Law Development Journal
SINTA 2 Degree No. 0228/DTS/C3/DT.05.00/2026
ISSN: 2747-2604
Volume 8 No. 3, September 2026

The Hospital's Legal Liability for the Doctor's Actions in a Therapeutic Agreement as a Form of Health Services

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Abstract. *The implementation of therapeutic agreements in health services often raises disputes regarding the limits of civil liability between doctors and hospitals. The development of modern healthcare practices shows that hospitals no longer function only as providers of health facilities, but also as institutions that manage service systems, supervision of medical personnel, and patient safety. This study aims to analyze the construction of hospital civil liability in the implementation of therapeutic agreements and formulate an ideal model of accountability based on the balance of health service interests. The research uses normative legal research methods with a legislative approach, a conceptual approach, and a case approach through the analysis of various court decisions and laws and regulations in the health sector. The results of the study show that hospital liability in Indonesia has shifted from a fault-based liability approach that is oriented towards individual doctors' mistakes to institutional liability that places hospitals as legal subjects responsible for the quality of service, supervision, patient safety, medical records, informed consent, and clinical governance. Based on these findings, the Balanced Institutional Liability model was formulated, which is an accountability model that integrates the protection of patient rights, the protection of the medical profession, hospital institutional accountability, preventive risk management, and a fair dispute resolution mechanism in one proportionate accountability system. This model provides more equitable legal certainty in the implementation of therapeutic agreements. Research recommends the reconstruction of hospital accountability arrangements through strengthening the principle of balance of interests as the basis for health law reform in Indonesia.*

Keywords: *Agreements; Hospitals; Therapeutic.*

1. Introduction

Health services are one of the fundamental rights of every citizen that is guaranteed as part of human rights. Recognition of the international right to

health is affirmed in *Constitution of the World Health Organization* (1946) which states that everyone has the right to enjoy the highest degree of health (*the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being*) (Zunnuraeni et al. 2023). This principle is then strengthened in the *Universal Declaration of Human Rights* In 1948 and *International Covenant on Economic, Social and Cultural Rights* 1966, especially Article 12, which places health as a basic right that must be respected, protected, and fulfilled by the state (Jannah et al. 2024). In the Indonesian legal system, the constitutional guarantee is reflected in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that everyone has the right to receive health services, as well as Article 34 paragraph (3) of the 1945 Constitution which affirms the state's responsibility in providing proper health service facilities. Consequently, the implementation of health services is not only seen as a public service activity, but also as the implementation of the state's constitutional obligation in realizing community welfare.

The implementation of the right to health services is realized through various national regulations, including Law No. 17 of 2023 concerning Health which integrates the implementation of the national health system comprehensively and Law No. 44 of 2009 concerning Hospitals which regulates the functions, obligations, and responsibilities of hospitals as health service institutions (Damanhury, Candra, and Sagala 2025). Along with the development of medical science and technology, health services are no longer seen as a simple relationship between doctors and patients, but as a service system that involves hospitals as health service providers, medical personnel, other health workers, and patients as legal subjects who have rights and obligations. The complexity of these legal relationships gives birth to various juridical consequences, especially when there is an alleged negligence in medical actions that cause losses to the patient.

The legal relationship between the doctor and the patient is essentially born through a therapeutic agreement (*Therapeutic Agreement*), which is a legal relationship based on an agreement on the provision of medical services. In contrast to agreements in general, the object of a therapeutic agreement is not the result of a cure, but rather the professional effort made by the doctor to the maximum (*Commitment to Effort*), so that doctors do not guarantee the patient's recovery, but are obliged to carry out medical measures in accordance with professional standards, service standards, and standard operating procedures. In this relationship, reciprocal rights and obligations arise between doctors and patients, while hospitals become institutions that provide service systems, health human resources, facilities, infrastructure, and health service governance (Ramadan 2021). Therefore, the legal relationship in health services is no longer only bilateral between doctors and patients, but has developed into a legal relationship involving three legal subjects at once, namely patients, doctors, and hospitals.

The development of these legal relations has implications for a change in the paradigm of hospital accountability. Hospitals were originally seen as social institutions that obtained protection through doctrine *Charitable immunity* It is now developing into a modern healthcare institution managed based on the principles of corporate governance (*Corporate Governance*) and risk management. The change places hospitals no longer just as providers of health facilities (*Healthcare Facility*), but also as an organization responsible for the quality of service, patient safety (*Patient Safety*), supervision of health human resources, as well as the implementation of the health service system as a whole. Consequently, the legal liability of hospitals can no longer be limited only on the basis of the formal working relationship between doctors and hospitals, but must consider the entire health service system organized by the hospital (Kartikawati 2021).

Normatively, the provisions regarding hospital accountability obtain a legal basis in Article 46 of Law No. 44 of 2009 concerning Hospitals which states that *The hospital is legally liable for all losses incurred due to negligence committed by healthcare workers in the hospital*. This provision was then strengthened through Article 193 of Law No. 17 of 2023 concerning Health which affirms that hospitals are responsible for losses caused by the negligence of health human resources in hospitals. These arrangements indicate a paradigm shift from individual accountability to institutional accountability (*Institutional Liability*) (Arianti and Lany 2026). However, the formulation of the two provisions still leaves problems in its implementation, especially regarding the limits of hospital liability for the actions of doctors who have different legal statuses, such as permanent doctors, partner doctors (*Independent Contractor*), as well as visiting physicians (*visiting physician*).

This problem is even more complex when it is associated with the development of the hospital liability doctrine in health law. So far, hospital accountability has been based more on doctrine *vicarious liability* or *Respondeat Superior*, which limits the hospital's liability to only health workers who have an employment relationship with the hospital (Tanjung and Calvin 2026). On the other hand, the development of modern health care practices gave birth to the doctrine *Corporate Liability*, *central responsibility*, and *Ostensible* or *apparent agency* which expands the scope of the hospital's accountability as a health service provider institution (Nasution and Calvin 2025). The shift in doctrine shows that the orientation of hospital accountability is no longer solely based on the personnel relationship between doctors and hospitals, but also on the existence of hospitals as health service system providers who have the obligation to ensure the quality of service and patient safety.

This paradigm difference has implications for the inconsistency of the application of the law in judicial practice. A number of court decisions still limit the hospital's liability to only permanent doctors based on the doctrine of *superior respondeat*, as reflected in the Palembang District Court Decision Number 18/Pdt.G/2006/PN.

PLG which was upheld until the Supreme Court Review Decision Number 352/PK/PDT/2010. Likewise, the West Jakarta District Court Decision Number 102/PDT.G/2016/PN.Jkt.Brt and the Surabaya District Court Decision Number 325/Pdt.G/2017/PN. Sby basically places hospitals only as providers of facilities and infrastructure, while responsibility for medical actions is charged to doctors as professional actors. On the other hand, the development of health law shows a tendency to strengthen the institutional accountability of hospitals as a consequence of the obligation of hospitals in implementing an integrated health service system. This condition shows that there is no consistency regarding the model of hospital accountability for the actions of doctors in therapeutic agreements.

These inconsistencies ultimately cause an imbalance in legal protection for the parties. If the hospital's liability is limited only based on the doctor's working relationship with the hospital, then the patient's right to recover damages may not be optimally fulfilled. On the other hand, if all responsibility is imposed on the hospital without regard to the independence of the medical profession, then the principle of autonomy of the medical profession and the character of the therapeutic agreement as *Commitment to Effort* Negligible (Sumeru and Tanawijaya 2022). Therefore, an accountability model is needed that is not only oriented towards patient protection or limiting hospital liability, but is able to realize a balance of interests between patients as recipients of health services, doctors as professions that exercise independent medical authority, and hospitals as health service providers.

Studies on hospital accountability and legal relations in health services have actually been conducted by many researchers, but they still show a tendency to discuss partial. Irpan Suriadiata et al. through their research entitled "Legal Responsibility of Health Workers in the Case of Medical Malpractice in Hospitals" (2025) analyzes the construction of legal liability of health workers in medical malpractice cases from the perspective of civil, criminal, and administrative law (Scott, Scott, and Scott, 2025). The research emphasized the importance of reconstructing the accountability system through affirming the boundaries between medical risks and malpractice, and encouraging the strengthening of hospital institutional responsibility through the application of the principle *vicarious liability* and *Corporate Liability*. However, the focus of the study is still limited to the construction of health worker liability in malpractice cases and has not examined how the hospital liability model is applied to the actions of doctors in legal relationships born from therapeutic agreements by paying attention to the balance of interests between patients, doctors, and hospitals.

Another research was conducted by Sri Jauharah Laily et al. through an article entitled "Doctors' Responsibility for Patient Losses in Therapeutic Agreements" (2022). The study explained that the legal relationship between the doctor and the patient is a contractual relationship in the form of *Commitment effort*, so that the

doctor is responsible for the patient's losses if proven to have committed negligence in the implementation of the therapeutic agreement (Laily 2022). The study also identified the lack of clarity on the basis of doctors' liability, whether it was based on default or unlawful acts. Although it makes an important contribution to the development of the concept of therapeutic agreements, the study still places doctors as the main subject of accountability and has not comprehensively examined the position of hospitals as health service providers that also have legal responsibilities in the modern health care system.

Furthermore, Michael Alfonsus and Dyah Ersita Rustanti in a study entitled "Legal Relations Between Hospitals, Patients, and Medical Personnel" (2025) describe the pattern of legal relations between hospitals, patients, and medical personnel based on Law No. 17 of 2023 concerning Health, Law No. 44 of 2009 concerning Hospitals, and Law No. 29 of 2004 concerning Medical Practice (Alfonsus and Rustanti 2025). The research focuses on aspects of legal relations, the rights and obligations of the parties, and the implementation of *informed consent* as a form of legal protection for patients. However, the study has not developed a construction of a model of hospital accountability for the actions of physicians that is able to accommodate the development of various accountability doctrines, such as *vicarious liability*, *Corporate Liability*, *central responsibility*, or *Ostensible Agency*, within the framework of a legal relationship born from a therapeutic agreement.

Based on the three studies, it can be seen that the developing studies are still oriented towards three main focuses, namely the accountability of health workers in cases of malpractice, the individual responsibility of doctors in therapeutic agreements, and the legal relationship between hospitals, medical personnel, and patients. There has been no research that specifically formulates a model of hospital accountability for the actions of doctors in therapeutic agreements by making the balance of health service interests a conceptual foundation. In fact, the dynamics of modern health services show that legal protection is not enough to be directed only to patients or limited to the professionalism of doctors alone, but must be able to balance the protection of patient rights, the independence of the medical profession, and the institutional responsibility of hospitals as health service providers. Departing from these gaps, this study offers a model of hospital accountability based on the balance of health service interests which is expected to provide a more comprehensive, adaptive legal construction, and be able to guarantee legal certainty, justice, and benefits for all parties in the implementation of health services.

2. Research Methods

This research is a normative legal research that aims to analyze and formulate a model of hospital accountability for doctors' actions in therapeutic agreements based on Indonesia's positive legal system (Rizkia and Fardiansyah 2023). The

research was conducted by examining legal norms, legal principles, doctrines, and court decisions related to hospital accountability in the implementation of health services.

The approaches used include the statute approach, the conceptual approach, and the case approach (Jonaedi Efendi and Rijadi 2022). The law and regulation approach is used to analyze the provisions in the 1945 Constitution of the Republic of Indonesia, the Civil Code, Law No. 29 of 2004 concerning Medical Practice, Law No. 44 of 2009 concerning Hospitals, and Law No. 17 of 2023 concerning Health and its implementing regulations. Conceptual approaches are used to examine various doctrines of hospital accountability, such as *vicarious liability*, *Corporate Liability*, *central responsibility*, *Respondeat Superior*, and *ostensible (apparent) agency*, as well as the concept of therapeutic agreement as *Commitment to Effort*. Meanwhile, the case approach was used to analyze several court decisions related to hospital accountability for doctors' actions in order to determine the tendency of law application in judicial practice.

The legal materials used consist of primary legal materials in the form of laws and regulations and court decisions, secondary legal materials in the form of books, scientific articles, research results, and expert doctrines, and tertiary legal materials in the form of legal dictionaries and other relevant reference sources. All legal materials are collected through *library research*.

The analysis was carried out qualitatively using a deductive legal reasoning method, namely examining legal provisions, doctrines, and court decisions to find a legal construction regarding the model of hospital accountability for doctors' actions in therapeutic agreements that are able to realize a balance of interests between patients, doctors, and hospitals in the provision of health services.

3. Results and Discussion

3.1. Construction of Hospital Liability for Physician Actions in Therapeutic Agreements

The legal relationship between the patient, the doctor, and the hospital is born through a therapeutic agreement (*Therapeutic Agreement*), namely a contractual relationship that provides the basis for the implementation of health services. A therapeutic agreement is an alliance of efforts (*Commitment effort*), so that doctors and hospitals do not promise patient recovery, but are obliged to provide medical services according to professional standards, service standards, standard operating procedures (SOPs), and the principle of prudence (*Medical due care*) (Flora 2023). Thus, the measure of accountability does not lie in the success or not of healing, but in whether or not professional obligations are fulfilled in the health service process.

From a civil law perspective, hospital liability can arise from default or unlawful acts (onrechtmatige daad). The basis for default is based on Article 1234 and

Article 1243 of the Civil Code (KUHPercivil). Default occurs when the hospital or doctor fails to fulfill the obligations agreed upon in the therapeutic relationship, for example, not providing services according to standards, not providing competent medical personnel, delaying services without justifiable reasons, or performing medical procedures without the approval of medical procedures (*informed consent*) (Tanjung and Calvin 2026). Therefore, in therapeutic relationships, the object of achievement is not only limited to medical measures, but also includes administrative, informative and documentary obligations as part of health services.

In addition to default, hospitals can also be held accountable based on Article 1365 of the Civil Code regarding unlawful acts. The application of this provision requires the existence of four elements, namely unlawful acts, mistakes (*Debt*), loss, and the causal relationship between the act and the loss suffered by the patient (Nasution et al. 2026). In health services, unlawful acts are not only violations of laws and regulations, but also deviations from professional standards, service standards, medical codes of ethics, and patient rights. However, not every patient's loss can be categorized as an unlawful act because medical actions are a profession that contains risks (*medical risk*). Therefore, a clear distinction must be made between medical risks that are the scientific consequences of medical actions and medical negligence (*medical negligence*) that arises due to deviations from professional standards.

The hospital's liability is further expanded through Article 1366 of the Civil Code, which affirms responsibility for losses incurred due to negligence. In the context of health services, institutional negligence (*Corporate negligence*) can be in the form of failure of hospitals to provide competent medical personnel, weak surveillance systems, delays in emergency services, unavailability of facilities and infrastructure that meet standards, or failure to implement patient safety systems (*Patient Safety*) (Ningsih et al. 2025). Thus, the hospital's liability is not only born due to active unlawful actions, but also due to neglect of its legal obligations as a health service provider.

The most important basis for hospital accountability for the actions of doctors is found in Article 1367 of the Civil Code regarding responsibility for the actions of others (*vicarious liability*) (Kurniawan and Hapsari 2022). This provision places the hospital as the party responsible for losses caused by medical personnel working in the hospital service system. This doctrine develops through the principle of superior respondeat, which views hospitals as institutions that benefit from the services of medical personnel so that they must proportionately also bear the legal risks arising from the provision of such services (2026 mins). In its development, the concept was expanded through the doctrine *Corporate Liability* and *Corporate negligence*, which places hospitals as legal subjects who have an independent obligation to ensure the quality of services, certify medical personnel, provide

proper facilities, and supervise the implementation of health services (Pujiyono 2021).

The construction of accountability must be understood systematically with the health law regime. In addition to being guided by Article 1365, Article 1366, and Article 1367 of the Civil Code, hospitals are also bound by Law No. 44 of 2009 concerning Hospitals, especially Article 46 which states that hospitals are legally responsible for losses arising from the negligence of health workers in hospitals. This provision was then emphasized in Article 193 of Law No. 17 of 2023 concerning Health which affirms the hospital's responsibility for losses due to negligence of health human resources. Both provisions show a paradigm transformation from individual physician accountability to institutional accountability (*Corporate Responsibility*) (Muljadi, Hastuti, and Hananto 2022).

These developments are also reflected in judicial practice. Supreme Court Decision Number 2863 K/Pdt/2011 emphasizes that the relationship between patients and hospitals is a contractual relationship that gives birth to reciprocal rights and obligations, including the obligation of hospitals to provide access to medical records. Furthermore, the Supreme Court Decision Number 872 K/Pdt/2017 shows that a default in a therapeutic agreement can be committed by both parties, both patients and hospitals, so that the therapeutic relationship is seen as a *reciprocal contractual relationship*. Meanwhile, the Sangatta District Court Decision Number 11/Pdt.G/2019/PN.Sgt shows that there is still ambiguity between the use of the basis of a default lawsuit and unlawful acts in medical disputes, while the Jakarta High Court Decision Number 262/PDT/2018/PT. DKI expands its understanding of accountability in the contractual relationship of health services.

Table 1. Court Ruling on Default and Unlawful Acts in Therapeutic Agreements

No.	Decision Number	Basis of Lawsuit	Bottom Line	Rule of Law (Ratio Decidendi)
1	Supreme Court No. 2863 K/Pdt/2011	Default	Refusal to provide medical records to patients	The medical record is part of the achievement in the therapeutic agreement so its rejection is a form of hospital default.
2	Supreme Court No. 872 K/Pdt/2017	Default	Dispute over payment of service fees and access to medical records	The relationship between the patient and the hospital is contractual so that each party can commit a default (reciprocal default).
3	PN Sangatta No. 11/Pdt.G/2019/PN.Sgt	PMH	Alleged malpractice resulting in patient blindness	PMH is assessed based on evidence of violations of professional standards, SOPs, errors, losses, and causal relationships.
4	PT DKI Jakarta No. 262/PDT/2018/PT. DKI	Default	Dispute over the implementation of health service contracts	Liability is born from the contractual relationship and the obligation to carry out

	services according to the agreement.

The table that has been compiled in the dissertation is still maintained because it shows the development of the pattern of hospital accountability in Indonesian judicial practice.

Analysis of these results shows a paradigm shift in understanding therapeutic relationships. The court no longer views the doctor-patient relationship as a paternalistic relationship, but rather as a modern contractual relationship that gives rise to rights and obligations for patients, doctors, and hospitals. However, there are still inconsistencies in determining whether a health care dispute should be based on default or unlawful acts. This inconsistency has implications for differences in the burden of proof, the scope of compensation, and the error parameters used by judges.

The various normative bases and developments in jurisprudence show that the hospital accountability system in Indonesia has moved from the paradigm of individual responsibility to corporate responsibility. However, the existing construction still relies on *a fault-based and vicarious liability* approach, so it is not yet fully able to accommodate the increasingly complex legal relationship between patients, doctors, and hospitals in modern health services. Therefore, an accountability model is needed that is not only oriented towards patient protection or limiting hospital liability, but also able to balance the interests of all parties through a balanced approach to health service interests as the basis for the implementation of hospital accountability for doctors' actions in therapeutic agreements.

3.2. Implementation of the Hospital Accountability Model in Realizing a Balance of Health Service Interests

The implementation of hospital accountability for the actions of physicians in healthcare practice can no longer be understood only as the individual responsibility of medical personnel, but must be placed as an institutional responsibility (*Hospital Liability*) that is attached to the hospital as a health service provider (Suriadiata et al. 2025). In a relationship born of a therapeutic agreement, the hospital has an obligation to ensure that all medical services are carried out in accordance with professional standards, service standards, standard operating procedures (SOPs), and the principle of prudence (*Medical due care*). Thus, hospital liability does not only arise due to doctors' errors, but also due to the failure of the service system that is under the supervision and control of the hospital.

The development of judicial practice shows the strengthening of the concept of institutional liability. This is reflected in the Supreme Court Decision Number 365 K/Pdt/2012, which emphasizes that delays in emergency services are a form of institutional negligence of hospitals. Similarly, the Supreme Court Decision Number 2863 K/Pdt/2011 and the Supreme Court Decision Number 872 K/Pdt/2017, which place medical records as part of the achievement in a

therapeutic agreement and affirm the reciprocal legal relationship between patients and hospitals. Meanwhile, the South Jakarta District Court Decision Number 381/Pdt.G/2014/PN. Jkt.Sel applies the principle of vicarious liability through the doctrine of *superior respondeat*, while the Surabaya District Court Decision Number 550/Pdt.G/2016/PN. Sby expanded the hospital's liability for administrative errors as a form of corporate negligence. The Sangatta District Court Decision Number 11/Pdt.G/2019/PN.Sgt shows that the court still uses an unlawful approach in medical service disputes, so there is no uniformity in the application of the basis of accountability.

Table 2. Application of Hospital Accountability Based on Court Decisions

No.	Decision Number	Points of Dispute	Form of Accountability	Applied Legal Principles
1	Supreme Court No. 365 K/Pdt/2012	Patient death due to delay in emergency department services	PMH	Hospitals are responsible for corporate *negligence*.
2	Supreme Court No. 2863 K/Pdt/2011	Refusal to provide medical records	Default	Medical records are a patient's right and part of the hospital's contractual obligations.
3	Supreme Court No. 872 K/Pdt/2017	Disputes over service fees and medical records	Default	Therapeutic relationships are contractual relationships that give birth to reciprocal rights and obligations.
4	South Jakarta District Court No. 381/Pdt.G/2014/PN. Jkt.Sel	Postoperative malpractice lawsuit	PMH jo. *Vicarious Liability*	The hospital is responsible for the actions of medical personnel within the scope of hospital services (*superior respondeat*).
5	Surabaya District Court No. 550/Pdt.G/2016/PN. Sby	Baby is confused due to administrative error	PMH	Administrative system errors are a form of *hospital corporate negligence* .
6	PN Sangatta No. 11/Pdt.G/2019/PN.Sgt	Alleged malpractice that causes blindness	PMH	Liability is determined based on proof of violations of professional standards and medical SOPs.

**The table regarding court decisions is maintained because it shows the development of hospital accountability patterns in Indonesian judicial practice.*

An analysis of these decisions shows that hospital accountability is no longer based only on the working relationship with doctors, but also on the institution's ability to ensure the quality of health services as a whole. Hospitals are required to build a service system that is able to prevent the occurrence of *medical negligence* through the implementation of service standards, professional standards, clinical governance, and patient safety systems.

The implementation of the accountability model relies on four main instruments. First, medical service standards as a parameter to assess whether medical

measures have been carried out in accordance with *Empty Artist*. This obligation is affirmed in Article 29 paragraph (1) letter b of Law No. 44 of 2009 concerning Hospitals and Law No. 17 of 2023 concerning Health, which requires hospitals to provide safe, quality, effective health services, and prioritize patient safety. Service standards are the main benchmark in distinguishing between medical risks (*medical risk*) and medical negligence (*medical negligence*) (Pujiyono 2023).

Second, professional standards and standard operating procedures (SOPs) are objective parameters to assess whether there are deviations in medical actions. The obligation of medical personnel to carry out practice in accordance with professional standards and SOPs is affirmed in Article 273 of Law No. 17 of 2023 concerning Health, and strengthened by Article 50 and Article 51 of Law No. 29 of 2004 concerning Medical Practice. Compliance with these standards not only protects patients, but also provides legal protection for doctors and hospitals when medical procedures have been performed according to professional standards.

Third, medical records have a strategic function as a means of proof in health service disputes. Article 295 of Law No. 17 of 2023 concerning Health and Regulation of the Minister of Health Number 24 of 2022 concerning Medical Records require that every health service action be documented in a complete, accurate, and sustainable manner. Medical records are no longer seen as mere administrative documents, but have evolved to become part of the object of achievement in therapeutic agreements as well as the main evidentiary tool for assessing whether or not medical service standards are met (Talib and MARS 2022).

Fourth, informed consent is an instrument of preventive legal protection for patients, doctors, and hospitals. Article 293 of Law No. 17 of 2023 concerning Health, Article 45 of Law No. 29 of 2004 concerning Medical Practice, and Regulation of the Minister of Health Number 290/MENKES/PER/III/2008 require that every medical procedure be preceded by the patient's consent after obtaining complete information about diagnosis, procedures, benefits, risks, and alternative actions. However, the existence of *informed consent* does not remove liability if it is proven that there are deviations from professional standards or SOPs.

Table 3. Implementation of Hospital Accountability Based on Regulations

Aspects	Regulatory Basis	Substance of the Arrangement	Implications for Hospital Civil Liability
Medical Service Standards	Article 174 and Article 175 of Law No. 17 of 2023 concerning Health; Article 29 paragraph (1) letter b of Law No. 44 of 2009 concerning Hospitals	Hospitals are obliged to provide safe, quality, effective, and prioritize patient safety health services according to health service standards.	It is the main parameter to assess whether or not the duty of care is fulfilled. Violation of service standards can be the basis for default or unlawful acts if it causes losses to patients.
Professional Standards and	Article 273 of Law No. 17 of 2023 concerning Health; Article 50 and	Every medical action must be carried out	It is the basis for the implementation of

Standard Operating Procedures (SOP)	Article 51 of Law No. 29 of 2004 concerning Medical Practice; Permenkes Number 1438/MENKES/PER/IX/2010	in accordance with professional standards, medical service standards, professional ethics, and hospital SOPs.	vicarious liability and corporate negligence, because hospitals are responsible for ensuring that medical personnel work according to professional standards and SOPs.
Medical Records	Articles 310–315 of Law No. 17 of 2023 concerning Health; Minister of Health Regulation Number 24 of 2022 concerning Medical Records	Medical records must be made complete, accurate, stored, kept confidential, and accessible in accordance with the provisions of laws and regulations.	Medical records are the main evidence in health service disputes. Incompleteness or loss of medical records can strengthen the hospital's alleged negligence and become the basis for proving defaults or unlawful acts.
Informed Consent	Article 293 of Law No. 17 of 2023 concerning Health; Article 45 of Law No. 29 of 2004 concerning Medical Practice; Permenkes Number 290/MENKES/PER/III/2008	Each medical procedure must obtain the patient's consent after a complete explanation of the diagnosis, procedure, benefits, risks, alternative course of action, and prognosis.	Informed consent is a form of preventive legal protection for patients, doctors, and hospitals. Consent that is not preceded by adequate information may give rise to civil liability for violating the patient's right to information.

The table on the basis of regulation is maintained because it shows the relationship between service standards, professional standards, medical records, and informed consent as parameters of hospital accountability.

Analysis of various regulations and court rulings shows that the hospital accountability system in Indonesia has undergone a transformation from an individual liability approach to institutional liability. Hospitals are no longer positioned as providers of health care facilities alone, but as corporations responsible for service quality, clinical governance, patient safety, and supervision of medical personnel. This transformation strengthens the application of the doctrine of vicarious liability, corporate negligence, and corporate responsibility as the basis for hospital liability.

However, the implementation of hospital accountability still faces problems in the form of non-uniform use of the basis for lawsuit for default and unlawful acts, and the lack of parameters that clearly integrate individual responsibilities of doctors with hospital institutional responsibilities. Therefore, a hospital accountability model based on a balance of health service interests is important to implement. This model places patient protection, the independence of the medical profession, and the institutional responsibility of hospitals as a complementary unit. With this approach, hospital accountability is not only oriented towards providing compensation after a dispute occurs, but is also directed as a prevention instrument through strengthening clinical governance, compliance with service standards, accountable medical record documentation, and effective

implementation of *informed consent* so as to create legal certainty, justice, and balance of interests in the implementation of health services.

3.3. Ideal Model of Hospital Civil Liability Based on Balance of Interests in the Implementation of Therapeutic Agreements

The development of modern health services shows that the legal relationship in therapeutic agreements no longer only takes place bilaterally between doctors and patients, but has evolved into a tripartite legal relationship involving hospitals as health service providers. This change has resulted in a paradigm shift in hospital civil liability from the traditional concept of only placing hospitals as providers of health service facilities (*hospital as a place*) towards the concept of hospitals as legal subjects responsible for the entire health service system (*Institutional Liability*) (Male 2024). In this new paradigm, doctors' medical actions are seen as an integral part of the hospital service system so that accountability is no longer only based on the individual mistakes of medical personnel, but also includes the hospital's institutional responsibility for service quality, supervision, patient safety, and health service governance.

This development gained normative legitimacy through Article 46 of Law No. 44 of 2009 concerning Hospitals which affirms that hospitals are legally responsible for all losses incurred due to the negligence of health workers in hospitals. This provision shows that Indonesia's positive law has abandoned the paradigm of accountability that is fully burdened on doctors towards hospital institutional accountability. This construction is also in line with the provisions of Law No. 17 of 2023 concerning Health which places hospitals as health service providers who are obliged to ensure service quality, patient safety, implementation of professional standards, medical service standards, medical records, *and informed consent.*

Analysis of various court decisions shows that there has been a consistent development towards expanding the hospital's liability. Supreme Court Decision Number 1366 K/Pdt/2017 emphasizes that hospitals cannot escape responsibility for doctors' actions carried out in the hospital service system. The Supreme Court Decision Number 779 K/Pdt/2014 shows that hospitals can be held directly responsible for service system failures (*corporate negligence*), while the Supreme Court Decision Number 365 K/Pdt/2012 strengthens the existence of *the duty of care* inherent in the hospital institution. Meanwhile, Supreme Court Decision Number 3004 K/Pdt/2014 emphasizes that informed consent is not sufficiently fulfilled administratively, but must show adequate medical communication so that the patient truly understands the medical measures to be taken. On the other hand, Supreme Court Decision Number 1145 K/Pdt/2017 provides a limitation that not every bad result of medical services can be categorized as malpractice because it must be clearly distinguished between *medical risk* and *medical negligence*.

Based on the normative construction and the development of jurisprudence, this study found that the accountability model that has been applied so far is still

dominated by the *Fault-based liability* which focuses on proving individual doctors' mistakes (Av 2025). The model has not been fully able to provide proportionate legal protection because patients are in a weak evidentiary position due to information inequality (*Information asymmetry*), doctors are often the most burdened with responsibility, while hospitals still have room to escape responsibility on the grounds that medical actions are the professional domain of doctors. In fact, in modern health care practice, medical actions are the result of interactions between the competence of doctors, hospital service systems, organizational governance, health facilities, risk management, and clinical supervision (Av 2025). Therefore, a purely error-oriented approach is no longer adequate.

On this basis, this study offers a reconstruction in the form of *Balanced Institutional Liability Model*, which is a hospital civil liability model built on the principle of balance of interests (*balance of healthcare interests*). This model places hospitals at the center of health care responsibilities (*Central Responsibility Doctrine*), but still maintains the independence of the medical profession and ensures the protection of patients' rights (Widjaja 2025). Thus, liability is not automatically imposed on one of the parties, but is determined based on the location of the fault (*Locus of Fault*) and the contribution of each party in the implementation of health services.

Table 4. Ideal Model of Hospital Civil Liability Based on Balance of Interests

Aspects	Conventional models	Model Ideal (Balanced Institutional Liability)	Implications
Responsibility Orientation	Fault-based liability	Balance-based between patients, doctors, and hospitals	More proportionate responsibility
Hospital Ranking	Service facility providers	Legal subject of health service providers	Institutional liability
Doctor's Position	Primary responsible party	Responsible for professional actions according to professional standards	Professional liability
Patient Position	Service objects	Legal subjects who have rights and obligations	Patient rights protection strengthened
Basis of Liability	Individual errors	The locus of fault and the contribution of each party	Shared liability
Protection Focus	Repressive	Preventive through patient safety, clinical governance, medical audits, SOPs, medical records, and informed consent	Dispute prevention
Dispute Resolution	Litigation	Mediation, internal hospital mechanisms, and litigation	Efficiency and legal certainty

The model is built on three main pillars. The first pillar is patient *rights protection* which is realized through the fulfillment of the right to information, the implementation of *substantive informed consent*, the right to obtain medical records, patient safety, and the right to receive compensation in the event of negligence in health services. The second pillar is *doctor professional protection*, which places doctors as responsible professionals based on professional standards, medical service standards, and procedural operational standards, so

that inherent medical risks are not necessarily qualified as negligence. The third pillar is hospital institutional *accountability* which places hospitals as legal entities responsible for the quality of service systems, supervision of medical personnel, clinical risk management, provision of facilities, and patient safety.

The three pillars are further strengthened through the implementation of preventive risk management, namely the obligation of hospitals to implement *good hospital governance*, medical audits, risk management, patient safety systems, and supervision of compliance with professional standards and standard operating procedures. In addition, dispute resolution is no longer solely litigation-oriented, but also prioritizes a proportionate dispute resolution mechanism through mediation, internal hospital settlement, and professional ethics mechanisms as a form of preventive legal protection.

Based on this construction, this study offers a new formulation of hospital civil liability which is formulated as follows:

Balanced Civil Liability Formula

Civil Liability of Hospital = Patient Rights Protection + Doctor Professional Protection + Institutional Accountability + Preventive Risk Management + Fair Dispute Resolution

The formula shows that hospital accountability is no longer based solely on *proving fault liability*, but is a combination of patient rights protection, physician profession protection, hospital institutional accountability, preventive risk management, and fair dispute resolution mechanisms. Thus, the model offered in this study reconstructs the concept of hospital civil liability from fault-based liability to Balanced Institutional Liability, which is an accountability model that is more in line with the characteristics of modern health services because it is able to integrate the interests of patients, doctors, and hospitals proportionately. This model also strengthens legal certainty, justice, and legal usefulness in the implementation of therapeutic agreements and places hospitals no longer just as *a place of treatment*, but as legal subjects of healthcare accountability who are responsible for the entire health care system.

4. Conclusion

The civil liability of hospitals in the implementation of therapeutic agreements can no longer be understood only as a consequence of individual physician errors, but as an institutional responsibility inherent in the health service delivery system. The development of regulations and judicial practices in Indonesia shows a shift from a fault-based liability approach that is oriented towards personal fault to institutional liability that places hospitals as legal subjects responsible for service quality, clinical governance, supervision of medical personnel, and patient safety protection. In this context, medical service standards, professional standards and SOPs, medical records, and informed consent are the main parameters in

determining whether or not there is civil liability of hospitals. Based on normative analysis and jurisprudence, this study offers an Ideal Model of Hospital Civil Liability Based on the Balance of Health Service Interests (Balanced Institutional Liability Model). This model reconstructs the therapeutic relationship as a tripartite legal relationship between patients, doctors, and hospitals, with a proportionate division of responsibility according to the locus of fault. Hospitals are responsible for the failure of the service system and institutional governance, doctors are responsible for deviations from professional standards, while the protection of patients' rights is realized through information transparency, the implementation of substantive informed consent, accountable medical records, and fair dispute resolution mechanisms. The model is expected to be able to realize legal certainty, justice, and usefulness in the implementation of health services and become a direction for the renewal of hospital civil liability laws in Indonesia.

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