

Formulation of Hospital Legal Responsibility in Sexual Violence Cases Based on Legal Certainty

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Abstract. Sexual violence in hospitals is a serious legal violation that can violate the human right to a sense of security. Hospitals, which should be places of healing and recovery for patients who come to their place, have instead become places where sexual violence occurs that threaten human dignity and violate the law. Research objectives: To identify and analyze the weaknesses of hospital legal accountability, the formulation of hospital legal accountability in cases of sexual violence based on Legal Certainty. This legal research method is a social legal research design with a legislative approach method, a case approach method, and a comparative approach method. The legislative approach method is an approach method that refers to current laws and regulations. The case approach method is by conducting a review of cases of sexual violence that occurred in hospitals. The comparative method is used to compare laws and regulations and decisions from hospital management. Research results: Hospitals are required to have anti-sexual violence SOPs, professional codes of ethics, reporting mechanisms, investigation mechanisms, mediation mechanisms, and settlement decisions. Establishment of patient and employee protection units. Legal proceedings against perpetrators and negligent parties. Medical, psychological, legal, and rehabilitation services. The hospital has moral and legal responsibility towards the individual victim.

Keywords: Hospitals; Legal Responsibility Formulation; Sexual Violence.

1. Introduction

Sexual violence in hospitals is a serious legal violation that can violate the human right to a sense of safety. This phenomenon is complex because it involves the relationships between medical personnel and patients, medical personnel and other health care workers, management and the hospital community, and weak internal oversight mechanisms in healthcare institutions. Hospitals, which should be places of healing and recovery for patients, have instead become sites of sexual violence that threaten human dignity and violate the law.¹

¹ Komnas Perempuan, *Catatan Tahunan Kekerasan Seksual di Institusi Kesehatan*, 2023.

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Cases of violence occurred in several hospitals that were revealed in March-April 2025. For example, at Hasan Sadikin Hospital in Bandung, a male medical worker committed sexual violence against a female patient's family member; in Garut, during a patient's ultrasound examination; in Jakarta, a student was filmed while taking a shower; at Persada Hospital in Malang, during a patient examination; and other cases that were not exposed. Cases of sexual violence that occurred in a hospital in Semarang city and another hospital in Semarang regency included a female doctor being repeatedly verbally abused by a male health worker. In another hospital in Semarang, a male doctor groped a health worker's sensitive areas, committed verbal sexual violence, and several other cases. Under Indonesian law, accountability mechanisms can be seen in Law Number 44 of 2009 concerning Hospitals, Law Number 36 of 2014 concerning Health Workers, Law Number 17 of 2023 concerning Health, the Civil Code (regarding unlawful acts), and the Criminal Code or Law Number 12 of 2022 concerning Sexual Violence (regarding sexual violence crimes). However, there has been little research specifically addressing the formulation of hospitals' legal responsibility in cases of sexual violence. Every healthcare facility is required to have a mechanism for handling victims of gender-based violence, including sexual violence.²

This research is expected to provide academic contributions and practical recommendations for hospital policies that deal with cases of sexual violence.

2. Research Methods

The paradigm used in this research is Constructivism ³ namely, the truth of a social reality is seen as the result of social construction and truth, without compartmentalizing social, legal, political, or economic sciences. Instead, this research attempts to see integrated social activities so that law can elevate human dignity and thus realize just, correct, and prosperous laws for the people. This paradigm is the main philosophical system to provide an ontological (true) umbrella.

3. Results and Discussion

3.1. Formulating Hospital Accountability in Sexual Violence Cases Based on Legal Certainty

Law enforcement is a crucial effort to resolve an act of sexual violence in a hospital environment, which constitutes a serious violation of human rights, professional codes of ethics, and public trust in healthcare institutions. Hospitals, as institutions that provide protection and services to patients, are legally responsible if acts of sexual violence are perpetrated by healthcare workers or occur under their supervision.

² Kementerian Kesehatan RI, *Pedoman Penanganan Korban Kekerasan Seksual di Fasilitas Kesehatan* (Jakarta: Kemenkes RI, 2019), 12.

³ Paradigma konstruktivisme ini melihat bahwa law as mental construction, law as relative and contextual consensus, Baca Esmi Warrasih " Peran komisi yudisial dalam membangun kultur Hakim melalui perubahan paradigma" dalam bulletin komisi Yudisial , vol VIII, nomor 2 tahun 2008

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Therefore, it is necessary to formulate a legal framework for hospital accountability that ensures legal certainty, justice for victims, and institutional accountability.

Legal Basis for Hospital Accountability

1. Law Number 44 of 2009 concerning Hospitals

Article 46:

"Hospitals are legally responsible for all losses resulting from negligence by healthcare workers in the hospital."

2. Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (TPKS)

- Affirms protection for victims of sexual violence.
- Guaranteeing victims' rights to medical, psychological, and legal recovery.

3. Law Number 36 of 2014 concerning Health Workers

Regulates the responsibilities of health workers for professional and ethical actions.

4. Civil Code and Criminal Code

- Article 1365 of the Civil Code concerns civil liability for unlawful acts.
- Article 294 of the Criminal Code prohibits immoral acts by persons in positions of power or trust, such as doctors, towards patients.

Forms of Hospital Liability in Cases of Sexual Violence

a. Criminal Liability

A hospital can be held criminally liable if:

- The act of sexual violence is committed by a health worker within the scope of their work and is not prevented by hospital management.
- The hospital fails to provide a system of supervision and patient protection.

Example of a legal basis: Articles 4 and 5 of the TPKS Law require institutions to provide mechanisms for preventing and reporting sexual violence.

Failure to do so can be categorized as active inaction or institutional negligence.

a. Civil Liability

Hospitals are obligated to compensate victims for material and immaterial losses if they are proven to have:

- Failed to fulfill their obligation to protect patients,
- Failed to supervise, or
- Failed to provide an effective complaint mechanism.

Based on Article 1367 of the Civil Code:

"A person is responsible not only for losses caused by their own actions, but also for losses caused by those they are responsible for."

b. Administrative Liability

Hospitals may be subject to administrative sanctions by the Ministry of Health or local governments if they:

- Violate service standards,
- Fail to follow up on reports of sexual violence,
- Fail to implement a prevention system in accordance with Minister of Health Regulation No. 24 of 2022 concerning Medical Records and Minister of Health Regulation No. 11 of 2017 concerning Patient Safety.

Sanctions can include written warnings, fines, and even revocation of operating permits.

3.2. Legal Certainty as a Basis for Accountability

Legal certainty in this context means that:

- Legal regulations must be clear and firm regarding hospital responsibility for sexual violence.
- Law enforcement must be consistent, regardless of the perpetrator's status (doctor, nurse, or employee).
- Victims are guaranteed protection and recovery under the TPKS Law.
- Hospitals are required to have an internal legal system: prevention SOPs, reporting mechanisms, and ethical training for healthcare workers.

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e. Thus, legal certainty ensures that victims' rights are protected, and hospitals cannot avoid responsibility on the grounds of the perpetrator's individuality.

3.3. Ideal Formulation for Hospital Liability

Based on the principle of legal certainty, the following formulation can be applied:

Aspek	Prinsip Kepastian Hukum	Implementasi
Regulasi Internal	Adanya aturan tertulis dan terbuka	Rumah sakit wajib memiliki SPO: anti kekerasan seksual, kode etik profesi, mekanisme pelaporan, mekanisme investigasi, mekanisme mediasi, putusan penyelesaian.
Pengawasan dan Pencegahan	Sistem kontrol yang pasti dan konsisten	Pembentukan unit perlindungan pasien dan pegawai
Penegakan Hukum	Tidak diskriminatif, sesuai prosedur	Proses hukum terhadap pelaku dan pihak yang lalai
Perlindungan Korban	Hak atas keadilan dan pemulihan	Layanan medis, psikologis, hukum, dan rehabilitasi
Akuntabilitas Institusional	Pertanggungjawaban melekat pada lembaga	Rumah sakit bertanggung jawab moral dan hukum terhadap individu korban.

4. Conclusion

The formulation of hospital legal accountability in cases of sexual violence must be based on legal certainty, which requires:

1. Clear, firm, and enforceable regulations.
2. Institutional accountability for the actions and negligence of medical personnel.
3. Legal protection for victims as a form of substantive justice.

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With legal certainty, hospitals are not only providers of healthcare services, but also institutions that guarantee the safety, dignity, and human rights of every patient.

5. References

Journals:

Husni Fauzan & Dzulkifli Hadi Imawan. 2023. Pemikiran Maqashid Syariah Al-Tahir Ibn Asyur. *JURNAL SYARI'AH & HUKUM* Journal homepage: <https://jurnal.uii.ac.id/jsyh10.20885/mawarid.vol5.iss1.art7>. July 18, 2023. eISSN: 2656-193X. ISSN: 2656-1654.

Muhammad Nur Iqbal, Et all. 2023. Tujuan Hukum Islam Dalam Perspektif Maqashid Al-Syari'ah. *Jurnal Pendidikan dan Konseling* Volume 5 Nomor 1 Tahun 2023EISSN: 2685-936XdanP-ISSN: 2685-9351 Universitas Pahlawan Tuanku Tambusai

Muhammad Ziril Amin dan Lalu Husni. 2023. Perlindungan Hukum dan Tanggung Jawab Perusahaan Alfamart yang beroperasi Terhadap Karyawan Alfamart yang Berkerja Malam Hari (Studi Kota Mataram). *Jurnal Private Law*, Volume 3, Issue 1, Februari 2023.

Nurhayati & Ali Imran Sinaga, (2019), Fiqh dan Ushul Fiqh, Jakarta: Kencana. Rizki, Sandi, (2017) "Aplikasi Maqashid Al-Syari'ah Dalam Bidang Perbankan Syariah", *Jurnal Ekonomi dan Keuangan Syariah* Vol. 1 No.2

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Books:

Kementerian Kesehatan RI, Pedoman Penanganan Korban Kekerasan Seksual di Fasilitas Kesehatan (Jakarta: Kemenkes RI, 2019), 12.

Komnas Perempuan, Catatan Tahunan Kekerasan Seksual di Institusi Kesehatan, 2023.