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Reconstruction of Criminal Design Based on Strict Liability Theory for Hospitals in Cases of Medical Malpractice Against Patients

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Abstract

Cases of malpractice by medical personnel or healthcare workers in Indonesia occur due to several aspects, namely the lack of doctor experience, limited medical equipment, and minimal hospital supervision. Malpractice can have fatal consequences, including permanent disability or death, with many cases going unreported due to the low public awareness of patient rights. This research aims to analyze the reconstruction of regulations on the imposition of criminal sanctions on hospitals in cases of malpractice by medical personnel or healthcare workers that can infringe on patients' rights. This research is a normative legal study emphasizing a conceptual and legislative approach. The research findings emphasize that to enhance patient protection and hospital accountability, it is recommended to apply the concept of strict liability to hospitals in malpractice cases. With strict liability, hospitals are responsible for losses caused by medical negligence without needing to prove the hospital's fault. This concept is expected to improve service standards and reduce the risk of malpractice. A revision of Article 440 of the Health Law is needed to regulate criminal sanctions for hospitals involved in malpractice, emphasizing the application of strict liability, where the hospital must prove that the malpractice was not the fault of the hospital.

Keywords: *Criminal Sanctions, Hospital, Malpractice, Patient Rights, Strict Liability.*

A. INTRODUCTION

A hospital is a corporation in the form of a limited liability company that organises individual health service activities in a plenary manner through promotive,

preventive, curative, rehabilitative, and/or palliative health services, as mandated in Article 1 number 10 of Law Number 17 Year 2023 concerning Health (Health Law) (Trhombocytosis & Children, 2022). Hospitals and other forms of health services have recently come under scrutiny from the public due to the frequent occurrence of medical malpractice that harms patients. Based on the 2023 Health Law, patients have the right to obtain safe, quality and affordable health services in order to realise the highest degree of health (D. Wijaya et al., 2024). Patients also have the right to receive health care that is in accordance with health service standards (Anatami et al., 2021).

The previous Health Law in its consideration states that everything that causes health problems in Indonesian society will cause great economic losses for the state and every effort to improve the degree of public health also means investment in the development of the country (D. Wijaya et al., 2023). Therefore, every development effort must be based on health insight in the sense that national development must pay attention to public health and is the responsibility of all parties, both the Government and the community (Meng et al., 2023). If we use this view of any disturbance to health can cause economic losses, it is evident that when the state of health is disturbed, then everyone can no longer carry out their activities to meet the needs of life, so medical treatment is a crucial need to help the process of treatment and recovery for people who are sick. Thus, medical treatment is expected to be carried out professionally so that people can be fully cured, regain their perfect health, and get back to work as soon as possible (Sutrisno, 2023).

However, many cases of medical malpractice prove that the health service process carried out by the hospital has not gone well. Based on research conducted

by Monica Shahnaz Tuda, Jocefina A. Tendean, Karno MS Rumondor and R. Rigen I Sumilat, cases leading to medical negligence or medical malpractice were recorded in 182 cases throughout Indonesia, proven to have been committed by doctors after going through a trial by the Indonesian Medical Discipline Honour Council (MKDKI), with details as can be seen in Table 1 (Malpractice Cases throughout Indonesia).(Pally et al., 2022)

Table 1. Malpractice Cases All Over Indonesia

No	Doer	Number Of Cases
1.	General Doctor	60
2.	Surgeon	49
3.	Obstetrician	33
4.	Paediatrician	16
5.	Others	24

(Source: MKDKI)(Kebijakan Kesehatan Indonesia, 2024)

Furthermore, Ali Baziad, Chairman of the Indonesian Medical Discipline Honour Council (MKDKI), revealed that in the last eight years, MKDKI received 193 complaints of alleged malpractice, which led to 34 doctors being given written sanctions, 6 doctors being required to participate in re-education programmes, and, the most severe, 27 doctors had their registration letters revoked which automatically made their licences to practice invalid, as can be seen in Table 2 (Sanctions for Doctors Who Commit Malpractice).

Table 2. Sanctions for Doctors Who Commit Malpractice

No	Type of Sanction	Number of Doctors
1.	Given Written Sanction	34

2.	Required to Join a Re-education Programme	6
3.	Registration Certificate Revoked	26

(Source: MKDKI) (Kebijakan Kesehatan Indonesia, 2024)

The data presented in Table 2 provides insights into the types of sanctions imposed on doctors who commit malpractice. In the majority of cases, the most common form of sanction is a written warning or reprimand. This suggests that while these cases may involve malpractice, the severity of the offenses may not warrant more severe penalties. Despite that, there are also a lot of cases where the most severe sanction is imposed. It is the revocation of a registration certificate, that can effectively prevent the doctor from practicing medicine. This is reserved for cases where the malpractice is deemed particularly egregious or poses a significant risk to patient safety. Then the least sanction imposed is assigning doctors who commit malpractice on reeducational programs. This sanction requires doctors to focus on improving their skills and knowledge (López-Tarrida et al., 2021). This approach may be seen as a way to prevent future malpractice incidents while also providing an opportunity for professional development. From these cases, the data shows that in the event of medical malpractice, the doctor or nurse is legally responsible, as can be seen in the case of dr. Dewa Ayu et al, sentenced to 10 months in prison for causing the patient Siska Makatey to die after cito secsio surgery (Merdeka, 2024). In 2024 there was a case of alleged malpractice in Palembang, a patient with a deformed left hand after being infused in one of the hospitals in Palembang (Dhoni, 2024).

In general medical malpractice cases, the suspects are doctors or nurses and rarely or arguably have never made the hospital corporation or the hospital's board of directors as suspects/defendants, let alone sentenced to criminal judgement in court (McQuoid-Mason, 2022). Although it's important to note that there have been instances where hospitals and their governing boards have been held liable for medical malpractice in cases that involve systemic failures, such as inadequate staffing, poor quality control, or a failure to address known risks. But still, the when and how to get a hold of accountability from hospitals and their governing boards is worth to be questioned.

Previous research discussing cases of maladministration and accountability in the medical field has indeed been conducted by several researchers, such as Sylvana and St. Laksanto Utomo (2021), who analyzed the accountability of hospitals towards patients during the COVID-19 pandemic (Yana Sylvana, 2021). Another study was conducted by Goel and Tomer (2023) which analyzed the accountability of healthcare workers in relation to the use of artificial intelligence in the medical field (Vidushi Goel, 2023). The next study was conducted by Puspitasari and Pramono (2023), which analyzed the legal consequences faced by doctors in cases of negligence related to the effort of *visum et repertum* (Puspitasari & Budi Pramono, 2023). From the three previous studies mentioned above, it can be concluded that this research is original because it focuses on the effort to reconstruct criminal sanctions regarding cases of maladministration based on the strict liability theory.

Based on the description above, the researcher identifies the problem and formulates it in the formulation of the problem: (i) how is criminal liability by the hospital in malpractice cases that occur in the hospital based on indonesian positive

law and human rights perspective? and (ii) how to formulate policies in the criminalisation of the hospital as a health service provider corporation in order to protect the rights of patients who are violated by health human resources?.

This research is a normative legal study that focuses on the analysis of legislation related to medical malpractice experienced by patients, particularly from the perspective of criminal law (Suteki & Taufani, 2020). The primary legal material in this research is Law Number 17 Year 2023 concerning Health (Health Law). Secondary legal materials include journal articles, books, and research findings that discuss medical malpractice experienced by patients, particularly from the perspective of criminal law. Non-legal materials include language dictionaries. The analysis of legal materials is conducted prescriptively, emphasizing the reconstruction of criminal sanctions related to medical malpractice experienced by patients in hospitals in this study (Negara, 2023).

B. RESULT AND DISCUSSION

1. Criminal Liability By The Hospital In Malpractice Cases That Occur In The Hospital Based on Indonesian Positive Law And Human Rights Perspective

The phenomenon of medical malpractice in hospitals in Indonesia has shown a significant increase in recent years. Malpractice is defined as mistakes or negligence committed by medical personnel in providing healthcare services to patients (McQuoid-Mason, 2022). This can occur at various stages of the treatment process, from diagnosis to patient care and recovery. According to data from the Indonesian Ministry of Health, in 2020 there were more than 500 malpractice cases reported in hospitals (Ismail Koto, 2021). These cases include various types of medical errors, such as negligence in surgical procedures, mistakes in medication

administration, and neglect of patients' conditions requiring intensive care.

Several factors contributing to the increase in malpractice cases in Indonesia include(Sandra & Panji, 2022):

a. Lack of experience among doctors. Many new doctors lack experience in handling complex cases.
b. Limitations of medical equipment. Hospitals often do not have adequate equipment to perform procedures safely.
c. Lack of supervision. The lack of supervision from the hospital management can lead to undetected errors.

Medical malpractice can have fatal consequences, including permanent disability and death. Approximately 37.5% of malpractice cases in Indonesia result in permanent disability for patients (Sheila Febriana Ngiti Sasmita, Sabir Alwy, 2023). In addition, many malpractice cases go unreported or unresolved legally due to the low public awareness of patient rights (Wahyuni et al., 2020).

Patient rights in the context of healthcare services are an integral part of human rights (Patria et al., 2022). In Indonesia, the recognition of these rights is regulated by various laws and regulations. Article 28H of the 1945 Constitution states that everyone has the right to a decent life and to receive safe and quality health services (Ramadani et al., 2023). This shows that patient rights are part of the right to life and to receive welfare (Silven et al., 2022). Patients essentially have several fundamental rights such as (Balubun et al., 2019): (i) patients have the right to receive clear information about their health condition, medical procedures, as well as the risks and benefits of the actions to be taken, (ii) patients have the right to choose the type of treatment and doctor they want, and to refuse unwanted medical

actions, (iii) patients have the right to file complaints if they feel their rights are violated or if the quality of service does not meet standards. Patient rights as part of human rights are very important to ensure that every individual receives fair and quality healthcare. Efforts to raise awareness of these rights among the public and healthcare workers are essential to ensure that these rights are fulfilled optimally.

Criminal sanctions related to medical malpractice are regulated in the Health Law, including: (i) Article 440 of the Health Law, which essentially states that any medical personnel who commit malpractice can be subject to criminal sanctions. This includes actions taken with negligence or intent that cause harm to patients, (ii) Article 308 of the Health Law which essentially regulates the procedure for reporting alleged malpractice, where medical personnel suspected of violations must obtain a recommendation from the council before being subjected to criminal sanctions. This aims to ensure a fair investigation process before legal action is taken, and (iii) Article 447 of the Health Law, which regulates the criminal liability of hospitals for malpractice committed by medical personnel. Hospitals as institutions can also be sanctioned if proven negligent in supervising and preventing malpractice by medical and healthcare personnel (Ang, 2023). Before the criminal process begins, a recommendation from the ethics honor board is required to assess whether the action meets the criteria to proceed to legal proceedings (Ramadhan & Sari, 2022). If found guilty, medical personnel may face varying criminal sanctions, including imprisonment or fines, depending on the degree of fault and its impact on the patient (Anatami et al., 2021). These sanctions reflect efforts to enhance accountability in medical practice and protect patients' rights. With this provision, it is expected that medical personnel will be more careful in carrying out their practices, and hospitals

will be more responsible in supervising their staff's performance. Overall, the Health Law has indeed established a clearer and more comprehensive legal framework for handling malpractice cases, with the main goal of protecting patients and ensuring high standards of healthcare services (Yusyanti, 2021).

In general, criminal sanctions have several fundamental characteristics in the legal context, especially related to their purpose and application (Fahmi et al., 2022). Criminal sanctions are strict, meaning there are clear legal provisions regarding the types of violations and the consequences that the violators will face (Emaliawati et al., 2022). This sanction is coercive in nature, meaning that the state has the authority to enforce the law and impose sanctions on the violator. Criminal sanctions also have another purpose, which is to prevent future crimes (preventive) and to punish offenders as a form of retribution (repressive) (Yusyanti, 2021). With the existence of sanctions, it is hoped that other individuals will think twice before committing unlawful acts. Criminal sanctions are binding on every individual in society. Everyone must adhere to the applicable legal norms, and violations of these norms will result in the imposition of sanctions. Criminal sanctions are not only aimed at specific individuals but also reflect the public interest. Criminal law functions to protect society as a whole from harmful actions (Roy, 2021).

Criminal sanctions in the health sector have diverse characteristics and are designed to enforce the law and protect the public from dangerous medical practices (Baharudin, 2020). With the existence of these sanctions, it is hoped that healthcare workers will be more careful in carrying out their practices and complying with existing regulations. In general, it can be seen that the existence of criminal sanctions in the health sector actually has two main objectives(Varava, 2021): first,

to ensure preventive measures so that malpractice or other aspects are not carried out by medical or health personnel. In addition, the second orientation of criminal sanctions in the health sector is to ensure that patients are protected in various health practices so that their rights can be optimally fulfilled (Król-Całkowska et al., 2022).

Regarding the existence of criminal sanctions related to malpractice in the health field, Black's Law Dictionary defines malpractice as a professional error or a lack of skill or unreasonable diligence in a professional duty, resulting in injury, loss, or damage to the recipient of the service or those entitled to rely on it (Bryan A. Garner, 2019). This term is generally applied to professions such as doctors, lawyers, and accountants. This definition emphasizes that malpractice includes negligent actions performed by a professional in carrying out their duties. To succeed in a malpractice lawsuit, the plaintiff must prove the existence of a cause-and-effect relationship and the damages resulting from the action. In the context of the health sector, malpractice can occur due to negligence or unprofessionalism from medical or healthcare personnel. This emphasizes that malpractice in the health or medical field is essentially committed by individuals or professionals in the health or medical profession (Geyh, 2019).

Article 440 paragraph (1) of the Health Law also emphasizes that negligence committed by healthcare workers or medical personnel resulting in serious injury is subject to a maximum criminal penalty of 3 years or a maximum fine of IDR 250,000,000. Further provisions in Article 440 paragraph (2) of the Health Law also clarify that if the negligence of healthcare workers or medical personnel causing serious injury subsequently leads to death, they may be subject to a maximum prison sentence of 5 years or a maximum fine of Rp. 500,000,000. If read based on the

sociological interpretation of the provisions of Article 440 paragraph (1) and (2) of the Health Law, it essentially emphasizes that criminal sanctions in the health sector related to malpractice are negligence that at least causes serious injury. The provision, through argumentum a contrario, emphasizes that criminal sanctions in the field of health are imposed when malpractice carried out by healthcare or medical personnel only causes minor and moderate injuries.

From the perspective of criminal law, the assertion that criminal sanctions in the health sector are imposed when malpractice committed by healthcare or medical personnel is not imposed if the malpractice only causes minor and moderate injuries is intended so that not every case of malpractice committed by healthcare or medical personnel is always directed towards criminal sanctions (H. Wijaya et al., 2021). In this context, criminal sanctions should be positioned as part of the *ultimum remidium*. Criminal law as *ultimum remedium* refers to the principle that the application of criminal sanctions should be the last resort in law enforcement (Silaswaty Faried et al., 2022). This term comes from Latin, meaning "last resort," indicating that criminal law should only be used after all other alternative resolutions have been tried and failed (Andrianto, 2021). *Ultimum remedium* states that criminal law should be applied only after other efforts, such as administrative sanctions or mediation, are inadequate to resolve the existing legal issues (Hendra, Ravel, Novel Firdhaus, Michael Ari Kurniawan, 2021). Criminal sanctions have harsher characteristics compared to civil or administrative sanctions (Agus, E., 2021). Therefore, its application must be carried out with caution and considered as a last resort. Criminal law functions as a subsidiary sanction, meaning it is only applied when no other means can effectively address the legal violation. The application of

the principle of *ultimum remedium* has important implications in legal policy and law enforcement (Simon Butt, 2023). This encourages a more humane approach and reduces the negative impact of criminal sanctions on individuals and society. Thus, this principle seeks to maintain a balance between law enforcement and the protection of human rights (Dicky Eko Prasetio, Muh. Ali Masnun, Arinto Nugroho, Denial Ikram, 2024). Overall, ultimum remedium emphasizes the importance of using criminal sanctions wisely and only when truly necessary to restore social order.

Referring to Article 440 paragraph (2) of the Health Law, this is actually in line with the principle of ultimum remidium because it is only applied when malpractice by healthcare or medical personnel causes serious injuries. Regarding malpractice committed by healthcare workers or medical personnel that only causes minor or moderate injuries, no criminal sanctions are imposed, and it falls within the realm of professional organizations to impose ethical sanctions in accordance with the code of ethics of each healthcare or medical profession. However, the provisions of Article 440 paragraph (2) of the Health Law have not yet regulated criminal sanctions for the hospital in relation to malpractice committed by healthcare or medical personnel. This is because the elements in Article 440 paragraph (2) of the Health Law only emphasize sanctions for individual healthcare workers or medical personnel related to malpractice. In this context, hospitals cannot be subjected to criminal sanctions if malpractice is committed by healthcare or medical personnel (Anatami et al., 2021). The existence of this provision does not actually guarantee patient rights because, ideally, besides healthcare workers or medical personnel who can be held accountable for malpractice, hospitals should also be held criminally liable for malpractice actions committed by healthcare workers or medical personnel.

2. Legal Liability of The Hospital for Lawsuits Arising from Medical Disputes and Medical Malpractice in The Hospital Environment

The development of technology today has resulted in people easily accessing all information quickly, easily and cheaply, including in terms of health (Hani, 2021). Public awareness of the law is increasing and has begun to dare to sue in the event of medical negligence (Vidushi Goel, 2023). This has led to an increase in suits for violations of professional ethics by doctors that cause harm to patients. However, the responsibility for medical malpractice is always charged to the doctor because the doctor is the one who performs the medical action while the hospital is free from legal liability.

To protect the interests of doctors in the event of a dispute or medical malpractice, the hospital should be held liable in accordance with Article 193 of the Health Law which regulates the hospital's legal responsibility for all losses caused by negligence committed by the hospital's health human resources. However, the article does not provide a way to hold the Hospital liable, so to link the legal facts of medical malpractice with the elements of criminal offences in the Health Law, a theoretical approach is required through the use of relevant corporate theories such as strict liability theory, vicarious liability theory and others, which can be applied to the Hospital, as a legal entity (corporation). This theoretical approach can prevent the Hospital from being prosecuted, even though the hospital (*rechtpersoon*) does not have the mens rea (inner attitude) of a human being (*natuurlijkpersoon*), it can still be held criminally liable for medical malpractice by doctors within the Hospital (D. Wijaya et al., 2023). The hospital as an institution must also take responsibility and be obliged to protect medical personnel under the auspices of the hospital. The hospital must participate actively in resolving the problems that occur.

The concept of responsibility was also put forward by the originator of pure legal theory, Hans Kelsen. According to him, responsibility is closely related to obligation, but not identical (Syofyan Hadi, 2022). The obligation arises because of the existence of legal rules that regulate and provide obligations to legal subjects (Aulia, 2021). Legal subjects who are burdened with obligations must carry out these obligations as an order from the rule of law. As a result of not fulfilling the obligation, it will cause sanctions (Adair-Toteff, 2023). This sanction is a forced action from the rule of law so that obligations can be carried out properly by legal subjects. For Kelsen, the legal subject who is subject to the sanction is said to be 'responsible' or legally responsible for the offence (Trivisonno, 2021).

Based on this concept, it can be said that responsibility arises from the existence of legal rules that impose obligations on legal subjects with the threat of sanctions if these obligations are not carried out. Such responsibility can also be said to be legal responsibility, because it arises from the command of the rule of law and the sanctions given are also sanctions stipulated by law, therefore the responsibility carried out by legal subjects is legal responsibility. This theory of legal responsibility emphasises the meaning of responsibility that is born from the provisions of the legislation so that the theory of responsibility is interpreted in the sense of "liability"(Setiawan et al., 2024).

In the case of medical malpractice, hospitals as health facilities where medical personnel (doctors) and health personnel (nurses) are based, are liable for losses incurred by health human resources under hospital management(Gluschkoff et al., 2021). Hospital liability is regulated in several laws and regulations as follows:

a. Article 1367 of the Civil Code (KUH Perdata)

Article 1367 of the Civil Code postulates that a person can be liable for his own actions as stipulated in Article 1365 of the Civil Code (liability based on fault) but for losses caused by the actions of those for whom he is responsible (Sage, 2021). Responsibility in the legal sense, is a responsibility that is truly related to rights and obligations. In relation to medical malpractice, the hospital as a business actor in carrying out its business has a responsibility to the patient as a consumer for all actions that can harm the patient, so the losses suffered from using harmful services are the responsibility of the hospital. From this description, the principle of responsibility is a very important matter in consumer protection law.

b. Article 193 of Law Number 17 of 2023 concerning Health (Health Law)

The Health Law as a legal umbrella for norms applicable in the field of Health, clearly and clearly regulates the absolute legal responsibility of the Hospital for all losses due to negligence of Hospital Health Human Resources (HRH). The definition of Health Human Resources is explained in point 5 of article 1 of the Health Law as 'a person who works actively in the field of health, whether or not he or she has formal health education, which for certain types requires authority in carrying out Health Efforts.

In the handling of medical malpractice cases in the United States and the United Kingdom, the vicarious liability theory is applied to hold hospitals accountable (Yuanitasari et al., 2023). This theory states that the carelessness or negligence of the management, employees or agents of the corporation in the course of carrying out their work, is considered a corporate act so the corporation will be responsible for the actions of the careless corporate management. In Indonesia, the

concept of corporate liability is not yet to be known before 1999. Even in 1915 through Staatblad No. 732 in the Netherlands, the formulators in drafting the Criminal Code had the view that societas delinquere non potest, namely corporations could not commit criminal offences. However, in its development, Indonesia made regulations on legislation outside the Criminal Code, namely Law Number 41 of 1999 concerning Environmental Protection and Management, Law Number 32 of 2009 concerning Forestry, and Law Number 8 of 2010 concerning the Prevention and Eradication of Money Laundering Crime, which positioned corporations to be held criminally liable, which became known as corporate criminal responsibility. This theory adopts the norm of delegation in Article 1367 of the Civil Code as explained in letter c point 1) above. Law Number 1 of 2023 concerning the Criminal Code adopts the Vicarious Liability theory, stated in Article 37 point b which states that in cases determined by the Law, every person can be held accountable for criminal acts committed by others (Mahardika, 2022). Furthermore, the doctrine of corporate criminal liability states that legal entity may be criminally accountable when the actions of a person have a rational basis that the legal entity authorizes or permits the action to be committed (Dinh et al., 2020).

In practice, positioning a corporation as a party that can be held accountable, while it is not easy but it is still possible. Barda Nawawi explained that the existence of corporate liability must first be clear in determining the subject that can be held accountable so that it begins with determining who the perpetrator or maker of the criminal act is and determining the perpetrator or maker is quite a difficult matter (Irmawanti & Arief, 2021). Although the corporation is positioned as a party that can be held criminally liable, in carrying out its legal actions it is represented by its

management, therefore logically it is not the corporation that commits the act, but the management that can be held criminally liable. Finding the management that must be held responsible is not an easy matter, due to the complexity of authority and the correlation of structural relations of management in cooperatives resulting in the need for efforts to disclose criminal acts committed by corporations. However, the elements of intent and negligence can be determined by looking at the management who acts for and on behalf of the corporation. The behaviour of the corporation as a way of achieving the goal by using its complementary tools, so it can be seen that the corporation has intentionality and/or negligence which is taken over from the management who act for and on behalf of the corporation.

Related to corporate liability, it can be seen from the actions of the management that have statutory objectives of a corporation or can also be from corporate policy (*bedrijfspolitiek*) (Hendriawan, 2022). More easily, in principle, it is only enough to know that the action is in accordance with the scope of work (*feitelijke werkzaamheden*) of the corporation (Usman, 2023). The concept of functional behaviour will not be well understood, if the actions carried out in reality in the community are not seen as corporate actions.

In its development, the theory of vicarious liability gave birth to the doctrine of liability without fault, which later developed into the theory of strict liability (Weriansyah & Ramadani, 2022). In strict liability, the punishment is only based on the fulfilment of the elements of the criminal offence without considering the factor of the perpetrator's guilt. The perpetrator can be punished if it can be proven that the perpetrator has committed an act prohibited by the criminal provisions *(actus reus*) without looking at his inner attitude (*mens rea*). This Strict Liability theory is

adopted by Health Law concerning the Criminal Code in Article 37 point a which states that in the case determined by the Law, every person can be punished solely because the elements of the criminal offence have been fulfilled without regard to the existence of guilt.

Regarding the subject of the offence, with the development of society, there is a demand for the recognition of corporations as perpetrators who can be held accountable in criminal law. This is later known as corporate liability. Regarding the criminal liability system, the principle of strict liability emerged as an exception to the principle of fault. Strict Liability is an element of fault which does not need to be proven by the plaintiff as a basis for payment of compensation (Aqil et al., 2022). This provision is a lex specialis in tort actions in general. Since the enactment of the principle of absolute liability in Indonesia, it is necessary to review how it is applied in Indonesia, especially in the process of proving corporate criminal liability. An important factor related to the principle of strict liability is the burden of proof (Kusuma, 2022). One of the criteria that determines the distribution of the burden of proof should be given to the party that has the greatest ability to provide evidence about something about the losses caused by the corporation's operational activities.

The application of strict liability for hospitals in the context of malpractice is very important because it provides stronger legal protection for patients and ensures the accountability of hospitals for the actions of medical staff. Strict liability means that the hospital is responsible for the losses caused by the negligence of healthcare workers, without needing to prove any fault or negligence on the part of the hospital itself. In this context, the principle of "res ipsa loquitur" or "the thing speaks for itself" applies, where the facts indicate that the loss occurred due to negligence in

healthcare services, thus the hospital must be held accountable. With the existence of strict liability, patients receive legal certainty that they can claim compensation if they suffer losses due to malpractice, without having to prove specific fault on the part of the doctor or medical staff. The application of this principle also serves as a deterrent for hospitals and medical personnel to improve service standards and reduce the risk of malpractice.

As a legal entity, hospitals have the responsibility to ensure that all medical actions are carried out to a high standard. If malpractice occurs, the hospital can be held accountable even if it is not directly involved in the action. Although hospitals are directly responsible to patients, they can use the right of recourse to seek compensation from the medical personnel who committed negligence, maintaining a balance between patient protection and the rights of healthcare workers (Anatami et al., 2021). Thus, the implementation of strict liability in hospitals is an important step to protect patients, improve the quality of healthcare services, and ensure that healthcare institutions are accountable for the actions of medical personnel.

Reconstructive efforts related to the regulation of criminal liability for hospitals in cases of malpractice towards patients should indeed be carried out by revising the provisions of Article 440 of the Health Law. The provisions in Article 440 of the Health Law need to regulate criminal sanctions for hospitals in cases of malpractice against patients committed by healthcare workers or medical personnel. The provision of criminal sanctions for hospitals in cases of malpractice against patients by healthcare or medical personnel needs to be implemented by emphasizing the theory of strict liability, where patients should not be burdened with a heavy and complicated burden of proof. Therefore, the burden of proof should be placed on the

hospital to demonstrate that the malpractice against patients by healthcare or medical personnel is not the fault of the hospital. The hospital, as a legal entity, should have its criminal liability regulations formulated with specific fines to ensure that hospitals conduct more supervision and training, thereby preventing malpractice by healthcare or medical personnel in hospitals.

C. CONCLUSION

The phenomenon of medical malpractice in Indonesia shows a significant increase caused by the lack of doctor experience, limited medical equipment, and insufficient hospital supervision. Malpractice can cause permanent disability or death, and many cases go unreported due to the low public awareness of patient rights. Patients have the right to receive safe and quality healthcare services, as regulated by the 1945 Constitution and the Health Law. Criminal sanctions for medical personnel who commit malpractice are regulated by the Health Law, with imprisonment or fines depending on the impact. However, hospitals cannot yet be held criminally liable for malpractice committed by medical personnel. Criminal law in malpractice cases must be applied with caution and only as a last resort (ultimum remedium), while ethical sanctions can be imposed for malpractice that causes minor or moderate injuries.

The reconstruction of criminal liability regulations for hospitals in malpractice cases can be carried out by affirming the application of the strict liability concept for hospitals in malpractice cases, thereby protecting patients and ensuring the hospital's accountability for the actions of medical staff. With strict liability, hospitals are responsible for losses arising from medical negligence, without the need to prove the hospital's fault. This concept also serves as a deterrent to improve service standards

and reduce the risk of malpractice. Hospitals can be held accountable even if they are not directly involved, and they can use the right of recourse to claim compensation from the medical staff. Therefore, there is a need to revise Article 440 of the Health Law to regulate criminal sanctions for hospitals involved in malpractice, emphasizing the theory of strict liability, where the hospital must prove that the malpractice was not their fault.

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