



## Health Human Resources Negligence: Is It The Hospital's Responsibility?

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### ABSTRACT

Hospitals are institutions fraught with the risk of legal action, as they are dense with resources, technology, knowledge, and the risk of health measures. Health human resources (medical personnel, health personnel, and supporting personnel) carry out their work based on standards determined by the government, their profession, and the hospital, with permanent employee status or an agreement/contract, forming an employment relationship. On this basis, the hospital is responsible for negligence committed by its workers. The Corporate Liability Doctrine demands that the hospital be responsible for its workers who make mistakes. Apart from this doctrine, the theory of vicarious liability also explains the same thing. However, all accusations of negligence to obtain compensation must, of course, require proof of error in the action. Furthermore, health law does not only require hospitals to be responsible for clinics or community health centers, not being included in this category even though legally they are both legal entities. Apart from that, the amount of compensation borne by hospitals and health resources has not been regulated in the provisions, so it needs to be determined jointly by both parties because both parties have legal responsibility.

## A. INTRODUCTION

Health is an important key in running the country.<sup>1</sup> The country can be crippled if public and individual health is unhealthy.<sup>2</sup> In the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) Article 28H Paragraph (1) Every person has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and the right to receive health services. To achieve the country's goals, sustainable development is being implemented, which is a comprehensive, directed, and integrated series of development, including health development. Health is a human right and an element of prosperity that must be realized in accordance with the state's goals as intended in Pancasila and the 1945 Constitution.<sup>3</sup> On this basis, all government efforts are to strive for health development to achieve prosperity for its citizens so that the level of health continues to increase.

Realizing health requires cooperation, seriousness, and hard work carried out by the government, private sector, and society. In the past, health was only limited physically, but now health is an integral part of a complete individual, namely being healthy physically, and socially, and not just being free from disease to enable an individual to live a productive life. A form of health by carrying out all activities in an integrated manner to maintain and improve the level of health with cooperation, seriousness, and hard work by the government and society.<sup>4</sup>

Health management capabilities, which are the key to successful health development, are currently not fully adequate. Policy consolidation is very important to realize national development in the health sector as a form of fulfilling human rights and upholding the rights of patients as recipients of health services.<sup>5</sup> Apart from strengthening policies to fulfill human resources in the health sector which are still lacking and especially the quality of service which still receives a lot of attention from the community, disputes between medical personnel and patients and cases of alleged malpractice are currently still being discussed both in the media and by academics. A hospital is a place where medical and health personnel provide promotive, preventive, curative,

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<sup>1</sup> Viju Raghupathi and Wullianallur Raghupathi. "The influence of education on health: an empirical assessment of OECD countries for the period 1995–2015." *Archives of Public Health* 78 (2020): 14.

<sup>2</sup> B. K Salaev et al. "Impact of food quality on the economic security of the region." In *IOP Conference Series: Earth and Environmental Science* 677, no. 3, p. 032008. IOP Publishing, 2021: 76.

<sup>3</sup> See the Explanation of Law Number 17 of 2023 concerning Health.

<sup>4</sup> David CH Harris et al. "Increasing access to integrated ESKD care as part of universal health coverage" *Kidney international* 95, no. 4 (2019): S21.

<sup>5</sup> Rif'atul Hidayat. "Hak Atas derajat pelayanan kesehatan yang optimal." *Syariah: Jurnal Hukum dan Pemikiran* 16, no. 2 (2016): 130.

rehabilitative, and/or palliative health services by providing inpatient, outpatient, and emergency services. A hospital is an organization that is very dense with various health sciences and various types of health workers whose respective sciences interact with each other.

Health services involve two parties, namely the hospital as a place for carrying out health service activities and health/medical personnel. In health services, there is sometimes a risk of legal action in the form of negligence committed by medical personnel or healthcare workers.<sup>6</sup> Moreover, if the patient's prosecution against the doctor and hospital becomes a sensitive cases.<sup>7</sup> This case is always a concern because the consequences result in significant losses ranging from disability to death. But not only that, the impact of prosecution is that it creates harsh penalties for doctors and hospitals.<sup>8</sup> An individual who wants a hospital to be held liable for negligence has a hurdle to overcome, namely having to file a lawsuit and prove their injury resulted from a negligent act. In addition, a malpractice claim against a hospital requires the plaintiff to be able to prove that the injury was caused by the negligent actions of the doctor.<sup>9</sup> The fear of doctors or hospitals remains even though malpractice claims come and go. However, health services still exist because health services are still needed, anticipating health service accidents. and supervision are also important for hospitals.<sup>10</sup>

Provisions for the relationship between hospitals and patients and hospitals and medical or health personnel are regulated in Law Number 17 of 2023 Article 193 Hospitals are legally responsible for all losses incurred due to negligence committed by hospital health human resources. Hospitals carry out the function of individual health services and provide basic health services, educational functions, and research in the health sector. This provision means that for all the consequences of the negligence of doctors or medical personnel, the hospital is responsible for the negligence caused by health service actions carried out by medical personnel and health workers.

The above policy provides relief to doctors or health workers in hospitals, but places a heavy burden on hospitals. Hospitals feel there is

<sup>6</sup> Marcel Seran and Anna Maria Wahyu Setyowati. *Dilema etika dan hukum dalam pelayanan medis* (Bandung: Mandar Maju, 2010), 59, see also Hui Yun Chan. "Hospitals' liabilities in times of pandemic: Recalibrating the legal obligation to provide personal protective equipment to healthcare workers." *Liverpool Law Review* 42, no. 2 (2021): 198.

<sup>7</sup> Eva Dias Costa and Micaela Pinho. "Does implicit healthcare rationing impose an unfair legal burden on doctors? A study of Portuguese jurisprudence." *Medical Law International* 20, no. 1 (2020): 46.

<sup>8</sup> Paula Case and Gunjan Sharma. "Promoting public confidence in the medical profession: learning from the case of Dr. Bawa-Garba." *Medical Law International* 20, no. 1 (2020): 65.

<sup>9</sup> Raymond L. Hanson and Ross E. Stromberg. "Hospital liability for negligence." *Hastings Law Journals* 21 (1969): 1.

<sup>10</sup> Allen Kachalia and Michelle M. Mello. "The Medical Liability Environment: Is It Really Any Worse for Hospitalists?" *Journal of hospital medicine* 16 no. 7 (2021): 446.

injustice, the ones who commit negligence are health workers or medical personnel while the hospital is also responsible, The objection was raised during a scientific seminar organized by hospital leaders. On the other hand, the importance of this article is that it differs from the previous discussion in this article, as revealed by wahyudi where negligence is only limited to negligence caused by health workers, not all acts of negligence by health workers are the responsibility of hospitals such as part-time doctors.<sup>11</sup> Whereas this article emphasizes that the position of health human resources with hospitals and discusses the responsibility of negligence not only health workers but also actions taken by all health human resources in the hospital. Considering the above, this article is very important for the understanding of hospitals, health resources and others.

## B. RESEARCH METHODS

The research method used in this research is a normative juridical approach, where legal norms, including statutory regulations, legal principles, and legal theories are used as the main guidance. This research has analytical descriptive specifications. The initial stage of research involves a regulatory review and systematic literature review. Through this stage, the researcher investigated the existing initial situation, referring to relevant literature and statutory regulations. Data collection techniques were carried out through document study. The data obtained were analyzed normatively and qualitatively, where the data was explained in the form of sentences that are arranged effectively, regularly, logically, and without overlap. The results of the discussion of the problems discussed in this research are used to conclude inductively, to answer the problems that are the focus of the research.

The research method used in this research is the normative juridical approach method, which uses legal norms including laws and regulations, namely the Health Law of the Republic of Indonesia No. 17 of 2023, the Civil Code, the Academic Manuscript of the Health Law, Law No. 6 of 2023 concerning Job Creation, Law No. 20 of 2023 concerning State Civil Apparatus and Regulation of the Minister of Health of the Republic of Indonesia No. 1438/MENKES/PER/IX/2010 concerning Medical Service Standards. and legal theories are used as the main guidelines using the theory of vicarious liability (hospital responsibility).<sup>12</sup> This study has an analytical descriptive specification. The initial stage of the research involved regulatory review and systematic literature review. Through this stage, researchers searched for appropriate literature to support the study and relevant laws and regulations. Data

<sup>11</sup> Setya Wahyudi. "Tanggung Jawab Rumah Sakit Terhadap Kerugian Akibat Kelalaian Tenaga Kesehatan Dan Implikasinya." *Jurnal dinamika hukum* 11, no. 3 (2011): 510.

<sup>12</sup> Roy K. Lisko. "Hospital Liability Under Theories of Respondeat Superior and Corporate Negligence." *University of Missouri-Kansas City Law Review*, 47 (1978): 171.

collection techniques were conducted through document studies. The data obtained were analyzed normatively qualitatively, where the data were described in the form of sentences arranged in an orderly, logical, non-overlapping, and effective manner. The results of the discussion of the problems discussed in this study are used to conclude inductively, with the aim of answering the problems that are the focus of the research.

## C. RESULT AND DISCUSSION

### **The Legal Position of the Hospital as a Health Service Provider**

As times progress, health needs become more advanced and modern, existing innovations require developments in various lines, including hospitals. Health science and health technology continue to develop, which creates demands for health service providers, especially in the era of national health insurance, so that people can easily get health services. In the past, only certain people could access health facilities, but now the majority of people who need health services, whether poor or rich, can easily get health services.

The enactment of Law Number 6 of 2023 on Job Creation creates a good opportunity for the development of the world of health, where the Law aims to provide ease of doing business, one of which is for health facilities. The Government uses input from the business world to make improvements in order to improve services to the public and business actors so that in the future it will be easier for the public and business actors to do business in Indonesia. The government is also designing policies that are more efficient, easily accessible to all parties, and can be implemented easily, including making it easier for foreign investors to build hospitals in various regions.<sup>13</sup>

The distribution of health services is also not evenly distributed, only on the island of Java which is densely packed with health facilities, while in other areas it is still limited. The data consists of the islands of Sumatra and Aceh 605 public hospitals, Java Island 1,164, Bali Island 64, East Nusa Tenggara Island 50, West Nusa Tenggara 34, Kalimantan Island 163, Sulawesi Island 226, Maluku Island 50 and Papua Island 66 public hospitals.<sup>14</sup> Therefore, the government makes it easy to simplify the basic requirements for hospital licensing to provide health facilities more evenly and health status increase. Here the role of the hospital is important, because the hospital is an institution

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<sup>13</sup> Health Law Academic Manuscript.

<sup>14</sup> Badan Pusat Statistik Indonesia. "Jumlah Rumah Sakit Umum, Rumah Sakit Khusus, Rumah Sakit/Rumah Bersalin, Puskesmas, Klinik/Balai Kesehatan, Posyandu, dan Polindes Menurut Provinsi, 2018." Last modified October 16, 2019, <https://www.bps.go.id/id/statistics-table/3/YmlzemNGUKNVblZLVVhObIREWnZXbkEzWld0eVVUMDkjMw==/jumlah-rumah-sakit-umum--rumah-sakit-khusus--puskesmas--klinik-pratama--dan-posyandu-menurut-provinsi--2018.html?year=2018>

that provides health services to the community as well as possible in accordance with the provisions of the applicable law.<sup>15</sup>

Hospitals have the function of providing individual health services in the form of specialties and/or subspecialties. Hospital management can be carried out by the central government, regional government, and the community. Hospitals organized by the Central Government or Regional Government to provide health services can apply the financial management pattern of public service agencies. Meanwhile, hospitals established by the community must be in the form of legal entities whose business activities are only engaged in the field of health services, except for hospitals operated by non-profit legal entities.<sup>16</sup>

Hospital classification is mandated by the Health Law through government regulations but so far has not been established after the Health Law was published. In Health Law No. 17 of 2023 Article 184 Paragraph (3) In addition to organizing individual health services as referred to in paragraph (1), hospitals can carry out educational and research functions in the field of health. The article explains that in addition to organizing individual health services, hospitals can also be designated as teaching hospitals, with the function of being a place for education, research, and integrated health services in the field of education for medical and health personnel and multiprofessional continuing education. However, if we look at Minister of Health Regulation Number 3 of 2020 on the Classification and Licensing of Hospitals, there are two types of hospitals, namely general hospitals and special hospitals. The former has types A, B, C, and D while the latter has types A, B, and C.

Proper quality management provides progress for the hospital, so seriousness is needed in management. Hospitals must provide health services to the entire community because the development and implementation of health in hospitals need to be directed towards national goals in the health sector. Hospitals as health service facilities have a very important role in efforts to accelerate the improvement of the health status of the Indonesian people.

Within the hospital, there are many complex resources, facilities infrastructure, and health human resources. The existence of medical personnel, health personnel, and support/support personnel is part of the management process in hospitals. Each has an important role and is required to be able to cooperate. Based on the provisions of Law Number 17 of 2023 Article 197, Health Human Resources consists of medical personnel, health personnel, and health support personnel. Medical personnel are grouped into

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<sup>15</sup> Law Number 6 of 2023 concerning Job Creation and Law Number 17 of 2023 concerning Health.

<sup>16</sup> Law Number 17 of 2023 Article 185

doctors and dentists, where the types of doctors consist of doctors/dentists (general), specialist doctors, and subspecialist doctors.

Health workers themselves are grouped into clinical psychology, nursing, midwifery, pharmacy, public health, environmental health, nutrition, physical therapy, medical technicians, biomedical engineering, traditional health, and other health workers determined by the Minister. Elucidation of Article 200 of Law Number 17 of 2023 refers to support or health support personnel, including biological personnel, administrative personnel, waiters, financial personnel, corpse handling officers, and ambulance officers. The health worker's resources are his involvement in and dedication to health efforts and management in health facilities,<sup>17</sup> and an employee, either permanent or contract, who works in a health service facility to help the smooth operation of the health service facility.

### **Legal Position of Health Human Resources Hospitals in Indonesia**

A person (medical personnel, health personnel, support, and health support personnel) who is in a hospital has the status of a permanent or contract employee. Health services at hospitals provide inpatient, outpatient, and emergency services with the task of supporting the fulfillment of public health in Indonesia. Hospitals and doctors have an important role in maintaining and improving the quality of public health. This is because people think that hospitals are places to treat someone, so doctors and hospitals can be considered providers of health services while patients are recipients of health services.

The patient has an influence on treatment with all its rights and obligations, meaning that the influence is the patient's obligation to convey his condition at the time of illness, nothing is kept secret in order to help the doctor diagnose the disease and avoid unwanted things, such as allergies to certain drugs or having a history of other diseases. Patient rights must be fulfilled considering that patient satisfaction is one measure of service quality. Likewise, service providers have an important role in providing health with their knowledge and competence. Therefore, patients, medical personnel/health workers basically have a close relationship. The relationship between health professionals and patients is formed by a medical relationship and a legal relationship. As a medical relationship, it will be regulated by the rules of medical science and as a legal relationship, it will be regulated by legal rules. Since the beginning of human history, there has been a relationship of trust between two humans, namely the human who heals and the human who

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<sup>17</sup> Arman Rifat Lette Lette. "Jumlah dan kebutuhan sumber daya manusia kesehatan di fasilitas kesehatan Kota Kupang." *Jurnal Publikasi Kesehatan Masyarakat Indonesia* 7, no. 2 (2020): 45.

is healed. In modern times, this relationship is referred to as a therapeutic transaction or contract between the doctor and the patient. This relationship is carried out confidentially, in an atmosphere of mutual trust and respect.<sup>18</sup>

A therapeutic agreement or transaction is an agreement made to provide therapy involving all aspects of health, starting from promotive, preventive, curative, and rehabilitative. The relationship between the doctor and patient in this therapeutic agreement is a civil law relationship that is subject to civil provisions based on the Civil Code, especially regulations regarding employees with a specific time work agreement (often referred to as contract workers). The transaction therapeutic creates an agreement, the patient comes to the doctor at the hospital with the aim of being assisted in his recovery. Civil Code 1313 states that an agreement is an act in which one or more people commit themselves to one or more other people. With this agreement, maximum efforts (*inspanningsverbinten*) to achieve the desired result. This is done because medical science creates uncertainty. This uncertainty lies in the fact that medical services always contain medical risks, the patient's immune system, patient compliance, and even bad things that can happen, namely malpractice due to carelessness. Despite the maximum efforts made by doctors in health services, doctors must carry out ethical values, discipline, prescribed standards, and legal responsibilities. Patients can sue the doctor's actions which they consider to be inconsistent with the provisions when the patient is harmed.

Regarding health human resources, as mentioned above, there are not only doctors but also nurses and other supporting staff, each with their specific duties and responsibilities. Nurses play a crucial role in supporting the performance of doctors in health services. They have both independent and interdependent functions. In their independent function, nurses can take action without requiring a doctor's order. The interdependent function involves actions that are based on teamwork for the maintenance or enhancement of overall health. Additionally, nurses have a dependent function, where they assist doctors in providing medical services, administering treatment, and performing special actions that are authorized and within the scope of a doctor's responsibilities.<sup>19</sup> Meanwhile, support and ancillary staff directly or indirectly assist doctors and patients in the treatment process at the hospital. All of these roles carry the potential to harm patients or the hospital. For example, a waiter, if not careful, may inadvertently provide food to the wrong

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<sup>18</sup> Christiana Jullia Makasengehe. "Aspek Hukum Transaksi Terapeutik Antara Tenaga Medis Dengan Pasien." *Lex Privatum* 12, no. 1 (2023): 67.

<sup>19</sup> Howard Waitzkin. "Why it's time for a national health program in the United States." *Western Journal of Medicine* 150, no. 1 (1989): 101.



patient who has allergies to certain foods, leading to a worsening condition due to lack of proper care.

As health service institutions, hospitals hold the status of either state (government-owned) or private (community-owned) entities, both recognized as legal entities. Concerning health human resources in government hospitals, there are State Civil Service Employees (ASN Employees), comprising Civil Servants, Government Employees with Work Agreements (PPPK),<sup>20</sup> and contract employees.<sup>21</sup> In contrast, private hospitals employ both permanent and contract-based staff. Here, we will outline the positions of employees in hospitals, both public and private, differentiating between permanent employees (Civil servants and non-civil servants permanent employees) and contract employees, including PPPK. This is because civil servants and permanent employees generally have the same position in each hospital in accordance with the authority of the agency and while employees with a specific time work agreement are clearly different in terms of time, rights and obligations contained in a work agreement. This is stated in Government Regulation No. 35 of 2021 Article 2 states that work relations occur due to work agreements between employers and workers where work agreements are made for a certain time. Article 1 paragraph (9) reads that a work agreement is an agreement between workers/laborers and employers or employers that contains working conditions, rights, and obligations of the parties. And Article 9, a fixed-term employment agreement is based on the agreement of the parties as outlined in the Work Agreement.

In the case of doctors who join as partners, part-time, or guests with the position of doctors by appointment, the terms agreed upon in their agreements are legally binding (under the principle of freedom of contract, Civil Code Article 1338, and the principle of *pacta sunt servanda*). The agreement, if it contains mutually agreed-upon terms, holds legal weight, serving as the governing law for the involved parties. Any provisions outlined are permissible as long as they align with the law, decency, and public order. Health professionals, including doctors, explicitly state their rights and obligations concerning the services they provide in health facilities.

The relationship between the hospital and its employees, which includes doctors and nurses, is evident in this context. Individuals appointed as permanent or temporary employees establish an employment relationship. This relationship arises due to the existence of a work agreement between the legal entities involved, namely the hospital as a legal entity, and doctors, health

<sup>20</sup> Law No. 23 of 2023 states that Government Employees with Work Agreements, hereinafter abbreviated as PPPK, are Indonesian citizens who meet certain requirements, who are appointed based on a work agreement for a certain period of time in order to carry out government duties and/or occupy government positions.

<sup>21</sup> Law Number 20 of 2023 concerning State Civil Apparatus

workers/support personnel, and health support staff. These legal entities engage in an employment relationship with an agreement specifying various conditions, rights, and obligations for each party. Government Regulation Number 23 of 2021, Article 1, defines an employment relationship as a connection between an entrepreneur and a worker/laborer based on a work agreement, encompassing elements such as work, wages, and orders. Article 51 of the Job Creation Law states that work agreements can be made in writing or verbally. If a work agreement is made in writing, of course, it must be implemented in accordance with applicable laws and regulations, whereas if the agreement is made unwritten, it is determined by a decree. So it is clear that doctors or health workers are either permanent workers or permanent workers based on an agreement that forms an employment relationship.

The employment relationship defined in Article 1 involves the elements of work, wages, and orders. Firstly, the work conducted by a doctor aligns with their competencies, encompassing knowledge, established standards, and a code of ethics. According to Lindy Willmott et al., the professional behavior of a doctor, including attitudes, knowledge, and skills, constitutes integral competencies that must be mastered in a balanced manner.<sup>22</sup> Medical or health personnel acquire their competencies through education and training, underscoring that health human resources possess the knowledge and competence necessary for their duties.

Secondly, concerning wages/salaries, the term "wages", as per the Big Indonesian Dictionary, refers to compensation in the form of money or other forms paid for services or as payment for expended energy. A doctor or health worker receives compensation for their services, which extends beyond a mere salary. Services may also encompass actions carried out in accordance with predetermined or agreed-upon provisions. Article 273 of the Health Law explicitly regulates that "medical personnel and health workers, in carrying out practice, receive a salary/wages as compensation for services".

Thirdly, in terms of orders, determining whether a doctor will adhere to orders from the hospital owner is complex. Doctors and nurses provide health services based on their knowledge and competence. The treatment of patients or actions taken are not solely dictated by orders from the hospital owner or its management. However, while not following direct orders, it does not imply an absence of a working relationship. In providing health services, professionals operate based on scientific knowledge, established standards, and a code of ethics.

The absence of direct orders does not negate the existence of a working relationship. Knowledge, standards, and a code of ethics are integral and

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<sup>22</sup> Lindy Willmott et al. "Nurses' knowledge of law at the end of life and implications for practice: A qualitative study." *Palliative medicine* 34, no. 4 (2020): 529.

necessary conditions for the practice of the medical profession. In essence, a doctor or health worker cannot carry out their responsibilities without the requisite knowledge, adherence to standards, and commitment to a code of ethics, which are essential for obtaining a license to practice. Medical personnel and health or supporting personnel, in such cases, operate not only on the basis of empathy but also uphold professional standards. This demand for professionalism mirrors the expectations in other professions when considering the perspective of a work relationship.

For instance, when a doctor provides health services in a hospital, it is mandatory to possess a registration certificate and a practice permit to work or offer services. Health service facilities serve as venues where health service efforts are conducted, accommodating medical or dental practices, health workers, and additional personnel supporting health services. The implementation of Medical Service Standards (SPK) aims to assure patients of receiving medical services aligned with scientific values, meeting their medical needs, and maintaining and improving the quality of services provided by doctors and dentists. Medical Service Standard encompasses National Guidelines for Medical Services and Standard Procedures Operating (SPO). The National Guidelines for Medical Services are of a national scope, formulated by professional organizations, and approved by the Minister. In contrast, the SPO is developed by the head of the health facility, serving as a reference for the SPO from the National Guidelines for Medical Services. The SPO functions as a guide for medical personnel or health workers in health facilities to fulfill their duties (as per Permenkes No. 1438/MENKES/PER/IX/2010 on Medical Service Standards). If the SPO becomes one of the standards applied for health services, it signifies an implementation of directives from hospital leaders.

Medical practice standards serve as guidelines that doctors or dentists must adhere to during medical practice.<sup>23</sup> Standard Operating Procedures (SPO) are a set of standardized instructions or steps designed to complete specific routine work processes. They represent the correct and optimal steps based on a consensus in carrying out various activities and service functions. Health service facilities develop SPOs based on professional standards, providing a structured framework for executing tasks efficiently and effectively.

Continuing with the discussion on the hospital as a legal entity, that have the independence to take legal action.<sup>24</sup> a legal entity is an entity formed

<sup>23</sup> Regulation of the Minister of Health of the Republic of Indonesia Number 1438/MENKES/PER/IX/2010 concerning Medical Service Standards.

<sup>24</sup> Handika Rahmawan, Fadillah Sabri, and Yussy Adelina Mannas. "Regulating Legal Relationships of Doctors and Hospitals to One Party with Patients to Other Parties in the Indonesian Civil Law System." *International Journal of Multicultural and Multireligious Understanding* 6, no. 4 (2019): 279.

based on the demands of community needs and is recognized by law as having rights and obligations.<sup>25</sup> Legal entities exhibit distinctions between individual legal subjects (*persoon*) and legal entity legal subjects (*rechtspersoon*). Individuals, or persons, are natural entities with their own inherent rights and obligations. On the other hand, *rechtspersoon* are a development as they are formed from collective authority. This type of legal entity comprises a group of individuals in specific positions, mobilizing authority that distinguishes it from the individual members. According to Article 185 of the Health Law, hospitals established by the community must be legal entities engaged solely in the field of health services. The absence of mention of the status of government-owned hospitals in the law is because the government itself is already a public legal entity, empowered to carry out actions with agreements and engage in transactions such as buying and selling. For a group of people to qualify as legal subjects, they must meet specific requirements:

- a. Association of people (organization)
- b. Ability to carry out legal actions in legal relationships
- c. Possession of their own assets
- d. Presence of a manager
- e. Possession of rights and obligations
- f. Capability to be sued and to sue before the court.

Seeing the explanation above, the legal relationship between health human resources and hospitals is formed due to employment agreements. With the status of a permanent employee or with a specific time work agreement (contract/partner/part-time) both have the same obligation to carry out the rules in the hospital. Both must have the obligation to follow orders from superiors through the standards set and the knowledge they have. These criteria ensure that a collective entity is legally recognized, allowing it to engage in legal activities and bear responsibilities within the legal framework.

### **Hospital liability for negligence of human health resources in accordance with the Health Law**

Health human resources are a profession, their expertise is seen from attitudes, skills and knowledge, all three of which form professionalism.<sup>26</sup> The position of medical personnel is a functional position that is paid/gets compensation/wages (in accordance with the provisions or based on an agreement) by the government or hospital owners for their professional expertise. However, in carrying out their duties, they still have autonomy as medical/health workers and in carrying out their duties based on

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<sup>25</sup> Chidir Ali. *Legal Entity* (Bandung: Alumni, 1987), 21.

<sup>26</sup> Donald Irvine. "The performance of doctors. I: Professionalism and self regulation in a changing world." *BMJ. British medical journal (International ed.)* 314, no. 7093 (1997): 1540.

predetermined standards that have been prepared by health facilities in the form of SPO and professional standards including a code of ethics.

Professional freedom for doctors does not absolve employers of their responsibilities. All professions within hospitals are obligated to adhere to standards to ensure the fulfillment of patient rights.<sup>27</sup> Even doctors who are not permanent employees (working based on agreements/contracts) are influenced by the environment in which they operate. Despite not being permanent employees, doctors with work permits in hospitals still bear the obligation to respect patient rights, adhere to established standards, and comply with hospital regulations as stipulated by the law. It is important to maintain consistent standards throughout the hospital according to the competence of both permanent and non-permanent employees so that service quality has certainty.

Hospitals, as legal entities, also operate within the framework of corporate liability, a concept universally recognized and widely adopted by many countries. This doctrine places responsibility on hospitals for the mistakes made by their employees.<sup>29</sup> In a previous case, for instance, an emergency room doctor with permanent status neglected to make a referral to another hospital, leading to a patient undergoing amputation. In this scenario, the hospital was held accountable for employing individuals with inadequate capabilities. This reflects the hospital's obligation in selecting and overseeing its doctors.

A historical case in England in 1951 illustrates a similar principle,<sup>30</sup> where a visiting doctor providing services at the hospital was held responsible for negligence resulting in a patient's injury. The patient could sue the hospital because the hospital had a duty of care, which doctors are expected to adhere

<sup>27</sup> Endang Kusuma Astuti. *Transaksi Terapeutik dalam upaya pelayanan medis di Rumah sakit* (Bandung: Citra Aditya Bakti, 2009), 31.

<sup>29</sup> J. Guwandi, *Hospital law: emerging doctrines & jurisprudence* (Bogor: Fakultas Kedokteran Universitas Indonesia, 2002), 30.

<sup>30</sup> The vicarious liability of hospitals gradually expanded its scope, starting from its liability being limited to hospital staff only, excluding visiting/partner doctors (*Collins v Hertfordshire Country Council*, 1947) and extending to the case of *Cassidy v. Ministry of Health*, 1951 where it is said: "Even though the visiting doctor or other contractor is essentially personally responsible for the negligence that resulted in the patient being injured, the patient can still sue the hospital if the visiting doctor or contractor is someone who the hospital uses because the hospital itself has a "duty of care" towards patients which cannot be avoided by using casual employees. Judge L.J Denning, who examined the *Cassidy* case, said further: "...i think that the hospital authorities are responsible for the whole of their staff, not only for the anaesthetists and the surgeons. It does not matter whether they are permanent or temporary, resident or visiting, whole-time or part time. The hospital authorities are responsible for all of them. The reason is because, even if they are not servants, they are the agents of the hospital to give the treatment. The only exception is the case of consultants or anaesthetists selected and employed by the patient himself. See: Lee, R. G. "The Liability of Hospital Authorities for the Negligence of Their Staff—A History." *Anglo-American Law Review* 8, no. 4 (1979): 317-319.

to in health services. Over time, the scope of hospital responsibilities has broadened, potentially extending to all personnel, including visiting doctors or consultants, in Indonesia.

In addition to this theory, Article 1367 of the Civil Code establishes the doctrine of respondeat superior, stating that an individual is not only responsible for losses caused by their own actions but also for losses caused by the actions of those under their authority. This doctrine asserts the responsibility of employers for the negligence of their workers. According to experts, an employer is someone with the authority to give instructions and control both the results achieved and the methods used. An employment relationship exists when the owner has the right to directly supervise and control the performance of duties. Respondeat superior provides a guarantee to patients for compensation in cases of doctor mistakes. It emphasizes that the hospital is responsible for the outcomes of work conducted to serve the interests of superiors, such as making a profit. Holding hospitals accountable for the negligence of their human resources encourages stricter monitoring of their competence.<sup>31</sup>

In addition to this theory, Article 1367 of the Civil Code 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. This explanation is known as the doctrine of respondeat superior where medical/health workers and supporting/support workers have a working relationship in accordance with their assigned duties. Vicarious liability of the company/employer for the negligence of its employees. According to experts, an employer is a person who has the right to give instructions and control over either the results achieved or the means used. The employment relationship is deemed to exist if the owner has the right to directly supervise and control the performance of his duties. The doctrine of respondeat superior to provide guarantees to patients in order to obtain compensation that the patient can receive for the doctor's mistakes. This doctrine also confirms that the hospital is responsible for the results of the work if the work is done to fulfill the interests of the superior, in this case for profit. If the hospital is responsible for the negligence of human resources in the hospital, then the hospital is more encouraged to supervise the competence of its resources more strictly.<sup>32</sup> In conventional liability, the principle of proximity is used to limit legal liability

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<sup>31</sup> J. Douglas Peters and Jeanette C. Peraino. "Malpractice in Hospitals: Ten Theories for Direct Liability." *Law, Medicine and Health Care* 12, no. 6 (1984): 256.

<sup>32</sup> J. Douglas Peters and Jeanette C. Peraino. "Malpractice in Hospitals: Ten Theories for Direct Liability." *Law, Medicine and Health Care* 12, no. 6 (1984): 257.

for negligence. In another sense, the negligence caused by a person becomes the basis of liability for the connected person (institution).<sup>33</sup>

In conventional liability, the principle of proximity is employed to delimit legal liability for negligence.<sup>34</sup> In other words, negligence committed by an individual becomes the basis for responsibility for the connected person (institution). This legal framework helps establish a clear chain of responsibility and accountability in cases of negligence.

As outlined by J. Guwandi,<sup>35</sup> hospitals generally have four main responsibilities:

- a. Personnel responsibility: This pertains to vicarious liability, the employer-employee relationship, where the employer is held responsible for the actions of their employees considered negligent.<sup>36</sup> In Indonesia, this is regulated in the Civil Code (Article 1367), encompassing all individual health workers carrying legal responsibility (Civil Code Articles 1365 and 1366). This structure delineates the chain of command, where managers and workers have a relationship in executing their work tasks.
- b. Professional responsibility towards the duty of due care: Certainty in providing services by doctors, nurses, and other personnel must adhere to predetermined standards. Doctors and nurses are legally responsible if the service provided falls below the standard, based on hospital laws determined by the institution. Hospitals are required to establish standards and conduct evaluations to adapt to scientific developments.
- c. Advice and equipment responsibilities: Ensuring that all facilities and equipment necessary for providing health services are safe and ready for use is an inherent responsibility of the hospital.
- d. Building safety and maintenance responsibilities: Hospitals are responsible for maintaining a safe environment by ensuring building security and conducting regular maintenance. For instance, if a building collapses or if the floor is slippery, resulting in a patient falling and suffering a fracture, the hospital's responsibility is regulated in the Civil Code (Article 1369).

The subsequent concept to be discussed is vicarious liability, where responsibility is assigned to a person or legal entity for the actions of another person, also known as indirect liability. This principle is commonly applied to employer or principal responsibility for the actions of an individual within a

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<sup>33</sup> Helen Smith and Kit Fotheringham. "Artificial intelligence in clinical decision-making: Rethinking liability." *Medical Law International* 20, no. 2 (2020): 145.

<sup>34</sup> Christiane Wendehorst. "Strict liability for AI and other emerging technologies." *Journal of European Tort Law* 11, no. 2 (2020): 174.

<sup>35</sup> Guwandi, *Hospital Law*, 34

<sup>36</sup> Christian Witting. "Modelling organisational vicarious liability." *Legal Studies* 39, no. 4 (2019): 705.

contractual relationship. According to Iskandar, Medical actions must be in accordance with the SPO and general principles of medical professionalism if negligence occurs, then based on representation in the theory of liability, the one who should be responsible in the case of negligence is the highest leader as the person in charge.<sup>37</sup>

In essence, it involves one person's legal responsibility for the actions of another person, and for this to apply, both individuals must have an employment relationship within the scope of their work. In the theory of vicarious liability, proof of error in their actions is typically required, demonstrating that a health resource has made a mistake in their work.<sup>38</sup> Theoretical foundations supporting vicarious liability include the identification theory, which posits that an individual's actions reflect the actions of an institution (such as a hospital), and the imputation theory, which describes institutional responsibility resulting from unlawful actions carried out by employees within the scope of their duties for the benefit of the institution. As an independent organ for legal actions, a hospital, being a legal entity, has rights and obligations for all actions it undertakes. In executing legal actions, a hospital mobilizes various human resources, including medical personnel, health personnel, support personnel, and other supporting personnel, each contributing to the institution based on their respective skills.

While it has been argued that hospitals are not responsible for the mistakes of medical professionals due to challenges in supervising the process of forming medical assessments or fulfilling social interests,<sup>39</sup> the current scenario indicates that hospitals do bear legal responsibility for their health human resources. Hospitals, as corporate entities, play a crucial role in patient care, and they must coordinate comprehensive health care.<sup>40</sup> It is imperative for hospitals to ensure that the health services they provide are in good condition and of high quality, both in terms of health services and scientific and legal accountability. Hospitals are obligated to ensure that medical professionals with qualifications in their field adhere to the code of ethics and comply with applicable regulations.

Apart from the responsibility that hospitals must bear for the negligence of health resources, hospitals also enjoy freedom from claims under certain conditions, as outlined in the Health Law Article 192:

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<sup>37</sup> Eka Ardianto Iskandar and Eka Ardianto Iskandar. "Doctors And Hospitals: A Legal Perspective On Accountability." *European Proceedings of Social and Behavioural Sciences* 52.

<sup>38</sup> Moh Hatta. *Hukum Kesehatan dan Sengketa Medik* (Yogyakarta: Liberty, 2013), 24.

<sup>39</sup> Arthur F Southwick. "Hospital liability: Two theories have been merged." *Journal of Legal Medicine* 4, no. 1 (1983): 32.

<sup>40</sup> Jim M. Perdue. "Direct Corporate Liability of Hospitals: A Modern Day Legal Concept of Liability for Injury Occurring in the Modern Day Hospital." *South Texas Law Journal* 24 (1983): 773.



- a. The hospital is not legally responsible if the patient and/or their family refuse or stop treatment, which could result in the patient's death after a comprehensive medical explanation (Health Law Article 192 Paragraph (1)).
- b. Hospitals cannot be required to carry out their duties in saving human lives (Health Law Article 192 Paragraph (2)).
- c. Medical risks that have been conveyed by doctors regarding health service actions.
- d. The hospital can prove that it cannot prevent actions that cause harm to patients.<sup>41</sup>

The legal landscape concerning hospitals' responsibility for the negligence of their professional staff presents both pros and cons. Although this clause existed in the health law and hospital law before being replaced by Law Number 17 of 2023, it remains a contentious issue. The question arises as to why only hospitals are held accountable, even though all health facilities have the risk of negligence. For instance, in the case of doctor Setianingrum accused of negligence that resulted in the death of her patient, she was initially deemed guilty for not inquiring about the patient's allergy history (*streptomycin* injection) or conducting an allergy test. However, at the cassation level at the Supreme Court, doctor Setianingrum was released because she had made maximum efforts by providing allergy medication and referring the patient. This incident occurred at the first-level health service, namely at the Pati Community Health Center.

Observing this, incidents of negligence are not exclusive to hospitals. While hospitals indeed pose greater risks due to the volume of actions and services, all health facilities, ranging from basic to advanced services, are susceptible to negligence or carelessness. This consideration is crucial, as legal certainty needs to be extended to health human resources in basic-level health facilities, ensuring guaranteed safeguards for patients in cases of negligence by health workers. Both health facility owners and medical personnel or other health workers share working relationships. Clinics owned by the Government and Regional Governments must adhere to statutory provisions. Clinics providing outpatient care and owned by individuals or business entities, as well as those offering inpatient care, must be established by legal entities. Considering these factors, working relationships persist.

In health services, doctors and other personnel also bear legal responsibilities and must be held accountable. However, not all of these responsibilities should be solely attributed to the hospital to prevent potential

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<sup>41</sup> Haryanto Njoto. "Pertanggungjawaban Dokter Dan Rumah Sakit Akibat Tindakan Medis Yang Merugikan Dalam Perspektif UU No 44 Th 2009 Tentang Rumah Sakit." *DiH: Jurnal Ilmu Hukum* 7, no. 14 (2011): 240016.

injustices. As noted by Alan, there are instances where the hospital should not be held accountable, particularly when errors occur outside the scope of work.<sup>42</sup> Similar sentiments have been expressed by others, emphasizing the need to establish limits on the compensation provided by hospitals for mistakes made by examining legal rights, responsibilities, and work relationships.<sup>43</sup> To date, laws and regulations have not fully addressed this matter, underscoring the importance of stating these considerations in agreements to ensure certainty for health facilities and health human resources.

#### **D. CONCLUSION**

Allegations of negligence can have detrimental effects on health facilities and those involved in their operation. To mitigate such occurrences, preventive measures are crucial and should be undertaken collectively by the government, health facilities, and professionals through the establishment of standards and regulations. Additionally, hospitals bear legal responsibility for negligence committed by their health human resources. Medical professionals in hospitals, including visiting and specialist doctors, are obligated to provide health services. This obligation stems from their employment relationship, whether as permanent employees or under an agreement, making them integral parts of the hospital environment. This relationship is termed as an employment relationship. The determination of the amount of loss resulting from negligence should be a collaborative effort between the hospital and health resources. This ensures that each legal entity assumes responsibility for their actions, fostering a fair and accountable system.

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<sup>42</sup> Alan O. Sykes. "The boundaries of vicarious liability: An economic analysis of the scope of employment rule and related legal doctrines." *Harvard Law Review* 101, no. 3 (1988): 575.

<sup>43</sup> Jason W Neyers, "A theory of vicarious liability." *Alberta Law Review* 43 (2005): 287.

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