

## **Criminal Liability of Hospitals and Medical Personnel for Medical Malpractice in Indonesia**

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### **ABSTRACT**

*Medical malpractice cases represent a serious concern in healthcare services, as they have the potential to cause physical harm, psychological distress, and even death to patients. This study aims to analyze the forms of criminal liability imposed on hospitals and medical personnel in malpractice cases, based on a review of Court Verdict Number 85/Pdt/2021/PT PAL. The research adopts a normative juridical approach with a case study method, examined through applicable legislation, legal doctrine, and an analysis of the court decision's substance. The findings indicate that in the aforementioned decision, legal responsibility was not solely attributed to individual medical personnel, but extended to the hospital institution as a party bearing administrative and operational responsibility for healthcare services. The panel of judges determined that negligence had occurred in the application of standard medical procedures, alongside the hospital's failure to exercise adequate supervision over its medical staff. This decision serves as a significant precedent in strengthening the criminal dimension within the domain of medical malpractice, and affirms that hospitals cannot absolve themselves of legal responsibility when ethical and professional violations are committed by medical personnel under their institutional authority.*

**Keywords:** *Corporate Criminal Liability, Criminal Liability, Hospital, Medical Malpractice, Vicarious Liability*

## **Pertanggungjawaban Pidana Rumah Sakit dan Tenaga Medis terhadap Tindakan Malpraktik Medis di Indonesia**

### **ABSTRAK**

*Penelitian ini mengkaji pertanggungjawaban pidana tenaga medis dan rumah sakit dalam kasus malpraktik medis berdasarkan hukum positif Indonesia. Metode yang digunakan adalah penelitian hukum normatif dengan pendekatan perundang-undangan, konseptual, dan kasus, melalui studi terhadap Putusan Nomor 120/Pdt.G/2019/PN Ckr. Hasil penelitian menunjukkan bahwa pertanggungjawaban pidana tenaga medis mensyaratkan terpenuhinya empat unsur secara kumulatif, yaitu hubungan hukum antara tenaga medis dan pasien, pelanggaran standar profesi atau prosedur operasional, kerugian nyata yang diderita pasien, serta hubungan kausal yang terbukti antara pelanggaran dan kerugian tersebut. Dalam ranah pidana, pembuktian unsur culpa lata menjadi syarat utama untuk menjerat tenaga medis berdasarkan Pasal 359 dan Pasal 360 KUHP. Adapun rumah sakit sebagai korporasi dapat dimintai pertanggungjawaban pidana berdasarkan prinsip corporate criminal liability dan vicarious liability sebagaimana diatur dalam Undang-Undang Nomor 44 Tahun 2009, Peraturan Mahkamah Agung Nomor 13 Tahun 2016, dan Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan. Putusan Nomor 120/Pdt.G/2019/PN Ckr memperlihatkan bahwa pertanggungjawaban atas malpraktik medis bersifat berlapis dan dapat menjangkau individu tenaga medis sekaligus institusi rumah sakit secara bersamaan. Penelitian ini menegaskan perlunya kepastian hukum yang lebih kuat dalam penanganan kasus malpraktik medis demi perlindungan pasien dan keseimbangan antara tanggung jawab profesi dan institusi.*

**Kata kunci:** *Corporate Criminal Liability, Malpraktik Medis, Pertanggungjawaban Pidana, Rumah Sakit, Vicarious Liability*

## INTRODUCTION

In Indonesian healthcare practice, medical procedures performed by healthcare professionals do not always produce the expected outcomes. When medical interventions result in harm to patients, whether in the form of permanent disability, serious injury, or death, a fundamental legal question arises: who bears responsibility, and in what form should that responsibility be imposed. The Minister of Health, Budi Santoso, at the Working Meeting of Commission IX of the House of Representatives with the Minister of Health and the Public Hearing with the Medical Discipline Council (MPI), IDI, IBI, and the Indonesian National Nurses Association (PPNI), which discussed the resolution of alleged malpractice in healthcare facilities, stated that reported malpractice cases in Indonesia between 2023 to 2025 totalled 51 cases.<sup>1</sup>

Medical malpractice, in a juridical sense, can be defined as conduct by medical personnel that deviates from professional standards, standard operating procedures, and medical ethics, thereby causing harm to patients.<sup>2</sup> Under Law Number 29 of 2004 on Medical Practice, every medical professional is obligated to provide services in accordance with professional standards and to bear responsibility for each action performed. Violations of this obligation may give rise to legal liability, whether civil, criminal, or administrative in nature.<sup>3</sup>

The issue becomes considerably more complex when examining the extent to which a hospital, as an institution, may be held criminally liable for malpractice committed by medical personnel under its management. Within the framework of modern criminal law, corporations, including hospitals, may be recognized as subjects of criminal liability.<sup>4</sup> Article 46 of Law Number 44 of 2009 on Hospitals affirms that hospitals bear legal responsibility for all losses arising from the negligence of healthcare workers employed within them.<sup>5</sup> Furthermore, Law Number 17 of 2023 on Health reinforces the principle of corporate criminal liability, whereby healthcare

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<sup>1</sup> “KOMISI IX DPR RI RAKER DENGAN MENKES, MENTERI KEPENDUDUKAN DAN KELUARGA DAN KEPALA BGN - YouTube,” July 2, 2025, <https://www.youtube.com/watch?v=9RIMHaWNQyY&list=PL0xc4657cib5AMiEtK9IxVIQLdFyp6QrZ&index=29>.

<sup>2</sup> Abdul Kholib, “Analisis Yuridis Perbandingan Risiko Medis Dengan Kelalaian Medis,” *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 2, no. 2 (July 22, 2020): 238–54, <https://doi.org/10.37680/ALMANHAJ.V2I2.481>.

<sup>3</sup> I Made Dwi Jayantara, Hidayattullah Hidayattullah, and Hanafi Arief, “Analisis Pertanggungjawaban Pidana Dan Penyelesaian Terhadap Tenaga Medis Yang Melakukan Malpraktik Medis Ditinjau Dari Perspektif Undang-Undang Nomor 17 Tahun 2023 Tentang Kesehatan,” *Jurnal Hukum Lex Generalis* 5, no. 7 (December 28, 2024), <https://ojs.rewangrencang.com/index.php/JHLG/article/view/706>.

<sup>4</sup> Rodliyah Rodliyah, Any Suryani, and Lalu Husni, “Konsep Pertanggungjawaban Pidana Korporasi (Corporate Crime) Dalam Sistem Hukum Pidana Indonesia,” *Journal Kompilasi Hukum* 5, no. 1 (February 9, 2021): 191–206, <https://doi.org/10.29303/JKH.V5I1.43>.

<sup>5</sup> Eko Pujiyono, “The Position of Hospital Corporation in Negligence Liability,” *Jurnal Hukum Dan Etika Kesehatan* 1, no. 2 (September 20, 2021): 177–85, <https://doi.org/10.30649/JHEK.V1I2.35>.

facilities that violate established standards may be subject to criminal sanctions as stipulated under Article 344.<sup>6</sup>

In Indonesian judicial practice, however, the application of criminal liability to hospitals as corporate entities continues to face substantial juridical challenges. Proving the elements of fault, establishing causal relationships, and distinguishing between individual and institutional negligence remain the principal obstacles in delivering justice to victims of medical malpractice.<sup>7</sup> This situation reveals a normative gap that warrants thorough examination, particularly regarding the conditions under which, and the mechanisms by which, hospitals may be held criminally liable for acts of medical malpractice.

The analysis of Verdict Number 120/Pdt.G/2019/PN Ckr is pertinent in this context. This verdict, issued by the Cikarang District Court (*PN Cikarang*), concerns a civil claim based on unlawful acts arising from alleged malpractice involving medical personnel and related institutions. The panel of judges granted the plaintiff's claim in its entirety and found the defendants proven to have committed unlawful acts. The defendants were ordered to pay material loss amounting to Rp194,900,000 and immaterial loss of Rp2,000,000,000. Although the case was a civil proceeding, the legal facts established during the trial provide a concrete illustration of the elements of medical negligence, violations of procedural standards, and the basis for institutional accountability, which, upon further analysis, may open avenues for the application of criminal liability.<sup>8</sup>

Several studies have examined related aspects of medical malpractice liability in Indonesia, yet none has comprehensively addressed the simultaneous criminal accountability of both individual medical personnel and hospitals as corporate entities within a single analytical framework. Research done by Mirza, Dahlan, and Mansur concluded that healthcare malpractice must be viewed as a criminal offence subject to criminal liability in accordance with the Criminal Code and Law Number 17 of 2023 on Health, yet the study's scope remained confined to the criminal responsibility of

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<sup>6</sup> Syarifudin Syarifudin, "PROBLEMATIKA PEMBUKTIAN DALAM TINDAK PIDANA MALPRAKTIK DOKTER DITINJAU DARI UNDANG-UNDANG NOMOR 17 TAHUN 2023 TENTANG KESEHATAN," *Justitia et Pax: Jurnal Hukum* 40, no. 2 (December 10, 2024): 295–330, <https://doi.org/10.24002/JEP.V40I2.8262>.

<sup>7</sup> Yusri Lisangan, Ruslan Renggong, and Baso Madiong, "PERTANGGUNGJAWABAN PIDANA PELAKU MALPRAKTIK MEDIK DI RUMAH SAKIT UMUM DAERAH ANUTAPURA PALU," *Indonesian Journal of Legality of Law* 6, no. 2 (June 30, 2024): 349–54, <https://doi.org/10.35965/IJLF.V6I2.4481>.

<sup>8</sup> Velliana Tanaya and Intan Indriani Putri, "The Civil Liability of Hospitals for Malpractice Committed by Healthcare Personnel Resulting in Baby Switched at Birth Incidents," *Jurnal IUS Kajian Hukum Dan Keadilan* 13, no. 1 (April 10, 2025): 1–19, <https://doi.org/10.29303/IUS.V13I1.1539>.

individual perpetrators without extending its analysis to institutional accountability.<sup>9</sup> From the institutional perspective, Vitrianingsih, Miarsa, and Yahya found that hospitals can be held civilly, criminally, and administratively accountable within the framework of vicarious liability, but noted persistent weaknesses in the implementation of regulations and a significant gap between legal norms and field practice.<sup>10</sup>

These studies, while individually significant, address either individual or institutional liability in isolation. No study has yet constructed a unified juridical analysis of the layered accountability mechanism encompassing both medical personnel and hospitals simultaneously, nor tested the cumulative elements of criminal liability against a concrete judicial decision.

Accordingly, this study aims to examine, from a juridical standpoint, how criminal liability of hospitals and medical personnel is constructed under Indonesian positive law, the conditions under which each party may be held accountable, and how the element of fault, encompassing both negligence and intent, is established in the context of medical malpractice. The findings of this study are expected to provide both theoretical and practical contributions toward the reform of health law in Indonesia, as well as legal certainty for patients, who remain the most vulnerable party in the healthcare service relationship.

## **LITERATURE REVIEW**

### **Criminal Liability**

Criminal liability constitutes a central aspect of criminal law, functioning as the mechanism by which the appropriateness of imposing criminal sanctions upon a person or entity is assessed. According to Moeljatno, criminal liability represents the second requisite condition following the establishment of a criminal act, whereby a person may only be subjected to criminal punishment if they can be held legally accountable for their conduct. This involves the element of fault, either in the form of intent (*dolus*) or negligence (*culpa*), as well as the capacity of the perpetrator to comprehend and control their actions.<sup>11</sup>

In the medical context, criminal liability becomes considerably more complex given that the profession inherently involves risk and demands highly specialized judgment. Consequently, not every adverse medical outcome can be automatically

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<sup>9</sup> Andi Mirza, Dahlan Dahlan, and Teuku Muttaqin Mansur, "Criminal Liability of Perpetrators of Health Care Malpractice," *International Journal of Law and Society* 2, no. 3 (July 14, 2025): 238–46, <https://doi.org/10.62951/IJLS.V2I3.699>.

<sup>10</sup> Yeni Vitrianingsih, Fajar Rachmad Dwi Miarsa, and Dhofirul Yahya, "The Legal Responsibility of Hospitals in Medical Malpractice Cases After the Issuance of the Health Law in 2023 | LEGAL BRIEF," *LEGAL BRIEF* 14, no. 2 (May 22, 2025): 174–83, <https://legal.isha.or.id/index.php/legal/article/view/1274>.

<sup>11</sup> M. Ali Zaidan, *Menuju Pembaruan Hukum Pidana* (Sinar Grafika, 2015).

categorized as a criminal act. It must be established that the medical professional violated procedural standards and the professional code of ethics, whether consciously or through gross negligence that cannot be legally justified.<sup>12</sup> Beyond the element of fault, a causal relationship must also be proven between the medical intervention performed and the harm suffered by the patient. Establishing this causal link in practice requires expert medical testimony that objectively explains whether the conduct in question deviated significantly from professional standards or remained within the bounds of acceptable medical practice.<sup>13</sup>

It is equally important to consider the subjective circumstances of the actor at the time the conduct occurred, including medical emergencies, limitations in available facilities, and the pressure of rapid clinical decision-making. In this regard, criminal law does not serve solely a punitive function, it also provides protection for medical professionals who have acted in good faith and in accordance with professional standards, so that they are not subjected to disproportionate criminalization merely because the outcome of their intervention did not meet the patient's expectations.<sup>14</sup>

### **Hospital as a Subject of Criminal Liability**

A hospital, as a healthcare institution constituted as a legal entity, may be categorized as a corporation within the meaning of criminal law. In the development of modern criminal law, corporations may be held criminally liable where a criminal act is committed by their management or employees in the course of corporate activities and for the benefit of the corporation. According to Muladi, corporate criminal liability may be constructed through three models, namely *strict liability*, *vicarious liability*, and the *identification theory*.<sup>15</sup>

In Indonesia, corporate criminal liability has been accommodated through various legal instruments, including Supreme Court Regulation Number 13 of 2016 on Procedures for Handling Criminal Cases Involving Corporations. In the healthcare domain, Article 46 of Law Number 44 of 2009 on Hospitals expressly provides that hospitals bear legal responsibility for all losses arising from the negligence of healthcare workers employed within them. This provision constitutes the normative foundation for the application of the vicarious liability principle in the healthcare context, whereby the fault of medical personnel acting within the scope of their duties

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<sup>12</sup> Adami Chazawi, "Malapraktik Kedokteran," *Kesehatan Masyarakat*, 2015, 1–270.

<sup>13</sup> Sabrina Hidayat, *Pembuktian Kesalahan: Pertanggungjawaban Pidana Dokter Atas Dugaan Malpraktik Medis* (Scopindo Media Pustaka, 2020).

<sup>14</sup> Rospita Adelina Siregar et al., *Hukum Kesehatan Berdasarkan: UU RI No.1 Tahun 2023 Tentang KUHP Dan UU RI No.17 Tahun 2023 Tentang Kesehatan* (Jakarta: Sinar Grafika, n.d.).

<sup>15</sup> Muladi Muladi and Diah Sulistyani, *PERTANGGUNGJAWABAN PIDANA KORPORASI (CORPORATE CRIMINAL RESPONSIBILITY)* (Penerbit Alumni, 2023).

may be attributed to the hospital as the employing institution.<sup>16</sup>

To determine the extent to which a hospital may be considered culpable for the conduct of its medical personnel, the legal relationship between the two parties must be carefully examined. Where medical personnel act as permanent employees of the hospital, their conduct may legally be attributed to the hospital as an institution. Conversely, where medical personnel act beyond the scope of their authority or independently make decisions that deviate from established standard operating procedures, liability may rest entirely with the individual concerned. The distinction between individual fault and institutional fault is critically important to draw with precision, so as to prevent the disproportionate criminalization of institutions.<sup>17</sup>

### **Medical Personnel and Healthcare Service Standards**

Medical personnel, particularly physicians, belong to a profession regulated strictly by law and professional ethics. Under Article 51 of Law Number 29 of 2004 on Medical Practice, physicians are obligated to provide medical services in accordance with professional standards and standard operating procedures, with due regard for patient safety. Failure to fulfill this obligation may be classified as malpractice where it causes actual harm to the patient.<sup>18</sup>

In assessing a physician's fault in cases that may give rise to criminal liability, it is important to distinguish between *error in iudicium*, referring to an error in medical judgment, and *error in procedendo*, referring to an error in the procedure of the action performed. Errors in medical judgment may occur even where the physician has acted in accordance with professional standards, whereas procedural errors reflect violations of established protocols or clinical pathways. Generally, only errors classifiable as error in procedendo may give rise to criminal liability, particularly where accompanied by elements of gross negligence or criminal intent.<sup>19</sup>

The analysis of Verdict Number 120/Pdt.G/2019/PN Ckr provides a concrete illustration of this distinction. In that case, the plaintiff, a patient who had undergone orthopedic surgery, alleged that the defendants, comprising a specialist physician and the related institutional parties, had committed unlawful acts in the performance of medical procedures. The panel of judges granted the claim in its entirety and found the defendants proven to have committed unlawful acts, resulting in material and immaterial losses suffered by the plaintiff. The factual findings of this proceeding demonstrate that violations of procedural standards in medical practice not only

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<sup>16</sup>Sigit Lesmonojati, *Pertanggungjawaban Pidana Atas Perbuatan Kelalaian Pada Tindakan Medis Di Rumah Sakit* (Scopindo Media Pustaka, 2023).

<sup>17</sup> Muladi and Sulistyani, *PERTANGGUNGJAWABAN PIDANA KORPORASI (CORPORATE CRIMINAL RESPONSIBILITY)*.

<sup>18</sup> Zaeni Asyhadie, *Aspek-Aspek Hukum Kesehatan Di Indonesia*, 1st ed. (Depok: Rajawali Pers, 2022).

<sup>19</sup> Chazawi, "Malapraktik Kedokteran."

produce civil legal consequences, but also open the possibility of criminal liability assessment where the element of gross negligence can be established.

Furthermore, legal enforcement concerning alleged medical malpractice must be conducted with considerable caution so as not to produce an excessive deterrent effect among medical professionals that leads to defensive medicine or an error to the medical practice. The evidentiary process must involve medical experts to assess whether the physician's conduct genuinely deviated from standards that are scientifically and professionally acceptable.<sup>20</sup>

### **Criminal Law Perspectives on Medical Malpractice**

Medical malpractice may be examined from multiple legal perspectives, encompassing civil, administrative, and criminal law. From the perspective of criminal law, conduct may only be subjected to criminal sanctions where it fulfills the elements of a criminal offense as prescribed by statute. Article 359 of the Criminal Code governs negligence resulting in death, while Article 360 governs negligence resulting in serious bodily harm. These two provisions serve as the primary legal instruments for prosecuting medical malpractice as a criminal matter in Indonesia. Law Number 17 of 2023 on Health further reinforces this framework by providing more specific criminal sanctions for violations of healthcare service standards.<sup>21</sup>

One of the greatest challenges in criminal law enforcement against medical malpractice is proving that the conduct of medical personnel deviated from the applicable standard of care and that such deviation bears a direct causal relationship to the harm suffered by the patient. In judicial practice, expert medical testimony is particularly determinative, not only for assessing whether the physician's actions conformed to professional standards, but also for providing an objective evaluation of the level of risk associated with the intervention and whether a safer alternative course of action was available and should reasonably have been taken.<sup>22</sup>

Prior to the initiation of criminal proceedings, the Indonesian legal system prioritizes resolution through the Indonesian Medical Disciplinary Honor Council (MKDKI), in accordance with the principle of *ultimum remedium*, which positions criminal law as a measure of last resort. This approach is designed to ensure that medical disputes are resolved proportionately, maintaining a proper balance between

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<sup>20</sup> Yemima Reina Manse, Rospita Adelina Siregar, and Mompang L Panggabean, "Pertanggungjawaban Pidana Tenaga Medis Dalam Malpraktik," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 5, no. 5 (July 21, 2025): 4682–88, <https://doi.org/10.38035/JIHHP.V5I5.5771>.

<sup>21</sup> Siregar et al., *Hukum Kesehatan Berdasarkan : UU RI No.1 Tahun 2023 Tentang KUHP Dan UU RI No.17 Tahun 2023 Tentang Kesehatan*.

<sup>22</sup> Hidayat, *Pembuktian Kesalahan: Pertanggungjawaban Pidana Dokter Atas Dugaan Malpraktik Medis*.

the interests of patient protection and the protection of the medical profession.<sup>23</sup>

## **RESEARCH METHODOLOGY**

This study employs a normative legal research design, which involves the systematic examination of primary and secondary legal materials to identify legal arguments, theories, and concepts pertinent to the issue under investigation. According to Peter Mahmud Marzuki, normative legal research is a process of discovering legal rules, legal principles, and legal doctrines in order to address legal problems, and of producing arguments, theories, or new concepts as prescriptive solutions to those problems.<sup>24</sup>

The approaches adopted in this study comprise the statute approach, the conceptual approach, and the case approach.<sup>2</sup> The statute approach involves a comprehensive review of all regulations relating to the criminal liability of medical personnel and hospitals, including the Criminal Code (KUHP), Law Number 29 of 2004 on Medical Practice, Law Number 44 of 2009 on Hospitals, Supreme Court Regulation Number 13 of 2016 on Procedures for Handling Criminal Cases Involving Corporations, and Law Number 17 of 2023 on Health. The conceptual approach is employed to analyze relevant legal doctrines, including vicarious liability, corporate criminal liability, the identification theory, and the principle of *ultimum remedium* within the context of medical criminal liability. The case approach is applied through an analysis of Verdict Number 120/Pdt.G/2019/PN Ckr as the primary analytical material, with the aim of understanding how the court assessed the elements of negligence, causal relationships, and legal accountability in a concrete medical malpractice proceeding.

The legal materials utilized in this study consist of both primary and secondary sources. Primary legal materials include legislation in the fields of health law and criminal law, as well as judicial decisions relating to medical malpractice cases, with particular reference to Verdict Number 120/Pdt.G/2019/PN Ckr. Secondary legal materials encompass legal scholarship, academic journals, legal doctrines, and the opinions of legal scholars concerning the criminal liability of medical personnel and hospital corporations.<sup>25</sup>

The collection of legal materials was conducted through library research, involving the systematic gathering, reading, identification, and analysis of relevant

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<sup>23</sup> Muhammad Afiful Jauhani, *Dilema Kapabilitas Dan Imparsialitas Doter Sebagai Mediator Sengketa Medis* ( Scopindo Media Pustaka, 2020).

<sup>24</sup> Peter Mahmud Marzuki, *Penelitian Hukum: Edisi Revisi*, 13th ed. (Jakarta: KENCANA, 2005).

<sup>25</sup> Soerjono Soekanto, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Rajawali, 2003), <https://lib.ui.ac.id/detail?id=20135943>.

legal sources.<sup>26</sup> The analysis was carried out qualitatively using a prescriptive method, meaning that the study does not merely describe the existing state of the law, but also advances normative assessments and recommendations regarding how the criminal liability of hospitals and medical personnel ought to be properly constructed within the Indonesian legal system, with particular attention to medical malpractice cases involving both institutional and individual negligence.

## **RESULTS AND DISCUSSION**

### **The Role of the Latest Health Law in Regulating the Criminal Liability of Hospitals**

Law Number 17 of 2023 on Health introduces significant reforms to the regulation of criminal liability applicable to hospitals. As institutions providing healthcare services, hospitals occupy a central role in fulfilling the public's right to safe, quality, and accountable medical care. This legislation affirms that hospitals, as corporate entities, may be held criminally liable for negligence and legal violations committed in the course of their service functions, as stipulated under Article 344 of Law Number 17 of 2023.

The latest Health Law contains several provisions that clarify the conditions under which hospitals may be subjected to criminal liability.

First, concerning the recognition of hospitals as subjects of criminal law. The 2023 Health Law adopts the principle of corporate criminal liability, acknowledging that legal entities such as hospitals may be treated as criminal subjects. This is reflected in Article 344, which affirms that healthcare facilities violating healthcare service standards bear legal responsibility. The relevance of this provision is clearly demonstrated in Verdict Number 120/Pdt.G/2019/PN Ckr, where the panel of judges imposed liability not solely upon individual medical personnel, but upon the defendants collectively, reflecting the presence of an institutional dimension of accountability.

Second, concerning service standardization and accountability. Article 302 of the Health Law requires every healthcare facility to comply with government-established healthcare service standards. Where a hospital fails to meet those standards, whether in respect of infrastructure, the competency of healthcare workers, or service procedures, such failure may attract administrative, civil, or criminal sanctions.<sup>27</sup> In the context of Verdict Number 120/Pdt.G/2019/PN Ckr, the proven commission of unlawful acts by the defendants demonstrates that the applicable

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<sup>26</sup> Zainuddin Ali, *Metode Penelitian Hukum*, ed. Leny Wulandari, 1st ed. (Jakarta: Sinar Grafika, 2009).

<sup>27</sup> Siregar et al., *Hukum Kesehatan Berdasarkan : UU RI No.1 Tahun 2023 Tentang KUHP Dan UU RI No.17 Tahun 2023 Tentang Kesehatan*.

service standards were not adequately observed, resulting in actual harm to the patient amounting to Rp194,900,000 in material loss and Rp2,000,000,000 in immaterial loss.

Third, concerning the forms of criminal sanctions applicable to hospitals. Hospitals found to have committed violations may be subject to various forms of criminal sanctions as provided under Article 348 of the Health Law, including substantial monetary fines, revocation of operating licenses, and public announcement of sanctions as a measure of deterrence.

Fourth, concerning the principle of vicarious liability. Beyond direct liability, hospitals may also be held accountable for the conduct of medical personnel who form part of the institution.<sup>28</sup> The principle of vicarious liability applies where fault or negligence committed by medical personnel in the performance of their official duties engages the legal responsibility of the hospital. Verdict Number 120/Pdt.G/2019/PN Ckr implicitly reflects this principle through the collective liability imposed upon the defendants.

Fifth, concerning enforcement mechanisms. Legal enforcement against hospitals proceeds initially through administrative measures. Where violations persist or cause substantial harm to patients, proceedings may be escalated to the criminal level. The Health Law requires that a medical investigation be conducted by a competent authority, such as the MKDKI, prior to the initiation of criminal proceedings, as provided under Article 375 of Law Number 17 of 2023.

From the perspective of substantive liability, the norms contained in the Health Law expressly regulate civil, criminal, and administrative accountability for both medical personnel and healthcare institutions. The obligation of medical personnel to act in accordance with professional standards and the medical code of ethics, the obligation of hospitals to provide safe and quality services, and the firm sanctions prescribed for violations collectively demonstrate that healthcare carries strong legal dimensions and cannot be regarded merely as an ordinary social activity.<sup>29</sup>

From the perspective of dispute resolution mechanisms, the Health Law prioritizes resolution through ethical and disciplinary proceedings via the MKDKI before resort to criminal or civil proceedings, consistent with the approach of *lex specialis derogat legi generali* which is specific law overrides the general law.

## **Criminal Liability of Medical Personnel and the Hospital**

### **1. Criminal Liability of Medical Personnel**

Within the Indonesian legal system, the criminal liability of medical personnel depends not only on the consequences produced by their actions, but

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<sup>28</sup> Lesmonoajati, *Pertanggungjawaban Pidana Atas Perbuatan Kelalaian Pada Tindakan Medis Di Rumah Sakit*.

<sup>29</sup> Asyhadie, *Aspek-Aspek Hukum Kesehatan Di Indonesia*.

also on the degree to which those actions deviated from the applicable standards of competency and professional ethics. Medical malpractice encompasses any form of negligence by medical personnel in the discharge of their professional duties, whether through action or omission, that is contrary to professional standards and causes harm to the patient.<sup>30</sup>

Article 50(a) of Law Number 29 of 2004 on Medical Practice provides that physicians are obligated to deliver medical services in accordance with professional standards and standard operating procedures. From a normative standpoint, medical malpractice comprises four essential elements; the existence of a legal relationship between the medical professional and the patient, a violation of professional standards or standard operating procedures, actual black hole appeared and suffered by the patient; and a causal relationship between the violation committed and the harm sustained by the patient.<sup>31</sup>

All four elements were demonstrably satisfied in Verdict Number 120/Pdt.G/2019/PN Ckr. The causal relationship between the substandard medical intervention and the resulting harm was found proven by the court, while the patient's actual losses were established in detail at Rp194,900,000.

In the criminal law domain, Article 359 of the Criminal Code may be applied to medical personnel whose negligence results in the death of a patient, while Article 360 governs negligence resulting in serious bodily harm. Criminal proof requires the establishment of *culpa lata*, namely gross negligence that exceeds the bounds of reasonable tolerance within the medical profession.<sup>32</sup>

Under the framework of modern criminal liability, a further distinction must be drawn between malpractice committed with intent (*dolus*) and malpractice resulting from negligence (*culpa*), with intentional conduct attracting more severe punishment.<sup>33</sup> It is important to note that criminal law, as *ultimum remedium*, means that criminal proceedings against medical personnel are only initiated where no other legal remedy is available or where the consequences are particularly serious.

## 2. Criminal Liability of Hospital

The application of criminal liability to hospitals as corporations reflects

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<sup>30</sup> Chazawi, "Malapraktik Kedokteran."

<sup>31</sup> Koesmoeryantati Koesmoeryantati and Rospita Adelina Siregar, "Pandangan Hukum Kesehatan Terhadap Dugaan Malpraktek Versus Komplikasi Tindakan Kedokteran.," *Jurnal Kolaboratif Sains* 8, no. 6 (June 24, 2025): 2897–2909, <https://doi.org/10.56338/JKS.V8I6.7815>.

<sup>32</sup> Reina Manse, Adelina Siregar, and Panggabean, "Pertanggungjawaban Pidana Tenaga Medis Dalam Malpraktik."

<sup>33</sup> Muladi and Sulistyani, *PERTANGGUNGJAWABAN PIDANA KORPORASI (CORPORATE CRIMINAL RESPONSIBILITY)*.

a paradigm shift in modern criminal law, which no longer focuses exclusively on individual perpetrators. Hospitals, as healthcare service institutions, are obligated to bear responsibility for every medical service rendered by personnel under their management, grounded in the principle of vicarious liability as affirmed by Article 46 of Law Number 44 of 2009 on Hospitals.

Under Article 4 of Supreme Court Regulation Number 13 of 2016, a corporation may be held criminally liable where: the criminal act was committed for the benefit of the corporation; it was carried out by a person in an employment relationship with the corporation; and the corporation failed to undertake adequate prevention, supervision, or compliance enforcement.

According to Muladi, corporate criminal liability, including that of hospitals, may be established through three models.<sup>34</sup> Under the strict liability model, it is sufficient to prove the act and its consequences. Under the vicarious liability model, the fault of medical personnel is attributed to the hospital as the employing institution. Under the identification theory model, the conduct of management is treated as the conduct of the corporation itself. In medical malpractice cases such as that reflected in Verdict Number 120/Pdt.G/2019/PN Ckr, the vicarious liability model is the most applicable.

### 3. The Legal Relationship Between Medical Personnel and Hospitals

The legal relationship between medical personnel and hospitals plays a significant role in determining which party may be held criminally liable. This relationship may take two primary forms; an employment agreement and a partnership contract, each carrying different implications for hospital liability.<sup>35</sup>

Under an employment agreement, medical personnel operate under the direct authority, supervision, and responsibility of hospital management. Consequently, all actions taken by medical personnel in the performance of their official duties become the responsibility of the hospital by virtue of the vicarious liability principle. Under a partnership arrangement, the hospital's liability is more limited. However, where the hospital is found to have been negligent in supervision or where its facilities fail to meet the required standards, the hospital remains accountable for administrative negligence.

In Verdict Number 120/Pdt.G/2019/PN Ckr, the collective liability imposed upon the defendants indicates that the court recognized a sufficiently strong legal relationship between the individual medical personnel and the related institution, such

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<sup>34</sup> Muladi and Sulistyani, *PERTANGGUNGJAWABAN PIDANA KORPORASI (CORPORATE CRIMINAL RESPONSIBILITY)*.

<sup>35</sup> Pujiyono, "The Position of Hospital Corporation in Negligence Liability."

that accountability could not be allocated exclusively to a single party.

## **CONCLUSION**

Based on the findings of the normative legal research conducted through an examination of legislation, legal doctrines, and an analysis of Verdict Number 120/Pdt.G/2019/PN Ckr, two principal conclusions may be drawn as follows.

First, medical personnel may be held criminally liable where it is established that their conduct deviated from professional standards and standard operating procedures as governed by Articles 359 and 360 of the Criminal Code and Law Number 29 of 2004 on Medical Practice. Criminal liability of medical personnel requires the cumulative satisfaction of four elements: the existence of a legal relationship between the medical professional and the patient; a violation of professional standards or standard operating procedures; actual harm suffered by the patient; and a proven causal relationship between the violation and the resulting harm. Verdict Number 120/Pdt.G/2019/PN Ckr provides a concrete illustration of the satisfaction of all four elements in judicial practice, where the panel of judges granted the claim in its entirety and ordered the defendants to pay material loss of Rp194,900,000 and immaterial loss of Rp2,000,000,000, reflecting proven medical negligence with demonstrable consequences for the patient. The legal facts established in those proceedings, when examined through the framework of criminal law, potentially satisfy the element of culpa as referred to in Article 360 of the Criminal Code, thereby creating scope for the application of criminal liability against the medical personnel concerned.

Second, hospitals as corporations may be held criminally liable on the basis of the principle of corporate criminal liability as regulated under Law Number 44 of 2009 on Hospitals, Supreme Court Regulation Number 13 of 2016, and Law Number 17 of 2023 on Health. Criminal liability of a hospital may be imposed where it is established that the criminal act was committed in the course of institutional activities, that an employment relationship existed between the perpetrator and the hospital, and that the hospital demonstrably failed to conduct adequate supervision, prevention, or compliance enforcement. The collective liability imposed upon the defendants in Verdict Number 120/Pdt.G/2019/PN Ckr reflects the court's recognition of an institutional dimension of responsibility that cannot be separated from the individual accountability of medical personnel. This affirms that within the Indonesian legal system, liability for medical malpractice operates in a layered manner, capable of extending simultaneously to individual medical personnel and to the hospital as an institution, provided that the required elements are cumulatively satisfied.

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