pISSN 2798-2106 eISSN 2808-4470

Studi Ilmu Sosial Indonesia
Vol. 5, No. 2, 141-156

Criminal Liability of Hospitals and Medical Personnel in Cases of Medical Malpractice Under Law No. 17 of 2023 on Health

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Abstract

Medical malpractice is a complex issue in health law enforcement in Indonesia, particularly concerning who is criminally liable. Law Number 17 of 2023 concerning Health brings a fundamental change by shifting the paradigm from individual responsibility toward corporate responsibility. This writing analyzes the regulation of criminal liability for hospitals and medical personnel for acts of malpractice based on said law, covering criteria for corporate sentencing, the doctrine of vicarious liability, patterns of employment relationships, as well as new procedures that mandate recommendations from the professional discipline council before an investigation is conducted. The results of the discussion show that hospitals can be prosecuted if proven to have committed systemic negligence, while medical personnel can only be processed after there is a recommendation from the council assessing a violation of professional standards. The implication is that collaboration between law enforcement officials and health professional organizations is a necessity to ensure that law enforcement is professional and equitable.

Keywords: medical malpractice, corporate criminal liability, hospital, medical personnel, health law

Darmadi, S. & R. Hardyansah. 2025. Criminal Liability of Hospitals and Medical Personnel in Cases of Medical Malpractice Under Law No. 17 Of 2023 on Health, Studi Ilmu Sosial Indonesia, 5(2), 141-156.

Introduction

Medical malpractice has emerged as a central issue in the discourse of Indonesian health law, primarily due to its complexity, which spans clinical, legal, ethical, and human rights dimensions. Each year, numerous allegations of malpractice are reported by patients who perceive themselves as aggrieved by the healthcare services received. From diagnostic errors and surgical missteps to negligence in post-operative care, these cases invariably lead to a fundamental question: where does legal responsibility lie? This inquiry often sparks protracted debates regarding the distinction between unavoidable medical risks and genuine negligence on the part of service providers (Amir et al., 2024). The issue is further complicated by the shift toward collective and systemic healthcare delivery, which involves a multitude of stakeholdersphysicians, nurses, pharmacists, and hospital management. While patients are entitled to safe, professional, and standardized care, prioritizing the protection of their rights as a matter of law and medical ethics (Herisasono et al., 2023), medical personnel and institutions simultaneously require legal certainty to avoid the specter of unwarranted criminalization following unsatisfactory treatment outcomes. Bridging this tension between patient and professional protection requires a balanced, explicit legal framework (Arimbi & Arimbi, 2025).

Historically, the enforcement of malpractice law in Indonesia has been impeded by structural and cultural constraints. The primary obstacle is a widespread lack of public understanding regarding the definition of malpractice, often resulting in all poor outcomes being misconstrued as negligence. In clinical practice, the reality of "medical risk" and unavoidable complications persists even when practitioners adhere strictly to professional standards. A holistic understanding of clinical procedures and patient rights is essential to mitigate these misunderstandings (Amir et al., 2024; Herisasono et al., 2023). A secondary obstacle is the inadequacy of out-of-court complaint and dispute resolution mechanisms, causing most cases to culminate in lengthy, costly, and arduous litigation. The third and most significant challenge is the lack of regulatory clarity regarding the criminal liability of corporations specifically hospitals in malpractice cases (Revinesia & Revinesia, 2025). Beyond criminal liability, the health sector continues to face broader challenges related to equitable access and the effectiveness of disease management across diverse regions

(Harianto et al., 2024). For years, criminal prosecution has disproportionately targeted individual practitioners, while hospitals, as institutions vested with the power to manage, oversee, and control healthcare systems, have largely evaded criminal accountability.

This climate of legal uncertainty was exacerbated by the absence of firm regulatory oversight prior to the enactment of Law Number 17 of 2023 concerning Health. Previously, Indonesian legislation did not explicitly regulate the criminal liability of hospitals acting as corporate entities in malpractice scenarios. This regulatory void had a detrimental impact on overall service quality, directly affecting public satisfaction with healthcare facilities (Darmawan et al., 2022). Law Number 36 of 2009 concerning Health, for instance, focused predominantly on administrative and licensing aspects, with criminal sanctions remaining too general to address the nuances of malpractice. This occurred despite an urgent need for robust, sustainable health policies to improve quality of life and create equality for all citizens (Issalillah, 2021). Consequently, law enforcement often struggled to identify appropriate legal grounds for malpractice litigation, particularly when systemic hospital policies were involved (Wulan et al., 2025). Many cases were prematurely terminated due to a failure to establish criminal elements within a practitioner's individual actions, leaving patients and their families feeling aggrieved and deepening public perceptions of injustice, while simultaneously inflicting profound legal uncertainty upon the healthcare profession (Nuraeni & Sihombing, 2024).

Amidst the aforementioned regulatory void, a growing demand emerged for the government to revise health legislation to include comprehensive provisions regarding criminal liability, particularly concerning medical malpractice. Legal scholars, medical practitioners, and civil society organizations reached a consensus that the criminal law paradigm in the health sector required an urgent shift. This change is viewed as essential not only for the adjudication of medical cases but as a broader component of addressing national health development challenges (Harianto et al., 2024; Issalillah, 2021). The criminal law paradigm, which historically focused on the individual as the sole subject capable of committing an offense, is gradually evolving toward an understanding that corporations including hospitals can generate policies, systems, or workplace cultures that collectively cause harm to patients. In its evolution, law enforcement in the

health sector demands a strong integration between strictly enforced criminal law and professional ethics (Hartika et al., 2023). Malpractice does not always stem from individual negligence; it frequently arises from weak oversight systems, flawed management policies, or even the willful negligence of hazardous practices. Consequently, hospitals as corporate entities cannot be absolved when the systems they manage are proven to be the primary source of patient harm. This paradigm shift aligns with developments in criminal law across many developed nations, which have long recognized the concept of *corporate criminal liability*.

The government's response to these demands culminated in the enactment of Law Number 17 of 2023 concerning Health, which replaced the previous health legislation. This new law introduces several significant provisions, including the recognition of corporate criminal liability (Article 447), criminal regulations for medical personnel who commit negligence (Article 440), and a new procedural mandate requiring a recommendation from the Professional Discipline Council before criminal investigations against medical personnel can commence (Article 308). The implementation of this regulation requires a deep understanding of policy aspects as well as the administrative procedures prevalent within the health ecosystem (Hakim et al., 2024). These provisions reflect the legislature's effort to balance legal accountability with professional certainty, while simultaneously accommodating the complexity of medical actions, which cannot always be assessed through the lens of conventional criminal law. This regulatory reform is expected to have a positive impact, given that optimal public health status is also contingent upon integrated management of chronic conditions (Issalillah, 2022). Nevertheless, these new provisions raise fresh inquiries: by what criteria can a hospital be held criminally liable; how is the doctrine of *vicarious liability* applied regarding the employment relationship between physicians and hospitals; and how are the Professional Discipline Council's recommendation procedures practically executed in the field?

From the perspective of medical personnel, the law establishes clear criminal threats for negligence resulting in severe injury or death. Conversely, it provides significant procedural protection through the mandatory recommendation from the Professional Discipline Council prior to the initiation of a criminal investigation. Through this ethical

enforcement mechanism, all forms of professional violations, including the falsification of medical documents, are expected to be minimized effectively (Hartika et al., 2023). This measure can be interpreted as an effort to prevent unwarranted criminalization of medical personnel, acknowledging that not all poor treatment outcomes constitute malpractice. The efficacy of health insurance claims and the execution of clinical procedures remain heavily dependent on adherence to clear, codified rules (Darmawan et al., 2022; Hakim et al., 2024). The Professional Discipline Council, comprised of experts in the field, will assess whether a practitioner's actions adhered to professional standards, service standards, and standard operating procedures. In other words, medical personnel can only be processed criminally if they are professionally proven to have violated applicable standards. This represents a significant advancement, as medical evaluations previously often conducted by law enforcement officials lacking medical expertise now benefit from expert oversight, thereby reducing the risk of errors that could unfairly prejudice medical practitioners.

Based on this background, this writing aims to comprehensively outline and analyze the regulation of criminal liability for hospitals and medical personnel regarding acts of malpractice based on Law Number 17 of 2023 concerning Health. The urgency of this writing is not only academic but also practical, considering that the new provisions in the law will soon be implemented in law enforcement in Indonesia. More specifically, this writing will discuss the paradigm shift from individual responsibility to corporate responsibility, the criteria for hospitals as legal subjects to be held criminally liable, the application of the doctrine of vicarious liability regarding the employment relationship between doctors and hospitals, as well as the new procedures involving the professional discipline council in the investigation process of medical personnel. Through a systematic and in-depth description, it is hoped that this writing can provide a holistic understanding for stakeholders, including law enforcement officials, hospital managers, medical personnel, academics, and the general public, regarding the construction of criminal liability for malpractice following the enactment of Law Number 17 of 2023 concerning Health.

Method

This research is a normative legal research or doctrinal legal research, which is research that examines law as a system of norms, principles, regulations, and legal doctrines. The approaches used in this research are the statute approach and the conceptual approach. The statute approach is conducted by examining all relevant provisions in Law Number 17 of 2023 concerning Health, specifically Article 308, Article 440, and Article 447, along with other related articles. The conceptual approach is conducted by examining relevant criminal law doctrines, such as corporate liability, vicarious liability, respondeat superior, and ostensible agency, as well as the concepts of individual legal subjects (naturlijke persoon) and legal entities (rechtspersoon).

The legal materials used in this research consist of primary, secondary, and tertiary legal materials. The primary legal material is Law Number 17 of 2023 concerning Health. Secondary legal materials include literature, scientific journals, legal articles, and expert opinions discussing criminal liability for medical malpractice, corporate responsibility, and health law. Tertiary legal materials consist of legal dictionaries and encyclopedias to assist in interpreting technical terms.

The technique for collecting legal materials is conducted through library research by tracing various relevant legal documents, literature, and scientific publications. All collected legal materials are then analyzed qualitatively using legal interpretation methods, namely grammatical interpretation (based on the text of the law), systematic interpretation (by connecting one article with another), and teleological interpretation (based on the purpose of the legislation's formation). The results of the analysis are presented in a descriptive-analytical manner in the form of a systematic and structured narrative to address the formulated problems (Rohman et al., 2024).

Result and Discussion

A comprehensive understanding of medical malpractice is vital for all healthcare stakeholders. Malpractice is a multifaceted issue within Indonesian health law; while patients possess an inherent right to safe, standardized care necessitating robust legal protections against practitioner

negligence (Ghozali et al., 2024; Lethy et al., 2023) medical personnel and hospitals simultaneously require legal certainty in the exercise of their duties. This discourse aims to synthesize the criminal liability frameworks for hospitals and medical personnel under Law Number 17 of 2023 concerning Health, focusing on the paradigm shift toward corporate responsibility, criteria for hospital criminalization, and the integration of professional discipline councils into legal procedures. Clarifying these responsibilities is essential to eliminate interpretive ambiguity regarding legal liability in malpractice cases.

Legal certainty regarding criminal liability for malpractice is imperative, yet historically, Indonesian legislation has struggled to explicitly define such liability. This complexity is compounded by the persistent judicial challenge of distinguishing between unavoidable medical risks and genuine clinical negligence (Kurniawan, 2013). Law Number 17 of 2023 addresses this through Article 447, paragraph (1), which stipulates that if criminal acts (as referenced in various articles including 428, 430–435, 437, 442, 444, 445, and 446) are committed by a corporation, criminal responsibility shall be borne by the corporation, its functional management, those issuing orders, controllers, and/or beneficial owners. While this remains specific rather than universal, it provides a critical foundation for corporate accountability in the health sector, aligning with broader efforts to ensure social justice and manage public health burdens effectively (Issalillah & Mardikaningsih, 2022).

However, merely establishing the potential for corporate criminal liability is insufficient to fundamentally transform law enforcement practices. Empirically, the number of legal claims filed by patients for medical errors remains disproportionately low due to various normative inhibiting factors (Kurniawan et al., 2024). A fundamental question arises: why should hospitals, traditionally viewed as humanitarian institutions, be positioned as subjects of criminal law? The answer lies in a shifting perception of criminal legal subjects. Historically, criminal law focused exclusively on the individual as the sole perpetrator of a crime. Modern legal scholarship and social reality, however, recognize that corporations including hospitals can implement policies, systems, or institutional cultures that collectively inflict harm upon patients. Such harms are particularly acute when systemic failures lead to fatal diagnostic errors,

necessitating severe legal accountability (Setiyadi et al., 2023). Consequently, malpractice is often not merely the result of isolated individual negligence but the manifestation of weak oversight, flawed management policies, or the deliberate tolerance of hazardous practices. Therefore, before examining specific criteria for hospital criminalization, one must grasp the broader shift in the paradigm of criminal liability from the individual to the corporation.

The evolving perception of criminal legal subjects serves as the cornerstone for understanding hospital accountability. The paradigm has shifted from an exclusive focus on individual responsibility toward the broader concept of corporate criminal liability (*corporate liability*) (Budiman et al., 2023). Unlawfulness and culpability remain the general requirements for criminal acts, even when not explicitly detailed in every statutory provision. Hospitals, in their operational capacity, are fully capable of committing unlawful acts particularly in the management of patient care thereby establishing them as potential subjects of criminal proceedings. Beyond mere legal enforcement, patient satisfaction with these health institutions remains heavily contingent upon the quality of service and the accessibility of available facilities (Mardikaningsih, 2022). Jurisprudentially, legal subjects are bifurcated into natural persons (*naturlijke persoon*) and legal entities (*rechtspersoon*). In executing their operations, these legal entities must prioritize informed consent and respect for patient autonomy as fundamental operational imperatives (Issalillah et al., 2023). Both forms of legal subjects are equally liable for criminal or civil consequences arising from malpractice. Consequently, hospitals can no longer be exempted from criminal prosecution when malpractice occurs as a result of systemic negligence.

To ensure that law enforcement is accurately targeted, specific criteria for the criminalization of hospitals must be meticulously understood. First, a hospital, as a corporation, possesses the power to organize and command parties engaged in prohibited acts, yet fails to make efforts to prevent or halt such conduct or, in more severe cases, where such acts are mandated by corporate policy. This management oversight function also extends to full control over the administration of all therapeutic treatments, including herbal medicine, to ensure patient safety (Mansyur et al., 2024). Second, corporate management holds the authority to supervise, prevent, and

terminate prohibited acts but fails to exercise adequate oversight, maintains poor management practices, or willfully permits such acts to occur. This systemic negligence extends across all clinical services provided by the facility, including specialized practices such as midwifery (Safitri et al., 2023). These two criteria serve as indispensable benchmarks for law enforcement officials when establishing corporate criminal culpability.

The application of general legal doctrines in malpractice cases must be calibrated to the unique characteristics of hospital employment relationships (Alstott, 2004). Corporate criminal liability in medical malpractice aligns with the doctrine of *Vicarious Liability*, which bifurcates into two specific applications. The *Respondeat Superior* doctrine limits hospital criminal liability to internal staff physicians (*dokter in*), whereas the *Ostensible* or *Apparent Agency* doctrine expands hospital criminal liability to include both internal and external physicians (*dokter in* and *dokter out*). Determining the extent of a hospital's liability requires an examination of several facets: the pattern of the therapeutic relationship, the nature of the health personnel's employment relationship within the hospital, the status of the hospital as a corporation, and the specific nature of the malpractice. Crucially, the evaluation of these employment aspects must not diminish the fundamental rights of vulnerable groups, such as the impoverished and individuals with disabilities, to access equitable services (Noor et al., 2023; Subiakso et al., 2023). By weighing these comprehensive factors, the judiciary can render equitable decisions regarding the degree of responsibility to be borne by the hospital. Furthermore, robust oversight of medical information regulations and health advertisements remains necessary to safeguard the rights of patients as consumers (Sahidu et al., 2023).

Determining the practical application of *respondeat superior* or *ostensible agency* doctrines hinges entirely on the concrete employment status of the physician within the hospital's organizational structure. These doctrines cannot be applied abstractly; rather, they require a granular examination of whether a physician operates as a permanent employee subject to full institutional control, a professional partner with a degree of independence, or an independent contractor utilizing hospital facilities. Alongside this, the professional awareness of medical personnel regarding the confidentiality of patient data remains a critical metric of conduct (Rusli et al., 2025). This legal protection landscape is inherently dynamic, particularly when

practitioners face emergency situations that demand rapid intervention outside the scope of their primary practice permits (Juliarto et al., 2023). Because these statuses carry divergent legal consequences and are set against a macro-environment influenced by social support systems like elderly health coverage and reproductive rights (Khayru, 2022; Nalin, 2025) judges and investigators must prioritize the identification of the actual working relationship as the foundational step in any malpractice inquiry.

Employment status is the primary arbiter of hospital criminal liability (Yadav & Rastogi, 2013). If a physician is classified as an employee, the hospital bears responsibility; if the physician is an attending physician or partner, criminal liability typically rests with the practitioner; if the physician is an independent contractor, the burden of criminal accountability is assigned solely to the practitioner. Consequently, every malpractice case must begin with the formal identification of this working relationship. Such identification is paramount, as the protection of patient-consumers must remain the paramount objective across all healthcare delivery models, including emerging sectors like the online procurement of medical devices (Sulaiman et al., 2024).

Medical personnel, as the frontline of healthcare, are subject to specific criminal provisions. Article 440 of Law Number 17 of 2023 mandates that any medical or health worker whose negligence results in severe injury to a patient is subject to imprisonment for a maximum of three years or a fine of up to Rp250,000,000. If such negligence results in death, the penalty increases to a maximum of five years' imprisonment or a fine of up to Rp500,000,000. These sanctions are intended to foster heightened caution and professionalism among practitioners (Tamon et al., 2025). Fundamentally, these criminal penalties and enforcement mechanisms seek to establish a balanced protection framework that safeguards both patients and healthcare providers (Sumardi et al., 2025).

Achieving fair criminal procedures for medical personnel requires balancing patient protection with respect for the profession. In tandem with the overhaul of the Health Law, a new paradigm for criminal accountability has been introduced under Article 308, paragraphs (1), (3), (5), (7), (8), and (9). Under these provisions, medical personnel suspected of unlawful acts in the delivery of care may face criminal sanctions, but only following a mandatory recommendation from an *ad hoc* council

specializing in professional discipline. While the implementation of this new regulation may face hurdles similar to challenges seen in other labor-related legislative reforms the fulfillment of constitutional professional rights remains a non-negotiable guarantee (Suyuti et al., 2023).

The Professional Discipline Council serves as the critical arbiter in determining the existence of professional disciplinary violations by healthcare personnel. Investigators whether from the Indonesian National Police or Civil Servant Investigators must submit written requests for recommendations, upon which the Council assesses whether the practitioner's actions breached professional ethics. Recommendations must be issued within a maximum of fourteen working days, explicitly stating whether an investigation is warranted based on the action's conformity with professional, service, and operational procedure standards. This procedure reinforces patient rights within Indonesia's social health insurance framework (Tamaka et al., 2023). If the Council fails to issue a recommendation within the specified timeframe, it is deemed that a recommendation to proceed with the investigation has been granted. This procedural safeguard ensures that no medical personnel face criminal charges without substantive evidence of a professional standard violation (Anton et al., 2024).

Legal protection for healthcare personnel must not diminish patient rights; rather, it should fortify the accountability of the judicial process. The government's effort to verify conformity with professional, service, and operational standards prior to investigation is crucial for maintaining legal certainty for patients receiving care at primary facilities, such as community health centers (*Puskesmas*) (Tampil et al., 2023). This approach is justified on two fronts: first, health-related criminal acts constitute a specialized domain requiring experts to evaluate adherence to clinical standards; second, most law enforcement officials lack the specialized medical knowledge required to determine whether an action met these rigorous standards, necessitating assessment by competent peers. Furthermore, judicial proceedings rely heavily on the integrity of medical records as foundational evidence (Ustani et al., 2024). Consequently, a seamless collaboration between law enforcement agencies and health professional organizations has become an inescapable necessity.

Ultimately, the provisions outlined ranging from the recognition of hospitals as subjects of criminal law and the criteria for corporate

criminalization to the application of *vicarious liability*, the identification of employment relationships, and the mandatory Council recommendations all converge on a central objective: establishing equilibrium between legal accountability and professional certainty in healthcare. This enforcement framework for suspected malpractice applies across all health professions, including midwifery, which is now explicitly covered under the latest regulations (Vitrianingsih et al., 2023). No provision within Law Number 17 of 2023 is intended to hinder enforcement or shield medical errors; rather, these regulations are designed to ensure that criminal proceedings in the health sector are conducted meticulously and professionally, acknowledging that the complexity of medical interventions cannot be fully captured by conventional criminal law. Beyond juridical factors, the social characteristics of urban populations also influence the macro-level dynamics of health status and legal enforcement (Warin, 2023). The fundamental shift introduced by this law is not merely technical, but philosophical redefining the nature of criminal responsibility in the healthcare sector. Through this philosophical foundation, robust legal protection for nurses and other healthcare workers operating in hospital settings can be genuinely realized (Yulius et al., 2023).

Law Number 17 of 2023 concerning Health has fundamentally transformed the landscape of criminal liability for malpractice by shifting the paradigm from an exclusive focus on individual responsibility toward a more robust framework of corporate accountability. This shift ensures that hospitals can now be prosecuted if they are proven to have perpetrated systemic negligence. Although explicit regulations governing every nuance of malpractice remain an evolving area of law, Article 447, paragraph (1) provides a decisive foundation for the prosecution of hospitals as legal entities. The determination of a hospital's criminal liability is heavily contingent upon the nature of the employment relationship maintained with the physician; a physician classified as an employee imposes liability upon the hospital, whereas the status of an independent contractor largely absolves the institution from such criminal burdens. For medical personnel, the law codifies specific criminal threats for negligence resulting in serious injury or death; however, it introduces a vital procedural safeguard requiring that criminal investigations only proceed following a formal recommendation from the Professional Discipline Council, which must

assess whether a violation of professional, service, or operational standards has occurred. Mandating such expert review is a critically appropriate measure, as the adjudication of health-related criminal acts requires specialized clinical expertise that conventional investigators typically lack.

Conclusion

Law Number 17 of 2023 concerning Health has shifted the paradigm of criminal liability for malpractice from individual responsibility toward corporate responsibility, so that hospitals can now be prosecuted if proven to have committed systemic negligence. Although the explicit regulation regarding malpractice is still not fully accommodated, Article 447 paragraph (1) provides a foundation for law enforcement against hospitals as legal entities. The criminal liability of a hospital is heavily determined by the pattern of the employment relationship with the doctor, where a doctor as an employee imposes responsibility on the hospital, while a doctor as an independent contractor absolves the hospital from criminal liability. For medical personnel, this law regulates criminal threats for negligence resulting in serious injury or death; however, the investigation process can only be conducted after receiving a recommendation from the professional discipline council assessing a violation of professional standards, services, and operational procedures. The step of mandating such a recommendation is considered appropriate because health-related criminal acts require specialized expertise that is generally not possessed by conventional investigators.

The implications of this description include several important points. For hospitals, they must immediately evaluate the supervision system for medical personnel and draft strict internal policies to prevent malpractice. For medical personnel, they are required to be more disciplined in following professional standards and understand their employment status with the hospital, as this determines who is criminally liable. For law enforcement officials, they cannot directly conduct an investigation without a recommendation from the professional discipline council and are obliged to build cooperation with health professional organizations. For patients and the public, the criminal process against medical personnel becomes longer, so patients are encouraged to consider civil lawsuits as an alternative. Finally, for policymakers, more detailed implementing regulations are

needed regarding the council's recommendation mechanism, as well as massive socialization to all stakeholders so that these new provisions can be implemented effectively and equitably.

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