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Reconstruction of Hospital Liability caused by the Negligence of Medical and Healthcare Personnel

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ABSTRACT

Hospital liability for negligence committed by medical or healthcare personnel is regulated in Article 193 of Law No. 17 of 2023 concerning Health (the 2023 Health Law). Provisions regarding this liability were previously regulated in Law No. 44 of 2009 concerning Hospitals (Hospital Law), which the 2023 Health Law revoked. Both laws position hospitals as if they are legal entities obligated to cover patient losses resulting from the negligence of medical or healthcare personnel. This places a burden on hospitals to adopt deliberation and consensus resolution measures to maintain a positive hospital image. This has resulted in various malpractice issues that have never been resolved satisfactorily. Furthermore, it will also outline the financial losses that hospitals must bear due to the negligence of medical and healthcare personnel. If this matter continues indefinitely, it will undoubtedly have a far-reaching impact on hospitals. This study aims to demonstrate and discuss the legal aspects of hospital liability for negligence by medical or healthcare personnel. The research method employed is a normative research approach, characterized by a descriptive and analytical orientation. The data collected consists of secondary data, including primary legal sources, secondary legal sources, and tertiary legal sources, as well as non-legal secondary data that can support this research. To ensure the validity and reliability of the data, researchers also collected primary data through structured interviews and Focus Group Discussions. The analysis was conducted qualitatively in stages, assessing the studied norms conceptually, historically, comparatively, and casuistically. The results of this study are expected to provide input for amendments to the 2023 Health Law, especially regarding hospital liability norms.

Keywords: hospital, responsibility, negligence, medical personnel, health workers, liability

INTRODUCTION

The 2023 Health Law was created to reform and transform the health sector. One area for improvement is the legal framework for the provision of health services. The 2023 Health Law initiated a new relationship between healthcare facilities and patients. This legal relationship forms the basis for the legal relationship between medical and healthcare personnel and patients. This legal structure further establishes a legal relationship between

healthcare facilities and healthcare personnel (Widjaja & Mailinda, 2024; Widjaja, 2023; Widjaja, 2024; Widjaja et al., 2005).

Hospital liability for errors and/or negligence committed by medical and/or healthcare personnel working in hospitals was first regulated in Hospital Law. The Hospital Law was later declared invalid by the 2023 Health Law. Article 193 of the 2023 Health Law states that hospitals remain legally responsible for all losses incurred as a result of negligence by medical and/or healthcare personnel working in hospitals.

This formulation results in the hospital being the sole resolver of any problems arising from negligence by medical or healthcare personnel. If not resolved, the hospital will be burdened with damage to its reputation. This will result in various malpractice cases not being disclosed. Furthermore, the hospital will be saddled with financial responsibility, which could be detrimental to the hospital. Beyond these two issues, from a legal perspective, hospitals are not recognized as legal entities. Although many hospitals have been sued in practice, there has never been any news of the execution of a hospital's assets after it has lost a lawsuit.

This article will examine the status of hospitals in relation to their liability for losses incurred by patients. This issue has not been studied in detail or seriously to correctly, firmly, and clearly define the legal personality of hospitals and the existence of their assets before the law, in compliance with Article 1131 of the Civil Code. The research aims to analyse the position of hospitals as legal subjects under civil law, enabling them to assume responsibility as stipulated in Article 193 of the 2023 Health Law. The legal position of hospital assets in the context of ownership based on the concept of property law (right in rem) to be responsible in accordance with the provisions of Article 193 of the 2023 Health Law.

METHOD

The research method used is normative research. Two main norms will be examined: the legal personality status and the recognition of hospital assets within the context of Article 1131 of the Civil Code. As a normative study, the data used are secondary data. The data collected includes primary, secondary, and tertiary legal sources, as well as other secondary data that are not legal sources but aid in conducting the research analysis. Data were collected through an online literature review utilizing a network of available websites (Soekanto & Mamudji, 2003). The secondary data used include the Hospital Law, the 2023 Health Law, various court decisions, and studies on cases requiring hospitals to cover patient losses due to errors or negligence by medical or healthcare personnel. Furthermore, structured interviews and Focus Group Discussions (FGDs) with experts in the field were conducted to support the validity and reliability of the analysed data (Soekanto, 2010).

The analysis was conducted qualitatively and in stages, examining the norms of hospitals as legal subjects and the nature of their accountability. The analysis was performed using a conceptual approach by aligning the principles. This study employs case studies, including court decisions and opinions on these decisions, as well as a comparative legal approach (Soekanto, 2010).

The research was conducted through several stages, as follows:

1. Historical, juridical, and normative research was conducted by collecting secondary data and primary and secondary legal materials to determine the regulations and views of the legal and lay community regarding the norms of hospital responsibility under civil law, in accordance with the provisions of the general lege (Civil Code), before and since the enactment of the Hospital Law, and before and after the passage of the 2023 Health Law;
2. Comparative analysis of secondary data, conducted in stages, on the regulations and views of the legal and lay community regarding the norms of hospital responsibility under the general law and the 2023 Health Law;
3. Collection of secondary data and primary and secondary legal materials to determine the regulations regarding personnel and property norms applicable in civil law, in accordance with the provisions of the general law (Civil Code) currently in effect;
4. Analysis of secondary data on the legal and lay worldviews and regulations regarding hospital responsibility norms stipulated in the Hospital Law and the 2023 Health Law in relation to the Civil Code;
5. This will be followed by interviews (scientific discussions) and focus group discussions to support the validity and reliability of the analysed data;
6. Final Analysis;
7. Concluding and proposing changes to the norms contained in the 2023 Health Law.
8. Preparation of reports and outputs for publication.

The research phase involved conducting preliminary studies related to hospital responsibilities as outlined in the Hospital Law (Tritarayati, 2010; Tritarayati, 2011; Al Fikri & Najicha, 2021; Yuliana, 2021; Harmoni, et.al., 2022; Ibella & Andryawan, 2023), as well as 2023 Health Law (Widjaja & Mailinda, 2024; Widjaja, 2023; Widjaja, 2024; Widjaja et.al., 2005). The collected data, including laws, court decisions, and studies that explain hospital responsibilities, will be analysed. The analysis was conducted using a qualitative and tiered approach. The first approach used was conceptual and casuistic. The legal norms studied were the nature of legal personality (persona standi in judicio) and the status of hospital assets, using Article 1131 of the Civil Code as an analytical tool in

fulfilling civil obligations. The results of the analysis were re-examined through interviews and FGDs. The results of the interviews and FGDs will be re-analysed normatively and comparatively. The study's results will be presented as conclusions and suggestions aimed at correcting misperceptions and errors in understanding hospital responsibilities. These results will show that although Health Law is unique, it is also subject to applicable general legal norms.

Research on hospital liability has been conducted since 2011, shortly after the enactment of the Hospital Law, in a study conducted by a student at the Faculty of Law, University of Indonesia.7 This research was continued by the student in the form of a thesis in the Postgraduate Program at Hasanuddin University, Makassar.8 Subsequent studies have not questioned the perceived reasonableness of hospital liability (Al Fikri & Najicha, 2021; Yuliana, 2021; Harmoni et.al., 2022; Ibella & Andryawan, 2023), although in 2015, researchers conducted research on the unique treatment of hospitals in the Hospital Law (Widjaja & Permanasari, 2016). This research demonstrated the existence of a unique obligation relationship, distinct from the general concept of obligations (Muljadi & Widjaja, 2003; Muljadi & Widjaja, 2004; Widjaja, 2005).

Further research, with the development of health law, has shown that the nature of hospital liability for the negligence of medical personnel/healthcare workers was never questioned until the enactment of the 2023 Health Law (Widjaja & Yustanti, 2025; Harry & Widjaja, 2025; Widjaja & Sijabat, 2025). Researchers have been studying and discussing the 2023 Health Law since its enactment and continue to do so to the present. Previously, researchers conducted a comprehensive study of health law learning in a 2021 publication (Widjaja, 2021). 20. In 2024, researchers examined the paradigm error in viewing hospitals as legally responsible for the negligence of medical personnel and healthcare workers (Widjaja, 2024).

FINDINGS AND DISCUSSIONS

Results Obtained According to the Year of Implementation

From the research activities conducted regarding hospital responsibilities, the following findings and achievements can be presented in the form of research data:

1. Regarding hospital regulations in Indonesia, three legal provisions governing hospital responsibilities are identified:

a. Law No. 17 of 2023 concerning Health (The 2023 Health Law), Article 193 of which states: "Hospitals are legally responsible for all losses arising from negligence committed by Hospital Health Human Resources."

b. Law No. 44 of 2009 concerning Hospitals (the Hospital Law), Article 46 of which explicitly states that "Hospitals are legally responsible for all losses arising from negligence committed by healthcare workers in the Hospital."

c. The Civil Code (KUHPerdata), based on the provisions of Article 1367, which reads: "A person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of people who are his dependents or caused by goods under his control."

2. Regarding court decisions against hospitals, 25 court decisions were selected, ranging from district courts, high courts, cassation courts, to the Supreme Court judicial reviews. These selected decisions were reviewed and analysed. The analysis showed that:

a. Almost all claims for compensation against hospitals were filed in conjunction with claims against medical personnel or healthcare professionals who committed negligence.

b. Claims against hospitals were filed as a continuation of joint and several liability for negligence or errors committed by healthcare professionals, including medical personnel.

c. Most claims were filed based on Article 1367 of the Civil Code, which is based on unlawful acts, while claims against healthcare professionals or healthcare facilities were based on Article 1365 of the Civil Code.

d. Many claims did not even refer to the applicability of Article 46 of the the Hospital Law as a special regulation.

e. Many claims against hospitals were also filed jointly against hospital owners, including central government hospitals, regional government hospitals, and private hospitals.

f. Some lawsuits are filed against hospitals, some are filed against the Director/Head of the hospital, in addition to being addressed to the hospital itself.

g. The lawsuits primarily refer to the employment or labour relationship between medical or health personnel and the hospital. However, some lawsuits have been found that make no reference to such a legal relationship at all.

h. Court decisions are inconsistent in their legal reasoning, but most grant claims for unlawful acts when medical personnel or health workers are proven to have committed negligence.

i. Court decisions that grant claims against health workers, including negligent medical personnel, essentially also grant claims against hospitals.

j. Some lawsuits against medical personnel are rejected, but lawsuits against hospitals are granted.

k. There are variations in court decisions regarding the enforceability and bindingness of MKDKI decisions in the opinion of the panel of judges before they render their decisions.

l. Court decisions rarely question the status of hospitals that are not legal entities.

m. There are variations in court decisions that punish hospitals for negligence by medical personnel or health workers who do not have an employment or labour relationship with the hospital. In this context, hospitals only provide facilities without human health resources for implementing certain government or private programs that must be executed.

n. Basically, court decisions that impose compensation penalties on hospitals are based on joint and several liability; however, some decisions punish hospitals but do not impose penalties on medical or health workers.

3. Regarding expert perspectives and opinions mentioned in manuscripts on hospital liability before, during the validity period of the Hospital Law, and after the enactment of the 2023 Health Law, we have reviewed 25 publications in each period. The results of the study and analysis indicate that the research published in these journals primarily explains the validity of the legal norms stipulated in the Hospital Law and the 2023 Health Law, justifying the punishment of hospitals for failing to provide compensation to patients harmed by negligence of medical and/or healthcare personnel working in hospitals. Most of the articles also continue to relate the issue of hospital liability for the negligence of medical and healthcare personnel to a superior-subordinate relationship, as regulated in Article 1367 of the Civil Code. Article 1367 of the Civil Code is frequently cited in descriptions and analyses throughout the manuscript. This also indicates that almost all scientific papers use unlawful acts as the basis for analysing hospital liability, in the form of vicarious liability.

4. The results of meetings and discussions with stakeholders indicate that basically, the understanding of hospital responsibility regarding the negligence of medical personnel or health workers is treated as a common thing, and no one questions the basic concept and philosophy of the regulation. However, several scholars question the responsibility of hospitals, as hospitals are not legal subjects. Regarding legal entity status, hospitals are not considered legal bodies, which means they cannot be sued under the law. The Indonesia court decisions that recognize lawsuits using the provisions of Article 1367 of the Civil Code (as an equivalent to Article 1365 of the Civil Code aimed at health workers and medical personnel) show that basically so far, there is an inconsistency and harmony in the recognition of the status of hospitals after the enactment of the 2023 Health Law which expressly states that hospitals are only limited to places or tools; or in the Indonesian Standard Business Field Classification is part of the licensing of activities related to human health, which refers to state administrative law related to licensing.

5. Discussions with colleagues and experts in the form of Forum Group Discussions (FGDs) indicate that it is fundamentally necessary to provide an understanding and comprehension that Health Law is sui generis, distinct from criminal, civil, and administrative law in general. This stems from the debate regarding the legal relationship between hospitals and patients, hospitals and medical or health personnel, and between medical or health personnel and patients. Understanding, conceptualizing, and reorganizing the legal relationship created and formed by hospitals in the context of providing health services as a contractual legal relationship that is not based on results (result-oriented), but instead on the process (process-oriented by fulfilling three established standards, namely Professional Standards, Service Standards, and Standard Operating Procedures. This brings logical consequences from the nature of hospital accountability as regulated in Article 193 of the 2023 Health Law. Hospitals, as regulators of the implementation of clinical guidelines in the form of Standard Operating Procedures, are fully responsible for ensuring the accuracy of the clinical implementation processes and procedures by medical staff within the hospital.

Analysis of Research Findings

Historical, Relational, and Normative Analysis

The findings also indicate that although hospitals have long existed and were established during the Dutch East Indies era, their organization and legal basis were not well-defined and tended to lack a solid foundation. In her research, Hotmaria (2025) demonstrated the limited healthcare facilities operating in the Dutch East Indies at that time. In general, only a few healthcare facilities, primarily hospitals, provided healthcare to the general public. One well-known one was the *Military Gezondheids Dienst* (Army Health Service), which was a military hospital (Kartiko & Vadero, 2023). The provision of healthcare to the public was somewhat less well-organized because the Dutch East Indies colonial era prioritized services for war victims. In addition to these military healthcare facilities, private hospitals were subsequently established by the *Burgerlijke Gezondheids Dienst* (Private Health Service). One of these private hospitals was Dr. Ciptomangun Kusumo Hospital, founded on November 19, 1919, under the name Central Civil Hospital (also known in Dutch as *Centrale Burgerlijke Ziekeninrichting*, CBZ) (Wikipedia, n.d.).

It was not until 1998 that a specific regulation regarding hospitals was issued, specifically Minister of Health Regulation No. 159b/MEN.KES/PER/II/1988 concerning Hospitals (PMKRS1988). This PMKRS1988 was issued as an implementation of Law No. 9 of 1960 concerning Health (1960 Health Law). In this PMKRS1988, a

hospital is defined as "a health care facility that provides health service activities and can be used for health worker education and research."

The PMKRS1988 mandates that hospitals provide not only health services but also administrative services, education, and maintenance of buildings, equipment, and supplies. Furthermore, as a follow-up to PMKRS1988, the Minister of Health issued Decree No. 772/MENKES/SK/VI/2002 concerning the Guidelines for Internal Hospital Regulations (Hospital Bylaws) (KMK772). KMK772 lists hospitals as "social institutions that are immune from the law." This provision further explains that "punishing hospitals to pay compensation is the same as reducing their assets, which in turn will reduce their ability to help the wider community." The following note in KMK772 is a statement stating that "… making hospitals in Indonesia legal subjects." which is preceded by the fact that the community has filed many lawsuits. The last phrase is supported by the statement in KMK, which states that limited liability companies can establish hospitals, hospitals owned by the Ministry of Health can become state-owned companies, and regional hospitals can become legal entities.

Based on the facts presented in KMK772, KMK772 then states the importance of establishing Internal Hospital Regulations (Hospital Bylaws), which are the hospital's Bylaws. The hospital owner or their representative establishes these bylaws. Hospital bylaws are not a set of hospital SOPs, but rather a set of rules for the Board of Directors on running the hospital, written hospital policies, and job descriptions for healthcare workers and hospital staff, which the hospital's Board of Directors establishes. The matters established by the hospital's Board of Directors focus more on the hospital's technical operational policies. In this context, KMK772 treats the hospital as an independent legal entity, with an owner (or their representative), administrators, and medical staff who provide medical services. This is emphasized by the subsequent explanation in KMK772, which places Hospital Bylaws under the Articles of Association of Foundations, Limited Liability Companies, and State-Owned Companies, as well as regulations regarding the legal entity of the hospital owner. So it is clear in KMK772 that the hospital is an "object" owned as a facility. These hospital bylaws will subsequently serve as requirements for hospital accreditation. According to KMK772, hospital bylaws consist of corporate bylaws, which govern the relationship between the owner or their representative and the director or manager of the hospital, and medical staff bylaws, which govern the medical staff in the hospital.

Subsequently, provisions concerning hospitals were regulated in Law Number 44 of 2009 concerning Hospitals (Hospital Law). The definition provided by the Hospital Law, Article 1, point 1, stipulates that "A hospital is a health service institution that provides comprehensive individual health services, providing inpatient, outpatient, and emergency care." This institutional definition positions a hospital as an organization, seemingly distinct from the entity that owns the hospital, which can include foundations, limited liability companies, central governments, regional governments, and others. The existence of this hospital organization is even regulated in Article 35 of the Hospital Law, which states that "Hospital organizational guidelines are stipulated by Presidential Regulation."

The Presidential Regulation on Hospital Guidelines is regulated in Presidential Regulation No. 77 of 2015 concerning Hospital Organizational Guidelines (PPPORS). Not a single provision in the PPPORS regulates the legal nature of hospitals as a distinct entity. It only states that the hospital's organizational guidelines were created to ensure good corporate governance and good clinical governance. Therefore, these guidelines are an implementation of the Hospital Bylaws. The PPPORS was subsequently revoked by Government Regulation No. 28 of 2024, which implements the regulations of Law No. 17 of 2023 concerning Health (PP28/2024).

Article 46 of the Hospital Law states: "Hospitals are legally responsible for all losses arising from negligence by healthcare workers within the hospital." Previously, Article 45 of the Hospital Law stated:

"(1) A hospital is not legally responsible if a patient and/or their family refuses or discontinues treatment that could result in the patient's death after a comprehensive medical explanation has been provided.

(2) A hospital cannot be sued for carrying out its duties to save human life."

The fact that hospitals are not considered philosophically and conceptually legal entities is evident from the formulation of Article 7, paragraph (4) of the Hospital Law, which states that "Hospitals established by the private sector must be legal entities whose business activities are solely in the field of hospitalization." The requirement that the hospital owner must be a legal entity invalidates the understanding that a hospital is a legal entity. This is because a legal entity, as a legal subject, cannot be owned by another legal entity or legal subject. Only legal objects can be owned by legal subjects. Therefore, hospitals should be legal objects, not legal subjects (read: legal entities). However, the normative formulation stipulated in Article 46 of the Hospital Law makes discussion of hospital responsibility inseparable from this article (Widjaja, 2025; Widjaja & Sijabat, 2025a; Widjaja & Sijabat, 2025b).

Comparative Analysis

The historical facts, regulations, and normative formulations above do not indicate any philosophical or conceptual rationale for the existence of hospital responsibilities, which are not legal entities. To find this answer, the researcher explored the comparative nature of hospital existence and organization in countries that adhere to the common law tradition. This comparative analysis cannot be separated from the provisions of KMK 772. KMK

772 mentions the existence of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). In this regard, the researcher examined the regulations regarding hospital organization within the hospital accreditation institution, the Joint Commission on Accreditation of Hospitals (JCAH). The JCAH essentially separates the hospital organization from the governing body, which consists of the policymakers within the hospital organization. The regulations are contained in the bylaws of each organization. In the common law tradition, the law governing the establishment of a legal entity distinguishes between the statute, articles of association, and bylaws of a legal entity. Meanwhile, in this context, countries with a civil law tradition do not recognize stand-alone bylaws; instead, they are part of the articles of association contained in the statute of an organization (Beaudoin, 2023; Fastercapital, 2025; Glasgow, 2024). According to the laws and regulations governing foundations, associations, and limited liability companies in Indonesia, only the deed of establishment and the Articles of Association are recognized, with the latter being incorporated into the deed of establishment (Widjaja, 2007).

It is understandable that the misunderstanding of hospitals as a facility or place, or the purpose and objectives of the organization, with hospital owners as independent legal subjects—particularly in the formation of KMK772 and subsequently in the Hospital Law—has led to hospitals being seen as responsible parties. This is also essentially evident in the confusion stipulated in the explanation of Article 34 paragraph (3) of the Hospital Law, which states that "hospital owners include, among others, company commissioners, foundation founders, or local governments." Hospitals are not inherently legal entities under civil law, and therefore cannot formally and legally assume liability as stipulated in Article 193 of the 2023 Health Law. Furthermore, under the 2023 Health Law, hospitals are merely facilities. Therefore, in terms of civil liability, the hospital owner, who has legal entity status, bears the responsibility.

CONCLUSION

From the findings and discussions given above, it is very clear that there is a misinterpretation of the Hospital bylaws in KMK772. The misunderstanding created the assumption that a hospital is a legal entity, akin to an institution or organization that has its own legal status as a legal subject. Based on this, the hospital shall be responsible for the negligence of health workers or medical staff. The misinterpretation by the hospital's owner, who is not liable, has made the hospital the liable institution; meanwhile, the hospital is only a legal entity and not a legal person. The definition of 'hospital' given in the 2023 Health Law has returned to the fundamental concept of a hospital as a legal object, rather than a legal subject. However, Article 193 of the 2023 Health Law remained. This fallacy must be corrected by providing all stakeholders with a comprehensive understanding of the hospital's status as a legal entity, rather than a legal person. Since a hospital is a legal entity, it does not have its own assets, which means it cannot be held liable under the law.

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