

Reconstructing Hospital Civil Liability in Indonesia: A Layered Model of Professional, Vicarious, Organizational, and Contractual Responsibility

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ABSTRACT

Hospitals are healthcare institutions operating through organizations, professional personnel, facilities, technology, procedures, and governance. This complexity raises the issue of who bears civil liability when patients' rights are violated. This study analyzes the construction of hospital civil liability and formulates the scope of institutional responsibility. The study employs normative juridical research using statutory, conceptual, and case approaches. Primary legal materials include Law Number 17 of 2023 on Health, the Indonesian Civil Code, Law Number 8 of 1999 on Consumer Protection, Government Regulation Number 28 of 2024, and Minister of Health Regulation Number 24 of 2022 on Medical Records. The findings show that hospital liability cannot be reduced to individual negligence. Article 193 of the Health Law places legal responsibility on hospitals for losses caused by negligence of health human resources working in the hospital. Article 189 on hospital obligations, Article 276 on patient rights, Article 274 on professional duties, and Article 293 on informed consent form an integrated normative framework. Liability may arise from breach of contract, unlawful acts, vicarious liability, and corporate or organizational liability. The study proposes a layered liability model connecting professional liability, liability for functionally connected health personnel, direct organizational liability, and contractual liability

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1. INTRODUCTION

Healthcare services constitute a field of law in which patients' rights, the professional obligations of medical and healthcare personnel, and the institutional obligations of hospitals intersect. This relationship can no longer be appropriately understood as a simple bilateral relationship between patients and

physicians. Hospitals provide a comprehensive range of services involving professional personnel, facilities, medicines and medical devices, medical records, referral systems, communication, complaint mechanisms, patient safety, credentialing, and clinical governance. Therefore, when a patient suffers harm, the legal question is not merely whether an individual healthcare professional has committed an error, but also whether the hospital has fulfilled its duty of care as an organization.

The change in the legal regime through Law Number 17 of 2023 concerning Health strengthens the need for such an approach. The Health Law repealed, among others, Law Number 44 of 2009 concerning Hospitals and Law Number 29 of 2004 concerning Medical Practice. Article 189 imposes institutional obligations on hospitals, while Article 193 stipulates that hospitals are legally responsible for all losses arising from negligence committed by healthcare human resources employed by the hospital. Article 193 is significant as a legal basis for hospital liability for negligence committed by healthcare personnel. However, the provision also raises a doctrinal problem: does corporate liability arise only after the individual fault of healthcare personnel has been established, or may a hospital be held directly liable for systemic negligence that exists independently of individual negligence?

This issue constitutes a legal gap in the existing research. If Article 193 is interpreted solely as a form of vicarious liability, hospital liability tends to depend on proving the individual negligence of healthcare personnel. Such an interpretation may leave an accountability gap when the source of the harm lies in organizational decisions and systems, such as inadequate credentialing, unsafe staffing, failure to implement standard operating procedures (SOPs), inadequate supervision, improper facilities, ineffective patient safety systems, or failures in documentation and communication. In other words, there is a doctrinal tension between the individual-vicarious liability model and the corporate negligence model, which recognizes the hospital as an enterprise having its own independent duty of care.

From a doctrinal perspective, this problem can be examined through the concepts of Hospital Corporate Negligence or the Darling Doctrine, Enterprise Liability Theory, and Risk-Bearing Theory. The Darling Doctrine developed from *Darling v. Charleston Community Memorial Hospital*, 211 N.E.2d 253 (Ill. 1965), which demonstrated that hospitals may have institutional obligations concerning the quality and safety of healthcare services. Enterprise liability views the organization as the entity that controls and derives benefits from healthcare activities, whereas risk-bearing theory places a portion of the risks associated with healthcare activities upon the party that is best positioned to control and internalize those risks. In the Indonesian context, these doctrines are not automatically applicable as positive law but are employed as conceptual frameworks for interpreting the direct obligations of hospitals under the Health Law.

Judicial practice indicates that institutional hospital liability may arise concurrently with the liability of physicians. In Supreme Court Decision Number 1001 K/Pdt/2017, the Supreme Court affirmed negligence relating to the obligation to provide information and imposed liability for damages on both the physician and the hospital. In Supreme Court Decision Number 42 K/Pdt/2018, civil liability in a medical malpractice case was also associated with violations of professional standards and the duty of care, with the defendants being held jointly responsible. Meanwhile, Supreme Court Decision Number 3004 K/Pdt/2014 demonstrates the importance of distinguishing individual professional liability from the mechanisms for establishing institutional liability. These decisions indicate that an analysis of hospital liability cannot be limited to Article 1367 of the Indonesian Civil Code (*Burgerlijk Wetboek*) or Article 193 of the Health Law. Rather, it must identify the specific source of the duty of care that has been breached.

Based on this problem, this study focuses its analysis on three interrelated legal questions: How is the doctrinal construction of hospital corporate liability formulated following the enactment of Law Number 17 of 2023?; What criteria distinguish individual negligence by healthcare personnel from organizational failures attributable to the hospital?; How can an operational layered liability model be designed to determine liability proportionately?

The objective of this study is to develop a legal framework that shifts the orientation of liability from merely individual-vicarious liability toward enterprise-organizational liability, without transforming hospitals into absolute insurers against every medical outcome that fails to meet expectations.

2. METHODS

This study employs a normative juridical legal research method (doctrinal legal research) with a prescriptive character. The research focuses on the construction of legal norms and doctrines concerning the civil liability of hospitals, rather than on empirically measuring the prevalence of violations. The approaches employed are the statute approach, conceptual approach, and case approach.

2.1 Legal Materials

The primary legal materials consist of Law Number 17 of 2023 concerning Health, the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata), Law Number 8 of 1999 concerning Consumer Protection, Government Regulation Number 28 of 2024 concerning the Implementing Regulations of Law Number 17 of 2023, Minister of Health Regulation Number 24 of 2022 concerning Medical Records, and relevant judicial decisions.

Secondary legal materials comprise books, journal articles, and scholarly works addressing corporate liability, medical malpractice, informed consent, and hospital liability. Tertiary legal materials are used to facilitate the identification and clarification of legal terminology and relevant legal sources.

2.2 Operationalization of the Case Approach

The judicial decisions were selected purposively based on four eligibility criteria: (a) the case concerns a healthcare service dispute; (b) the case involves issues of negligence, breach of the duty to provide information, professional standards, or hospital obligations; (c) the hospital and/or medical personnel are parties whose liability is at issue; and (d) the decision is available and sufficiently accessible for analysis of the legal basis of liability, evidentiary considerations, and available remedies.

The judicial decisions selected as comparative case studies are Supreme Court Decision Number 1001 K/Pdt/2017, Supreme Court Decision Number 42 K/Pdt/2018, and Supreme Court Decision Number 3004 K/Pdt/2014.

2.3 Legal Construction Technique

The legal construction is conducted in three stages. First, normative synthesis is undertaken by examining the interrelationship between Articles 189, 193, 274, 276, and 293 of Law Number 17 of 2023 and the Indonesian Civil Code and Consumer Protection Law. Second, doctrinal abstraction is conducted by examining the relevance and applicability of the concepts of vicarious liability, corporate negligence, enterprise liability, risk-bearing, and transactional/contractual liability. Third, a prescriptive mapping is developed by formulating indicators for determining whether liability arises from individual negligence, a functional relationship, an organizational system failure, or a contractual obligation.

2.4 Normative Harmonization Framework

Normative harmonization is conducted by functionally applying the principle of *lex specialis derogat legi generali*. The Health Law serves as the special legal regime governing healthcare services and hospital obligations, while the Indonesian Civil Code provides the general legal basis for contractual obligations and unlawful acts (*perbuatan melawan hukum*).

The Consumer Protection Law is applied complementarily to the extent that its consumer-protection provisions are not inconsistent with the specific characteristics of the therapeutic relationship and do not transform the professional duty of care, which is fundamentally an obligation of means, into a guarantee of a particular medical outcome.

3. FINDINGS AND DISCUSSION

3.1 Doctrinal Construction of Corporate Liability Following Law Number 17 of 2023

Article 193 of Law Number 17 of 2023 must be situated within the broader architecture of hospital obligations. The provision stipulates that hospitals are legally responsible for all losses arising from negligence committed by healthcare personnel employed by the hospital. This provision strongly indicates the existence of vicarious liability or institutional responsibility for the actions of healthcare

personnel operating within the hospital environment. However, if Article 193 is interpreted as the sole basis for hospital liability, organizational failures that cannot be reduced to a specific individual's negligence may potentially remain unaddressed.

A more consistent construction is to distinguish between two sources of liability. First, derivative or vicarious liability, which arises from the negligence of healthcare personnel acting within their functional relationship with the hospital. Second, direct or corporate/organizational liability, which arises when the hospital itself fails to fulfill institutional obligations that fall within its sphere of control. Accordingly, corporate liability is not merely an extension of Article 193 but rather a consequence of the hospital's direct obligations under Article 189 and the provisions protecting patients' rights.

This construction is also consistent with developments in Indonesian legal scholarship, which regard Article 193 as an important basis for hospital liability while acknowledging that questions remain concerning the boundaries and forms of such liability. The study by Kurnia, Simandjuntak, and Asmara concerning a case involving the exchange of newborn infants demonstrates that Article 193 places hospitals as subjects of civil liability while also highlighting the need for clearer boundaries concerning the form of liability. The present study extends this issue by explicitly distinguishing the source of individual negligence from systemic negligence.

3.2 Distinguishing Criteria: Individual Negligence versus Systemic Negligence

The distinction between individual negligence and systemic negligence should be determined by examining the source of the obligation and the locus of control. If the breached obligation falls within the professional competence of a healthcare professional in performing a particular clinical procedure, the starting point for establishing liability is professional liability. Conversely, if the harm occurs because the hospital fails to conduct adequate credentialing, fails to provide required equipment, implements unsafe staffing arrangements, allows standard operating procedures (SOPs) to remain ineffective, or fails to establish an effective patient safety system, the locus of the obligation lies with the organization.

The operational criteria can be formulated through five questions: (1) who has the authority to control the activity that creates the relevant risk; (2) whether the obligation is normatively imposed upon the individual or the hospital; (3) whether the violation could still occur without the negligence of a particular individual; (4) whether the hospital knew or reasonably should have known of the risk; and (5) whether the organizational failure has a causal connection with the patient's harm. These five questions prevent corporate liability from being transformed into strict liability.

3.3 Case Studies of Supreme Court Decisions

First, Supreme Court Decision Number 1001 K/Pdt/2017 demonstrates the significance of the duty to provide information. The case concerned repeated cesarean-section procedures and inadequate explanation of the associated risks. The Supreme Court found negligence and imposed liability for damages on both the physician and the hospital. This case is important because it demonstrates that the duty to inform is not merely a personal obligation of the physician; the hospital, as the institution in which healthcare services are provided, may also incur civil consequences when the duty to provide adequate information is not fulfilled.

Second, Supreme Court Decision Number 42 K/Pdt/2018 demonstrates that medical malpractice cases may be analyzed under Article 1365 of the Indonesian Civil Code by assessing professional standards, due care, damages, and causation. In that case, medical treatment provided to a child was associated with inadequate supporting examinations and incomplete informed consent, resulting in serious consequences for the patient's condition. The decision demonstrates that liability does not depend merely on whether the medical outcome was unfavorable, but rather on whether there was a breach of the duty of care and a causal relationship between the breach and the resulting harm.

Third, Supreme Court Decision Number 3004 K/Pdt/2014 is important as a comparative case because it confirms that medical negligence may be assessed through civil law and does not depend

exclusively on professional disciplinary proceedings. A comparison of the three decisions indicates that individual professional liability and institutional liability should initially be analyzed separately and subsequently connected on the basis of functional relationships, the source of the relevant obligation, and causation. Accordingly, judicial analysis should not stop at the formula contained in Article 1367 of the Indonesian Civil Code or Article 193 of Law Number 17 of 2023.

3.4 Harmonization of the Consumer Protection Law and the Health Law

The relationship between patients and hospitals may have a contractual dimension; however, the therapeutic relationship is fundamentally an *inspanningsverbintenis*, or an obligation of means. Patients pay to receive professional healthcare services that comply with applicable standards, rather than a guarantee of recovery. Therefore, the application of the Consumer Protection Law must be appropriately limited. The concepts of safe services and accurate information may strengthen patient protection, but strict liability should not be imposed merely because the medical outcome does not meet expectations.

In cases of normative conflict, the Health Law, as the special legal regime, provides substantive parameters concerning patients' rights, hospital obligations, professional obligations, and informed consent. The Indonesian Civil Code remains applicable for assessing breach of contract (*wanprestasi*) and unlawful acts (*perbuatan melawan hukum*), while the Consumer Protection Law functions as a complementary instrument where the characteristics of the dispute satisfy its applicable criteria. Through this construction, patient protection remains robust without undermining the principles of proportionality and legal certainty for hospitals.

3.5 Operational Matrix of the Layered Liability Model

Table 1 Matrix of Legal Indicators for Hospital Liability

Layer	Source of Duty	Indicators of Negligence	Locus of Control	Primary Evidence	Causation	Remedies
1. Professional Liability	Professional standards, healthcare service standards, Article 274 of Law Number 17 of 2023	Professional act or omission falling below the applicable standard of care	Medical and healthcare professionals	Medical records, professional standards, expert evidence, informed consent	The professional act or omission must constitute a cause of the patient's harm	Compensation; disciplinary/administrative consequences in accordance with applicable law
2. Vicarious Liability	Article 193 of Law Number 17 of 2023; functional relationship	Negligence by healthcare personnel in performing hospital-related duties	The hospital as the provider/organizer of healthcare functions	Employment/functional relationship, medical records, SOPs, evidence of the relevant act or omission	The negligence of healthcare personnel must be causally connected to the patient's harm	Compensation by the hospital in accordance with the applicable legal basis and court judgment

3. Corporate/Organizational Liability	Article 189 of Law Number 17 of 2023; patient safety; institutional duty	Failure in credentialing, unsafe staffing, or failure of facilities, SOPs, supervision, or patient safety systems	Hospital management and organizational systems	SOPs, audits, credentialing records, staffing records, facility logs, patient safety incident reports, medical records	The organization must have factually increased or created a risk that materialized and caused the harm	Compensation and remedial orders; systemic improvements as part of remedial governance
4. Contractual Liability	Healthcare service agreement, information obligations, and agreed service obligations	Failure to fulfill a contractual obligation without legal justification	The hospital as a party to the contractual relationship	Registration documents, consent forms, billing records, service information, hospital policies	The harm must result from the failure to fulfill the relevant contractual obligation	Damages/compensation in accordance with contract law and proven losses

The matrix provides a more objective evidentiary framework. The first and second layers are based on the acts or omissions of healthcare personnel, whereas the third layer is based on the failure of the hospital as an organization. The fourth layer captures obligations arising from the contractual relationship. A single case may involve more than one layer; however, each layer must be established based on the relevant duty, breach, damage, and causation.

3.6 Burden of Proof and Causation

In civil disputes concerning healthcare services, patients must still establish the legal basis of their rights, the breach of an obligation, the resulting harm, and the causal relationship in accordance with the applicable procedural and substantive law. In practice, however, there is an imbalance in access to information because hospitals control medical records, SOPs, credentialing records, safety audits, and internal documentation. Therefore, hospitals have a legal interest and institutional obligation to maintain the integrity and transparency of their documentation. A failure of documentation does not automatically establish negligence, but it may affect the ability to prove compliance with applicable standards.

Causation must also be examined strictly. Complications, medical risks, or unfavorable outcomes do not automatically establish negligence. Courts must distinguish between adverse outcomes that constitute inherent risks of medical treatment and harm that can reasonably be attributed to a breach of the duty of care. In cases of corporate negligence, the causal inquiry is whether the organizational failure materially contributed to the occurrence of the harm.

3.7 Informed Consent as a Process, Not Merely a Form

Article 293 of Law Number 17 of 2023 treats consent as a process involving the provision of adequate information. A signed consent form does not, by itself, establish that substantive communication has taken place, nor does it exempt hospitals or healthcare personnel from liability for negligent or substandard treatment. From the perspective of corporate liability, hospitals are required to establish systems that ensure that the informed consent process is properly conducted, documented, understandable to patients, and proportionate to the risks associated with the medical procedure.

3.8 Medical Records, Privacy, and Patient Safety

Medical records serve both as instruments of healthcare delivery and as evidentiary instruments. Minister of Health Regulation Number 24 of 2022 places documentation, security, and confidentiality of medical records as important components of medical record management. Because hospitals control medical record systems, failures in documentation, security, or confidentiality may constitute a basis for corporate/organizational liability where a breach of duty, harm, and a causal relationship are established.

3.9 Limitation of Liability: Not Strict Liability

The proposed enterprise-organizational liability model does not mean that hospitals are liable for every unfavorable medical outcome. Liability remains limited by four elements: duty, breach, damage, and causation. Accordingly, an unfavorable medical outcome, a complication that has been adequately disclosed, or an unavoidable risk does not automatically give rise to liability. Conversely, a risk that materializes as a result of a system failure that should have been controllable by the hospital may constitute a basis for direct institutional liability.

3.10 Design of the Layered Liability Model

The proposed model consists of four interconnected layers that must nevertheless be analytically distinguished. The first layer examines individual professional negligence. The second layer examines the hospital's liability for the acts or omissions of healthcare personnel within a functional relationship. The third layer examines organizational failures that exist independently of individual negligence. The fourth layer examines the fulfillment of contractual obligations. This sequence assists courts in identifying the source of liability before determining the appropriate form and extent of remedies.

Normatively, this model constitutes an interpretive reconstruction rather than the creation of a new form of strict liability. It integrates Articles 189 and 193 of Law Number 17 of 2023 with Articles 1365, 1366, and 1367 of the Indonesian Civil Code, as well as provisions concerning patients' rights and informed consent. Its theoretical contribution lies in shifting the analytical focus from the single question of "who is at fault?" toward a layered inquiry: "whose obligation was breached, who controlled the relevant risk, and at what level did the failure occur?"

3.11 Implications for Hospital Governance

The model has direct implications for hospital management. Corporate governance and clinical governance must be integrated with patient-rights compliance. Hospitals need to ensure effective credentialing and privileging, medical record audits, compliance with SOPs, risk-based staffing, informed consent procedures, incident reporting, data protection, complaint mechanisms, and internal legal audits.

Accordingly, dispute prevention should not be treated merely as a legal function activated after an adverse event has occurred. Rather, it should form an integral part of healthcare quality and patient safety management. From the perspective of risk-bearing theory, organizational-level risk control is a rational mechanism for preventing harm and reducing the costs associated with disputes.

3.12 Mapping of Types of Violations and Layers of Responsibility

Tabel 2. Forms of Violations, Relevant Legal Norms, and Potential Hospital Civil Liability

Type of Violation	Relevant Legal Norm	Potential Liability
Inadequate information or explanation	Articles 276 and 189 of Law Number 17 of 2023	Unlawful act (<i>perbuatan melawan hukum</i> /PMH), breach of contract (<i>wanprestasi</i>), and institutional liability
Treatment without valid consent	Article 293 of Law Number 17 of 2023	Unlawful act (PMH) and violation of patient autonomy
Healthcare services below applicable standards	Articles 189 and 274 of Law Number 17 of 2023	Unlawful act (PMH); Article 193 where related to negligence by healthcare personnel
Negligence by healthcare personnel	Article 193 of Law Number 17 of 2023	Vicarious/corporate liability
Improper medical record management	Article 189 of Law Number 17 of 2023; Minister of Health Regulation Number 24 of 2022	Institutional liability and evidentiary implications
Unsafe facilities or systems	Article 189 of Law Number 17 of 2023	Corporate/organizational liability
Discrimination	Article 189 of Law Number 17 of 2023	Unlawful act (PMH) and institutional obligation

4. CONCLUSION

Based on the findings of this study, it can be concluded that the positive law applicable following the enactment of Law Number 17 of 2023 provides a strong foundation for developing institutional hospital liability, particularly through Article 189, which emphasizes hospitals' obligations to provide safe and high-quality healthcare services and to ensure the protection of patients' rights, and Article 193, which regulates the legal liability of hospitals for losses arising from negligence by healthcare personnel working within the hospital. Accordingly, the civil liability of hospitals cannot be limited solely to the individual negligence of healthcare professionals. Under certain circumstances, such liability may be established through the legal constructions of breach of contract (*wanprestasi*), unlawful acts (*perbuatan melawan hukum*/PMH), vicarious liability, and corporate/organizational liability, including where failures in systems, facilities, supervision, documentation, provision of information, or the implementation of informed consent contribute to patient harm.

A more comprehensive liability framework is a layered liability model integrating professional liability, vicarious liability, corporate/organizational liability, and contractual liability. Such a model can strengthen legal protection for patients while simultaneously providing legal certainty for hospitals by determining liability on the basis of the source of the obligation, the nature of the breach or negligence, the resulting harm, and the causal relationship.

Therefore, stronger implementation guidelines for Article 193 of Law Number 17 of 2023 are necessary so that the boundaries and relationship between hospital liability for negligence by healthcare personnel and direct liability arising from organizational failures can be formulated more clearly. Hospitals should also develop integrated patient-rights compliance mechanisms within their quality and patient-safety systems by strengthening audits of informed consent, medical records, confidentiality and data protection, credentialing, compliance with SOPs, complaint mechanisms, and legal risk management. Future research should examine judicial decisions in greater specificity and, where appropriate, through empirical analysis, to identify patterns of proving negligence, functional relationships between healthcare personnel and hospitals, the nature and calculation of damages,

causal relationships, and the application of corporate liability in cases concerning the civil liability of hospitals.

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