or electronic form, as stipulated in Article 296 of Law No. 17 of 2023.

Legal liability of hospitals is governed by Article 46 of the Hospital Law and Article 193 of Law No. 17 of 2023. Hospitals can be held legally accountable for any harm caused by the negligence of their medical personnel. This responsibility includes ensuring the competence of healthcare workers, adherence to standard operating procedures (SOPs), and compliance with service standards. However, legal implementation remains complex due to issues such as the employment status of medical personnel (employee or partner) and the distinction between individual and institutional responsibility.

Two real-life cases illustrate the consequences of negligence. The first case occurred at Bunda Mulia Hospital in Kisaran, where a mother and baby died allegedly due to placental trauma. Although the hospital claimed to have followed SOPs, the patient's family sued for negligence. The second case involved RS Dadi Keluarga, where a patient was declared dead and buried under COVID-19 protocols, although a later PCR test (after seven months) revealed a negative result. This raised legal concerns and a lawsuit against the hospital.

Legal research supports the need for stronger hospital accountability and legal protection for patients. Ratna Kumalasari emphasizes the importance of therapeutic agreements and legal certainty between hospitals and patients. Astrio Merdian Putro highlights the need for professional standards and informed consent to establish physician liability. Wandani Syahrir explains that the legal relationship between hospitals and medical personnel, whether as employees or contractors, implies responsibility under civil law in cases of malpractice.

Normatively, the Health Law and the 1945 Constitution guarantee the right to healthcare. Articles 28H and 34 of the Constitution affirm the state's obligation to provide adequate healthcare services. However, in practice, not all legal aspects of the medical relationship are clearly regulated – especially oral consent and therapeutic agreements – leaving legal gaps.

Thus, hospitals are required not only to deliver healthcare services in accordance with procedures but also to assume legal responsibility for any negligence committed by their healthcare professionals. This is essential to

maintain public trust, ensure justice for patients, and improve the quality of healthcare services in Indonesia.

## LITERATURE REVIEW

### A. Theory of Civil Law

Law encompasses both written and unwritten rules that regulate society and provide sanctions for violations. It plays two major roles in social change: (1) adapting to societal transformations (a passive function), and (2) actively guiding planned social changes (as a tool of social engineering).

In modern development, the law must ensure legal certainty, justice, and usefulness. However, it often fails to fulfill its foundational purpose due to heavy influence from political and economic interests, making legal reform difficult.

Civil law governs relationships between individuals. It includes both codified laws, such as those in the Indonesian Civil Code (KUHPerdata), and unwritten norms. The classification in the civil code may not align with legal science perspectives.

In essence, civil law (or private law) regulates legal relationships between subjects—either individuals or legal entities—within family and social interactions. Unlike criminal law, which involves state intervention, civil law disputes are resolved privately without government involvement.

### B. Theory of Liability

In legal terms, liability refers to a person's obligation to be accountable for actions that result in harm. It is closely linked to the concept of rights and duties—where one's rights imply another's obligations. Legal liability arises when an individual's actions violate applicable rules or norms, whether intentionally or negligently.

Types of Legal Liability in Civil Law:

1. **Liability based on fault** - Responsibility is due to the individual's wrongful act.
2. **Strict liability** - Responsibility applies regardless of fault, especially in risk-based scenarios.

Types of Tort Liability:

- **Intentional tort** - Harm caused intentionally.
- **Negligence** - Harm caused by carelessness.
- **Strict liability** - Harm caused regardless of intent or negligence.

### Hospital Liability

Hospitals, as legal entities, are accountable for their staff and services through doctrines such as:

- **Respondeat Superior** - Employers are liable for their employees' actions performed within their job scope.
- **Ostensible or Apparent Agency** - Hospitals may be held liable for non-employee doctors if patients perceive them as hospital representatives.
- **Non-Delegable Duty** - Hospitals cannot delegate their fundamental duty to provide medical care.

### Doctor's Civil Liability

Doctors may face civil lawsuits for:

- **Breach of contract (wanprestasi)** – Failing to meet agreed obligations.
- **Tort (unlawful acts)** – Violating legal or ethical norms in patient care.

### Doctor-Hospital Relationships

Doctors may have various employment statuses – full-time, contract, part-time, or visiting – which influence the scope of liability. Hospitals are generally not liable for independent visiting doctors, who are considered personally accountable under the **borrowed servant** doctrine.

### C. Theory of Negligence

Negligence is defined as the failure to act with the care that a reasonably prudent person with similar training would use in similar circumstances. In medicine, negligence is the most common form of malpractice.

Negligence can be penalized under criminal and civil law, especially when it results in harm. Examples from Indonesia's Criminal Code (KUHP):

- **Article 359:** Negligence causing death.
- **Article 360:** Causing serious injuries or impairing someone's work.
- **Article 361:** If the act is performed in an official capacity, penalties increase by one-third.

According to **Van Hammel**, negligence requires:

1. Lack of necessary foresight.
2. Lack of required caution.

### D. Health Personnel Theory

Health personnel are individuals educated in health sciences who provide services in prevention, maintenance, treatment, and rehabilitation. They include doctors, nurses, and midwives.

Types of health care services:

1. **Promotive** – Promote health awareness.
2. **Preventive** – Disease prevention.
3. **Curative** – Treating illnesses.
4. **Rehabilitative** – Restoring health and function.

Healthcare is a **fundamental human right** and must prioritize patient safety under applicable legal standards (Article 29 of the Hospital Law).

### E. Hospital Theory

Under **Law No. 44 of 2009**, a hospital is a health institution offering comprehensive health services, including inpatient, outpatient, and emergency care.

Types:

- **General Hospital** – Covers all diseases.
- **Specialized Hospital** – Focuses on specific diseases or age groups.

According to the Indonesian Ministry of Health (Decree No. 129/Menkes/SK/II/2008), hospitals provide promotive, preventive, curative, and rehabilitative services.

The provision of healthcare services establishes legal relationships between hospitals and patients, including legal liability for negligence or malpractice.

## METHODOLOGY

### 1. Theory of Responsibility

A contract, which is an agreement between parties, creates rights and obligations that must be fulfilled by the parties involved. The exchange of these rights and obligations results in responsibilities. There are two main theories of liability:

- **Fault-based Liability:** This theory posits that a person should be held responsible for harm caused by their fault. It is commonly applied in civil law, particularly under Articles 1365, 1366, and 1367 of the Indonesian Civil Code. Generally, this responsibility is accepted because it is fair for the wrongdoer to compensate the victim. In other words, it is unjust for an innocent person to bear the loss caused by another's fault.
- **Strict Liability:** This theory assigns responsibility without requiring proof of fault. Strict liability is often associated with absolute liability, where responsibility is imposed regardless of fault or intent.

In Article 1367 of the Civil Code, it is stated: "A person is not only responsible for damages caused by their own actions but also for damages caused by the actions of those under their care or by goods under their supervision." This implies that liability can arise from the actions of subordinates or employees. In the context of a hospital, both medical and non-medical staff can be held jointly responsible for harm caused to patients.

### 2. Theory of Medical Negligence

Negligence refers to the failure to exercise the care that a reasonably prudent person would exercise in like circumstances. In the medical field, negligence can manifest in several forms:

1. **Malfeasance:** Performing an unlawful or improper act.
2. **Misfeasance:** Performing a lawful act in an improper manner.
3. **Nonfeasance:** Failing to perform a required act.
4. **Malpractice:** Professional negligence by a healthcare provider.
5. **Maltreatment:** Improper or unskilled treatment.
6. **Criminal Negligence:** Reckless disregard for the safety of others.

In the Indonesian Criminal Code, Articles 359 and 360 address negligence resulting in death or injury. Article 359 states: "Any person who due to their negligence causes another person to suffer death shall be punished with imprisonment for a maximum of one year." Article 360 addresses negligence resulting in injury, with varying penalties depending on the severity.

### 3. Liability Under Civil Law

In civil law, liability requires three elements:

1. **Negligence (Culpability):** The defendant's failure to exercise reasonable care.
2. **Damage:** Actual harm suffered by the plaintiff.
3. **Causal Relationship:** A direct link between the defendant's negligence and the plaintiff's damage.

In cases of medical malpractice, if a doctor knows that their actions could result in harm to a patient, they can generally be held liable under Articles 1365 and 1366 of the Civil Code.

#### 4. Definition of a Hospital

According to Article 1, paragraph 10 of Law No. 17 of 2023, a hospital is a healthcare facility that provides comprehensive personal health services, including promotive, preventive, curative, rehabilitative, or palliative care, with inpatient, outpatient, and emergency services.

- **Medical Personnel:** As defined in Article 1, paragraph 6 of the same law, medical personnel are individuals who dedicate themselves to the health field and possess professional attitudes, knowledge, and skills through medical or dental education, granting them the authority to perform health efforts.
- **Medical Discipline:** In addition to being bound by ethical and legal norms, the medical profession is also governed by Medical Professional Discipline, which aims to protect the public, maintain and improve the quality of healthcare services, and uphold the honor of the profession.
- **Medical Actions:** These are healthcare services performed by medical personnel on patients, including surgeries (both minor and major) and the administration of certain medications.

#### 5. Negligence in Medical Services

Negligence occurs when medical personnel fail to meet the professional standard of care, often due to:

- Lack of knowledge
- Lack of diligence
- Lack of attention during diagnosis or treatment

In healthcare services, negligence can result from factors such as insufficient knowledge, lack of seriousness, or lack of precision by the doctor during diagnosis or treatment.

#### 6. Medical Service Standards and Operational Procedures

- **Medical Service Standards:** As per Minister of Health Regulation No. 1438/Menkes/Per/IX/2010, these are guidelines that must be followed by doctors or dentists in providing medical practice.
- **Standard Operating Procedures (SOPs):** Defined in the same regulation, SOPs are standardized steps or instructions established to complete specific routine tasks or processes, ensuring that healthcare services are delivered correctly and consistently.

## Case of Negligence Committed by Medical Personnel

### A. Legal Provisions for the Management of Medical Personnel in Hospitals

Hospitals bear legal responsibility if a patient experiences harm due to medical negligence committed by medical personnel working within a health service or hospital. This is stated in Article 193 of the **Health Law No. 17 of 2023**. Hospitals are recognized as entities with legal autonomy capable of committing unlawful acts. Therefore, a hospital, viewed as a "**legal person**" (**rechtspersoon**), is granted rights and responsibilities. In general, the rights of a hospital in providing health services include:

- a. Establishing hospital regulations;
- b. Requiring patients to comply with all hospital regulations;
- c. Requiring patients to obey and follow all instructions given by doctors;
- d. Selecting and appointing doctors to be employed by the hospital;
- e. Suing any parties that have breached their obligations to the hospital.

### B. Issues of Negligence Committed by Medical Personnel

The healing process undertaken by doctors does not always yield the expected results. This is often mistaken as an error or negligence on the doctor's part. However, such outcomes are not necessarily negligence but rather a concept in the medical field known as **medical risk**.

**Medical risk** refers to a situation in which preventive measures are no longer feasible from a medical standpoint. Every medical treatment inherently carries risks. The only way to avoid medical risks altogether would be to refrain from any medical intervention. Thus, doctors must always act cautiously and thoughtfully to anticipate and minimize potential medical risks during treatment.

Undesired outcomes during medical treatment may result from several causes:

1. Consequences of the disease progression or complications unrelated to the medical action taken by the doctor;
2. Consequences of unavoidable medical risks, such as:
  - a. Previously unknown risks – arising due to the empirical nature of medical science and the varied, externally sensitive human body;
  - b. Known but acceptable risks – risks that:
    - Have a small probability and severity, are manageable or controllable (e.g., drug side effects, bleeding, infection during surgery);
    - Have a high probability and severity but must be undertaken in emergency situations as the only available medical option.

The term "**medical risk**" is not precisely defined in Indonesian legislation. However, it is implied within the concept of **informed consent** – a written document signed by the patient that gives permission for a specific medical procedure. This document becomes legally valid once the doctor explains the type of procedure and the associated medical risks.

Informed consent serves a dual purpose:

- To protect the patient from unwanted or unauthorized medical actions;
- To protect the doctor legally, validating that the patient was fully informed and accepted the potential risks.

A key statement typically included in the informed consent form is that the patient fully acknowledges and accepts the risks, and agrees not to pursue legal action in case of adverse outcomes. This clause highlights the essential nature of medical procedures as attempts or efforts rather than guaranteed outcomes.

In principle, doctors **cannot be held legally accountable** for medical risks that occur as long as they have performed the treatment:

- According to **standard medical procedures**;
- In line with **accepted medical practices** acknowledged by the medical community.

## RESEARCH RESULT AND DISCUSSION

### A. Legal Responsibility of Hospitals Due to Medical Personnel Negligence Based on Law No. 17 of 2023 on Health

Legally, the relationship between a doctor and a patient is established through an agreement or contract known as a **therapeutic transaction**. This agreement begins with an anamnesis (question-and-answer session) between doctor and patient, followed by a physical examination. The doctor then establishes a diagnosis, which may initially be a working or preliminary diagnosis or a definitive diagnosis. After a diagnosis is confirmed, the doctor determines the type of therapy or medical procedure to be administered.

A doctor's responsibilities extend beyond medical duties and include **legal obligations**. By law, every agreement gives rise to rights and obligations, and if one party breaches the agreement, the injured party may claim compensation or legal remedy. The rights and obligations within a therapeutic transaction form the basis for evaluating whether the doctor's actions are legally appropriate. If a breach of contract or an unlawful act occurs, the doctor may be considered to have committed **malpractice** – a failure to justify their expertise, resulting in harm to the patient.

In the legal context of healthcare, the doctor-patient relationship is governed by therapeutic contract principles. Each party – the healthcare provider and the recipient – has rights and responsibilities that must be respected.

This context gives rise to **informed consent**, where doctors are obligated to provide the best diagnosis, treatment, and medical action based on their knowledge and judgment. At the same time, patients or their families retain the right to decide whether to proceed with specific medical treatments.

According to Jonkers, legal incapacity is not limited to provisions under Article 44 of the Indonesian Criminal Code (KUHP). In his view, a person may lack legal responsibility not only due to mental disorders or illnesses but also due to factors such as age or hypnotic influence. Thus, incapacity to be held responsible includes a broader scope.

**Negligence in medical practice** refers to an act or omission by a healthcare professional that results in harm to another person. In Indonesia, this is generally referred to as **medical malpractice**. Most scholars and literature use this term to describe errors made by doctors in the course of their duties. However, adverse events that are **unforeseeable**, even when the medical procedure is performed according to standard, are **not classified as malpractice**.

To differentiate between **negligence and medical failure**, the key lies in whether the standard of care was met. If the standard was fulfilled but a fatal outcome occurred, legal liability generally cannot be imposed on the healthcare provider. This assessment must be conducted by an authorized body under the Medical Practice Law – specifically, the **Medical Disciplinary Honor Council (MKDKI)**.

#### **Types of Medical Negligence Include:**

1. **Failure to Refer**

If a doctor knows that a patient's condition is beyond their expertise and fails to refer the patient to a specialist, this violates the Indonesian Medical Code of Ethics Article 11.

2. **Failure to Consult with Previous Doctors**

If the patient has been previously treated, the next doctor is advised to consult with prior physicians to avoid incorrect treatment.

3. **Failure to Refer to Properly Equipped Hospitals**

A doctor must recognize not only their personal limitations but also the limitations of equipment. If proper instruments or facilities are not available, the doctor must refer the patient to a better-equipped hospital.

4. **Failure to Detect Infections**

While a missed diagnosis of infection does not automatically imply negligence, it can be considered a fault if there is no justifiable reason for failing to conduct the necessary tests.

5. **Negligence Due to Lack of Experience**

Inexperience cannot be used as a defense for negligence. Professional standards must be met, and abandonment or refusal to allow the patient to seek another doctor could lead to harm or death, which is a legal violation.

#### **Legal Concepts in Healthcare Responsibility**

Law has three primary interpretations:

- As a tool for achieving **justice**;
- As a **regulatory framework** issued by authorities to govern permissible and prohibited actions;
- As a **right**, providing protection and access to justice for society, especially victims.

Hospitals are **legally responsible** for harm caused to patients due to the negligence of healthcare personnel under their employment, as stated in **Article 193 of Law No. 17 of 2023**.

Hospitals also bear oversight responsibilities through:

- **Standard Operating Procedures (SOPs)**
- **Hospital Supervisory Boards**, as affirmed by Court Decision No. 11/Pdt.G/2019/PN Sgt.

Previously, **Article 46 of Law No. 44 of 2009 on Hospitals** held hospitals legally accountable for all harm caused by negligence of healthcare personnel. The updated Law No. 17 of 2023 (Article 193) expands this to all **Human Health Resources**, further solidified by **Government Regulation No. 28 of 2024**.

Under the earlier framework, liability was often shifted entirely onto doctors, sparing hospitals from accountability. However, with the new legal update, a **reconstruction of responsibility** is required, ensuring that hospitals are equally accountable.

### **Hospital Accountability in Healthcare Services**

Hospitals typically serve three core functions:

1. **Medical services** (promotive, preventive, curative, and rehabilitative);
2. **Medical and paramedical education and training;**
3. **Medical research and development.**

Based on Law No. 17 of 2023:

- Article 1(6): A **medical professional** is someone who devotes themselves to health services with professionalism, knowledge, and skills through formal medical education and has the authority to carry out health efforts.
- Article 198: Medical personnel includes doctors, specialists, and subspecialists, as well as dentists and dental specialists.

**Article 193** of the same law explicitly states:

*“Hospitals are legally responsible for any loss caused by the negligence of the hospital’s health human resources.”*

This provision is broader than Article 46 of Law No. 44 of 2009, making hospital liability more comprehensive. However, whether this effectively resolves legal ambiguity remains to be seen.

### **B. Resolution Efforts by Hospitals in Cases of Medical Negligence**

Hospitals must address negligence by healthcare personnel through proper corporate accountability mechanisms, as hospitals operate as **healthcare corporations**.

Three aspects determine accountability:

- a. **Mental capacity** of the person responsible (toerekeningsvatbaarheid);
- b. **Mental state or intent**, whether deliberate or negligent (dolus or culpa);
- c. **Absence of justifying or excusing reasons** (schuld ontbreekt).

Under **Article 54 of the Medical Practice Law**, medical personnel are liable for harm caused by **negligence or mistakes** in medical procedures, particularly when such actions deviate from professional standards.

**Ministerial Regulation No. 58 of 2014** further states that:

- Medical personnel must comply with service standards;
- They are responsible for the **quality** of care;
- They can be held **professionally and legally accountable** for any negative outcomes.

Cases of negligence often arise in the context of **social insurance patients** and may be worsened by hospital resource constraints.

Therefore, hospitals must ensure:

- Effective management of healthcare workers;
- Technical issues are addressed swiftly;
- Legal relationships between hospitals, doctors, and patients are respected.

## Legal Review of Medical Personnel Responsibilities

Medical personnel—including doctors, nurses, and others—must comply with professional standards and codes of ethics. Key regulations include:

- **Law No. 36 of 2009** on Health: Everyone has the right to quality health services.
- **Law No. 29 of 2004** on Medical Practice: Medical personnel are liable for harm due to negligence or error.
- **Article 1365 of the Civil Code (KUHPer)**: Any unlawful act causing harm must be compensated.
- **Ministerial Regulation No. 58 of 2014**: Outlines standard procedures and clinical guidelines.
- **Medical Code of Ethics** by the Indonesian Medical Council (KKI).

## Conclusion

Hospitals must provide facilities and staff to ensure safe medical care. According to Article 8 of Law No. 36 of 2014 on Healthcare Personnel, they are categorized as:

1. Healthcare professionals;
2. Assistant healthcare workers.

The legal framework in Indonesia emphasizes the importance of compliance with professional, ethical, and procedural standards, ensuring accountability and protection for patients.

## CONCLUSIONS AND RECOMMENDATIONS

### Conclusion

1. **The legal liability of hospitals** due to negligence committed by medical personnel under civil law, specifically for hospitals, has become more consistently applied following the enactment of the new Health Law. Hospitals bear **legal responsibility** if a patient experiences harm caused by **medical negligence** committed by healthcare personnel working in healthcare services or hospitals. This is regulated under the new Health Law, **Article 193 of Law No. 17 of 2023**.
2. **Legal remedies** for negligence that result in hospital liability should ideally be implemented through two models of civil liability in medical dispute resolution:
  - **Indirect Liability (Vicarious Liability)**: applicable to disputes involving medical services and medical actions.
  - **Centralized Responsibility (Central Responsibility)**: applicable to disputes involving medical service provision.

### Recommendations

Based on the conclusions above, the following recommendations are proposed to address the issue of hospital legal liability due to negligence by medical personnel:

1. During the treatment process, **doctors and patients must cooperate** by sharing complete and transparent information to avoid

miscommunication. This cooperation is essential to ensure the healing process proceeds smoothly.

2. Hospitals providing healthcare services to **insured patients** must offer the same level of attention and care without discrimination. Regardless of the payment method, both insured and uninsured patients contribute financially to hospital services. Providing **equal and fair treatment** to all patients is expected to reduce and prevent instances of medical negligence in hospitals across the country.

## ADVANCED RESEARCH

Follow-up research is necessary given the ongoing developments in health law in Indonesia, especially following the enactment of Law No. 17 of 2023 and its derivative regulations, such as Government Regulation No. 28 of 2024. These regulatory changes demand a renewal of legal paradigms and medical practices to ensure justice for patients while also providing protection for medical personnel and hospital institutions. Furthermore, follow-up research plays a crucial role in formulating an ideal model of legal accountability and in developing applicable ethical and legal guidelines within the national healthcare system.

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