



Legal Construction of Hospital Responsibility Due to Health Workers' Negligence Causing Babies to Be Swaped

Diah Arimbi^{1*}, Indah Dwiprigitaningtias¹, Zulfika Ikrardini¹

ABSTRACT

The negligence of a nurse's actions resulting in the swapping of babies' identities constitutes a matter of legal liability. The hospital's responsibility in resolving cases of swapped babies under the Health Law is fully applicable if the negligence of hospital resources causes harm, regardless of whether the service in question is medical or non-medical. The determining factor for liability is the act of negligence itself. This study is normative legal research with a statutory and conceptual approach. In cases of swapped babies, the element of negligence must be proven. However, the lack of clarity in Article 193 of the Health Law opens the interpretation that liability may not only be civil but also criminal. Hospitals can be categorized as tripartite corporate entities because of the employment relationship between hospitals and healthcare professionals, wherein healthcare professionals act individually or collectively on behalf of the hospital as a corporation. In imposing criminal penalties on hospitals as corporations, judges may consider factors such as whether the corporation benefited from the act, whether the corporation allowed the act to occur, whether preventive measures and mitigation of broader impacts were taken, and whether the corporation complied with the law. Conclusion: There is a need for legal certainty regarding the form of hospital liability, whether it is only civil or also criminal. If hospital liability is directed towards criminal accountability, clear provisions regarding the enforcement mechanisms must be established.

Keywords: : *Legal Construction, Responsibility, Hospital, Negligence*

¹ Universitas Jenderal Achmad Yani, Cimahi, Indonesia.

Corresponding author:

diah.arimbi@lecture.unjani.ac.id

Received : January 12, 2024
Revised : February 05, 2024
Accepted : May 15, 2024

© The Author(s) 2024

1. | INTRODUCTION

Health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation, as reflected in Pancasila and the Preamble to the 1945 Constitution of the Republic of Indonesia. Therefore, all activities and efforts to improve the highest possible standard of public health are carried out based on the principles of non-discrimination, participation, protection, and sustainability, which are of great importance for the development of Indonesian human resources, the enhancement of national resilience and competitiveness, and national development.¹ Efforts to achieve the highest possible standard of health initially focused on disease treatment, gradually evolving toward an integrated approach to health for the entire community, involving broad public participation. The provision of adequate healthcare services and public facilities is one of the rights to health. Fundamentally, health is viewed as both a human rights issue and a legal matter. Health, as a human rights issue, reflects the role of the government in upholding and ensuring the protection of human rights. This is evidenced by the formulation and establishment of laws, such as Law No. 39 of 1999 on Human Rights, which serves as the foundation for the implementation of human rights in Indonesia.²

Furthermore, health as a human rights issue is significant because it is a crucial matter faced by every country, directly correlating with the development of personal integrity for individuals to live with dignity in health. It also aligns with other factors such as education levels and purchasing power, which are key indicators for assessing the Human Development Index of nations worldwide. Healthcare services are not without challenges; numerous disputes or legal issues often arise, particularly between medical personnel and patients or their families. These issues may stem from negligence related to healthcare services, whether involving medical procedures or non-medical actions. Negligence in medical procedures, in the context of criminal law, is commonly referred to as medical malpractice or criminal malpractice. The consequences

of medical malpractice that may constitute criminal acts must align with those specified in the law. This is because malpractice "can only occur in material criminal acts, where the resulting consequences are a condition for completing the crime" (such as death, serious injury, and others). On the other hand, in medical services that do not result in injury or death but cause other consequences due to healthcare professionals' negligence, as in this case, it may involve the swapping of babies.³

The case of babies being swapped at Santosa Bagor Hospital came to light in 2023. The two babies, born in July 2022, were confirmed to have been swapped based on DNA test results conducted following complaints from parents who felt that the baby they had cared for over nearly a year was not their biological child. According to police investigations into the nurse on duty on the day of the incident, the problem began when a baby's identification bracelet reportedly came off. The nurse replaced it with a new bracelet bearing the names of Dian and Hartono. However, the nurse failed to carefully check that another baby had already been assigned a bracelet with the same name, resulting in two babies wearing bracelets labeled Dian and Hartono. The mistake was only realized after the babies had been sent home with their respective parents. Upon noticing a bracelet labeled Dian and Hartono left in the nursery while a baby with the same bracelet name had just been discharged, the nurse visited the patient's home and confirmed the existence of two bracelets with identical names.

Unfortunately, despite realizing the error, the nurses did not immediately follow up by reporting the issue to the hospital management, which could have taken steps to confirm whether the babies had indeed been swapped. It was not until a complaint was filed by one of the parents that a DNA test was conducted. The eventual revelation of the biological parents of each baby, after a significant delay, undoubtedly caused immeasurable psychological impacts due to the emotional bond that had formed between the babies and the parents who had cared for them. This psychological distress could potentially affect the growth and development of both babies. The case also highlighted

¹ Zariņš, Kristaps, and Emīls Georgs Siders. "Some Critical Remarks on the Principles of Social Responsibility in Healthcare: The Interconnection between Legal Research and International Law." *International Comparative Jurisprudence* 10, no. 1 (2024): 82-93.

² Gerke, Sara, Timo Minssen, and Glenn Cohen. "Ethical and legal challenges of artificial intelligence-

driven healthcare." In *Artificial intelligence in healthcare*, pp. 295-336. Academic Press, 2020.

³ Novianto, Widodo Tresno. "Penafsiran Hukum dalam Menentukan Unsur-Unsur Kelalaian Malpraktek Medik (Medical Malpractice)." *Yustisia* 4, no. 2 (2015): 488-503.



the nurse's failure to properly record and trace the issue.⁴

In addition to the negligence of healthcare personnel, the hospital's standard operating procedures for newborn care—placing babies in a nursery rather than in the same room as their mothers—pose a significant risk of babies being swapped. If the hospital's policy is to group neonatal care in a single nursery, it must ensure that medical staff on duty exercise utmost caution and precision to prevent such incidents. Any actions resulting from such negligence must carry accountability. Negligence is considered careless behavior for which an individual is responsible, particularly when due attention or precaution was warranted. The law holds individuals accountable for any resulting harm.⁵ To determine the hospital's responsibility for the nurse's negligence and the enforcement of legal accountability for the nurse's actions under Indonesian law, a juridical and literature study is necessary. This would clarify the hospital's position as a corporation and the relationship between the nurse and the hospital, leading to conclusions on legal accountability resulting from the nurse's negligence.

2. | RESEARCH METHODS

This study employs a normative juridical approach, focusing on the analysis of legal norms and regulations relevant to the topic of hospital responsibility for nurses' negligence resulting in a baby exchange. The data sources in this study are secondary data, which are collected from various legal materials. Primary legal materials include binding legal sources such as laws, regulations, statutes, uncodified legal materials, jurisprudence, treaties, and other legal instruments that directly pertain to hospital liability in cases of medical negligence. These primary materials form the legal foundation of the analysis. Secondary legal materials consist of legal opinions, scholarly books, articles, and writings that discuss the legal aspects of negligence in healthcare and hospital responsibilities. These sources provide insights and interpretations of the laws and regulations. Tertiary legal materials, such as encyclopedias, indexes, and dictionaries, are also used to support the research by providing additional context and definitions of key legal concepts. The data collection techniques in this study involve documentation and literature studies. Through

documentation, the researcher gathers relevant legal texts, case law, and legal opinions. Literature studies are used to analyze books, articles, and other scholarly works that discuss the subject matter in detail. After collecting the data, data processing and analysis are conducted to evaluate and interpret the legal materials, with the aim of understanding the legal responsibilities of hospitals in cases of negligence and the implications for hospital management and healthcare providers.

3. | RESULTS

3.1. Hospital Responsibility for Nurses' Negligence Resulting in Swapped Babies

Health is a fundamental right for human beings, encompassing the right to live and the right to sustain life. To preserve their lives, individuals continuously strive to improve their health through various means. Health is an inherent human right for each individual, and it is the state's obligation to provide protection for this right. This protection is enshrined in Article 28H, Paragraph (1) of the Constitution of the Republic of Indonesia of 1945, which states:

"Everyone has the right to live in physical and spiritual prosperity, to have a place to live, to enjoy a good and healthy environment, and to obtain healthcare services."

This provision ensures that all citizens can exercise their right to healthcare services, and the state, as the guarantor, has the obligation to fulfill this right. One of the government's efforts to achieve this is through the development of the national healthcare sector. The goal of healthcare development is to increase awareness, willingness, and ability of individuals to lead healthy lives in order to achieve the highest possible standard of public health. Achieving healthcare development is not solely the state's responsibility but also involves various stakeholders, including the government, hospitals as healthcare service providers, and medical and healthcare professionals who play a role in delivering healthcare services to the community. One measure of service quality is the fulfillment of patients' rights through professional care grounded in scientific principles. The professional relationship in healthcare services is known as a therapeutic transaction, a civil legal relationship subject to civil law provisions under

⁴ Pasquale, Frank. "Data-informed duties in AI development." *Colum. L. Rev.* 119 (2019): 1917.

⁵ Raz, Joseph. "Responsibility and the negligence standard." *Oxford Journal of Legal Studies* 30, no. 1 (2010): 1-18.

the Indonesian Civil Code (KUHPerdata), particularly those pertaining to contracts.⁶

Hospitals are institutions rich in resources, including infrastructure and human resources. Regarding healthcare human resources, these include medical professionals, healthcare workers, and support staff, each regulated under Law No. 17 of 2023, supplemented by further legislation. Nurses and other supporting staff have specific roles and responsibilities. Nurses assist doctors in providing healthcare services and also perform independent functions. In these independent functions, nurses' actions do not require a doctor's orders, as they are intrinsic responsibilities of a nurse.

The relationship between a hospital and its employees (nurses) can be observed here. An individual appointed as an employee, whether permanent or temporary, establishes an employment relationship. This relationship arises from a work agreement between the legal subjects: the hospital as a legal entity and the healthcare worker. These two legal subjects form an employment relationship based on an agreement outlining various terms of employment, rights, and obligations of both parties, which include elements of work, wages, and instructions. Employees are equally obligated to comply with hospital regulations, adhere to instructions from superiors, and follow established standards in the form of Standard Operating Procedures (SOPs) and the knowledge they possess. These criteria ensure that the collective entity is legally recognized, enabling it to engage in legal activities and bear responsibilities within the legal framework.⁷

Human resources within the legal entity of a hospital are part of the hospital's responsibility. A hospital, as a legal entity, bears responsibility for its personnel based on the employer-employee relationship, known as vicarious liability, respondent superior, or let the master answer. Law No. 17 of 2023 states that hospitals are legally responsible for any harm caused by the negligence of their healthcare personnel.⁸

As a legal entity, a hospital can perform legal acts, and its rights and obligations are represented by its human resources. Thus, the hospital adheres to the principle of Corporate Liability, whereby the hospital is accountable for the errors committed by its employees.⁹ Article 1367 of the Indonesian Civil Code (KUHPerdata) stipulates that a person is not only responsible for damages caused by their own actions but also for damages caused by the actions of those under their supervision. This principle is recognized as the doctrine of respondent superior, where medical personnel, healthcare workers, and supporting staff are in a working relationship based on their assigned duties.¹⁰

Direct supervision occurs when there is an immediate working relationship, allowing for monitoring and control. An employer is entitled to issue commands and ensure the quality of their subordinates' work. A working relationship is established when the employer has the direct right to oversee and control the execution of tasks.¹¹ The doctrine of respondent superior provides legal certainty for patients to obtain compensation for mistakes made by healthcare personnel, where the hospital is held accountable for the outcomes of such work performed for the hospital's benefit. Hospitals are responsible for the negligence of their human resources, and thus, they are expected to implement oversight, carefully select personnel, and provide training to enhance staff competencies. In other words, negligence caused by an individual serves as the basis for institutional liability.¹²

The principle of vicarious liability in Indonesia is regulated under Article 1367 of the Civil Code, which includes all healthcare personnel who are individually accountable under Articles 1365 and 1366 of the Civil Code. According to Christian Witting [10], this context illustrates the chain of command where the manager-worker relationship determines the execution of tasks. In the Civil Code, liability for unlawful acts committed by others is detailed further in Articles 1367

⁶ Makasenggehe, Christiana Jullia. "Aspek Hukum Transaksi Terapeutik Antara Tenaga Medis Dengan Pasien." *LEX PRIVATUM* 12, no. 1 (2023).

⁷ Arimbi, Diah, and Khakberdiev Abdumurad Abdusaidovich. "Health Human Resources Negligence: Is It The Hospital's Responsibility?." *Jurnal Pembaharuan Hukum* 11, no. 1: 180-200.

⁸ Montefusco, Ryan. "Hospital liability for the right reasons: a non-delegable duty to provide support services." *Seton Hall L. Rev.* 42 (2012): 1337.

⁹ Koto, Ismail, and Erwin Asmadi. "Pertanggungjawaban Hukum Terhadap Tindakan

Malpraktik Tenaga Medis di Rumah Sakit." *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* (2021): 181-192.

¹⁰ Hanson, Raymond L., and Ross E. Stromberg. "Hospital liability for negligence." *Hastings LJ* 21 (1969): 1.

¹¹ Smith, Helen, and Kit Fotheringham. "Artificial intelligence in clinical decision-making: rethinking liability." *Medical Law International* 20, no. 2 (2020): 131-154.

¹² Witting, Christian. "Modelling organisational vicarious liability." *Legal Studies* 39, no. 4 (2019): 694-713.



(2) to (4), as well as Articles 1368 and 1369, specifying the parties who can be held responsible for the harm caused to others, namely:

1. Parents and guardians towards minors, who still live with them, and over whom they exercise parental or guardianship;
2. Employers and those who appoint others to represent them in their affairs, towards their subordinates in carrying out work assigned to them;
3. School teachers towards their students while under their supervision;
4. Head craftsmen towards their craftsmen while under their supervision;
5. Owners of animals or those who use animals in carrying out an action towards the animal whether the animal is under their supervision or not; and
6. Owners of a building if the building collapses, either in whole or in part.

3.2. Application of Corporate Liability in Cases of Medical Negligence in Hospitals

Vicarious liability refers to the responsibility imposed on an individual or legal subject for the actions of another, also known as indirect liability or substituted liability. This principle is applied in cases where an employer or principal is held accountable for the actions of another party under a contract that indicates an employer-employee relationship. According to Iskandar, medical or healthcare actions must adhere to SOPs and general principles of medical professionalism. If negligence occurs, liability under the theory of representation suggests that the ultimate leader, as the person in charge, should be held responsible.¹³ In other words, liability according to law holds a person accountable for the wrongful actions of another person, provided that there is an established working relationship within the scope of their employment. Under the doctrine of vicarious liability,

proof of wrongdoing by the healthcare personnel involved must be established.¹⁴

In cases of negligence by nurses, such as an infant being switched, it may not fall under the category of medical malpractice since it does not involve a medical act. This type of negligence is non-medical, involving incorrect administrative registration. Although this may be exacerbated by the negligence of the nurse, claims of non-medical negligence caused by administrative errors could also result from the hospital's failure to manage its facilities and personnel efficiently. This may involve substandard safety protocols or the absence of proper standards. Hospitals must implement standard procedures to guide healthcare personnel in various situations, ensuring that patients receive the appropriate care. While it is challenging to anticipate every possible scenario, hospitals are obligated to update safety or patient security standards when they are found to be inadequate or overlooked.¹⁵

Claims of negligence in medical services can be filed against any worker within the healthcare environment, including healthcare personnel providing such services. These claims may arise from damages caused by healthcare services, including malpractice, medical negligence (resulting in disability or death), or non-medical negligence (e.g., administrative errors). An example of non-medical negligence includes errors in gathering information, such as failing to record allergic reactions or mis documenting information. These mistakes could lead to incorrect decisions by doctors who rely heavily on such information, as in cases where incorrect infant identification results in babies being switched and receiving improper care.¹⁶ When a nurse's negligence leads to a switched baby due to a lost identity bracelet and subsequent re-registration under the wrong name, this constitutes a serious error. Even though it does not directly result in death or disability, it has severe implications. For instance, a baby who should receive a particular medication might not receive it due to being misidentified, while another baby might suffer from allergic reactions or worsened conditions after receiving the wrong treatment.

¹³ Peters, J. Douglas, and Jeanette C. Peraino. "Malpractice in hospitals: Ten theories for direct liability." *Law, Medicine and Healthcare* 12, no. 6 (1984): 254-259.

¹⁴ Pusparini, Olivia, Erikson Sihotang, and Ni Ketut Wiratny. "Responsibility Of Doctors In Medical Services To Patients According To Laws And Regulations." *Journal of Social Research* 3, no. 8 (2024).

¹⁵ Siringoringo, Valeri MP, Dewi Hendrawati, and R. Suharto. "Pengaturan Perlindungan Hukum Hak-Hak Pasien Dalam Peraturan Perundang-Undangan Tentang Kesehatan Di Indonesia." *Diponegoro Law Journal* 6, no. 2 (2017): 1-13.

¹⁶ Putri, Prima Maharani, and Patria Bayu Murdi. "Pelayanan kesehatan di era jaminan kesehatan nasional sebagai program badan penyelenggara jaminan sosial kesehatan." *Jurnal Wacana Hukum* 25, no. 1 (2019): 80.

Moreover, proper breastfeeding and bonding from the biological mother or parents may be disrupted, leading to long-term psychological and emotional consequences. Such incidents are significant and cannot be overlooked. They reflect substandard care in the hospital and highlight the nurse's negligence, which warrants accountability.¹⁷ Accountability for negligence committed by the nurse has been clearly regulated in Law No. 17 of 2023 concerning Health Article 193 which reads "The Hospital is legally responsible for all losses caused by negligence committed by the Hospital's Health Human Resources: Article 306 paragraph (1) reads "Medical Personnel or Health Personnel who have carried out disciplinary sanctions as referred to in paragraph (1) which are imposed there is an alleged criminal act, law enforcement officers prioritize the resolution of disputes with a restorative justice mechanism in accordance with the provisions of laws and regulations" and Article 310 states "In the event that Medical Personnel or Health Personnel are suspected of making mistakes in carrying out their profession which causes losses to Patients, disputes arising from said mistakes are resolved first through alternative dispute resolution outside the courts".

The assessment of legal responsibility that is the author's concern in the case of a baby being exchanged for something that is made an obligation to be responsible because an event has occurred, a certain condition has occurred, and asks who is responsible or what is accountable for the event or condition. A responsibility will be questioned if something is detrimental. A person is said to be responsible for a loss if it causes a loss in a certain sense and as a result of something he does or his negligence. This depends on the transfer of responsibility in the form of a statement that the defendant must be asked to compensate the victim for the loss, or he himself is punished for it or both.¹⁸

In accordance with the patient's right to receive safe and quality healthcare services that meet health service standards to achieve the highest possible health status, if an unforeseen event occurs due to negligence,

patients may file claims for damages resulting from incidents such as baby switching. Legal obligations are linked to the concept of legal responsibility, meaning that someone whose actions violate regulations has a legal obligation or responsibility. A person who bears legal responsibility is considered legally accountable. There are two types of liability: a) Fault-Based Liability: This type of liability emphasizes the mental state of the individual, focusing on the lack of anticipation and deliberate intention of the perpetrator to cause harm. It considers whether the individual intended the harmful outcome. However, this is challenging for victims to prove, especially in negligence cases. This type of liability is difficult to apply in this case, as it is hard to prove the mental state or intent of the nurse to deliberately switch the babies. b) Strict Liability (Absolute Liability): This type of liability makes it easier for the patient, as there is no need to prove negligence. Instead, it is sufficient to establish a connection between the nurse's actions and the harm suffered by the patient.¹⁹

Strict liability offers a simpler approach by focusing solely on the result of the nurse's negligence causing harm to the patient. The connection between the harm and the act of negligence is sufficient to establish liability. This eliminates the need to examine the mental state or intent of the individual responsible for the incident. The application of strict liability (absolute liability or strict liability) in the context of this case can be implemented based on appropriate considerations and reasons, evaluated impartially, and aimed at minimizing the risk of injustice. Several considerations for applying this principle include the fact that the baby was under the nurse's supervision, not in the same room as the parents, and that assigning the baby's identification is the responsibility of medical or healthcare personnel. These factors establish the liability of the nurse in charge and the hospital.²⁰

Hospitals, as legal entities, are regulated under Law No. 17 of 2023. According to Article 185, paragraph (3), hospitals established by the community must take the form of legal entities, with their business activities solely focused on healthcare services. Chidir Ali

¹⁷ Maulana, Insan Budi, and LL M. SH. *Pergeseran Pemikiran Hukum dari Era Yunani Menuju Post-Modernisme*. Citra Aditya Bakti, 2020.

¹⁸ Simamora, Janpatar. "Tafsir Makna Negara Hukum dalam Perspektif Undang-Undang Dasar Negara Republik Indonesia Tahun 1945." *Jurnal Dinamika Hukum* 14, no. 3 (2014): 547-561.

¹⁹ Pennanen, Eveliina, and Leena Mikkola. "Constructing responsibility in social interaction: an

analysis of responsibility talk in hospital administrative groups." *Qualitative Research in Medicine and Healthcare* 2, no. 3 (2018).

²⁰ Zariņš, Kristaps, and Emīls Georgs Siders. "Some Critical Remarks on the Principles of Social Responsibility in Healthcare: The Interconnection between Legal Research and International Law." *International Comparative Jurisprudence* 10, no. 1 (2024): 82-93.



defines a legal entity as a legal subject recognized as having rights and obligations based on societal needs.²¹ Hospitals are autonomous organizations capable of engaging in legal actions and, as legal entities, bear rights and obligations. Hospitals have an institutional component aimed at providing healthcare services to the public.²² The institutional framework of a hospital is inseparable from regulatory provisions within Indonesian law. This framework relates to its position within the theory of legal subjects. The rights and obligations inherent in hospitals establish their position as legal entities. An operational license is crucial for validating the hospital's business operations and its transactions with third parties. Without an operational license, the legal subject status of the hospital's founders holds no effect on healthcare service transactions with members of society. Without this license, the founders cannot activate the legal entity status of the hospital.²³

Negligence regulated in the Health Law has a weakness due to the lack of specificity in Article 193, which allows for interpretations that liability may extend beyond civil to include criminal responsibility. A hospital can be categorized as a tripartite corporation subject because of the employment relationship between the hospital and healthcare workers. Healthcare workers may act independently or collectively for and on behalf of the hospital as a corporation.²⁴ A corporation, in this context, refers to an organized collection of individuals and/or assets, whether it is a legal entity or not. A corporation can be held criminally liable in accordance with the provisions of corporate criminal liability laws. When imposing a criminal penalty on a corporation, the judge may assess the corporation's fault as outlined in paragraph (1), including: a. The corporation benefits or gains from the criminal act, or the criminal act is carried out for the benefit of the corporation; b. The corporation allows the

criminal act to occur; or c. The corporation fails to take necessary steps to prevent, mitigate greater harm, and ensure compliance with applicable legal provisions to avoid the commission of a criminal act.²⁵

First, hospitals today do not only perform their social functions, as hospitals, as legal entities, can operate as state-owned enterprises (Persero) or public service bodies (government-owned hospitals). As a state-owned enterprise, a hospital has both idealistic and financial goals. Hospitals have both social and business aspects, and in relation to government-owned healthcare facilities, they provide healthcare services that apply the financial management model of a public service agency (*Badan Layanan Umum* BLU). As a BLU, the hospital does not solely prioritize profit but applies the principles of efficiency and productivity. In the case of a BLU hospital, productivity is emphasized. Productivity here refers to a comparison between output and input, service quality, revenue targets, and human resources ratio, ensuring that the balance is maintained, and that the hospital does not incur losses while still ensuring quality service and operational management.²⁶ Second, in the context of a baby swap case involving a nurse's negligence, it started with the loss of a bracelet and the incorrect recording of a baby's identity. This situation was not reported to management, and the incident was not communicated at the outset. It cannot be blamed that management was unaware of the situation or that the nurse did not follow standard operating procedures (SOPs). However, if the hospital did not have SOPs as an anticipatory measure or steps to address such a baby swap incident, it could be considered by decision-makers.²⁷

The Identification theory is also the basis for the corporate responsibility doctrine, where the actions of employees are seen as a reflection of the institution (hospital). Law No. 17 of 2023, Article 1, paragraph (10) states that a hospital is a healthcare facility that

²¹ Ali, Chidir. "*Badan Hukum (Cet. ke-3)*." Alumni, Bandung (2005).

²² Gerke, Sara, Timo Minssen, and Glenn Cohen. "Ethical and legal challenges of artificial intelligence-driven healthcare." In *Artificial intelligence in healthcare*, pp. 295-336. Academic Press, 2020.

²³ Pasquale, Frank. "Data-informed duties in AI development." *Colum. L. Rev.* 119 (2019): 1917.

²⁴ Hansen, Seng. "Does the COVID-19 outbreak constitute a force majeure event? A pandemic impact on construction contracts." In *Journal of the civil engineering forum*, vol. 6, no. 1, pp. 201-214. Universitas Gadjah Mada, 2020.

²⁵ Smith, Helen, and Kit Fotheringham. "Artificial intelligence in clinical decision-making: rethinking

liability." *Medical Law International* 20, no. 2 (2020): 131-154.

²⁶ Iancu, Emanuela M., and Lana E. Kandalaf. "Challenges and advantages of cell therapy manufacturing under good manufacturing practices within the hospital setting." *Current opinion in biotechnology* 65 (2020): 233-241.

²⁷ O'Sullivan, Shane, Nathalie Nevejans, Colin Allen, Andrew Blyth, Simon Leonard, Ugo Pagallo, Katharina Holzinger, Andreas Holzinger, Mohammed Imran Sajid, and Hutan Ashrafian. "Legal, regulatory, and ethical frameworks for development of standards in artificial intelligence (AI) and autonomous robotic surgery." *The international journal of medical robotics and computer assisted surgery* 15, no. 1 (2019): e1968.

provides comprehensive individual health services, and healthcare personnel perform health efforts within their authority. A hospital's functions are carried out by doctor or other healthcare personnel, as the hospital's duties are driven by people. The second theory is the Imputation theory, which depicts the institution's responsibility due to unlawful acts committed by employees within the scope of their duties for the benefit of the institution.²⁸

4. | CONCLUSION

A hospital is an institution with a primary function of providing comprehensive healthcare services, involving both the owners and healthcare human resources. The relationship between the hospital and its healthcare workforce is characterized by an employer-employee dynamic, where the employees are bound by employment contracts and are under the supervision and responsibility of the hospital management. When negligence occurs within the hospital, such as in a case where a nurse's error leads to a baby being swapped, the hospital can be held accountable, provided the negligence is proven. This liability is based on the doctrine of vicarious liability, where an employer (the hospital) is responsible for the wrongful acts committed by its employees (the nurse), as long as those acts fall within the scope of their duties. According to Law No. 36 of 2009 on Health, Article 193, the hospital is liable for negligence caused by its healthcare personnel. In cases where negligence occurs, such as a mix-up of babies, it is the hospital's responsibility to ensure that proper measures, including the establishment of standard operating procedures (SOPs), are in place to prevent such incidents. The hospital's liability is not limited to the act of negligence itself but extends to ensuring that their healthcare personnel act within the legal and ethical standards expected in the healthcare industry. Therefore, the hospital, as the employer, can be held responsible for the actions of its staff if those actions result in harm to patients, as per the applicable legal framework of vicarious liability and health law.

²⁸ Wani, Tafheem Ahmad, Antonette Mendoza, and Kathleen Gray. "Hospital bring-your-own-device security challenges and solutions: systematic review of

gray literature." *JMIR mHealth and uHealth* 8, no. 6 (2020): e18175.



References

- Ali, Chidir. "Badan Hukum (Cet. ke-3)." Alumni, Bandung (2005).
- Arimbi, Diah, and Khakberdiev Abdumurad Abdusaidovich. "Health Human Resources Negligence: Is It The Hospital's Responsibility?." *Jurnal Pembaharuan Hukum* 11, no. 1: 180-200.
- Gerke, Sara, Timo Minssen, and Glenn Cohen. "Ethical and legal challenges of artificial intelligence-driven healthcare." In *Artificial intelligence in healthcare*, pp. 295-336. Academic Press, 2020.
- Hansen, Seng. "Does the COVID-19 outbreak constitute a force majeure event? A pandemic impact on construction contracts." In *Journal of the civil engineering forum*, vol. 6, no. 1, pp. 201-214. Universitas Gadjah Mada, 2020.
- Hanson, Raymond L., and Ross E. Stromberg. "Hospital liability for negligence." *Hastings LJ* 21 (1969): 1.
- Iancu, Emanuela M., and Lana E. Kandalaft. "Challenges and advantages of cell therapy manufacturing under good manufacturing practices within the hospital setting." *Current opinion in biotechnology* 65 (2020): 233-241.
- Koto, Ismail, and Erwin Asmadi. "Pertanggungjawaban Hukum Terhadap Tindakan Malpraktik Tenaga Medis di Rumah Sakit." *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* (2021): 181-192.
- Makasengegehe, Christiana Jullia. "Aspek Hukum Transaksi Terapeutik Antara Tenaga Medis Dengan Pasien." *LEX PRIVATUM* 12, no. 1 (2023).
- Maulana, Insan Budi, and LL M. SH. *Pergeseran Pemikiran Hukum dari Era Yunani Menuju Post-Modernisme*. Citra Aditya Bakti, 2020.
- Montefusco, Ryan. "Hospital liability for the right reasons: a non-delegable duty to provide support services." *Seton Hall L. Rev.* 42 (2012): 1337.
- Novianto, Widodo Tresno. "Penafsiran Hukum dalam Menentukan Unsur-Unsur Kelalaian Malpraktek Medik (Medical Malpractice)." *Yustisia* 4, no. 2 (2015): 488-503.
- O'Sullivan, Shane, Nathalie Nevejans, Colin Allen, Andrew Blyth, Simon Leonard, Ugo Pagallo, Katharina Holzinger, Andreas Holzinger, Mohammed Imran Sajid, and Hutan Ashrafian. "Legal, regulatory, and ethical frameworks for development of standards in artificial intelligence (AI) and autonomous robotic surgery." *The international journal of medical robotics and computer assisted surgery* 15, no. 1 (2019): e1968.
- Pasquale, Frank. "Data-informed duties in AI development." *Colum. L. Rev.* 119 (2019): 1917.
- Pennanen, Eveliina, and Leena Mikkola. "Constructing responsibility in social interaction: an analysis of responsibility talk in hospital administrative groups." *Qualitative Research in Medicine and Healthcare* 2, no. 3 (2018).
- Peters, J. Douglas, and Jeanette C. Peraino. "Malpractice in hospitals: Ten theories for direct liability." *Law, Medicine and Healthcare* 12, no. 6 (1984): 254-259.
- Pusparini, Olivia, Erikson Sihotang, and Ni Ketut Wiratny. "Responsibility Of Doctors In Medical Services To Patients According To Laws And Regulations." *Journal of Social Research* 3, no. 8 (2024).
- Putri, Prima Maharani, and Patria Bayu Murdi. "Pelayanan kesehatan di era jaminan kesehatan nasional sebagai program badan penyelenggara jaminan sosial kesehatan." *Jurnal Wacana Hukum* 25, no. 1 (2019): 80.
- Raz, Joseph. "Responsibility and the negligence standard." *Oxford Journal of Legal Studies* 30, no. 1 (2010): 1-18.
- Simamora, Janpatar. "Tafsir Makna Negara Hukum dalam Perspektif Undang-Undang Dasar Negara Republik Indonesia Tahun 1945." *Jurnal Dinamika Hukum* 14, no. 3 (2014): 547-561.
- Siringoringo, Valeri MP, Dewi Hendrawati, and R. Suharto. "Pengaturan Perlindungan Hukum Hak-Hak Pasien Dalam Peraturan Perundang-Undangan Tentang Kesehatan Di Indonesia." *Diponegoro Law Journal* 6, no. 2 (2017): 1-13.
- Smith, Helen, and Kit Fotheringham. "Artificial intelligence in clinical decision-making: rethinking liability." *Medical Law International* 20, no. 2 (2020): 131-154.
- Smith, Helen, and Kit Fotheringham. "Artificial intelligence in clinical decision-making: rethinking liability." *Medical Law International* 20, no. 2 (2020): 131-154.
- Wani, Tafheem Ahmad, Antonette Mendoza, and Kathleen Gray. "Hospital bring-your-own-device security challenges and solutions: systematic review of gray literature." *JMIR mHealth and uHealth* 8, no. 6 (2020): e18175.
- Witting, Christian. "Modelling organisational vicarious liability." *Legal Studies* 39, no. 4 (2019): 694-713.
- Zariņš, Kristaps, and Emīls Georgs Siders. "Some Critical Remarks on the Principles of Social

Responsibility in Healthcare: The Interconnection
between Legal Research and International
Law." *International Comparative*
Jurisprudence 10, no. 1 (2024): 82-93.