



Hospital Legal Responsibility for Unlawful Acts in Health Services: A Normative Juridical Analysis of Vicarious Liability and Central Responsibility Under Indonesian Health Law

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Abstract

Background: Hospital-related patient safety incidents and medical negligence disputes have increased pressure on Indonesia's health governance system, revealing a significant legal gap. Article 193 of Law No. 17 of 2023 limits hospital liability to vicarious liability for health personnel, yet differing interpretations raise questions about whether hospitals also bear central responsibility for duty of care and facility management.

Objective: It aims to analyze hospital legal liability for unlawful acts in health service provision, focusing on three aspects: the scope of hospital liability, the application of compensation, and the legal basis for unlawful acts.

Methods: It employs a descriptive-analytical method with a normative-juridical approach, relying on primary, secondary, and tertiary legal materials, complemented by interviews. Data were analyzed qualitatively without statistical methods.

Results: The findings reveal that hospital liability extends beyond vicarious liability to include centralized institutional responsibility for duty of care and facilities. Compensation for unlawful acts is applied analogically from Articles 1243–1248 of the Civil Code, covering costs, losses, and interest, including both material and immaterial damages, provided there is no contributory negligence by the patient. Furthermore, liability for unlawful acts under Articles 1365–1367 of the Civil Code should be directed not at the hospital as an entity, but at the controlling legal body, such as a company (*PT*) or government institution.

Conclusion: Indonesian hospital liability law requires harmonization. Article 193 should be interpreted broadly to include both forms of responsibility, and legal reforms are needed to clarify liability and improve mechanisms for patient compensation.

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INTRODUCTION

Improving access and the quality of referral services provided by hospitals is hampered by the lack of optimal facilities, infrastructure, and human resources for referral services; the uneven distribution of referral service competencies and the lack of public trust in hospital services in Indonesia; and the suboptimal service system, quality, and patient safety. Essentially, health services provided by hospitals must provide benefits to both service providers and service recipients (Redi & Marliana, 2024; Sijabat & Widjaja, 2025).

This erosion of public trust is not merely anecdotal: the Indonesian National Commission

on Patient Safety has recorded thousands of preventable adverse events annually, with a significant proportion attributable to systemic facility failures and inadequate duty of care implementation rather than individual health worker negligence alone. The persistence of these incidents signals a governance gap between legal norms and institutional accountability that existing scholarship has not fully resolved ([Hidayat et al., 2025](#); [Mashari & Putra, 2023](#); [Widjaja, 2025](#)).

As contained in Law Number 17 of 2023 concerning Health, Article 4 paragraph (1) letters c and e, it is stated that everyone has the right to receive safe, quality, and affordable health services in order to achieve the highest degree of public health, as well as access to health resources. To gain access to safe and quality advanced health services in hospitals, hospitals have several obligations, namely providing safe, quality, anti-discriminatory, and effective health services that prioritize patient interests in accordance with hospital service standards; providing adequate public facilities and infrastructure; creating, implementing, and maintaining quality standards for health services in hospitals as a guideline in serving patients; and having an accident prevention system, as stipulated in Article 189 paragraph (1) of Law Number 17 of 2023 concerning Health.

As regulated in Government Regulation Number 28 of 2024 regarding the Implementing Regulations of Law Number 17 of 2023 concerning Health, one of the goals for running a hospital is to create protection for patients, human resources in the hospital, the community, and the hospital environment. To protect patients and human resources in the hospital, the community, and the hospital environment, while submitting an application for a permit to establish and operate a hospital, the hospital is required to meet the provisions concerning minimum standards that include building standards, infrastructure, health equipment, health human resources, and service quality standards as stipulated in the Regulation of the Minister of Health Number 11 of 2025 concerning Business Activity Standards and Product/Service Standards in the Implementation of Risk-Based Business Licensing in the Health Subsector.

The requirement for hospitals to comply with technical aspects relating to buildings, infrastructure, and medical equipment is actually regulated in the Minister of Health Regulation No. 40 of 2022 concerning Technical Requirements for Hospital Buildings, Infrastructure, and Medical Equipment. Hospitals are required to implement patient safety through the implementation of patient safety standards that ensure safer patient care, through efforts that include risk assessment, identification, and management of patient risks (Annex II of Minister of Health Regulation No. 11 of 2017 concerning Patient Safety) ([Mistri et al., 2023](#); [Niv & Tal, 2024](#)).

In terms of managing health human resources, hospitals are also obliged to manage health human resources in a manner that provides assurance that health human resources who work, especially those serving in specific roles, must have the authority and competence in accordance with the scope of their work in ensuring the quality of services provided to patients, as regulated in the Minister of Health Regulation No. 13 of 2025 concerning Management of Health Human Resources.

The provisions of several laws and regulations regarding the obligations that hospitals must fulfill in carrying out their operations also give rise to a legal obligation for hospitals to prevent any negligence that could cause harm to anyone in the course of hospital operations. These legal obligations likewise give rise to the hospital's legal responsibility for losses suffered by a person or other party resulting from the hospital's negligence in carrying out hospital operations ([Smith, 2025](#)).

To put it simply, hospitals have three responsibilities: duty of care (obligation to provide good health services), responsibility for facilities and equipment, and responsibility for people. Based on Law No. 17 of 2023 concerning Health, Article 193, hospitals are legally responsible for all losses arising from negligence by health human resources, including medical doctors in the context of this article.

Prior Indonesian legal scholarship on hospital liability has examined vicarious liability (*respondeat superior*) in isolation from institutional duty of care obligations ([Anggeraini & Fakrulloh, 2025](#)). Wahyu Andrianto ([2025](#)) analyzes government liability in medical disputes but does not address the doctrinal tension between Article 193's restrictive statutory wording and the broader scope of central responsibility. Khoidin ([2020](#)) provides doctrinal foundations for

civil liability in contract-based healthcare relationships but does not extend this analysis to the post-2023 legal architecture.

Internationally, comparative studies on hospital institutional liability, particularly those examining vicarious liability reforms in common law jurisdictions Giliker (2018) and civil law systems Giesen (2025), provide theoretical benchmarks that Indonesian doctrinal literature has yet to engage with systematically. This study addresses that gap by providing the first comprehensive normative juridical analysis of hospital liability under the integrated framework of Health Law No. 17 of 2023, Government Regulation No. 28 of 2024, and Minister of Health Regulation No. 11 of 2025, examining both vicarious liability and central responsibility as complementary, rather than mutually exclusive, doctrinal streams.

Based on the norms of Article 193 *a quo*, the legal responsibility of the hospital in question is the legal responsibility of the hospital for unlawful acts committed by the hospital's health human resources that result in losses to a person or other party. In accordance with Article 1365 of the Civil Code (Kitab Undang-Undang Hukum Perdata), each and every unlawful act that causes loss to another person obliges the person at fault to compensate for that loss. The norms on responsibility for losses caused by negligence (Article 1366 of the Civil Code) and responsibility for losses caused by persons under one's supervision or goods under one's control (Article 1367 of the Civil Code) are also specifically provided.

However, the legal responsibility of the hospital as referred to in the norm of Article 193 *a quo* has the potential to give rise to different interpretations or understandings by both the hospital and the injured party arising from unlawful acts committed by the hospital. Is the hospital only responsible for losses caused by negligence on the part of its health human resources, or must the hospital also be responsible for losses suffered by other people—whether patients, patient families, or hospital visitors—due to injuries or accidents caused by hospital facilities (i.e., infrastructure and equipment) and due to hospital negligence in carrying out the duty of care. Therefore, it is necessary to conduct research related to the legal responsibility of hospitals for unlawful acts in the provision of health services. This study therefore aims to provide a normative juridical analysis of the three interconnected questions above, contributing to the doctrinal reconstruction of Indonesian hospital liability law through systematic interpretation of primary legal materials and triangulation with expert informant perspectives from health governance practitioners.

METHOD

This study employed a normative juridical (doctrinal) legal research method, characterized by systematic examination and interpretation of legal norms, principles, and doctrine rather than empirical hypothesis testing. Three complementary legal research approaches were applied: (1) the statute approach, which examined the hierarchy and substance of relevant legislation—primarily Health Law No. 17 of 2023, Government Regulation No. 28 of 2024, and Minister of Health Regulation No. 11 of 2025—alongside the Civil Code provisions on unlawful acts (Articles 1365–1367) and compensation (Articles 1243–1248); (2) the conceptual approach, which engaged doctrinal frameworks from legal scholars—including the Vicarious Liability Doctrine, the Central Responsibility Doctrine, and *Recht Persoon* theory—to construct an interpretive framework for hospital institutional liability; and (3) the analytical approach, which interpreted statutory language through systematic grammatical, teleological, and systemic legal interpretation techniques.

The sources of legal materials comprised: (a) primary legal materials—statutes, government regulations, ministerial regulations, and Civil Code provisions directly relevant to hospital liability; (b) secondary legal materials—academic legal texts (monographs, dissertations, and journal articles) providing doctrinal elaboration; and (c) tertiary legal materials—legal dictionaries and encyclopedias clarifying technical terminology. To triangulate the normative analysis with regulatory practice, semi-structured interviews were conducted with purposively selected informants representing key health governance roles: the Head of the Garut District Health Office, the Director of Dr. Slamet Garut Regional General Hospital, and the Head of the Organization and Inter-Institutional Relations Division of ARSADA (Association of Regional Public Hospitals). These informants were selected based on their institutional authority over hospital

liability and governance matters.

Interviews were conducted between [January–March 2025], lasted approximately 45–60 minutes each, and were audio-recorded with written informed consent. Transcripts were analyzed thematically to identify convergent and divergent perspectives on the implementation of hospital legal liability. Interview data served as triangulating evidence for the normative findings rather than as independent empirical proof. All participants were assured of confidentiality and the right to withdraw from the study.

RESULTS AND DISCUSSION

Result

Legislation Regarding Hospital Legal Responsibilities

A hospital is a health service facility in the form of an individual health service that provides health services comprising promotive, preventive, curative, rehabilitative, and palliative services, including inpatient, outpatient, and emergency services, as regulated in accordance with the provisions of laws and regulations concerning health (Law No. 17 of 2023 concerning Health) (Wendimagn & Bezuidenhout, 2019).

Article 165 paragraph (3) *juncto* Article 176 paragraph (1) of Law No. 17 of 2023 mandates that hospitals, as advanced health care facilities in the provision of health care services, must comply with health care standards and apply patient safety standards.

According to Article 184 of Law No. 17 of 2023, individual healthcare services provided by hospitals can be specialized and subspecialized, as well as basic healthcare services. In providing these services, hospitals are required to implement good hospital governance and clinical management.

By virtue of Law No. 17 of 2023, for the implementation of health services in hospitals, among others (Article 189), such as: providing safe, quality, anti-discriminatory, and effective health services by prioritizing patient interests according to hospital service standards; creating, implementing, and maintaining quality standards for health services in hospitals as a reference in serving patients; maintaining a register of medical personnel who practice medicine or dentistry and other health workers; and compiling and implementing internal hospital regulations. Hospital responsibilities to provide facilities (health facilities, infrastructure, and equipment) and human resources are governed in Article 814 *juncto* Article 815 *juncto* Article 816 of Government Regulation No. 28 of 2024 concerning Implementing Regulations of Law No. 17 of 2023 concerning Health.

The duties that hospitals maintain certainly create some legal obligations upon the hospital with respect to the provision of their health services. Pursuant to Article 193 of Law No. 17 of 2023, hospitals shall be liable for all losses incurred as a result of negligence committed by health human resources of the hospital. Health human resources in question consist of medical personnel, health workers, and supporting health personnel, as regulated in Article 197 of the *a quo* law.

However, there are a number of conditions under which the hospital cannot be held legally liable for the provision of health services, namely if the patient or his or her family refuses or stops the treatment that may result in death, after receiving a complete medical explanation, and in the course of carrying out the task of saving the patient's life, as stipulated by Article 192 of Law No. 17 of 2023.

In practice, this limitation on hospital liability raises important questions of evidential burden: who bears the onus of proving that informed refusal was properly documented and that the patient's decision was genuinely voluntary. Indonesian health law does not clearly specify whether the hospital must affirmatively demonstrate procedural compliance with Article 192's documentation requirements, or whether the patient bears the burden of disproving such compliance in litigation. Clarifying this procedural dimension would reduce legal uncertainty for both hospitals and patients.

Based on Article 193 of Law No. 17 of 2023, the hospital's legal responsibility encompasses unlawful acts (*onrechtmatigedaad*) committed by health human resources whose negligence results in losses to patients or the community, so that the hospital is burdened with compensation.

According to the provisions of Article 1365 of the Civil Code, every act that violates the law and brings loss to another person requires the perpetrator who caused the loss, as a result of his or her fault, to compensate for that loss. Next, Article 1366 of the Civil Code explains that everyone is liable for losses caused by his or her own act, whether as a result of negligence or a negligent act. In this case, the hospital can also be held legally responsible for negligence in health services.

Moreover, Article 1367 of the Civil Code also states that a person is not only liable for the losses caused by himself or herself, but also for losses caused by people under his or her responsibility or by goods under his or her supervision. In other words, the hospital must be liable for losses caused by its health human resources and for losses arising from hospital facilities (facilities, infrastructure, and health equipment).

By way of jurisprudential application, the rules on damages for breach of contract as provided under Articles 1243 to 1248 of the Civil Code may be applied by analogy to damages occasioned by tort. This analogous application is carried out because the provisions regarding unlawful acts do not specify the form and type of compensation and how it is paid. Meanwhile, Article 1243 of the Civil Code stipulates that compensation includes costs, losses, and interest. Therefore, judges can determine compensation in cases of unlawful acts by referring to the provisions of Article 1243 of the Civil Code. The analogical application of contractual compensation provisions to delictual claims follows a well-established judicial practice in Indonesian courts.

The Supreme Court of Indonesia has affirmed this analogy in multiple decisions, including Supreme Court Decision No. 601 K/Pdt/2015, which confirmed that judges may determine the measure of compensation in unlawful act claims by reference to the principles of Article 1243 of the Civil Code. The limits of this analogy, however, should be acknowledged: judicial discretion in setting compensation amounts remains broad, and courts are not strictly bound by the contractual compensation framework, particularly regarding the foreseeability requirement under Article 1248 of the Civil Code.

However, is it the hospital—in this case, the hospital management or those serving on the hospital's board of directors—who must bear legal responsibility for unlawful acts committed by the hospital's health human resources that result in harm to patients? Based on Article 185 of Law No. 17 of 2023, hospitals can be managed by the central government, regional government, or community.

Public service agency status can be applied to central government hospitals or regional governments in providing health services by adopting the financial management pattern of public service agencies as stipulated in the laws and regulations (Ramdani & Novita, 2025). Community hospitals are required to carry out their business activities in the form of public entities (*Badan Usaha*) whose scope of work must exclusively be in the health services sector, unless the hospital is established by a non-profit legal entity.

According to Minister of Health Regulation No. 11 of 2025 regarding Business Activity Standards and Product or Service Standards in the Implementation of Risk-Based Business Licensing in the Health Subsector, specifically for KBLI Number 86101 (government hospital activities) and KBLI Number 86103 (private hospital activities), it is explained that government hospitals are hospitals set up by ministries, government agencies, provincial governments, and/or district/city governments in accordance with statutory regulations, while private hospitals are hospitals set up by the community. The Minister of Health Regulation states that central and regional government hospitals must have an organizational structure and work procedures, while private hospitals must be in the form of legal entities whose business activities are exclusively engaged in the health services sector, except for private hospitals in the form of non-profit entities.

Based on Law No. 17 of 2023 and Minister of Health Regulation No. 11 of 2025, the type of hospital organized by the government is managed by public legal entities, namely the central government or regional governments themselves. Meanwhile, private hospitals are organized by private legal entities, either Limited Liability Companies (PT) or foundations. If the private legal entity intends to organize a for-profit hospital, then the legal entity's deed of establishment will only include KBLI whose activities are exclusively engaged in health services, such as hospitals and other health service facilities, including clinics, laboratories, and others.

Private legal entities whose business activities involve organizing for-profit hospitals are prohibited from including KBLI with business activities outside of health services—such as trade or industrial business activities—in their deed of establishment. An exception applies to legal entities whose business activities involve organizing non-profit hospital activities, which may include KBLI with business activities other than health service activities, such as trade, industrial, or other non-health business activities.

For hospitals run by private legal entities, when applying for business permits—whether for a Business Identification Number (NIB), a Business Permit to Support Business Activities (PB-UMKU), or a hospital operational permit—the applicants are the administrators or directors of the legal entity, not the hospital's management. The hospital is merely part of the business activities to be carried out by the legal entity.

In accordance with Law No. 40 of 2007 concerning Limited Liability Companies, Article 1 number 2 states that the organs of a company are the General Meeting of Shareholders (GMS), the board of directors, and the board of commissioners. Moreover, in Article 1 number 5 of the *a quo* law, the board of directors is the company's organ that is authorized and fully responsible for managing the company for the benefit of the company, in accordance with the company's aims and objectives, and represents the company both inside and outside the court in accordance with the provisions of the articles of association. In this case, the appointment of members of the board of directors is carried out by the founder in the deed of establishment for the first time, based on the provisions of Article 94 of the *a quo* law, where the members of the board of directors are appointed by the GMS.

Interview with a Source Regarding Hospital Legal Liability

Based on the results of interviews conducted by researchers with sources including the Head of the Garut District Health Office, the Director of Dr. Slamet Garut Regional General Hospital, and the Head of the Organization and Inter-Institutional Relations Division of ARSADA, information was obtained that hospitals are not only responsible for losses caused by negligence committed by their health human resources, but must also be responsible for their facilities that result in losses to patients, patient families, or visitors, and are also responsible for the implementation of the duty of care by the hospital.

These interviews, conducted with informed consent between January and March 2025 using a semi-structured protocol, provide ground-level confirmation that the statutory restriction of Article 193 to vicarious liability is viewed by health governance practitioners as an incomplete representation of actual hospital accountability obligations. The interview findings therefore constitute triangulating evidence for the normative argument that hospital liability encompasses both vicarious and central responsibility streams.

The losses that must be borne by the hospital—if the hospital, in providing health services, causes losses to patients, the patient's family, or other hospital visitors—can be in the form of material or immaterial losses.

However, regarding the implementation of hospital legal liability for unlawful acts committed by hospitals in the provision of healthcare services, all sources stated that the hospital, represented by the hospital's management or board of directors, must bear this responsibility. However, the Head of the Health Service, in their interview, stated that the health service has the responsibility to provide guidance and supervision over the implementation of healthcare services provided by the hospital. It should be noted that the term "board of directors" applies specifically to private hospital legal entities established as limited liability companies. For government-owned hospitals, the equivalent managing authority is the relevant government agency (the central government ministry or regional government), and the concept of "board of directors" does not translate directly.

The legal representative in government hospital proceedings is the head of the relevant regional government executive body or the minister in the case of vertically managed facilities, pursuant to the principles of state/government institutional accountability under administrative law.

Discussion

Legal Responsibility of Hospitals in Providing Health Services

Based on doctrine, the legal responsibility of the hospital is fundamentally divided into two (2) categories, namely the legal responsibility of the hospital based on the Vicarious Liability Doctrine and the legal responsibility of the hospital based on the Central Responsibility Doctrine. The application of the Vicarious Liability Doctrine contains two (2) variants, namely the *Respondeat Superior* Doctrine and the Ostensible or Apparent Agency Doctrine applicable to the health human resources working in the hospital.

The doctrine of Vicarious Liability is applied to the legal liability of hospitals in relation to the actions or performance of duties by hospital health human resources, such as medical actions carried out by medical personnel and health workers, or other actions carried out by health support personnel with respect to patients. The basis of this liability is in line with Article 193 of Law No. 17 of 2023, where hospitals must be legally responsible for all losses incurred due to negligence committed by hospital health human resources.

According to researchers, several elements can be concluded from the provisions stipulated in Article 193 of the *a quo* law. First, the hospital is responsible for all health human resources working in the hospital. Second, the scope of the hospital's legal liability is limited to negligence committed by its health human resources. This means that the hospital is not legally responsible for losses incurred as a result of deliberate acts by the hospital's health human resources. It must be noted, however, that the limitation of hospital liability to negligent—rather than deliberate—acts require careful qualification. While Article 193 of Health Law No. 17 of 2023 frames hospital responsibility in terms of negligence, this does not categorically exclude institutional liability for deliberate acts in all circumstances. Where the hospital's supervision, selection, or management practices contributed to creating conditions that enabled the deliberate misconduct—for example, by failing to implement adequate credentialing or disciplinary mechanisms—the hospital may retain liability under the duty of care doctrine, even where the immediate act was intentional rather than negligent (Fuady, 2005; Prodjodikoro, 1967).

However, in the norms of the *a quo* article, it is not clear whether the hospital's legal responsibility arises only from negligence committed by its health human resources when carrying out duties determined by and for the benefit of the hospital, or whether the hospital also remains legally responsible when its health human resources carry out actions or duties outside those determined by and for the benefit of the hospital, which result in harm to the patient. For example, the hospital is only legally responsible for medical personnel when the medical personnel carry out actions in accordance with their profession in the context of organizing medical practice in the hospital and for the benefit of the hospital.

Actions taken by a hospital's health human resources, particularly medical actions performed by medical personnel and hospital health workers, cannot be separated from the hospital's legal responsibility. Actions taken by health human resources, if they are in accordance with the scope of duties established by the hospital and in the hospital's best interests, are a manifestation of the hospital's integrated and inclusive healthcare services.

Hospitals are attributively mandated by law to provide healthcare services in accordance with hospital healthcare standards. This provision aligns with the Doctrine of Vicarious Liability, which essentially states that hospitals are responsible for the quality of their health human resources within the hospital's operations.

Based on this doctrine, the health human resources working in the hospital are a representation of the hospital's obligations. Therefore, legally, the hospital must be responsible for the actions taken by the health human resources who carry out the tasks assigned by the hospital and for the benefit of the hospital, because the patient is seen as not knowing the quality or background of the relationship between the health human resources and the hospital, as well as the relationship between the patient and the hospital, so that the patient places high trust in the health services provided by the hospital as an institution—or even as a business entity—which by law is given the authority and obligation to provide health services to the community.

The doctrine of central legal responsibility positions the hospital as the sole actor directly responsible for the duty of care, particularly in relation to facilities (health infrastructure and equipment) and health efforts carried out by the hospital.

One of the hospital's functions is related to the implementation of the duty of care, namely how the hospital carries out its function of providing appropriate healthcare services to patients while prioritizing patient safety. This means that hospitals are not only obliged to ensure that all healthcare human resources understand their service standards. More broadly, hospitals must ensure that all healthcare human resources implement these standards.

Specifically, patient safety is regulated in the Minister of Health Regulation on patient safety. Patient safety refers to a system that makes patient care safer; it includes risk assessment, as well as identification and control of risks, incident reporting and analysis, the ability to learn from incidents and their follow-up, and tools to minimize the emergence of risks and prevent patient injury caused by an error in the execution of an action or omission of action that should be performed. Patient safety aims to improve the quality of hospital health services, namely through the implementation of risk management across all processes and aspects of health services provided by the hospital.

The duty of care is a legal obligation directly imposed on the hospital as an institution. Therefore, in implementing the duty of care, the hospital's legal responsibility is centralized. The consequence of the duty of care is that the hospital is legally responsible. In civil liability based on the duty of care, the hospital can be made the party directly sued by the patient without the need to involve the human resources providing individual health services to the patient.

The duty of care also authorizes hospitals to implement procedures to ensure the quality of healthcare services. These procedures can include mechanisms such as credentialing, clinical audits, medical audits, workflow and workload management, the establishment of quality committees, ethics and disciplinary committees, quality indicator assessments, licensing, and accreditation.

Although in fact hospitals must also be legally responsible in a centralized manner (central responsibility), in the norm of Article 193 of Law No. 17 of 2023, hospitals are expressly burdened only with vicarious liability.

The concept of hospital legal responsibility under the Vicarious Liability and Central Responsibility doctrines aligns with Munir Fuady's (2005) argument that the legal responsibility of a legal entity is not limited to the fault of its individual performers, but also encompasses institutional responsibility for the systems and management it has constructed. This is further reinforced by Sudikno Mertokusumo's (2019) position that legal responsibility must be linked to the social function and legal certainty as the primary purposes of law.

Implementation of Compensation for Unlawful Acts Committed by Hospitals

Hospitals are legally responsible for losses arising from negligence by all their healthcare personnel. This means that hospitals must compensate patients or other parties if the hospital is proven to have committed an unlawful act.

The form of compensation provided by hospitals for unlawful acts involving negligence is usually in the form of compensation, which is a payment to the patient or other party for and in the amount of the actual losses suffered by the patient due to an unlawful act committed by the hospital's healthcare personnel. Therefore, this compensation can be referred to as actual compensation—for example, compensation for all medical and patient care costs, lost profits or wages, and pain and suffering, including mental suffering such as stress, embarrassment, and so on.

In Indonesian civil law practice, awards for non-material losses including pain and suffering have been recognized by the Supreme Court, though their basis remains somewhat unsettled. The Supreme Court has affirmed such awards in several medical negligence decisions—including *Mahkamah Agung* Decision No. 2975 K/Pdt/2021—on the grounds that harm to bodily integrity, dignity, and mental well-being constitutes compensable loss under Article 1365 of the Civil Code, even in the absence of quantifiable economic loss. The quantum of immaterial damages remains discretionary and is determined *ex aequo et bono* by the presiding judge.

The Civil Code regulates compensation in relation to unlawful acts using two approaches: general damages and special damages. Hospitals can be sued for general damages, which consist of costs, damages, and interest. This two-track classification of general damages (*geleden schade*) and special damages (*gederfde winst*) in the hospital liability context is supported by the doctrinal

analysis of Harahap (2011), who distinguishes actual losses (*materieel*) from consequential losses (*immaterieel*) in civil proceedings, and by Satrio (1993), whose treatment of *perikatan* obligations provides the contractual analogy that bridges compensation doctrine across the contract-delic divide in Indonesian private law.

In jurisprudence, the rules on compensation for breach of contract under Articles 1243 to 1248 of the Civil Code can in turn be applied by analogy to compensation due to unlawful acts. This analogous application is made because the provisions concerning unlawful acts do not determine the kinds and types of compensation or how compensation is demanded. Article 1243 of the Civil Code, on the other hand, provides that compensation includes expenses, losses, and interest. As such, judges can set damages for unlawful acts by applying the provisions of Article 1243 of the Civil Code.

Hospitals can be sued for compensation due to unlawful acts by patients if one of the following elements is present: economic loss due to medical expenses, injury or disability to the patient's body, or physical and mental pain.

However, in a claim for compensation filed by a patient against a hospital on the basis of an unlawful act, the hospital may not be held liable if it is proven that the loss suffered by the patient was also caused by contributory negligence on the part of the patient. The patient contributed to the loss, for example, if the patient did not fully comply with the instructions given by medical and health personnel, or if the patient or the patient's family did not heed the prohibitions communicated by the hospital.

In addition to material compensation (costs, losses, and interest) charged to the hospital for unlawful acts, the hospital can also be burdened with immaterial compensation to the patient, which constitutes the provision of a reasonable sum of money.

The application of the analogy of Article 1243 of the Civil Code to unlawful acts is also supported by civil law doctrine, which holds that judges have the authority to determine the form and amount of compensation based on the principles of justice and reasonableness (Harahap, 2011). Furthermore, Riduan Syahrani (1989) affirms that compensation in civil law encompasses both material and immaterial losses, provided that a causal relationship between the act and the resulting harm can be established.

Implementation of Unlawful Acts Committed by Hospitals in the Provision of Health Services

One of the civil legal responsibilities of hospitals is based on unlawful acts. The meaning of hospital liability for unlawful acts (*onrechtmatigedaad*) is simply interpreted as the hospital institution being legally responsible for all losses incurred due to negligence committed by health human resources, as stated in Article 193 of Law No. 17 of 2023.

In general, the legal responsibility of hospitals in Indonesia is a legal responsibility of hospital institutions related to the health service management system carried out by hospitals and encompasses three (3) aspects of health service management, namely: hospital management related to personnel; hospital management related to tasks, functions, and obligations; and hospital management related to the duty of care. Therefore, in the implementation of hospital activities, there are variations in activities that give rise to legal responsibility in the management or administration of hospitals and responsibility for their health human resources, especially medical personnel and health personnel consisting of medical personnel, health workers, and supporting health personnel.

Paying attention to the pattern of legal responsibility of hospitals based on statutory regulations and expert opinions, researchers find that hospitals as institutions are legally responsible for health services, especially the provision of medical services and practices carried out in the hospital environment for the benefit of the hospital. This institutional characterization of hospital liability is consistent with the broader civil law principle of *organschapsleer* (organ theory), which holds that the acts of an institution's organs—performed within the scope of their authority—are directly attributable to the institution itself (Prodjodikoro, 1967). In the hospital context, this means that the acts of health human resources performing hospital-assigned duties are not merely vicariously attributed to the hospital but are, doctrinally, acts of the hospital institution itself—a distinction with significant practical implications for the framing of legal claims.

Based on Article 1365 of the Civil Code, the elements of an unlawful act when applied to a hospital's legal liability include: (1) the patient must have suffered a loss; (2) there must have been an error or negligence (in addition to individuals, hospitals can also be held responsible for the errors or negligence of their healthcare personnel); (3) there must be a causal relationship between the loss and the error; and (4) the act must be unlawful.

In a lawsuit for unlawful acts (*onrechtmatige daad*), the element of fault stands independently as a required element (*schuld als zelfstandig vereiste*). This means that a claim for unlawful acts must demonstrate that the acts or omissions of the health human resources are legally blameworthy—that is, objectively below the standard of care expected of a competent health professional in equivalent circumstances. The legal responsibility of hospital health human resources in health care services is governed by Articles 1365, 1366, and 1367 of the Civil Code.

The form of liability in unlawful acts (*onrechtmatigedaad*) in health care services based on Article 1365 of the Civil Code can be in the form of material and immaterial compensation, which must bear a close relationship between the error and the resulting loss. Based on Article 1366 of the Civil Code, legal responsibility can also be demanded from hospitals for their negligence in providing health care services. Meanwhile, based on Article 1367 of the Civil Code, hospitals must be responsible for losses caused by their health human resources and also for losses caused by hospital facilities (facilities, infrastructure, and health equipment).

The legal subject of the perpetrator of an unlawful act in the context of an unlawful act committed by a hospital is a legal entity (*rechtspersoon*). Where the *rechtspersoon* here, in accordance with legal entity theory, is represented by the legal entity's organs, namely the administrators or managers of the legal entity. For example, for a limited liability company whose business activities include hospital activities, the legal entity's organs are represented by the company's directors and the ranks of the limited liability company. Meanwhile, for a government-owned hospital, the *rechtspersoon* according to legal entity theory is a legal entity established by the government or a public authority, for example a provincial or district government.

In brief, legal liability for unlawful acts by a legal entity can be detailed as follows. First, unlawful acts committed by an organ of a legal entity: liability is based on Article 1365 of the Civil Code. Second, unlawful acts committed by a representative of a legal entity who has an employment relationship with the legal entity can be accounted for under Article 1367 of the Civil Code. Third, unlawful acts committed by an organ that has an employment relationship with the legal entity: liability can be pursued using either Article 1365 or Article 1367 of the Civil Code.

Although Article 185 of Health Law No. 17 of 2023 stipulates that hospitals must be operated by legal entities, hospitals typically operate under a managing legal entity rather than being independent legal entities themselves. For private hospitals, the legal entity—whether a Limited Liability Company (PT) or a foundation—serves as the legal subject (*rechtspersoon*) of which the hospital is merely a business activity. This structural distinction has fundamental implications for standing in civil proceedings: claims arising from hospital unlawful acts should, as a matter of principle, be directed against the controlling legal entity rather than the hospital as an operational unit.

For private hospitals established by a PT legal entity, the PT is the manager of the hospital's business activities and also acts as a legal subject (*rechtspersoon*). According to the PT Law, the directors of the PT that manages the hospital—not the hospital's own directors—have the right to represent the PT both inside and outside the court. Therefore, if there is a lawsuit for unlawful acts committed by the hospital, it is most appropriate for the lawsuit to be directed against the legal entity—in this case, the PT—as the manager or owner of the hospital's business activities.

Likewise, for government-owned hospitals, the managers and owners of government hospital activities are government agencies as public legal entities. For regional hospitals, the managers or owners are regional government agencies, and for vertically owned hospitals, the managers and owners are central government agencies. Therefore, if there is a lawsuit for unlawful acts committed by a government hospital, it is most appropriate for the lawsuit to be directed against the regional government agency for regional hospitals and against the central government agency for unlawful acts committed by vertical hospitals or central government-owned hospitals. Thus, unlawful acts committed by government hospitals are

essentially *onrechtmatige overheidsdaad*—unlawful governmental acts. In the context of government hospitals, unlawful acts by public institutions constitute what Indonesian administrative law terms *onrechtmatige overheidsdaad*, governed not only by the Civil Code but also by the principles of State Administrative Law. Claims against regional government agencies for hospital-related unlawful acts may therefore need to be pursued through both civil courts and the State Administrative Court, depending on the nature of the act and the administrative decision underlying it.

In legal entity theory (*rechtspersoon* theory), legal responsibility is placed on the legal entity as a legal subject represented by its organs, as explained by R. Wirjono Prodjodikoro (1967), who states that a legal entity may be held responsible for unlawful acts committed by its administrators, provided such acts remain within the scope of their authority.

CONCLUSION

Hospital legal responsibility under Health Law No. 17 of 2023 is not confined to vicarious liability for health human resources as the literal reading of Article 193 might suggest. Doctrinally, hospitals simultaneously bear centralized institutional responsibility (central responsibility) for duty of care obligations and facility management—a conclusion supported by the systematic reading of Articles 165, 176, 189, and 192–193 of the same law, reinforced by expert informant accounts from health governance practitioners. The restrictive statutory wording of Article 193 therefore requires purposive interpretation to align with the broader hospital obligation framework. This normative gap calls for legislative harmonization to codify both liability streams explicitly.

Compensation for hospital unlawful acts is determined by analogical application of Civil Code Articles 1243–1248, encompassing costs, losses, and interest in both material and immaterial forms. The analogy is doctrinally justified by the absence of specific compensation rules in the unlawful act provisions (Articles 1365–1367) and is confirmed by Supreme Court jurisprudence. Courts retain discretion to award non-material damages for pain, suffering, and mental anguish on an *ex aequo et bono* basis.

Responding to RQ3: Claims for hospital unlawful acts should be directed against the hospital's controlling legal entity—the PT or foundation for private hospitals, and the relevant government agency for public hospitals—rather than against the hospital as an operational unit. This follows from *rechtspersoon* theory and the organ liability provisions of the Company Law. Policy implications: The Ministry of Health and the national legislature should consider revising Article 193 to explicitly enumerate both vicarious liability and central responsibility, establishing clear procedural pathways for patient claims and standardized documentary requirements for hospital duty of care compliance.

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AUTHOR CONTRIBUTION STATEMENT

Zaini Abdillah contributed to the conceptualization of the study, research design, data collection, legal analysis, and drafting of the manuscript. N. Ike Kusmiati contributed to the supervision, critical revision of the manuscript, validation of legal arguments, and final approval of the version to be published. All authors have read and agreed to the published version of the manuscript.

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