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CIVIL LIABILITY OF HOSPITALS FOR MEDICAL RISKS LEGAL REVIEW AND IMPLICATIONS FOR MEDICAL PRACTICE INDONESIA

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Abstract
This study adopts a normative legal perspective to explore the configuration and extent of civil liability attributed to hospitals in Indonesia, with particular attention to patient losses arising from alleged medical negligence or malpractice. Employing a doctrinal approach grounded in the examination of statutory provisions and legal doctrines, the research identifies a notable evolution in the allocation of responsibility. Legal accountability, which was previously directed toward individual healthcare professionals, has progressively shifted to hospitals as institutional entities. Notably, the Hospital Law, as stipulated in Article 46 of Law Number 44 of 2009, assigns hospitals a central role as the entities responsible for legal consequences arising from healthcare services. This legislative orientation reflects the principle of vicarious liability as articulated in Article 1367 paragraph (3) of the Indonesian Civil Code, under which an institution may be held legally responsible for acts committed by individuals operating within its sphere of authority . Within this legal construct, hospitals are regarded as autonomous legal persons responsible for the conduct of all healthcare personnel operating within their organizational framework, including physicians, and are consequently obliged to provide compensation when patients incur harm. The analysis also highlights the necessity of drawing a clear distinction between acts of professional negligence that give rise to civil liability and medical risks that are inherently associated with clinical interventions and have been duly acknowledged through valid informed consent. Taken as a whole, the findings indicate that Indonesian law has developed a structured and stringent model of hospital accountability, serving not merely as a means of providing remedies to patients, but also operating as a regulatory instrument means to improve healthcare quality and strengthen clinical risk management, thereby ensuring substantive legal protection for patients..

Keywords: Civil Liability, Hospital, Medical Risk, Vicarious Liability, Patient Protection.

INTRODUCTION

The world of health, along with all its progress and complexity, is a realm built on a foundation of trust. Hospitals, as institutions that carry out the noble task of providing services and restoring life, become the last bar for every patient's hope (Tenda et al., n.d.; Klau et al., 2022). However, behind even the most sophisticated medical efforts, there is one inevitable reality: medical risks Medical practice is not an error-free science; There is always the possibility of suboptimal outcomes, complications, or even losses arising beyond reasonable estimates, which is often referred to as medical risk.

When the risk actually occurs and turns into a loss for the patient, leading to a lawsuit for compensation, then a thick fog of medical disputes begins to envelop (Asvatham & Purwani, n.d.). Claims for damages based on negligence or lack of care on the part of medical personnel are a central issue that challenges the legal system and medical practice in Indonesia (Sulistyani & Syamsu, 2015; Widjayanto et al., 2024). Traditionally, the focus of accountability tends to be directed to individual physicians who perform the Actions (Listiawati, D. M. & Sidi, R. 2023). However, in the modern healthcare system, hospitals are no longer just 'places of practice', but a legal entity that has institutional obligations and responsibilities (Irfan et al., 2025).

At this stage, it can be identified that there are fundamental problems in the health legal system in Indonesia. In practice, negligent acts are often carried out by medical personnel personally, but Article 46 of Law No. 44 of 2009 concerning Hospitals actually transfers the legal responsibility to hospitals as an institutional entity for losses arising from the actions of health workers in the implementation of medical services (Andrianto & Achmad Andaru, 2019; Tenda et al., n.d.). This principle is in harmony with and strengthens the provisions related to acts that are contrary to the law as stipulated in the provisions of Article 1365 of the Criminal Code, as well as the regulation

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regarding responsibility for the actions of other parties as stated in Article 1367 paragraph (3) of the Criminal Code (Romadhoni & Suryono, n.d.; Irfan et al., 2025). The implementation of the principle of civil liability conceptually gives birth to an increasingly complex pattern of legal relations between patients, health workers, and hospitals as health service providers. Along with the increasing level of public awareness of legal rights in the health sector, a more in-depth study is needed on how the mechanism of hospital civil liability is understood and implemented in practice. On that basis, this study is directed to comprehensively analyze the juridical aspects of hospital civil liability in medical risk cases, as well as examine its strategic impact, both in strengthening legal protection for patients and in encouraging the improvement of service quality, professionalism, and accountability of medical practices in Indonesia.

Problem Formulation

1. How is the construction of hospital civil liability formulated in the Indonesian legal system, and what are the main legal bases including the provisions in the Hospital Law and the Criminal Code that are the basis for the transfer of legal responsibility from doctors as individuals to itals as institutions?
2. What is the key legal distinction between damages arising from professional negligence (malpractice) that can be sued for damages, and losses caused by purely medical risks (*inherent risks*), and what is the role of *informed consent* in limiting civil liability?
3. How does the application of this principle of institutional civil liability affect hospital obligations to health workers with non-employee status (such as partner doctors), and what are the practical implications for improving service quality and clinical risk management in hospitals?

Research Objectives

1. Analyze and comprehensively describe the juridical basis that confirms the pattern of institutional civil liability of hospitals, including the application of the doctrine of *vicarious liability*.
2. Define a clear legal demarcation line between professional negligence claiming civil damages and pure medical risk, and examine the crucial function of *informed consent* as a legal defense.

Exploring and explaining the implications of this civil liability framework as a corrective mechanism that encourages accountability, governance, and improvement of service quality standards in hospitals for the protection of patients.

METHOD

The first step in assembling a study on hospital civil liability is to determine the right methodology, because the character of this research is purely juridical. Therefore, this research is expressly classified as *normative legal research*. The selection of this research method is based on its relevance to the purpose of the study, which is to examine in depth the legal norms, principles, and doctrinal constructions that govern the legal relationship between hospitals and patients, especially in the context of the emergence of medical risks that cause losses. In the implementation of this research, two mutually supportive analytical approaches were applied. The statute *approach* is used as the main basis by studying in a structured manner all regulations in the legal hierarchy system. The study began with a discussion of the general provisions contained in the Civil Code, especially Article 1365 which regulates unlawful acts and Article 1367 paragraph (3) regarding the liability of the employer, then continued with a review of special provisions, namely Article 46 of Law No. 44 of 2009 concerning Hospitals, including all related implementing regulations.

This research also uses a *conceptual approach* to deepen theoretical and philosophical understanding of the main doctrines that are the basis for the formation of the concept of hospital civil liability. Concepts such as *vicarious* liability, *superior responsiveness*, *strict liability*, and differentiation between malpractice and medical risk will be examined in depth to clarify the boundaries of hospital institutional responsibility (Tenda et al., n.d.; Klau et al., 2022). The data used in this study is secondary and is used as the main basis in the review process, with groupings into three categories. Primary legal materials include the provisions of applicable laws and regulations and are juridically binding. Meanwhile, secondary legal materials consist of scientific papers such as journals that review medical disputes, civil law and health law textbooks, as well as relevant previous research results (Andrianto & Achmad Andaru, 2019; Irfan et al., 2025). Meanwhile, tertiary legal materials function as support. All legal rules that are the subject of analysis in this study are obtained through literature search and review of relevant documents, then processed and analyzed using a qualitative approach.

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RESULTS AND DISCUSSION

The research conducted through this normative legal review clearly reveals the existence of a strong legal role in determining the civil liability of hospitals in Indonesia.

I. Legal Basis Dualism: From the Individual to the Institution

An analysis of the laws and regulations shows that hospitals assume civil liability based on two complementary pillars of law, which aim to maximize protection for aggrieved patients.

A. The Concept *of Strict Liability* in the Realm of the Hospital Law

The regulation regarding the legal liability of hospitals is clearly contained in Article 46 of Law No. 44 of 2009 concerning Hospitals. This provision shows the character of a firm and determinative norm, by placing the hospital as the party that is obliged to bear the legal consequences for patient losses caused by the negligence of health workers in the provision of health services (Irfan et al., 2025; Tenda et al., n.d.). With such a construction, the hospital is positioned as the party that bears the main responsibility, which in practice is close to the character of strict accountability in the implementation of health services. In practice, patients who suffer losses due to alleged negligence do not need to bother suing the medical personnel involved one by one, but can directly sue the hospital as a legal entity that is financially and structurally more responsible. Thus, the Hospital Law has succeeded in institutionalizing civil liability in health services.

B. Strengthening the Principle *of Vicarious Liability* through the Civil Code

The imposition of legal responsibility on hospitals is not only sourced from special provisions, but is also strengthened by general norms that develop in the civil law system. Through Article 1367 paragraph (3) of the Criminal Code, the principle of liability for the actions of other parties is affirmed, which in legal doctrine is known as vicarious liability or superior respondeat. This principle places an obligation on the superior or employer to bear the legal consequences of losses caused by the actions of the parties in the employment relationship, as long as the act is carried out in the performance of its duties. (Romadhoni & Suryono, n.d.). The application of this doctrine is particularly relevant given that most medical personnel and health professionals are employees or contracted with hospitals. All medical procedures they perform within the hospital environment are considered to be actions performed in the name of and under institutional supervision. Although negligence is personal, the impact is legally addressed to the hospital. The integration of the provisions in Article 46 of the Law on Hospitals and the provisions of Article 1367 paragraph (3) of the Criminal Code gives birth to a legal protection system that ensures that the patient's right to obtain civil compensation for the losses suffered can be fulfilled.

II. The Spearhead of Disputes: Separating Medical Negligence and Risk

In dealing with medical disputes, this study emphasizes that the key to determining whether or not civil liability exists is the ability to clearly distinguish between professional negligence/*malpractice* and inherent medical *risk*.

Civil liability can only be imposed if there is evidence of an element of negligence, which is defined as an act or absence of action that is below the standards of the medical profession or the standard of hospital operational procedures (Widjayanto et al., 2024; Asvatham & Purwani, n.d.). The proof of negligence must be based on four basic elements known in civil law, which include the existence of legal obligations, the occurrence of negligence as a form of violation of legal obligations, the occurrence of losses, as well as the relationship between the causes of a negligent act so as to result in a loss that occurs.

On the other hand, if the patient's loss constitutes a genuine medical risk—i.e., complications or adverse outcomes that are medically anticipated and potentially occurring even though all medical procedures have been carefully performed and in accordance with applicable standards—then a civil lawsuit for negligence is unacceptable. The condition is that the patient has been given comprehensive *informed consent*, including an explanation of the inherent risks (Tenda et al., n.d.). This distinction is crucial to prevent the criminalization of medical practice and protect doctors from unfounded lawsuits due to treatment outcomes beyond human control.

III. Implications of Transforming Medical Practice

The establishment of this pattern of institutional accountability not only has an impact on the litigation aspect, but also triggers a fundamental transformation in healthcare governance: Strengthening *Patient Safety* and *Risk Management*: With hospitals being held accountable for compensation, there is automatically an increase in the need to increase the effectiveness of risk management and build a culture of patient safety in a sustainable manner. (*patient safety*). Hospitals are forced to invest in staff training, equipment maintenance, and rigorous internal medical audits (Andrianto & Achmad Andaru, 2019). This shifts the focus from post-event reactions to proactive precautions.

1. The Dilemma of Partner Doctor Status: The issue that arises is the hospital's liability to doctors who are partners or non-permanent employees. Although there are partnership agreements internally, in the eyes of patients and the law, it is difficult for hospitals to escape responsibility. Studies show that hospitals should

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still be fully responsible to patients, even though they have the right of subrogation to demand compensation back to the partner physician if the physician's negligence is purely negligent (Klau et al., 2022).

2. The Importance of Documentation and *Informed Consent*: This strict civil responsibility also encourages hospitals to ensure all administrative procedures, especially medical record documentation and *informed consent* processes, are carried out flawlessly. Complete and accurate documentation is the most vital defense evidence for hospitals and medical personnel in court.

In summary, the results of this study confirm that the Indonesian legal framework has moved forward in ensuring institutional accountability of hospitals. Civil liability is not just a sanction, but a corrective mechanism that encourages all components of health services to operate under the highest standards of professionalism for the protection of patients and the dignity of the medical profession.

RESEARCH DISCUSSION

The issue of hospital civil liability in Indonesia has transformed significantly, moving from a focus of debate on individual physician misconduct to an emphasis on the institutional responsibility of hospital corporations. This fundamental shift is a manifestation of legal efforts to provide maximum protection to patients as vulnerable users of health services.

1. Legal Pillars of Hospital Institutional Accountability

The regulation on hospital liability is built on the relationship between special provisions in the field of health law and general principles of civil law. In line with the principle *of lex specialis derogat legi generali*, Article 46 of Law No. 44 of 2009 concerning Hospitals affirms the position of hospitals as a party required to bear the juridical consequences for losses incurred in the context of providing health services (Irfan et al., 2025; Tenda et al., n.d.). Conceptually, this provision is based on the understanding that the medical service relationship is essentially established between patients and hospitals as institutions, not solely with doctors as individual perpetrators of medical actions.

The legal construction is strengthened by the application of the principle of *vicarious liability* which is derived from Article 1367 paragraph (3) of the Criminal Code. Through the principle of superior responsiveness, hospitals are understood as institutions that bear the legal consequences of the actions of health workers as long as the actions are carried out in the performance of service functions, including the obligation to compensate (Romadhoni & Suryono, 2021).

2. Scope of Responsibilities and Employment Relationship Status

The institutional responsibilities of hospitals have a wide range, covering the entire spectrum of practicing health workers, regardless of their employment status. The issue becomes complex when it comes to the status of inorganic workers or medical supporters.

1. Visiting *Doctor*: In the case of a partner doctor, Klau et al. (2022) explain that although the partner doctor has personal responsibility for his or her professional negligence, the hospital still bears primary civil liability to the patient. The hospital is obliged to make compensation first based on the principle *of vicarious liability* because the doctor practices in the facility and on behalf of the hospital. Medical Support Personnel (Nursing Assistants): More fundamentally, institutional responsibilities are drawn to the level of medical support personnel such as Nursing Assistants. Ola et al. (n.d.) stated that medical actions carried out by nursing assistants outside the established authority which in practice often occur in areas with limited health worker resources have the potential to cause legal consequences that include criminal, civil, and administrative realms.

3. Basis of Civil Lawsuit: Malpractice and Legal Alliances

In the perspective of civil law, the interaction between doctors and patients is based on a legal relationship that is an agreement, which is referred to as a therapeutic agreement. (Sulistyani & Syamsu, 2015). If the obligations arising from the relationship are not fulfilled, then the act can be qualified as a default, especially when there is a violation of the agreement regarding the outcome, or as an unlawful act (*onrechtmatige daad*) if the act causes harm to the patient. (Widhiantoro et al., n.d.; Rokayah & Widjaja, 2022).

It should be emphasized that the obligation inherent in the doctor is the obligation to make maximum efforts (*inspanningverbintenis*), not the obligation to ensure the achievement of certain results (*resultaatsverbintenis*). This provision is in line with Article 51 of Law Number 29 of 2004, which emphasizes that the professional responsibility of doctors is realized through the provision of optimal medical efforts as a fulfillment of patients' rights to responsible health services, without promising results in the form of recovery (Septrina & Madjid, 2025).

4. The Critical Role *of Informed Consent* as a Legal Boundary Line

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In sorting out the suable negligence and the pure risk that must be accepted, informed *consent* plays a central role as a legal demarcation line. If *informed consent* is not carried out comprehensively, or medical procedures are performed without valid consent, this is categorized as negligence that requires civil liability (Tenda et al., n.d.). In contrast, perfect *informed consent*, which includes an explanation of the inherent medical risks, serves as a legal defense.

CONCLUSION

Based on the results of the research and in-depth discussion on the civil liability of hospitals in Indonesia, several main conclusions can be drawn:

1. Firm Institutional Responsibility: The Indonesian legal system clearly places hospitals as the primary subject of legal liability, shifting the burden of responsibility originally attached to individual doctors to hospital institutions as legal entities. Juridical consequences for patient losses caused by the negligence of health workers in the provision of medical services under their institutional control.
2. Layered and Non-Delegable Responsibilities: Institutional liability applies to any medical personnel who practice health services within hospital facilities, including physicians who work under a partnership pattern. In the presence of patients, hospitals still bear full civil liability and are obliged to handle compensation, although internal mechanisms (subrogation) against negligent doctors can still be carried out.
3. Key to Proving Negligence: The determination of civil liability depends on the ability to prove the existence of professional negligence (*malpractice*), which is a deviation from professional standards and standard operating procedures. Negligence must be clearly distinguished from inherent medical *risk* which is a scientifically permissible complication even if the procedure has been carefully performed.
4. *Informed Consent* as a Boundary Line: Informed consent that is carried out comprehensively and transparently is a crucial element. Negligence in its application can give rise to civil liability. In contrast, valid *informed consent* serves as the hospital's legal defense against losses arising from medical risks that have been described and agreed to by the patient.

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