

The Shift in the Concept of Liability for Medical Negligence After the Enactment of the 2023 Health Law

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ABSTRACT

This study aims to examine the shift in the concept of imposing responsibility for medical negligence losses from the past to the present. From the review of the Supreme Court's decisions regarding the imposition of liability for losses due to medical negligence until the issuance of Law No. 17 of 2023 concerning Health, it was found that there has been a shift in the concept of imposing liability for losses caused by medical and health workers. This shift in concept occurred because the use of civil law as a reference for imposing losses became irrelevant with the enactment of the 2023 health law. In the past, the concept of imposing medical negligence losses relied on the concepts of vicarious liability and respondeat liability, which later changed to the concept of ostensible liability, where the characteristics differ from the previous two concepts. The use of the concept of ostensible liability is relevant as the basis for imposing liability for losses incurred by medical personnel who practice independently. The research method used is normative legal research, where the study is carried out on legal norms, rules, jurisprudence, and principles in laws and regulations (statute approach), with the aim of analyzing the harmony of norms and providing legal arguments or finding legal concepts of liability and losses.

INTRODUCTION

In liability for damages from the perspective of civil law, it can be understood as a legal obligation that arises when a person commits an act that violates the rights of another person or fails to fulfill obligations under an agreement. Liability for this loss is not criminal but rather an obligation to recover the loss of another party through compensation, fulfillment of obligations, or other legal actions. In principle, responsibility for losses serves as a means to provide justice to the aggrieved party through a restorative legal mechanism (Robinson & Carlson, 2021). Civil liability not only regulates relationships between individuals but also ensures balance and legal certainty in society (Rangotwat, 2022).

The form of liability for losses from a civil law perspective aligns with the provisions of Article 1367 of the Civil Code, which states, "A person is not only liable for losses caused by

his own actions, but also for losses caused by the actions of persons under his or her dependents or under his supervision." Based on the explanation of this article, a person is not only responsible for losses caused by his own actions but also by the actions of those under his supervision or dependents (R. Subekti, 2012).

A hospital is a health service facility that provides comprehensive individual health services through promotive, preventive, curative, rehabilitative, and/or palliative health services by offering inpatient, outpatient, and emergency services (Rahayu & Susanti, 2024; Rifla & Sni Syam, 2024; Wendimagegn & Bezuidenhout, 2019). Hospitals, as organizations in the health sector, play an important role in optimizing public health; therefore, they are required to manage their activities by prioritizing the responsibilities of health workers, especially medical personnel, in carrying out their duties and authorities (Hareide et al., 2016; Parindra et al., 2024). The medical services provided by medical personnel in hospitals do not always yield the expected results for all parties. Sometimes, such services can involve negligence by medical personnel resulting in catastrophes such as disability, paralysis, or even death. In such cases, patients often seek compensation. Requests for compensation arise from physical or non-physical losses due to the negligence of medical personnel. The hospital is therefore legally liable to the patient for losses caused by such negligence (Hidayat et al., 2025; Stępnik, 2021). Physical (material) losses, for example, include the loss or dysfunction of all or part of the body's organs, while non-physical (immaterial) losses relate to a person's dignity (Quigley & Ayihongbe, 2018). In several past medical disputes—such as the Decision of the Supreme Court of the Republic of Indonesia Number III/PDT/2017/PT.BNA and the Decision of the Supreme Court Number 312/Pdt.G/2014/PN.JKT.SEL—the imposition of medical negligence compensation referred to civil law principles, where both medical personnel and hospitals bear liability, raising new issues, particularly in determining the proportion of losses to be borne by hospitals and doctors by non-standardized judges.

The issue of negligence by medical personnel towards patients in hospitals is related to the theory of legal liability (Taiwo et al., 2019). Legal liability is closely related to the concept of rights and obligations (Peráček & Kaššaj, 2023). The concept of rights emphasizes the notion of rights paired with corresponding obligations. It is commonly accepted that one person's rights are always correlated with obligations to others. A concept related to legal obligation is the concept of legal responsibility, where a person is legally responsible for a particular act, meaning that he is subject to sanctions if his actions violate applicable laws. This theory of legal responsibility was put forward by Ridwan HR (2016).

Hans Kelsen stated that "a person is legally responsible for a particular act or that he bears legal responsibility; this means he is liable for a sanction in the event of an act contrary to the law." A concept related to legal obligation is liability, where a person is legally responsible for a certain act and can be sanctioned in case of a contrary act. Essentially, Kelsen's theory of legal responsibility emphasizes that responsibility arises from laws and regulations, so the theory is interpreted in the sense of liability (Kelsen, 2006).

Previous studies provide insights into medical negligence and civil liability but also reveal gaps (Madan et al., 2024; Mello et al., 2020; Mustafa, 2025). For example, Santoso and Rahmawati (2018) examined the application of civil liability in hospital malpractice cases, highlighting judges' inconsistent approaches to distributing liability between medical personnel and hospitals. However, their study did not explore how the new Health Law reshapes the

concept of responsibility. Meanwhile, Putra et al. (2020) analyzed ostensible liability under Indonesian health regulations, emphasizing representative employment relationships; however, their research focused mainly on regulatory interpretation without critically linking the shift in liability concepts to theoretical frameworks such as Kelsen's legal responsibility theory.

In this study, the author illustrates that there is the shift in the concept of liability for medical negligence after the enactment of the 2023 Health Law, in which the concept of responsibility moves from vicarious liability, characterized by supervisory or dependent relationships, and respondent liability, characterized by official employment relationships, to ostensible liability, characterized by the absence of a formal employment relationship but based on representative employment relationships.

Based on the background description, the objective of this research is to investigate the conceptual shift in liability for medical negligence from Civil Code-based principles to Health Law-based provisions, and to assess the implications for hospitals and medical personnel in Indonesia. The study contributes to legal scholarship by providing a framework for standardizing the imposition of liability in medical malpractice cases and offers practical recommendations for policymakers and hospital management to improve accountability and patient protection. Thus, readers can understand the fundamental difference arising from the shift in the concept of liability for medical negligence after the enactment of the 2023 Health Law.

RESEARCH METHOD

This research used a normative legal research method with a statute approach to examine the consistency of laws and regulations with other legal provisions. The study collected secondary data through literature reviews, legislation, and court decisions. Data analysis employed qualitative methods to discuss legal provisions regarding liability based on the Civil Code, relevant court rulings, and Law No. 17 of 2023 concerning Health.

RESULTS AND DISCUSSION

Hospital Legal Liability According to Civil Law for Medical Personnel's Negligence Towards Patients Liability from a civil law perspective, there are several types of legal liability, including (Ricardo Goncalves Klau et al., 2022): Contractual liability, which is this responsibility arises due to a breach of promise, namely the non-performance of an obligation (achievement) or the non-fulfillment of a right of another party as a result of a contractual relationship; Liability in tort, this liability arises due to an unlawful act (Article 1365 of the Civil Code) committed by a person who due to his fault has caused harm to others; Strict liability, which can be interpreted to be held legally accountable as a result of unlawful acts, requires the existence of an element of fault as one of the main requirements for asking for accountability

In this concept of liability, the proof is from the aggrieved to the aggrieved party; From here, the imposition of responsibility for losses becomes a question, what concept is the basis for the liability of hospitals as well as health workers and medical personnel. In the analysis of the court decision that has been described above, the types of imposition on losses are in two forms, namely:

Vicarious liability, this type of liability arises due to mistakes made by subordinates. In

relation to medical services, hospitals (as employers) can be held responsible for mistakes made by medical personnel who work in subordinate positions (employees). It is different if medical personnel work as partners (attending physician or independent contractor), so that their position is at the same level as the hospital. This is in line with the application of Article 1367 of the Civil Code which states that a person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of those who are his dependents or caused by goods under his supervision. Responded liability where the imposition of losses is seen from the existence of official employment relationships, professional employment relationships and the existence of work hierarchy. Articles 1357 and 1367 of the Civil Code clearly describe the imposition of losses. In the Anglo-American legal system, the doctrine of vicarious liability began to develop as early as the Middle Ages and was adopted more systematically in modern judicial practice. This concept is intended to provide legal protection to third parties who are harmed by the actions of subordinates, arguing that the superiors have control over subordinates and benefit from their work. In Indonesia, although the term "vicarious liability" is not used explicitly, this principle can be found in Article 1367 of the Civil Code which states that a person is liable for losses caused by others under his supervision (R. Subekti, 2008).

In the doctrine of responded liability, in the civil law review in article 1357 it is stated that: "The party whose interests are well represented by another person, are obliged to fulfill the engagements, made by the representative on his behalf, to pay compensation and interest caused by all engagements made by him individually, and to reimburse all beneficial and necessary expenses". subordinate superiors.

Based on the explanation above, the responsibility for losses incurred by the hospital adheres to the doctrine of vicarious liability and responded liability, where the hospital (employer) can be held liable for mistakes made by medical personnel who work in a subordinate position (employee), and the legal liability of the aggrieved party does not abort the liability for losses of medical personnel who are negligent in providing services health (Ricardo Goncalves Klau et al., 2022).

The matter of medical personnel to bear losses is strengthened by the rule in Article 1365 of the Civil Code "every unlawful act that brings harm to another person obliges the person who by mistake publishes the loss to compensate for the loss." Civil claims or lawsuits that can be filed with the Hospital, among others (Arifin, 2016): Lawsuits for default or injury of promise or breach of promise based on contractual liability as stipulated in Article 1239 of the Civil Code; Lawsuit based on unlawful acts (*onrechtmatigedaad*) as stipulated in the provisions of Article 1365 of the civil law Hospital Responsibility to Patients for the Negligence of Medical Personnel According to the Health Law Hospitals must monitor and evaluate performance through data collection, intensively analyze incidents, and make changes to improve performance and safety in patients (Krisnawati, 2024). The hospital also implements service standards, operational procedure standards and professional standards for every person under its auspices, including medical personnel who practice independently. Article 193 of Law Number 17 of 2023 concerning Health clearly simplifies the burden of liability for medical negligence losses which in the past is more complex due to the use of postulates from civil law in medical disputes.

In the legislation, the concept of ostensible liability is in the mandate of article 189 letter g of the Health Law (1) Every hospital has the obligation (g) to make, implement and maintain

quality standards of health services in hospitals as a reference in serving patients" therefore the concept of ostensible liability has scope for doctors to carry out independent practice must follow the rules of the hospital.

The existence of the new health law also expressly and clearly shifts the concepts of vicarious liability and responded liability and imposes ostensible liability where not only the formal relationship between medical personnel and hospitals who work full-time but also medical personnel who are agents of hospitals such as specialists who practice independently.

The doctrine of ostensible liability is based on the assumption that it creates an image of the patient, that he is part of the hospital, with the use of the practice place, attribute, prescription head, medical equipment services, administrative personnel such as registration, recording of medical and administrative records and others, which gives rise to the perception of the patient, the doctor is a representative of the hospital or an apparent agency.

The shift in the concept of imposing compensation from vicarious and responded liability to ostensible is an important meaning of the concept of compensation which previously caused a lot of debate in the trial of medical disputes between doctors and patients, to be firm and clear the position of independent doctors and who pays medical negligence compensation.

Due to the mandate of article 193 of the health law, in the process of patient complaints, hospitals must be involved in the mediation process as mandated in article 310 and provide legal assistance for doctors as mandated in article 310 273 (1) Medical personnel and health workers in carrying out their practice have the right: a. to obtain legal protection as long as they carry out their duties in accordance with professional standards, professional service standards, operational procedure standards, and professional ethics, as well as the needs of patients' health; The article in the health law above shows that the concept of ostensible liability is a must for hospitals to be actively involved in protecting specialist doctors from the beginning of complaints to the hospital, complaints to the Professional Disciplinary Council to the compensation settlement stage, although to be noted, the imposition of this loss does not necessarily eliminate the right of the hospital to sue medical personnel who cause losses, This is regulated in the Health Law in Article 191 letter e.

In health law, the Supreme Court and the Constitutional Court have repeatedly emphasized the significance of institutional responsibility to patients, not only based on employment relationships, but also on representation of services.

The development of sustainable responsibility in the legal world is increasingly important not limited to the context of modern medical practice but also in other fields such as consulting services, travel agencies and outsourcing systems.

CONCLUSION

The concept of imposing liability for past losses in Indonesian civil law traditionally involved vicarious and respondent liability, holding both hospitals and medical personnel responsible for damages. However, the new Health Law, specifically Article 193, introduces a significant shift to ostensible liability, whereby the hospital alone bears the sole responsibility for compensating for medical negligence losses, including those caused by independent medical personnel. This marks a major change from shared to single burden liability. Future research could explore the practical implications of this shift on hospital accountability, patient rights, and dispute resolution outcomes in the Indonesian healthcare system.

REFERENCES

- Hareide, P. J., Bjørberg, S., Støre-Valen, M., Haddadi, A., & Lohne, J. (2016). Strategies for Optimization of Value in Hospital Buildings. *Procedia - Social and Behavioral Sciences*, 226, 423–430. <https://doi.org/10.1016/j.sbspro.2016.06.207>
- Hidayat, D. I., Prastopo, P., & Fadila, A. (2025). Legal Analysis of Hospital Liabilities For Medical Negligence (A Review According To Civil Law). *Ranah Research : Journal of Multidisciplinary Research and Development*, 7(5), 3815–3824. <https://doi.org/10.38035/rrj.v7i5.1705>
- Madan, R., Das, N., Patley, R., Nagpal, N., Malik, Y., & Math, S. B. (2024). Consequences of medical negligence and litigations on health care providers – A narrative review. *Indian Journal of Psychiatry*, 66(4), 317–325. https://doi.org/10.4103/indianjpsychiatry.indianjpsychiatry_799_23
- Mello, M. M., Frakes, M. D., Blumenkranz, E., & Studdert, D. M. (2020). Malpractice Liability and Health Care Quality. *JAMA*, 323(4), 352. <https://doi.org/10.1001/jama.2019.21411>
- Mustafa, C. (2025). A Cross-Jurisdictional Exploration of Inadvertent Negligence in Legal Theory and Practice. *Jurnal Hukum Dan Peradilan*, 14(1), 131–160. <https://doi.org/10.25216/jhp.14.1.2025.131-160>
- Parindra, I. K., Menap, M., & Khalik, L. A. (2024). Optimization of Hospital Health Services: Insights from Recent Literature. *Bioscientist : Jurnal Ilmiah Biologi*, 12(2), 1636. <https://doi.org/10.33394/bioscientist.v12i2.12467>
- Peráček, T., & Kaššaj, M. (2023). A Critical Analysis of the Rights and Obligations of the Manager of a Limited Liability Company: Managerial Legislative Basis. *Laws*, 12(3), 56. <https://doi.org/10.3390/laws12030056>
- Quigley, M., & Ayihongbe, S. (2018). Everyday Cyborgs: On Integrated Persons and Integrated Goods. *Medical Law Review*, 26(2), 276–308. <https://doi.org/10.1093/medlaw/fwy003>
- Rahayu, A., & Susanti, A. S. (2024). Analysis of Coaching and Supervision Results for Bandung City Hospitals by the Bandung City Health Office in 2024. *Asian Journal of Environmental Research*, 1(2), 39–48. <https://doi.org/10.69930/ajer.v1i2.49>
- Ricardo Goncalves Klau, Muhammad Saiful Fahmi, & Gusti Ayu Utami. (2022). Pertanggungjawaban Hukum Perdata Rumah Sakit Terhadap Tindakan Medis Dokter Mitra Yang Merugikan Pasien. *Jurnal Komunitas Yustisia*, 5(3), 490–497. <https://doi.org/10.23887/jatayu.v5i3.56323>
- Rifla, C., & Sni Syam, M. (2024). Hospital Efforts in Fulfilling Patients' Rights to Emergency Unit Health Services. *Blantika: Multidisciplinary Journal*, 2(6), 698–704. <https://doi.org/10.57096/blantika.v2i7.167>
- Robinson, S., & Carlson, D. (2021). A just alternative to litigation: applying restorative justice to climate-related loss and damage. *Third World Quarterly*, 42(6), 1384–1395. <https://doi.org/10.1080/01436597.2021.1877128>
- Stępnia, A. (2021). Medical error and negligence as a premise of liability for damage caused to patients. *Journal of Health Inequalities*, 7(2), 132–137. <https://doi.org/10.5114/jhi.2021.113165>
- Taiwo, A., Imosemi, A., & Abangwu, N. (2019). Administrative and legal protection of medical personnel against criminal and tortious negligence. *Nigerian Journal of Medicine*, 28(3), 253. <https://doi.org/10.4103/1115-2613.278594>
- Wendimagegn, N. F., & Bezuidenhout, M. C. (2019). Integrating promotive, preventive, and curative health care services at hospitals and health centers in Addis Ababa, Ethiopia. *Journal of Multidisciplinary Healthcare, Volume 12*, 243–255. <https://doi.org/10.2147/JMDH.S193370>