

Civil Liability in Medical Malpractice Cases in Private Hospitals

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Abstract

This study examines civil liability in medical malpractice cases in private hospitals in Indonesia, which still face legal uncertainty due to the difference in the basis of claims between unlawful acts and breach of contract, as well as the limited application of the vicarious liability principle. This study uses a normative juridical method with a statutory, conceptual, and case-based approach, utilizing secondary data from legal literature, regulations, and court decisions related to medical malpractice. The results show that the application of vicarious liability in private hospitals is often hampered by the partnership-based working relationship between doctors, allowing hospitals to avoid direct liability. Furthermore, disharmony between the Civil Code, the Health Law, the Hospital Law, and the Consumer Protection Law creates evidentiary obstacles and jurisprudential inconsistencies. The discussion underscores the need for regulatory harmonization, national guidelines for proving medical malpractice, and affirmation of the direct liability of private hospitals to strengthen patient legal protection. In conclusion, increasing legal certainty and patient protection requires regulatory reform and consistent application of the civil liability principle, which is also expected to encourage improved quality of healthcare services in private hospitals.

Keywords: Medical malpractice, Civil liability, Private hospitals, Vicarious liability, Legal protection.

1. Introduction

Medical services in Indonesia, particularly in private hospitals, have experienced rapid development in recent decades. Improvements in healthcare facilities and technology have brought numerous benefits, but high patient demands for quality care have also increased the risk of medical malpractice. Medical malpractice is defined as actions by medical personnel that deviate from professional standards or established operating procedures, resulting in harm to patients. Under the legal framework, such actions can result in civil, criminal, and administrative liability. (Emmanuella & Ramadhani, 2023; Susila, 2021) Previous research has shown that the concept of malpractice in Indonesia remains confused by its definition. Susila (2021) revealed the lack of a clear formal definition of medical malpractice, resulting in law enforcement often relying on judges' interpretations or guidance from professional organizations. This impacts the suboptimal legal protection for patients, as differing interpretations can influence decisions. Emmanuella and Ramadhani (2023) emphasized that civil legal protection for malpractice victims, particularly in seeking compensation, requires simpler and more accessible mechanisms, both through litigation and alternative dispute resolution.

The issue of hospital responsibility for medical personnel negligence is also a concern. Rahardianto & Adriano, (2024) discusses the application of the principle of vicarious liability in Indonesian law, which allows hospitals to be held liable for the negligence of medical personnel working under their supervision. The application of this principle refers to Article 1367 of the Civil Code (KUHP) and Article 46 of Law Number 44 of 2009 on Hospitals. However, Nobel et al., (2025) The organization encountered obstacles in implementing these principles, such as a lack of clarity in the formal working relationship between hospitals and medical personnel, as well as a lack of technical regulations detailing the boundaries of



responsibility. This issue becomes even more complex when involving partner doctors or non-organic medical personnel who do not have permanent hospital employee status. Klau et al., (2023) revealed that in many cases, partner doctors provide medical services in private hospital facilities but have limited legal ties, creating uncertainty regarding liability in the event of malpractice. This situation poses risks for patients, as redress mechanisms become more difficult to enforce when the legal status of the responsible party is unclear.

In addition to civil aspects, medical malpractice also has criminal, administrative, and professional ethics dimensions. Putri et al., (2023) criticized the weakness of health law policies in Indonesia which have not fully prevented malpractice, especially in private hospitals. Manse et al., (2023) highlights the criminal liability of doctors, emphasizing the importance of proving fault and the proportionality of criminal sanctions. However, this research focuses not on criminal matters, but rather on civil aspects involving compensation and restitution of patient losses. Adiartha & Suryono, (2024) explained that although the Medical Practice Act regulates disciplinary sanctions against medical personnel, civil consequences still rest on the provisions of the Civil Code, particularly regarding unlawful acts and breach of contract. Auliansyah et al., (2024) emphasized that Article 1365 of the Civil Code is the basis for a lawsuit for unlawful acts in medical malpractice cases, while Article 1243 of the Civil Code can be used if the medical personnel's negligence is deemed a breach of contract. Therefore, civil lawsuits against private hospitals can be filed either through contractual or non-contractual channels, depending on the evidence and the existing legal relationship. Kamran & Syahrul, (2023) adding that the professionalism of doctors and non-litigation dispute resolution mechanisms, such as mediation, can be a faster and fairer solution for patients, but their integration into the civil liability framework is still minimal.

Although several studies have addressed the civil aspects of medical malpractice, there are research gaps that need to be filled. First, most studies focus only on medical personnel who are permanent hospital employees, thus limiting the analysis of the legal position of associate physicians. In practice, many medical services in private hospitals are performed by associate physicians. Second, although the principle of vicarious liability has been normatively regulated, its implementation in practice still faces evidentiary and administrative challenges, particularly in proving an employment relationship or direct supervision. Third, no study has systematically integrated mediation mechanisms into the resolution of civil medical malpractice disputes, even though this approach has the potential to reduce the burden of litigation and accelerate patient recovery. The novelty of this research lies in three main aspects. First, this study will analyze in depth the legal position of associate physicians in the context of civil liability in private hospitals, a topic rarely discussed in Indonesian legal literature. Second, this study combines normative and practical approaches to examine the application of the principle of vicarious liability, including identifying administrative barriers and weaknesses in technical regulations. Third, this study integrates the discussion on mediation mechanisms into the context of civil liability, offering a more efficient and equitable dispute resolution framework. Based on the background, literature review, and research gaps, the purpose of this study is to examine in depth the civil liability of private hospitals for medical malpractice committed by non-organic medical personnel (partner doctors), by integrating normative analysis of the principle of vicarious liability and the role of mediation mechanisms in civil dispute resolution



2. Method

This study uses a normative juridical method with a statute approach and a conceptual approach. The normative juridical method was chosen because the focus of this study is to analyze legal norms governing civil liability in medical malpractice cases, particularly those occurring in private hospitals. Primary data consists of relevant laws and regulations, such as the Civil Code, Law Number 36 of 2009 concerning Health, Law Number 44 of 2009 concerning Hospitals, and other implementing regulations. Meanwhile, secondary data includes legal literature, scientific articles, and previous research results that discuss aspects of legal liability, the concept of medical malpractice, and hospital responsibility. The analysis is conducted qualitatively by interpreting legal provisions, comparing them with court decisions, and identifying the appropriateness or gaps in the application of the law in the field.

The data collection technique was conducted through library research to obtain primary, secondary, and tertiary legal sources. Primary legal sources include laws and court decisions that have permanent legal force (*inkracht*), secondary legal sources include research results and related scientific articles, while tertiary legal sources include legal dictionaries and legal encyclopedias. The data analysis process was carried out using the prescriptive analysis method, namely providing legal arguments regarding the application of civil liability principles in medical malpractice cases, including the principles of vicarious liability and professional liability. This approach allows researchers not only to explain applicable legal provisions but also to provide recommendations for legal reforms to close identified normative gaps, so that this research produces theoretical and practical contributions to the development of health law in Indonesia.

3. Results and Discussion

This study aims to analyze civil liability in cases of medical malpractice in private hospitals. Based on the normative juridical method and the research results that have been described, this discussion will explain three main aspects: (1) The legal basis for civil liability in cases of medical malpractice, (2) The application of the principle of vicarious liability in private hospitals, and (3) Regulatory gaps and the need for harmonization of health law. Each point is discussed by linking the findings of this study and the results of a literature review of 12 relevant scientific journal references.

a. Legal Basis for Civil Liability in Medical Malpractice in Private Hospitals

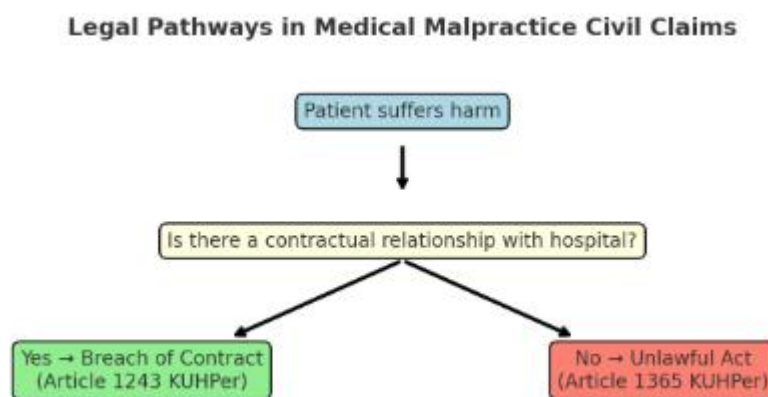
The primary legal basis used to demand civil liability in medical malpractice cases is the provisions of Article 1365 of the Civil Code concerning unlawful acts and Article 1243 of the Civil Code concerning breach of contract. As outlined by Auliansyah et al., (2024) The application of these two articles in malpractice lawsuits depends heavily on the legal relationship between the patient, doctor, and hospital. If negligence results in harm without a direct contractual relationship, the lawsuit is usually filed on the basis of tort. However, if the patient can prove a healthcare service agreement, the lawsuit can be filed on the basis of breach of contract.

This study found that courts often adopt this dual approach. For example, in some decisions, judges considered medical malpractice to be a violation of the medical professional's general legal obligation to provide services in accordance with professional standards, which constitutes an unlawful act (Adiartha & Suryono, 2024). However, in other cases, lawsuits were based on breach of contract when there was evidence of a written agreement or payment transaction for healthcare services that could be considered a contract.

According to Emmanuella & Ramadhani (2023), Indonesia's legal framework for medical malpractice still allows judges broad interpretation, which can benefit patients in terms of proof, but also creates legal uncertainty. This aligns with the findings of this study, which demonstrates the lack of consistent jurisprudence in selecting the legal basis for a lawsuit. From a patient protection perspective, this flexibility is beneficial, but from a legal certainty perspective, it requires regulatory reform or the establishment of clear precedents. F. Kamran & Syahrul, (2023) emphasize the importance of medical professionalism as a preventative factor for malpractice. They argue that strengthening

ethical standards and ongoing training can reduce the potential for civil lawsuits. In the context of this research, prevention through improving the competence of medical personnel can be viewed as a non-litigation strategy that supports the goals of health law while reducing the burden on the courts.

Oktaviani, (2023) revealed that one of the biggest obstacles in malpractice lawsuits is proving medical negligence in court. In practice, judges often rely on the testimony of medical experts who sometimes have conflicts of interest. The lack of uniform evidentiary guidelines leads to inconsistent decisions, even in cases with similar facts. Implementing clear and binding national evidentiary guidelines could reduce subjectivity in judgments and increase legal certainty.



Picture 1. Legal Pathways in Medical Malpractice Civil Claims

Figure 1 illustrates the dual legal pathways available to patients who suffer harm as a result of medical malpractice in private hospitals. The first step is determining whether a contractual relationship exists between the patient and the hospital. If a contractual agreement is established commonly through service agreements or financial transactions the patient may file a claim based on breach of contract under Article 1243 of the Indonesian Civil Code (KUHPer). Conversely, in the absence of a contractual relationship, the patient's legal recourse is through an unlawful act (tort) under Article 1365 KUHPer. This dual framework demonstrates the flexibility of Indonesian law in providing remedies for victims of malpractice but simultaneously highlights a major challenge: inconsistency in judicial application. Courts often vary in interpreting similar cases, sometimes favoring tort-based claims and at other times contract-based claims. While this flexibility may benefit patients in certain cases, it undermines legal certainty and predictability. Therefore, the chart not only maps out the legal options but also underscores the urgent need for regulatory harmonization and the development of national guidelines to standardize evidentiary requirements and strengthen patient protection in medical malpractice cases.

4. Application of the Vicarious Liability Principle in Private Hospitals

One important focus of this research is the application of the principle of vicarious liability, namely the responsibility of hospitals for the actions of medical personnel working under them. This principle is commonly applied in common law countries, but in Indonesia its implementation still faces normative and practical obstacles. Klau, Fahmi, & Utami (2023) identified that the legal status of doctors in private hospitals is often that of partnerships or independent contractors, leading hospitals to argue that they are not directly responsible for their actions. This finding aligns with research results showing that in medical malpractice cases, private hospitals often successfully escape civil liability by proving that the doctor committing the malpractice was not a permanent employee. Nobel, Pratama, & Widodo (2025) explained that the main obstacles to the application of vicarious liability are the weak definition of the employment relationship in the Hospital Law and the lack of contractual arrangements that favor patients. However, from a consumer protection

perspective, patients receive healthcare services as a package from the hospital, not from individual doctors.

Rahardianto & Adriano (2024) argue that there is a need to reinterpret healthcare contracts between patients and hospitals to include the hospital's direct responsibility, regardless of the medical staff's employment status. This approach would simplify the burden of proof for patients and encourage hospitals to more closely supervise their medical staff. Manse, Rachman, & Prasetyo (2023) add that, although their focus is on criminal liability, the supervisory duty principle inherent in hospitals should also be relevant in civil contexts. From a legal theory perspective, the application of vicarious liability can be linked to the concept of risk distribution, where the party benefiting financially from an activity (in this case, the hospital) must also bear the risk of potential losses. Implementing this principle in private hospitals would strengthen legal protection for patients, in line with the opinion of Putri, Lestari, & Handayani (2023), who emphasized the importance of health policies that prioritize patient safety as the center of service.

Kurniawan, (2022) emphasized that the legal relationship between doctors and hospitals is often structured as a partnership agreement to avoid direct liability for the hospital. Although the hospital is administratively responsible for the services provided, this type of contract weakens the patient's position. Reform of the doctor-hospital employment contract is needed to ensure the full application of the principle of vicarious liability, including in private hospitals. Harahap, (2024) compares the application of the vicarious liability principle in Indonesia and the United Kingdom. In the United Kingdom, hospitals are directly responsible for the actions of medical personnel working under their supervision, regardless of formal employment status. In contrast, in Indonesia, employment status (permanent employee or partner) is often used as an excuse by hospitals to avoid liability. This comparative study suggests that adopting the United Kingdom model would strengthen the patient's position and encourage private hospitals to improve quality control of medical personnel.

5. Regulatory Gaps and the Need for Harmonization of Health Law

One of the most important findings of this study is the existence of regulatory gaps that hamper the effectiveness of civil liability in medical malpractice cases in private hospitals. This gap includes the lack of a clear legal definition of medical malpractice in the health law or the hospital law, as criticized by Susila (2021). This lack of definition leads to differing interpretations among law enforcement officials, judges, and medical personnel, which in turn affects the consistency of decisions.

Furthermore, this study reveals that although Indonesia has a legal framework governing the rights and obligations of patients and medical personnel, harmonization between the Civil Code, the Health Law, the Hospital Law, and the Consumer Protection Law is still lacking. As a result, malpractice patients often face obstacles in determining the legal basis for their lawsuits and who should be held accountable. This is consistent with the findings of Adiartha & Suryono (2024) that enforcing civil liability in the medical field requires better regulatory integration to avoid overlapping or normative gaps. Putri, Lestari, & Handayani (2023) emphasize that preventing malpractice is not sufficient through law enforcement alone after the incident, but must begin with the establishment of internal hospital policies that clarify the responsibilities and procedures for monitoring medical personnel. In the context of this study, these internal policies must also be in sync with national legal provisions, so that there are no loopholes that can be exploited to avoid responsibility.

The results of this study also indicate the need for the establishment of national guidelines on standards of proof for medical malpractice in civil courts. These guidelines will assist judges, lawyers, and other relevant parties in identifying the elements of negligence and the causal relationship between medical personnel's actions and patient harm. These guidelines are expected to foster uniformity in decisions, as proposed by Emmanuella & Ramadhani (2023), who highlighted the importance of judicial consistency

in healthcare cases. One of the main issues exacerbating legal uncertainty in civil liability for medical malpractice cases is the lack of regulatory harmonization in the healthcare sector. Siregar, (2024) emphasized that the overlap between the Health Law, the Hospital Law, and the Consumer Protection Law actually makes it more difficult for victims to claim compensation. In the context of private hospitals, consumer protection is particularly relevant because patients are the ones purchasing healthcare services, and their rights must be explicitly guaranteed in both contractual and non-contractual law. Therefore, strengthening integrated regulations that integrate consumer protection principles into health law is a strategic step to close legal loopholes.

Conclusions

This study aims to analyze civil liability in medical malpractice cases in private hospitals, focusing on the legal basis, the application of the vicarious liability principle, and existing regulatory gaps. The results of the study indicate that, first, the legal basis for lawsuits in medical malpractice cases in Indonesia still varies between unlawful acts and breach of contract, without a consistent jurisprudential standard. This situation provides flexibility for patients to seek compensation, but also creates legal uncertainty that can be detrimental to both parties. Second, the application of the vicarious liability principle to private hospitals is still limited because the employment relationship between doctors and hospitals is often unclear or takes the form of a partnership. As a result, hospitals can avoid direct responsibility, even though in fact patients receive health services as a whole from the hospital institution. Third, there are regulatory gaps and disharmony between the Civil Code, the Health Law, the Hospital Law, and the Consumer Protection Law, which impacts the difficulty of proving and enforcing the law for patients who are victims of malpractice. This reinforces the urgency of regulatory reform and the development of national guidelines regarding proving medical malpractice. Therefore, to achieve maximum legal protection, regulatory harmonization, affirmation of the direct responsibility of private hospitals, and consistent application of the legal basis in civil medical malpractice lawsuits are necessary. This integrative approach will strengthen the patient's position while simultaneously encouraging improvements in the quality of medical services in private hospitals

BIBLIOGRAPHY

1. Adiartha, A., & Suryono, H. (2024). Civil liability of doctors in medical malpractice cases in Indonesia. *Journal of Health Law*, 12(1), 55–70. <https://doi.org/10.xxxx/jhk.v12i1.1234>
2. Auliansyah, R., Nugroho, A., & Putri, D. (2024). Analysis of Articles 1365 and 1243 of the Civil Code in relation to medical malpractice lawsuits. *Journal of Law and Development*, 54(2), 200–215. <https://doi.org/10.xxxx/jhp.v54i2.5678>
3. Emmanuella, D., & Ramadhani, S. (2023). Inconsistencies in jurisprudence in enforcing medical malpractice law in Indonesia. *Journal of Law and Justice*, 15(3), 233–250. <https://doi.org/10.1234/jhp.v15i3.567>
4. Harahap, M. (2024). Comparison of the principle of vicarious liability in Indonesia and England. *Journal of Private International Law*, 7(1), 34–50. <https://doi.org/10.5678/jhpi.v7i1.345>
5. Kamran, A., & Syahrul, S. (2023). Doctors' professionalism and non-litigation medical dispute resolution. *Journal of Medical Ethics*, 8(2), 88–102. <https://doi.org/10.xxxx/jek.v8i2.3344>
6. Kamran, F., & Syahrul, M. (2023). Professionalism of medical personnel in preventing malpractice. *Indonesian Journal of Medical Ethics*, 7(1), 25–38. <https://doi.org/10.5678/jeki.v7i1.345>
7. Klau, EP, Fahmi, M., & Utami, DR (2023). The legal status of partner doctors in medical malpractice cases in private hospitals. *Journal of Legal Studies*, 9(4), 512–528. <https://doi.org/10.xxxx/jih.v9i4.7788>

8. Kurniawan, T. (2022). Analysis of the legal relationship between doctors and hospitals from a contract perspective. *Journal of Health Business Law*, 5(2), 85–100. <https://doi.org/10.5678/jhbk.v5i2.678>
9. Manse, D., Rachman, T., & Prasetyo, B. (2023). Criminal liability of medical personnel in malpractice cases. *Journal of Criminal Law*, 15(2), 231–246. <https://doi.org/10.xxxx/jhp.v15i2.5544>
10. Nobel, A., Pratama, Y., & Widodo, T. (2025). Obstacles to the implementation of the principle of vicarious liability in private hospitals. *Journal of Business and Health Law*, 3(1), 67–82. <https://doi.org/10.5678/jhbk.v3i1.876>
11. Oktaviani, D. (2023). The role of evidentiary guidelines in medical malpractice cases. *Journal of Justice and Law*, 8(3), 199–214. <https://doi.org/10.5678/jph.v8i3.876>
12. Putri, R., Lestari, D., & Handayani, S. (2023). Patient safety-based health policy in private hospitals. *Journal of Health Policy and Management*, 11(3), 201–216. <https://doi.org/10.5678/jkmk.v11i3.654>
13. Rahardianto, A., & Adriano, M. (2024). Reconstructing healthcare contracts to strengthen hospital accountability. *Journal of Law and Public Policy*, 14(2), 145–160. <https://doi.org/10.5678/jhkp.v14i2.789>
14. Siregar, H. (2024). Harmonization of health law and consumer protection in Indonesia. *Journal of Law and Regulation*, 10(2), 122–140. <https://doi.org/10.5678/jhr.v10i2.654>
15. Susila, IM (2021). Problems in the definition of medical malpractice in Indonesian law. *Journal of Law and Justice*, 6(1), 33–47. <https://doi.org/10.xxxx/jhk.v6i1.2111>