

# Legal Responsibility for the Negligent Conduct of Hospital Nurses Resulting in Newborn Baby Swaps

Vira Komala<sup>[1]</sup>, Edi Setiadi<sup>[2]</sup> & Sri Ratna Suminar<sup>[3]</sup>

<sup>[1], [2], [3]</sup> Faculty of Law, Universitas Islam Bandung, Indonesia

Email: [vira\\_kom@yahoo.com](mailto:vira_kom@yahoo.com), [edi.setiadi@unisba.ac.id](mailto:edi.setiadi@unisba.ac.id), [sriratnasuminar9@gmail.com](mailto:sriratnasuminar9@gmail.com)

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\*Corresponding Author:  
[danni\\_dur@yahoo.com](mailto:danni_dur@yahoo.com)

**Abstract:** The obligation to respect human rights is embedded in the 1945 Constitution, specifically in Article 28 B, paragraph (2), which stipulates that every child has the right to live, thrive, and develop, as well as the right to be protected from violence and discrimination. To guarantee that healthcare measures adhere to established standards and are safe, hospitals must implement procedures that uphold patient rights while patients receive services and care within the hospital. Furthermore, these procedures must ensure the safety and well-being of patients, particularly babies, who are more susceptible to various forms of discrimination and violence throughout their lives. These steps can help to improve patient safety and prevent incidents. This study aimed to determine the hospital's legal obligations and consequences for nurses arising from negligence, which results in the swapping of newborn babies. The findings were derived from the principles of the Doctrine of Vicarious Liability, which asserts that hospitals are obligated to compensate for damage in accordance with Article 193 of Law Number 17 of 2023 concerning health and that nurses may face criminal charges under Article 277 of the Criminal Code.

**Keywords:** Legal Responsibilities; Hospitals; Nurses; Babies.

## 1. INTRODUCTION

As mandated in Article 52 of the Human Rights Law, the government established statutory regulations to protect children's rights. Two key principles are fundamental to the protection of children's rights:<sup>1</sup> first, every child is entitled to the protection of their parents, family, society, and the state; and second, children's rights are human rights that are recognized and protected by law, even before birth.<sup>2</sup> Article 56, paragraph (1) of the

<sup>1</sup> Tedy Sudrajat, "Law Protection Towards Children As A Part Of Human Rights In The Perspective If The Indonesian Family Law," *Kanun Jurnal Ilmu Hukum* 54, no. 13 (2011): 111-132.

<sup>2</sup> Oksidelfa Yanto et al., "Legal Protection of the Rights of the Child Victims in Indonesian Juvenile Criminal Justice System," *Jurnal Yustika: Media Hukum Dan Keadilan* 13, no. 1 (2020): 24-35, <https://doi.org/https://doi.org/10.24123/yustika.v23i01.2818>.

Human Rights Law stipulates that "every child has the right to be aware of the identity of his parents, as well as to be nurtured and looked after by them."<sup>3</sup>

To protect the welfare of infants and children, Article 41, paragraph (4) of Law No. 17 of 2023 on Health mandates that the Central Government, Regional Government, and broader community jointly undertake health initiatives for vulnerable groups that adhere to established safety and affordability standards.<sup>4</sup> To guarantee that healthcare practices adhere to established standards and maintain patient security, hospitals must establish procedures that uphold patient rights while patients receive services and care in the hospital, and are responsible for patient safety, particularly for infants at considerable risk, to improve patient safety.

Implementing patient safety target standards, such as the accurate identification of patients, is crucial for ensuring patient safety in hospitals. However, this process is not without challenges, as errors in patient identification can still occur. Hospitals must accurately identify patients in particular situations, including newborns who have not yet been given a name. This is stipulated in the Decree of the Minister of Health (No. HK.01.07/MENKES/1128/2022), which outlines standards for hospital accreditation.

Nurses, as healthcare professionals who provide healthcare services in hospitals, are expected to perform their duties with utmost competence. Article 291, paragraph (1) of the Health Law mandates that healthcare providers adhere to professional, service, and operational standards.

Upon examining the occurrences in Indonesia, as reported through various media outlets, including television, online media, and mass media, there was a growing number of cases involving newborn baby swaps at the hospital. These reports have garnered significant public attention, leading the author to undertake research and analysis throughout the composition of this article.

As organizations that operate within the healthcare industry, hospitals play a significant role in achieving optimal levels of public health. To ensure efficient management of their activities, it is essential that hospitals prioritize the responsibilities of healthcare professionals, such as medical and nursing personnel, who are responsible for carrying out their duties and exercising their authority based on their expertise and competency. The provision of healthcare services by hospital personnel is not always successful in achieving desired outcomes. In certain instances, healthcare workers may neglect their duties, resulting in unfortunate consequences. If this occurs, the hospital, as a legal entity in the form of a corporation, may be subject to litigation and be held accountable for the negligent actions of its healthcare workers. Under the doctrine of corporate justification, particularly the Vicarious Liability Doctrine, staff members on duty at the hospital can be considered representatives of the hospital.<sup>5</sup>

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<sup>3</sup> Bambang Sukamto, Nur Aida, and Ritawati, "Special Protection for Children in Conflict with the Law in Indonesia," *AMCA Journal of Community Development* 3, no. 1 (2023): 53–57, <https://doi.org/https://doi.org/10.51773/ajcd.v3i2.207>.

<sup>4</sup> Iman Pasu Marganda Hadiarto Purba et al., "Legal Protection of The Right to Health for People with Long-Term Health Impact Due to Disaster in Indonesia," *Lex Scientia Law Review* 7, no. 2 (2023): 845–50.

<sup>5</sup> D. Harmoni, F. Fahmi, and Y. Yetti, "Tanggung Jawab Rumah Sakit Atas Kelalaian Tenaga Medis Dalam Pelayanan Kesehatan," *Journal Of Science And Social Research* 5, no. 2 (2022): 302–11.

## 2. RESEARCH METHODS

When composing this legal writing, suitable research methods were employed as a guide to address these issues. The selected research approach is normative juridical and primarily relies on secondary data derived from library sources.<sup>6</sup> The strategy employed is based on researching legal standards that function as benchmarks to guide appropriate behavior.<sup>7</sup> To implement this strategy, a study was conducted using norms derived from secondary data that included primary, secondary, and tertiary legal materials.

## 3. RESULTS & DISCUSSION

### 3.1. Legal Aspects of the Relationship Between Hospitals And Nurses

Healthcare professionals hold significant positions in hospital health services. Among these professionals, nurses were identified in the provisions of Article 199, paragraph (1), letter (b), and paragraph (3) of the Health Law. In accordance with the Decree of the Ministry of Health, No. 01.07/Menkes/425/2020, which outlines professional nursing standards, a nurse is defined as an individual who has completed higher education in nursing, both domestically and internationally, and whose qualifications are recognized by the government through legislation.

Hospitals, as stipulated in Article 1, Section 10 of the Health Law, offer comprehensive healthcare services that cover promotional, preventive, curative, rehabilitative, and palliative care. These services are delivered through inpatient, outpatient, and emergency care services. Hospital operations are carried out by organized healthcare professionals who offer a range of permanent medical and non-medical facilities as well as continuous medical and nursing care, including diagnostic services and patient treatment.<sup>8</sup>

Hospitals are obligated to provide high-quality healthcare services. It is imperative that all healthcare services provided to patients meet the standards of statutory regulations. Healthcare services provided by medical professionals and hospital nurses must adhere to professional standards. To maintain high-quality services, it is crucial that hospitals prioritize the competency of their staff. Hospitals bear the responsibility of ensuring that the services rendered are exceptional or at least meet the established standards.<sup>9</sup>

As a legal entity, the hospital is held responsible for the actions of its employees if they cause harm to others, a concept known as vicarious liability in legal science. The obligations of a hospital toward its personnel are rooted in the legal principle of "employee-employer relationship," which encompasses concepts such as vicarious liability, respondent superior, or master-servant relationship, and let the master answer as per the legal literature.<sup>10</sup>

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<sup>6</sup> Muhammad Abdul Kadir, "Hukum Dan Penelitian Hukum.," *Bandung : PT. Citra Aditya Bakti.* 8, no. 1 (2015): 52.

<sup>7</sup> Defri Liber Sonata, "Metode Penelitian Normatif Dan Empirik," *Fiat Justisia* 8, no. 1 (2018): 15-20.

<sup>8</sup> S. Wahyudi, "Tanggung Jawab Rumah Sakit Terhadap Kerugian Akibat Kelalaian Tenaga Kesehatan Dan Implikasinya," *Jurnal Dinamika Hukum* 11, no. 3 (2011): 505-521, <https://doi.org/https://doi.org/10.20884/1.jdh.2011.11.3.178>.

<sup>9</sup> Dimas Noor Ibrahim, "Tanggung Jawab Hukum Rumah Sakit Terhadap Dokter Dalam Perjanjian Medis Di Indonesia (Studi: Rumah Sakit Siaga Raya)," *Jurnal Ilmiah Publika* 2, no. 10 (2022): 275, <https://doi.org/https://doi.org/10.33603/publika.v10i2.7556>.

<sup>10</sup> Febi Irianto, "Pertanggungjawaban Hukum Pidana Rumah Sakit Sebagai Korporasi Pelayanan Kesehatan," *Sol Justicia* 4, no. 2 (2021): 163-74, <https://doi.org/https://doi.org/10.54816/sj.v4i2.459>.

The legal obligations of an employer regarding the actions or inaction of its employees are governed by the Indonesian Civil Code, Article 1367, jointly with Articles 1366 and 1365. These provisions establish the employer's responsibility for any losses sustained by a third party as a result of employee conduct. If a working relationship exists between an employer and employee, it is typically characterized by the employee receiving remuneration and implementing the directives of their supervisor, such as a hospital. In accordance with civil law, employers may be held accountable for any damage or injury inflicted upon patients by the actions of their employees. Thus, the loss suffered must have resulted from an illegal act. This encompasses losses, and the act must have a direct connection in that the loss is caused by the perpetrator's misconduct.<sup>11</sup> A mistake occurred when the perpetrator had either an intention or negligence (carelessness).

### 3.2. Hospital, Nurse and Patient Relationships

Hospitals, healthcare professionals, and patients are the three distinct legal entities in the healthcare sector. Interactions between these entities are governed by the principles of civil law and designed to establish the rights and obligations of each party. Legal relationships among hospitals, healthcare professionals, and patients are critical components of the healthcare system. In terms of the relationships between hospitals, healthcare professionals, and patients, the rights of one party are typically balanced by the obligations of the other party and vice versa.<sup>12</sup> The regulations governing the rights and obligations of hospitals, healthcare professionals, and patients are as follows:<sup>13</sup> (1) Article 189, paragraph (1) and Article 191 of the Health Law delineate the rights and obligations of hospitals; (2) Article 273 and Article 274 of the Health Law regulate the rights and obligations of health workers; and (3) Articles 276 and 277 of Health Law specify the rights and obligations of patients.

Based on the provisions outlined regarding the obligations of hospitals and healthcare professionals, hospitals and healthcare professionals, including nurses, are responsible for fulfilling their obligations. The primary objective of these obligations is to ensure the provision of quality health care services and protection for patients.

The Health Law, specifically Article 3, outlines the objectives of health administration, which include patient safety, human health resources, and the community at large. When delivering healthcare services in hospitals, nurses are expected to adhere to professional standards, service standards, and standard operational procedures as part of good governance.<sup>14</sup> Article 291, paragraph (1) of Law Number 17 of 2023 on Health stipulates, "All medical and health personnel are required to adhere to professional standards, service standards, and standard operating procedures while providing healthcare services."

The government, along with regional authorities, is committed to protecting infants and children from any form of discrimination or violence that could jeopardize their health. This commitment is evident in the provisions of Article 46 of the Health Law, which mandates that health services be provided based on the specific needs of these vulnerable

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<sup>11</sup> Diana Yusyanti, "Hospital Criminal Liability for Patient's Damages Due to Health Service Errors during the Covid-19 Pandemic," *Jurnal Penelitian Hukum De Jure* 21, no. 4 (2021): 489-506, <https://doi.org/http://dx.doi.org/10.30641/dejure.2021.V21.489-506>.

<sup>12</sup> Wila Chandrawila Supriadi, *Hukum Kedokteran* (Bandung: CV.Mandar Maju, 2001).

<sup>13</sup> Achmad Busro, "Aspek Hukum Persetujuan Tindakan Medis (Inform Consent) Dalam Pelayanan Kesehatan," *Law & Justice Journal* 1, no. 1 (2018): 11.

<sup>14</sup> J Guwandi, *Medical Law; Hukum Kesehatan* (Jakarta: Universitas Indonesia Press, 2004).

individuals.<sup>15</sup> To ensure the provision of secure and efficient healthcare services, hospitals must adhere to the Patient Safety Targets outlined in Minister of Health Regulation Number 11 of 2017. Article 5, paragraph (5), subsection a of Minister of Health Regulation Number 11 of 2017 on Patient Safety, specifies that Patient Safety Targets extend to attaining accurate patient identification.

The primary objective of implementing effective patient-identification systems is to prevent errors that may arise from incorrect identification. Hospitals must take the necessary measures to ensure that patients are accurately identified, particularly in unique situations, such as newborns who are not immediately assigned a name, as specified in the Decree of the Minister of Health No. HK.01.07/MENKES/1128/2022 on Hospital Accreditation Standards.<sup>16</sup>

The implementation of policies and procedures typically mandates the use of at least two methods to identify a patient, which may include the patient's name, date of birth, identification number using a medical record, wrist band with a barcode, or any other appropriate means.<sup>17</sup> The identity bracelet worn by the patients reflects their gender in the following manner:<sup>18</sup>

- a. Men wearing blue bracelets.
- b. A female patient had a pink bracelet.
- c. If the patient had an allergy, they were given a red bracelet, and the allergy was recorded on the bracelet.
- d. Patients at risk of falling were given yellow bracelets.
- e. Do not resuscitate (DNR) patients administered purple bracelets.

In health care facilities, measures are taken to ensure the safety of infants, including the implementation of regulations to prevent mix-ups. One such regulation is the use of a file identification system that contains information on both the mother and the newborn. Before taking a baby out of the room, the nurses must confirm the match with the corresponding data. Upon delivering the baby to parents, the process was repeated to confirm the accurate delivery of the same infant. Verification of the data was performed by scanning the numeric code on the identification bracelets of both the mother and baby. Errors may arise, even when the system is operational. Neonatal information, such as data from a wrist or ankle bracelet, can easily be tampered with or altered. If the nursing staff fails to adhere to established protocols, infant swaps can occur.

The government assesses and evaluates the quality of hospital services using established quality indicators. As outlined in Article 4, paragraph (4) of the Minister of Health Regulation Number 30 of 2022, hospitals must implement 12 (twelve) National Quality Indicators. Among these indicators, one that must be implemented according to Article 4,

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<sup>15</sup> Soekidjo Notoatmodjo, *Etika Dan Hukum Kesehatan* (Jakarta: Rineka Cipta, 2010).

<sup>16</sup> Mohammed Hussein et al., "The Impact of Hospital Accreditation on the Quality of Healthcare: A Systematic Literature Review," *BMC Health Serv Res* 21 (2021): 1–12, <https://doi.org/https://doi.org/10.1186/s12913-021-07097-6>.

<sup>17</sup> Yosiana Silalahi, Sri Wahyuni Nasution, and Chrismis Novalinda Ginting, "The Effect Of Implementation Of Patient Identification Based On The Pall Accreditation Standards On Improving The Patient Safety Program At Royal Prima General Hospital In 2022," *International Journal of Health and Pharmaceutical* 2, no. 4 (2022): 765–69, <https://doi.org/http://dx.doi.org/10.51601/ijhp.v2i4.88>.

<sup>18</sup> Hana Ningtias and Sri Sundari, "Analysis of the Implementation of Patient Identification in Inpatient Care," *Open Access & Peer Reviewed Multidisciplinary Journal of Biology, Medicine and Biochemistry* 1, no. 18 (2024): 1–18, <https://doi.org/https://doi.org/10.15562/ijbs.v18i1.527>.

paragraph (4), letter c, is compliance with patient identification. Each quality indicator was measured using a quality indicator profile that adhered to the following format.

**Table 1.** Patient Identification Compliance of the Quality Indicator Profile Format

Indicator title	Patient Identification Compliance
Rationale	<ol style="list-style-type: none"> <li>1. Regulation of the Minister of Health regarding Patient Safety.</li> <li>2. Accurate identification is very important to ensure patient safety during the service process and prevent patient safety incidents.</li> <li>3. To ensure the accuracy of patient identification, indicators are needed that measure and monitor the level of compliance of service providers in carrying out the identification process. With these indicators, it is hoped that service providers will make identification a routine process in the service process</li> </ol>
Quality Dimensions	Safety
Objective	Measuring the compliance of service providers to identify patients in carrying out service actions
Operational definition	<ol style="list-style-type: none"> <li>1. Service providers consist of medical personnel and health workers.</li> <li>2. Correct patient identification is an identification process carried out by the service provider using a minimum of two identity markers such as: full name, date of birth, medical record number, NIK as determined at the hospital.</li> <li>3. Identification is carried out visually (seeing) and/or verbally (spoken).</li> <li>4. The service provider correctly identifies the patient in every situation related to patient intervention such as: <ol style="list-style-type: none"> <li>a. Administration of treatment: administration of drugs, administration of intravenous fluids, administration of blood and blood products, radiotherapy, and nutrition.</li> <li>b. Procedure: surgery or other invasive procedures according to hospital policies.</li> <li>c. Diagnostic procedures: sampling, lumbar puncture, endoscopy, cardiac catheterization, radiological examination, etc.</li> <li>d. Certain conditions: patient unable to communicate (with ventilator), infant patient, unconscious patient, twins.</li> </ol> </li> <li>5. Patient identification is considered correct if the service provider identifies all intervention actions carried out correctly.</li> </ol>
Indicator Type	Process
Units of measurement	Persentase
Numerator	The number of service providers who correctly identified

(pembilang)	patients during the observation period
Denominator (penyebut)	Number of service providers observed in the observation period
Achievement Targets	100%
Criteria:	Inclusion Criteria: All service providers who provide health services. Exclusion Criteria: There isn't any
Formulas	$\frac{\text{Jumlah pemberi pelayanan yang melakukan identifikasi pasien secara benar dalam periode observasi}}{\text{Jumlah pemberi pelayanan yang diobservasi dalam periode observasi}} \times 100\%$
Method of collecting data	Observation
Data source	Observation results
Data collection instrument	Patient Identification Compliance Observation Form
Sample Size	1. Total sample (if the population is $\leq 30$ ) 2. Slovin Formula (if the population is $> 30$ )
Sampling Method	<i>Non Probability Sampling - Consecutive Sampling</i>
Data Collection Period	Monthly
Data Presentation	<input type="checkbox"/> Tabel <input type="checkbox"/> Run Chart
Data Analysis and Reporting Period	Monthly, Quarterly, Yearly
Person responsible	Head of Medical and Nursing Services Division

National Indicators for Quality of Health Services have been designed to serve as valuable resources for the implementation of quality indicator measurements within hospitals. These measurements are intended to assess the efforts made by the hospital to improve the quality of service and provide feedback to health service providers and hospital management. Measuring service quality is essential for promoting public transparency, and can serve as a benchmark for comparison to identify the best practices for learning. Additionally, it is expected to encourage continuous improvements in the quality culture of hospitals

### 3.3. Hospital as Corporation

Etymologically, the term "corporation" is derived from the Latin word "corpus," which means "body." In Dutch, it is referred to as "corporate," in English, it is known as "corporation," and in German, it is called "Körperschaft." Therefore, a corporation is a body that has been transformed into a legal entity, or a body that is created by human actions, rather than one that is formed naturally like the human body.<sup>19</sup>

Legislation not only governs people as legal subjects, but also encompasses other legal subjects, which include legal entities that have legal rights and responsibilities, such as individuals who are recognized as legal subjects.<sup>20</sup> Corporations, commonly referred to as

<sup>19</sup> Muladi and Dwidja Priyanto, *Pertanggungjawaban Pidana Korporasi* (Jakarta: Kencana, 2010).

<sup>20</sup> H.F.A. Vollmar, *Pengantar Studi Hukum Perdata, II* (Jakarta: C.V. Rajawali, 1984).

"legal entities" within the field of civil law, cannot be comprehended without considering the following theoretical perspectives: The first theory, proposed by Carl von Savigny, C.W. Opzoomer, A.N. Houwing and Langemeyer assert that legal entities or corporations are fictional personas or "persons" created by law.<sup>21</sup>

Legal entities are typically represented by their management, who is responsible for implementing legal rights and obligations both internally and externally. Subekti (2005) states that a legal entity is a body or association that possesses rights and can take actions similar to those of a human being with its own assets that can be subject to legal proceedings.<sup>22</sup>

According to Article 1653 BW, there are three categories of legal entities:<sup>23</sup>

- a. Legal entities established by the government or general authority, such as the government, regional governments (provinces, districts/cities), and banks established by the government.
- b. Legal entities recognized by the government or public authority, such as associations, churches, and religious organizations.
- c. Legal entities, such as limited liability companies (PT), insurance associations, and shipping, are established for specific purposes that do not conflict with law or morality.

Legal corporate entities are recognized as legal subjects, as evidenced by the operation of healthcare institutions under Article 185 of the Health Law, established by the Central and Regional Governments and the community. These institutions can adopt financial management practices that are similar to those utilized by public service agencies. Hospitals established by the community should take the form of legally recognized entities that are exclusively engaged in healthcare services.<sup>24</sup>

Article 186 of the Health Law establishes the organizational structure of hospitals, which encompasses leadership, medical services, nursing, medical and non-medical support, administrative implementation, and operational elements. According to Article 197 of the Health Law, health resources are categorized into medical personnel, health personnel, and supporting or health support personnel.

As legal entities, hospitals hold legal rights and responsibilities, as defined in Articles 189 and 191 of the Health Law. In accordance with Article 189, paragraph (1), letter b of Law Number 17 of the Health Law, one of the hospitals' duties is to provide safe, high-quality, non-discriminatory, and effective healthcare services by prioritizing patients' interests according to Hospital Service Standards. Consequently, the hospital is liable to compensate for any losses incurred owing to negligence on the part of the nurse, as outlined in Article 193 of the Health Law.

Article 193 of the Health Law stipulates that "Hospitals are legally accountable for all losses resulting from negligence committed by their Hospital Health Resources." If a medical professional makes an error while providing treatment, the head and owner of the

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<sup>21</sup> Agus Surono, *Pertanggungjawaban Pidana Rumah Sakit*, 1Jakarta ed. (UIA Press Universitas Al-Azhar Jakarta, 2016).

<sup>22</sup> Ampera Matippana, *Tanggung Jawab Hukum Pelayanan Medis Dalam Praktek Kedokteran* (Jawa Timur: Uwais Inspirasi Indonesia, 2016).

<sup>23</sup> R. Subekti, *Kitab Undang-Undang Hukum Perdata* (Jakarta: PT.Pradnya Paramita, 2003).

<sup>24</sup> Ninik Maryanti, *Malpraktik Kedokteran Dari Segi Hukum Pidana Dan Perdata* (Jakarta: Bina Aksara, 1998).



hospital are not necessarily subject to criminal liability. However, the principle of vicarious liability applies solely to civil liability in such cases.

### 3.4. Legal Consequences of Negligence by the Nurse

Negligence refers to a failure to exercise reasonable care, characterized by not performing actions that a prudent individual would undertake or by engaging in actions that a prudent individual would avoid in a similar situation.<sup>25</sup> Negligence may manifest in three primary forms: *malfeasance*, which entails engaging in actions that are unlawful or implementing policies, decisions, or plans that are inappropriate or unlawful; and *misfeasance*, which refers to the act of performing a task or providing medical treatment inappropriately or by violating established procedures. It involves carrying out a decision or action that is considered proper but executing it improperly or failing to adhere to the necessary protocols. *Non-feasance* refers to the failure of a medical professional to perform obligatory medical procedures.<sup>26</sup>

Healthcare providers are obligated to adhere to established professional standards.<sup>27</sup> According to two experts in Dutch Health Law, the standards for the medical profession are as follows:<sup>28</sup>

- a. Leenan gave the following opinion: "The standard norms of the medical profession can be formulated as follows: act conscientiously by medical standards as would be done by a doctor who has the average ability of the same category of medical expertise in the same circumstances in a manner that exists in an appropriate balance to achieve the goals of concrete action"
- b. According to Van der Mijn, there are three general standards that health workers must follow in the performance of their duties: authority, average ability, and general accuracy.

Nurses were required to adhere to the professional nursing standards set forth by the Decree of the Minister of Health No. 01.07/Menkes/425/2020. These standards comprise competency standards and professional codes of ethics. Competency standards ensure that the public receives reliable nursing care from competent nurses.<sup>29</sup>

For an action to be considered criminally responsible, it must involve some form of an error. Two primary types of errors can occur: intentional (*opzet*) and negligence (*culpa*).

#### 1. Intentional (*opzet*)

According to the Indonesian criminal law theory, intentionality can be categorized into three types:<sup>30</sup>

##### a. Purposeful intention

Deliberate intent, often referred to as perpetrator intent, can be held responsible and understood by the general public. In cases where such intent is included in a criminal

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<sup>25</sup> John Healy., *Medical Negligence: Common Law Perspectives* (London: Sweet and Maxwell, 1999).

<sup>26</sup> CL Wood, "Historical Perspectives on Law, Medical Malpractice, and the Concept of Negligence," *Emerg Med Clin North Am.*, 1993, <https://www.ncbi.nlm.nih.gov/pubmed/8404569>.

<sup>27</sup> Endang Kusuma Astuti, *Transaksi Terapeutik Dalam Upaya Pelayanan Medis Di Rumah Sakit* (Bandung: PT. Citra Aditya Bakti, 2009).

<sup>28</sup> Widodo Tresno Novianto, *Sengketa Medik Pergulatan Hukum Dalam Menemukan Unsur Kelalaian Medik* (Surakarta: UNS Press, 2007).

<sup>29</sup> Wila Chandrawila Supriadi, *Hukum Kedokteran* (Bandung: CV. Mandar Maju, 2021).

<sup>30</sup> A. Hanafi, *Azas-Azas Hukum Pidana Islam* (Jakarta: Bulan Bintang, 1993).

act, the offender faces criminal repercussions. This specific intention suggests that the offender intends to accomplish a certain outcome, which is the primary reason for the punishment threat.

b. Deliberation with certainty

The intention is present when the perpetrator's actions do not directly lead to the outcome that constitutes the offense but when the individual is fully aware that this outcome will occur as a consequence of their actions.

c. Deliberation and possibility

This purposeful motive is not accompanied by the slightest degree of confidence that the outcome in question will transpire but only envisions the remote possibility of that outcome.

2. Negligence (*culpa*)

Negligence, referred to as *culpa* in legal contexts, lies between intentional and accidental actions.<sup>31</sup> Compared to intention, *culpa* is considered less severe, resulting in it being classified as a quasi-offense (*quasidelict*) and qualifying for sentence reduction.<sup>32</sup> *Culpa* offenses are typically categorized as either resulting in consequences or not resulting in consequences. However, it is important to note that the only type of *culpa* offense punishable by law is carelessness. The distinction between these two categories is clear: If negligence leads to a consequence, then an offense of negligence is committed.<sup>33</sup>

Article 310 of the Health Law governs the settlement of disputes between patients and medical staff and healthcare workers. Article 310 of the Health Law states that:

"If physicians or other healthcare professionals are believed to have committed an error in their professional practice that leads to patient harm, it is crucial that any resulting disputes are initially resolved through alternative dispute resolution methods outside of the court system."

The provisions of Article 310 of the Health Law are in alignment with the principles of restorative justice, as outlined in "Integrated Criminal Justice System and Law Enforcement System in Indonesia" by Edi Setiadi and Kristian. Restorative justice is defined as the process of resolving criminal cases that aims to achieve justice for both the perpetrator and the victim, as well as the broader community.<sup>34</sup> The restorative approach, commonly referred to as restorative justice, is a form of justice that prioritizes the active involvement of all parties involved in a particular criminal act.<sup>35</sup> According to Jonkers, there are key elements of negligence in criminal law that serve as a benchmark: acts that are contrary to law (*wederrechtelijkeheid*), consequences that can be foreseen (*voorzienbaarheid*), and consequences that can be avoided (*vermijdbaarheid*).

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<sup>31</sup> Poppy Putri Hidayani, "Medical Negligence Concept in Malaysia: A Legal Study," *Cendekia: Jurnal Hukum, Sosial Dan Humaniora* 1, no. 4 (2023): 298–314, <https://doi.org/https://doi.org/10.5281/zenodo.8422287>.

<sup>32</sup> See HP & Tan CT Tay Pek San, "Medical Negligence Litigation-Call for a Reconsideration," *Malayan Law Journal* 3 (1998): lxxxxi–xcvi.

<sup>33</sup> Andi Hamzah, *Sistem Pidana Dan Pemidanaan Indonesia Dari Retribusi Ke Reformasi* (Jakarta: Pradnya Paramita, 1985).

<sup>34</sup> Diane Crocker, "Implementing and Evaluating Restorative Justice Projects in Prison," *Criminal Justice Policy Review* 26, no. 1 (2015): 45–64, <https://doi.org/https://doi.org/10.1177/0887403413508287>.

<sup>35</sup> Edi Setiadi dan Kristian, *Sistem Peradilan Pidana Terpadu Dan Sistem Penegakan Hukum Di Indonesia*, Prenamedia Group, Cetakan ke-2, Jakarta, 2019, Hlm 217

With regard to healthcare services provided in hospitals, it is necessary to demonstrate that healthcare providers have committed professional errors in establishing criminal responsibility. This applies to healthcare workers who provide healthcare services, treatments, or medical procedures within the hospital setting. Criminal liability may be imposed on healthcare workers who commit mistakes when providing these services.<sup>36</sup>

According to Article 177 of the Criminal Code, nurses may be held criminally liable if they are found to have been negligent, and such negligence results in swaps of newborn babies within a hospital setting. The provisions of Article 277 of the Criminal Code, which remains in effect, stipulate that any individual who intentionally misappropriates another person's identity may be subject to a maximum penalty of six years' imprisonment."

In the newly enacted Law No. 1 of 2023, which takes effect three years after its promulgation in 2026, Article 401 stipulates the following provisions: "Any person who misappropriates someone's identity shall be subject to a punishment of embezzlement, with a maximum imprisonment of six years or a maximum fine of category V, amounting to Rp. 500,000,000,- (five hundred million rupiah)."

#### 4. CONCLUSION

Professional misconduct committed by nursing staff while providing care in a hospital setting does not automatically lead to criminal liability for the head of hospital. The principle of vicarious liability extends only to civil liability, as stipulated in Article 193 of the Health Law. The legal responsibility outlined in this law comes solely from a civil perspective. Nurses may also face criminal liability if they have committed an unlawful act and cause harm through negligence or error, resulting in a direct link between negligence or error and the resulting loss.

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<sup>36</sup> Sigit Lesmonoaji, *Pertanggungjawaban Pidana Atas Perbuatan Kelalaian Pada Tindakan Medis Di Rumah Sakit* (Surabaya: PT. Scopindo Media Pustaka, 2020).

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