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LIABILITY FOR COMPENSATION ON HOSPITALS DUE TO HEALTH WORKFORCE NEGLIGENCE (A CRITIQUE)

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ABSTRACT

This research examines the implications of Article 193 of Law No. 17 of 2023 concerning Health, which imposes sole liability on hospitals for negligence by health workers. This provision raises concerns about fairness and justice, as it deviates from established principles of shared accountability in Indonesian civil law. The study aims to critique this legal framework, assess its alignment with international standards, and explore its impact on healthcare delivery. Using a descriptive method, the research analyzes legal documents, case law, and relevant literature to understand the complexities of liability in healthcare. The findings reveal that Article 193 undermines the principles of distributive, retributive, and compensatory justice, potentially eroding trust in the legal system and discouraging hospitals from providing high-risk services. Furthermore, the study highlights that this one-sided liability can create an adversarial relationship between hospital management and health workers, ultimately harming patient care. The implications of this research suggest the need for legal reforms that promote shared accountability among healthcare providers and individual practitioners. By advocating for a reassessment of Article 193, the study aims to inform policymakers and legal professionals on creating a balanced liability framework that fosters a collaborative healthcare environment and enhances patient safety.

INTRODUCTION

In Article 193 of Law No. 17 of 2023 concerning Health, it is stated that "Hospitals are legally responsible for all losses caused by negligence committed by hospital health human resources." This provision places a significant burden on hospitals, as it holds them solely accountable for any negligence exhibited by their employees. This approach raises concerns about fairness and justice within the legal framework. The principle of justice in law entails that responsibility should be distributed equitably among all parties involved, rather than imposing an undue burden on one entity (Frosio & Geiger, 2023; Sardo, 2023; Sharkey, 2022; Sheehy, 2022; Stone, 2025). By focusing solely on the hospitals, the law may inadvertently undermine the accountability of individual health workers who contribute to the negligence.

In contrast, Indonesian civil law, as articulated in Article 1366 of the Civil Code, emphasizes that "everyone is responsible not only for losses caused by their actions but also for losses caused by negligence or lack of care." This legal framework clearly delineates that the perpetrator of negligence is obligated to assume responsibility for the consequences of their actions. Thus, the current law appears to deviate from this established principle by not holding individual health workers

accountable for their negligence. Instead, it directs all liability toward the hospital, which can create an environment where health workers may not feel compelled to exercise the necessary care in their duties.

Furthermore, Article 1367 of the Civil Code elaborates on the concept of shared responsibility, indicating that both superiors and subordinates can be held liable for damages incurred. This provision underscores the importance of collective accountability, suggesting that both the hospital administration and the individual health workers should share in the responsibility for negligence. The existing Article 193 neglects this principle by enforcing a one-sided liability that does not reflect the complexities of health care dynamics, where multiple parties play critical roles in patient care.

The implications of this legal framework are significant for the functioning of hospitals and the quality of health care provided. By placing the entire burden of liability on hospitals, there may be a chilling effect on the willingness of hospitals to admit patients or to provide certain high-risk procedures (Appel, 2012; Belkin, 2021; Liang, 2015; Mello et al., 2007; Studdert & Mello, 2018). Hospitals might become overly cautious in their operations, leading to potential reductions in the availability of services. Moreover, this could create an adversarial relationship between health workers and hospital management, which may ultimately harm patient care and the collaborative environment necessary for effective health delivery.

Article 193 of Law No. 17 of 2023 concerning Health raises serious concerns regarding the principle of justice in the context of liability for negligence. By absolving individual health workers of responsibility and placing the entire burden on hospitals, the law contradicts the established principles of Indonesian civil law, which advocate for shared accountability (Syarifuddin, 2021). To promote a fair and just legal framework, it is essential to reassess this provision, ensuring that all parties involved in health care, including individual practitioners and hospital administrations, are held accountable for their actions. This would not only align with the principles of justice but also foster a more responsible and collaborative health care environment.

The research attempts to explore the liability for compensation on hospitals due to health workforce negligence. The research contributes to understanding legal accountability in healthcare by examining hospitals' liability for compensation due to health workforce negligence. It highlights the complexities of existing legal frameworks and the implications of imposing sole responsibility on hospitals for their employees' actions. By addressing the relationship between hospital liability and patient safety, the study underscores the need for potential reforms to ensure fairness and justice in responsibility allocation. Ultimately, the findings aim to inform policymakers and legal professionals, guiding discussions on creating a balanced liability approach that promotes both accountability and high-quality patient care.

The provided research critiques Article 193 of Law No. 17 of 2023, highlighting issues of shared accountability in healthcare liability and its implications for justice and patient safety. It identifies a gap in existing literature, particularly in the studies by Suryoutom et al. (2025), which focus on hospital liability within tort law, and Lethy et al. (2023), which address legal protections for patients, but do not integrate historical context or comparative analysis. The novelty of this research lies in its multidimensional approach, tracing the evolution of justice principles, analyzing international liability standards, emphasizing the need for a fair legal framework that holds both hospitals and individual health workers accountable, and suggesting actionable reforms for policymakers.

METHODS

In this study, the author focuses on collecting data to test hypotheses or answer questions about the final status of research subjects, specifically regarding compensation liability in civil law. The research approach is descriptive, systematically collecting and analyzing data to understand the phenomenon of liability as it pertains to hospitals and health workforce negligence. Data sources include legal documents, such as Article 193 of Law No. 17 of 2023 concerning Health, relevant civil law statutes, case law, and literature related to health law and compensation liability. The data collection technique primarily involves document analysis to extract and examine relevant information. Data analysis techniques encompass thematic analysis for identifying patterns related to liability and compensation, while quantitative data may be analyzed using statistical methods. The research aims to provide suggestions for addressing specific problems and to analyze the results to assess the legality of facts or events related to the study. By utilizing the theory of liability for compensation in civil law, the data serves as a reference for evaluating the appropriateness of Article 193, which mandates that hospitals bear sole responsibility for losses caused by health workers in their facilities.

RESULTS

Civil Justice Theory of Liability for Losses

Aristotle divided justice into two types, namely distributive justice and commutative justice (Nasution & Nadirah, 2024). Distributive justice is justice that is handed over to everyone according to their portions according to their achievements. Meanwhile, commutative justice is justice that gives equal amounts to everyone regardless of their achievements (Nasution & Nadirah, 2024).

Justice is divided into 3 types, which are as follows (Pramudita, 2016):

1) Distributive justice has the same meaning as the traditional pattern, namely that profits and burdens must be shared fairly.
2) Levitative justice is related to the occurrence of wrongdoing, which means that the law or fine imposed on the guilty person must be fair.
3) Compensatory justice is also related to mistakes committed from the perspective of other aspects, namely a person has a moral obligation to compensate or compensate other parties who suffer losses.

Distributive justice is seen as the beginning of all kinds of justice theories (Hernoko, 2007). The justice that exists in the midst of society studied by experts is generally based on the theory of distributive justice with each person's own version and point of view (Hernoko, 2007).

Muhammad (2010) divided the theory of responsibility in tort liability into 3 theories, which are as follows:

1) Liability due to unlawful acts that are committed intentionally (intentional tort liability) which means that the defendant did indeed commit an act in such a way as to cause losses to the plaintiff or understand that what he did would cause losses.
2) Liability for unlawful acts committed due to negligence (negligence tort liability) is based on the concept of fault which has a relationship with morals and laws that have been intermingled.
3) Absolute responsibility for unlawful acts without questioning fault (strict liability), is based on acts either intentionally or unintentionally, which means that even if it is not a fault committed by him, he must still be responsible for the losses caused by his actions.

Meanwhile, according to Munir Fuady, the legal responsibility model is as follows (Susila, 2022):

1. Liability with an element of fault which is divided into intentional or negligent is stated in Article 1365 of the Civil Code which reads "Every act that violates the law and brings harm to another person, obliges the person who caused the loss due to his fault to compensate for the loss" (Soebekti & Tjitrosudibio, 2020)
2. Liability with an element of fault, especially negligence, is in accordance with Article 1366 of the Criminal Code which reads "Everyone is responsible, not only for losses caused by their actions, but also for losses caused by their negligence or recklessness" (Soebekti & Tjitrosudibio, 2020)
3. Absolute or no-fault responsibility as in Article 1367 of the Criminal Code which reads "A person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of people who are his dependents or due to goods under his supervision.

Parents and guardians are responsible for the harm caused by minor children, who live with them and against whom they exercise parental or guardian power. Employers and persons who appoint others to represent their affairs, are liable for the losses caused by their servants or subordinates in performing the work assigned to them. The schoolteacher or chief craftsman is responsible for any harm caused by his pupils or his craftsmen during the time that person is under his supervision. The aforementioned responsibilities end, if the parents, school teachers or chief craftsmen prove that each of them cannot prevent the act for which they should be responsible (Soebekti & Tjitrosudibio, 2020).

If the responsibility model is connected with the theory of justice, it can be understood that Article 1365 and Article 1366 are the application of distributive justice in which each person, if proven to have committed a mistake and caused others to suffer losses, must be responsible for providing compensation to that person. The burden of compensation must also be proportional according to the portion. In other words, in Indonesian civil law, the burden of compensation is the responsibility of the party who made the mistake based on Article 1365 and Article 1366 of the Criminal Code. Then there is an additional based on Article 1367 of the Criminal Code which means that a person who bears another person or supervises a person under him is also responsible if the person who is a dependent or under his supervision commits a mistake.

Other Countries' Civil Justice Theories on Liability for Losses

Danish State Civil Justice Theory of Liability for Damages

In Denmark, liability for losses within the scope of health care is regulated in the Danish Act on the Right to Complain and Receive Compensation. This law is a Consolidated Law Number 1022 dated August 28, 2017 and amended by Law Number 314 dated April 25, 2018 (The Danish Patient Compensation, 2025). The right to compensation for patients is listed in Articles 19 to 64 in Chapter 3 on Patient Compensation.

The party responsible for paying compensation is regulated in Article 29 of the Danish Act on the Right to Complain and Receive Compensation. Based on Article 29 paragraph (1), it can be known that there are at least 4 groupings of parties who are obliged to pay compensation. The parties who are obliged to pay compensation are as follows:

1. Operations Managers: The group of operational managers is divided into 3 categories, namely:
    a. Operational managers in general hospitals and pre-hospital care in accordance with the Danish Health Act listed in Article 29 paragraph (1) number 1.

b. Regional dental care operational managers, odontology district offices and municipal knowledge centers and health services in accordance with Chapters 36 to 41 of this law which are listed in Article 29 paragraph (1) number 3.
c. The operational manager of the dental school listed in Article 29 paragraph (1) number 4.

2. Region: There are at least 6 categories of regions that have an obligation to compensate patients or their heirs, which are as follows:
   a. The patient's place of residence, if the patient does not have a residence in Denmark, then the area where the patient receives treatment for the injury is the responsibility of the foreign hospital as provided for in Article 19 paragraph (4) of this law.
   b. The area where the practice of licensed private health workers or the practice of private non-practicing physicians who work as on-call doctors or administer vaccinations in accordance with Article 158 of the Danish Health Act. However, there are exceptions for specialists who do not specialize in general medicine. This is stated in Article 29 paragraph (1) number 5.
   c. The area where private hospitals, clinics, or other specialist practices are located when the treatment provided is included in the treatment capacity planned by the area in accordance with Article 64 paragraph (1), paragraph (2), paragraph (3), Article 75 paragraph (2), Article 79 paragraph (2), and Article 89 paragraph (2) as stated in Article 29 paragraph (1) number 6.
   d. Areas that are responsible for operations or municipalities where institutions, residences, nursing homes and others are located in a social environment that grants permission to health workers to work.
   e. Areas where institutions, organizations and so on employ health workers. However, this does not apply to private hospitals, clinics, and specialist medical practices described in number 7.
   f. The area where the health worker committed the injury that is not part of the employment contract or the employee's duties at the health clinic.
3. Hospitals, Clinics and Specialist Medical Practices are responsible for providing compensation in the event of an injury after treatment or examination in accordance with Article 87 of the Danish Health Act or which is not paid for by the public health service listed in Article 29 paragraph (1) number 7.
4. State: Based on Article 29 paragraph (1) number 8, the state is responsible for providing compensation as stipulated in Article 19 paragraph (1) number 4. The State is also responsible if citizens who participate in military service or contract staff suffer injuries as a result of medical care while in the armed forces or in emergency rescue services listed in Article 29 paragraph (1) number 9. In addition, if an inmate gets injured due to the health care provided while in a prison or detention center, it is also the responsibility of the state to provide compensation. However, in the case of dental injuries only when the inmate is indeed entitled to receive the treatment listed in Article 29 paragraph (1) number 10. Furthermore, the state is also responsible when an injury occurs due to medical treatment provided by a doctor in a detention center, when the doctor takes a blood sample for the police, a forensic psychiatric clinic under the Ministry of Justice, the State Serum Institute or Radio Medical as stated in Article 29 paragraph (1) number 14.

Article 29 paragraph (2) explains that the liability for compensation is also imposed on specialist medical practices that specialize in general medicine who do not comply with

the agreement in accordance with Article 60 paragraph (1) and Article 227 paragraph (1) of the Danish Health Act for injuries that occur after treatment or examination not paid for by the public health service. Not only that, but the region where the specialist medical practice is located is also obliged to pay compensation for injuries after treatment or examination in accordance with the Danish Health Act. If the case is delegated to a private institution in accordance with Article 19 paragraph (6), the Minister of Health can determine that the responsibility for providing compensation lies with the institution concerned or the licensed private health worker represented by the institution.

Based on Article 33 paragraph (1) of the Danish Act on the Right to Complain and Receive Compensation states that the Patient Compensation Association receives, discloses and decides all compensation cases in Chapter 3. In Article 33 paragraph (2) of the Danish Act on the Right to Complain and Receive Compensation, the potentially responsible parties must provide information to the Patient Compensation Association regarding the rules in the Danish Health Act that have been implemented when conducting examinations or treatments on patients within 30 days of receiving the request. Furthermore, Article 33 paragraph (4) of the Danish Act on the Right to Complain and Receive Compensation explains that the decision of the Patient Compensation Association will be sent to the insurance company, state, or regional/municipal council that insures itself so that it can pay the specified amount as soon as the deadline for filing a complaint expires, unless the decision is appealed.

New Zealand's State Civil Justice Theory of Liability for Damages

New Zealand has a no-fault *compensation system* for medical injuries intended for citizens, residents, and temporary visitors (Teahan et al., 2023). Injured patients will be entitled to government-funded compensation or damages, but patients waive their right to sue the guilty party except in cases of gross negligence (reckless conduct) (Teahan et al., 2023). The party responsible for administering the no-fault compensation scheme is The Accident Compensation Corporation (ACC) (Teahan et al., 2023).

ACC handles all types of injuries, whether they occur in the workplace or elsewhere. There are specific criteria as a condition for patients to receive compensation, namely that there has been a physical loss caused by receiving treatment and the injury experienced is not an ordinary result or a necessary part of the treatment (Teahan et al., 2023). ACC funds are sourced from a combination of contributions and contributions from the government. ACC manages a variety of accounts, such as work accounts, income accounts, non-income accounts, motor vehicle accounts, and care injury accounts (Teahan et al., 2023).

Based on Article 262 paragraph (1), ACC has the following functions:

1. Carry out the obligations as stated in Article 165, namely determining the scope for people who file claims, granting rights in accordance with the law, maintaining and operating accounts, collecting contributions, managing dispute resolution and carrying out duties related to the storage of competitive provisions.
2. Promote measures to reduce the incidence or severity of personal injury in accordance with Article 263.
3. Monitor access to accident compensation schemes for Māori and identified group populations to improve service delivery under this law for injured Māori tribal residents and residents of other group populations.
4. Manage the assets, liabilities, and risks associated with the account.

5. Performing other functions provided by law.

For the avoidance of doubt, ACC and its subsidiaries do not have the function of providing insurance, but may provide insurance-related services. In carrying out its functions, ACC is obliged to provide services to claimants and contributors with the aim of minimizing the incidence and all costs of personal injury to the community and ensuring fair rehabilitation and appropriate compensation for losses due to personal injury. In order to provide effective and equitable services, ACC may provide resources to assist organizations that provide advocacy services to ACC claimants.

Where is Justice for Hospitals?

From the description above, is the responsibility of hospitals for the negligence of their health human resources reflected in Indonesian civil law norms even in other countries such as Denmark and New Zealand where both countries are countries with excellent health service governance, of course not.

Based on the above explanation, it is a criticism of the injustice for hospitals with the enactment of article 193 of Law No. 17 Tahung 2023 concerning Health which states legal norms outside the norms of civil law both from the early days of Aristotle to modern times. Therefore, it is necessary to have a judicial review of the articles of the above law that do not reflect justice. Neglect of the enactment of this article will result in:

1. Erosion of justice values: Justice is regressed when legal norms fail to protect the principles of equality and justice.
2. Economic stagnation: Investment and economic growth are hampered when the legal system cannot provide certainty and fairness in economic transactions.
3. Reluctance for health service facilities to expand their business.
4. Not educating health human resources, because there is no stick and carrot principle in human resource management.

CONCLUSION

The research concludes that justice for imposing losses has historically been shared between the perpetrator and the employing agency, yet Article 193 of Law No. 17 of 2023 concerning Health fails to reflect principles of distributive, retributive, and compensatory justice, placing undue burden solely on hospitals. This provision diverges from international civil law norms and could lead to erosion of justice, economic stagnation, and reluctance among healthcare facilities to operate. Additionally, it does not promote the education of health resources to improve quality. The researcher suggests that hospitals challenge this article in the Constitutional Court, enhance internal consolidation to improve service quality, and establish medical committees for oversight. Future research could explore comparative liability models, assess the impact of legal reforms on healthcare, develop quality improvement frameworks, study the effectiveness of medical committees, and investigate patient perceptions of justice in healthcare.

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