

# Strict Liability as a Legal Protection for Hospitals from Lawsuits in the Implementation of Electronic Medical Records (EMR)

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## Abstract

The implementation of Electronic Medical Records (EMR) which replaces the manual paper-based recording system, is designed to improve the efficiency, accuracy, and integration of patient medical data, thus providing great benefits for hospitals and patients. However, the digitalization of health services brings new challenges, especially in terms of legal protection for hospitals. As an institution that organizes EMR, hospitals face high legal risks, such as patient data leaks, privacy violations, or system failures. For example, if a patient's medical data is accessed by an unauthorized party due to a weakness in the security system, the patient can file a lawsuit against the hospital. Such lawsuits are often based on the argument that the hospital has a legal obligation to maintain the confidentiality of patient data in accordance with Article 189 of Law No. 17 of 2023. When this obligation is violated, even though there is no element of direct error, the hospital is still responsible for the losses incurred. This is in line with the principle of *strict liability*, where legal responsibility is attached to the perpetrator even though no element of negligence can be proven. This research discusses how to apply *strict theory liability* in providing legal protection for hospitals as organizers of Electronic Medical Records (EMR) to protect their good name from civil lawsuits; What legal strategies can be implemented by hospitals in mitigating the risk of civil lawsuits related to the management of Electronic Medical Records (EMR); This study uses a normative legal approach method. The results of the discussion in this study are that the Hospital as the organizer of Electronic Medical Records (EMR) has a great legal responsibility in maintaining the confidentiality of patient data and ensuring that the health information system runs according to established standards. Legal strategies that can be applied to mitigate the risk of civil lawsuits include compliance with regulations, the preparation of comprehensive internal policies, contract management with technology providers, the use of data protection insurance, and the application of a restorative approach in resolving disputes. By integrating these steps, hospitals can not only minimize legal risks, but also increase public trust in safe, quality, and technology-based health services. This reflects the application of the principles of prudence and accountability in accordance with the *strict theory liability* in the management of the RME system.

## Keyword:

Strict liability, Legal Protection, Hospital, Lawsuit, RME

## 1. INTRODUCTION

Digitalization in the healthcare sector has brought about major changes in the way medical services are provided, including in the management of patient data. One important innovation is the implementation of Electronic Medical Records (EMR) which replaces the manual paper-based recording system. EMR is designed to improve the efficiency, accuracy, and integration of patient medical data, thus providing major benefits to hospitals and patients. In Indonesia, this digitalization is regulated in various regulations, including Law of the Republic of Indonesia Number 17 of 2023 concerning Health (hereinafter referred to as the Health Law) and Law of the Republic of Indonesia Number 2022 concerning Personal Data Protection

(hereinafter referred to as the Personal Data Protection Law) which are the main legal basis for the implementation of EMR. However, the digitalization of healthcare services brings new challenges, especially in terms of legal protection for hospitals. As an institution that organizes RME, hospitals face high legal risks, such as patient data leaks, privacy violations, or system failures. All of these risks can trigger civil lawsuits that have the potential to damage the hospital's reputation. In the context of civil law, the concept of strict liability becomes relevant, where the hospital can be held responsible for losses that occur even though there is no element of direct fault. Strict theory liability provides a strong analytical basis for understanding how hospitals are responsible for managing EMR. This concept assumes that legal responsibility is not only based on negligence, but also on the direct consequences of system failures or privacy violations. In this context, the implementation of EMR becomes a legal challenge that requires strengthening legal protection, both through regulation and the implementation of comprehensive risk mitigation strategies. The importance of legal protection for hospitals is not only related to compliance with regulations, but also to maintaining public trust in health services. The reputation of a hospital is a very valuable asset in the health industry. Reputational damage due to lawsuits can affect patient trust and lead to a decrease in the number of visits, which has an impact on the sustainability of hospital operations. Therefore, this study focuses on how the theory of strict liability can be applied to provide effective legal protection for hospitals in managing EMR. In the Indonesian legal system, hospitals as legal entities can be held liable under Article 1365 of the civil code, which states that any unlawful act that causes harm to another person must be compensated by the responsible party. In the context of EMR, patient data leakage due to system failure or negligence in management can be considered an unlawful act. For example, if a patient's medical data is accessed by an unauthorized party due to a weakness in the security system, the patient can file a lawsuit against the hospital. Such lawsuits are often based on the argument that hospitals have a legal obligation to maintain the confidentiality of patient data in accordance with Article 189 of the Health Law. When this obligation is violated, even though there is no element of direct fault, the hospital is still responsible for the losses incurred. This is in line with the principle of strict liability, where legal responsibility is attached to the perpetrator even though no element of negligence can be proven. The Health Law provides a comprehensive regulatory framework to govern the management of EMR. Some relevant articles include:

1. Article 172: Regulates the obligation of hospitals to use information technology that meets security and reliability standards
2. Article 189: Affirms the hospital's obligation to maintain the confidentiality of patient data.
3. Article 190: Regulates the integration of health information systems with the National Health Information System to improve data integration and mitigate the risk of system failure
4. Article 193: Gives hospitals the right to obtain legal protection in the face of baseless claims.

Although this regulation provides strong legal protection, its implementation in the field faces various obstacles. Many hospitals, especially in remote areas, do not yet have adequate technological infrastructure to meet the standards set. In addition, the threat of cyber attacks is a serious challenge that tests the readiness of hospitals to protect patient data. Strict principle liability in civil law emphasizes that legal responsibility can be imposed on the perpetrator even though there is no element of fault. This principle is relevant in the context of RME because the risk of system failure or data leakage often does not depend on the intention or negligence of the hospital, but on the vulnerability of the technology used. Therefore, the hospital must be responsible for any losses arising from the use of the technology. In this context, regulations such as the Personal Data Protection Act provide additional protection for patients as data subjects. Article 4 of the Personal Data Protection Act states that medical data is sensitive personal data that must be protected. If a data leak occurs, the patient has the right to claim compensation as regulated in Article 57 of the Personal Data Protection Act. This research is important to identify how strict theory liability can be effectively applied to protect hospitals from the risk of civil lawsuits in the management of RME. By reviewing existing regulations and the challenges faced, this study aims to provide strategic recommendations that can help hospitals maintain their good name while increasing public trust in technology-based health services.

### *Problem*

The following is the Problem Formulation in study This that is:

1. Strict theory liability in providing legal protection for hospitals as organizers of Electronic Medical Records (EMR) to protect their good name from civil lawsuits?
2. What legal strategies can hospitals implement to mitigate the risk of civil lawsuits related to the

management of Electronic Medical Records (EMR)?

### *Benefits of Research*

#### 1. Academic Benefits

Academic benefits are a requirement in completing educational assignments at the Islamic University of Bandung and the results of this study can add to the literature of Doctoral Law Study Program Students, Faculty of Law, Islamic University of Bandung.

#### 2. Theoretical Benefits

The theoretical benefit is to provide a contribution of thought or as a basis and reference for subsequent research and improving the quality of knowledge.

## 2. RESEARCH METHODOLOGY

### 1. Writing Nature

This writing uses descriptive research. Descriptive writing aims to accurately describe the characteristics of an individual, condition, symptom or certain group or to determine the spread of a symptom or to determine whether or not there is a relationship between one symptom and another in society.

### 2. Writing Type

This type of writing uses a normative legal approach or this library is a writing that examines document studies, namely using various secondary data such as laws and regulations, court decisions, legal theories, and can be in the form of opinions of scholars.

### 3. Method of collecting data

The data collection technique in this writing is by using the Library Writing method . *Research* ) Library technique is "Bibliography writing carried out by reading, reviewing and recording various literature or reading materials that are in accordance with the topic, then filtered and poured into a theoretical framework of thought".

### 4. Data Type

The author in this study uses Secondary Data , namely "data obtained or collected by people conducting research from existing sources". Secondary data is in the form of books, journals, encyclopedias, magazines, papers, articles and others that are relevant to the problem regarding the author's research title.

### 5. Data analysis

In the process of analyzing data in this study, qualitative analysis was used , which is a method of analyzing data sourced from legal materials based on concepts, theories, laws and regulations, and expert opinions and the research's own views.

## 3. RESULT AND DISCUSSION

*Strict Liability as a Legal Protection for Hospitals from Lawsuits in the Implementation of Electronic Medical Records (EMR)*

**Strict** theory **liability** is a legal concept that emphasizes responsibility without requiring an element of fault . In the context of Electronic Medical Records (EMR) management, the application of this theory places the hospital as the party responsible for all risks arising from the management of patient data, whether due to data leaks, privacy violations, or system failures. This principle is relevant because the hospital as the organizer of EMR acts as a data controller *who* has an absolute obligation to ensure the security of patient data in accordance with applicable legal standards. In the Indonesian legal system, Article 1365 of the Civil Code stipulates that "Every unlawful act that causes harm to another person requires the perpetrator to compensate for the loss." In the context of EMR, a data leak or system failure that harms a patient can be considered an unlawful act. Although the data leak may occur due to technological weaknesses or cyber attacks, the responsibility still falls on the hospital due to the *strict liability principle*. *liability* does not require proof of negligence. In addition, Article 1367 of the Civil Code confirms that a person can be held responsible for acts committed by parties under his supervision. In this case, the hospital is responsible for the negligence of medical personnel, technicians, or third parties involved in the management of RME. Implementation of *strict liability* provides legal certainty to patients that their rights will be protected even if the cause of the loss is difficult to prove. The latest regulation, the Health Law, provides a strong legal basis

for implementing the *strict liability principle*. *liability* in the management of RME. Some relevant key articles include:

1. Article 172: Hospitals are required to use information technology that meets security and reliability standards. Failure to meet these standards may result in legal liability based on *strict liability*
2. Article 189: Hospitals are required to maintain the confidentiality of patient data. Violation of this obligation, whether due to negligence or system failure, places the hospital in a position of absolute responsibility
3. Article 190: Management of the health information system must be integrated with the National Health Information System. Operational disruptions that result in patient losses can be the basis for a civil lawsuit against the hospital.

As an illustration, if there is a patient data leak due to a cyber attack, the hospital remains responsible even though the attack was carried out by an external party. This is in line with the *strict principle liability*, where responsibility is inevitable if the loss can be proven to be a direct result of system management failure. The Personal Data Protection Act also supports the implementation of *strict liability* in patient data protection. Article 4 of the Personal Data Protection Act classifies medical data as sensitive personal data that must be protected. If a breach occurs, the hospital as the data controller can be held liable, even if the breach is caused by a third party attack. Article 57 of the Personal Data Protection Act gives patients as data subjects the right to claim compensation for breaches of their personal data. In *strict context liability*, hospitals cannot use the excuse of “failure to prevent cyberattacks” as a defense. Instead, hospitals must show that they have taken maximum precautions, such as implementing data encryption, conducting regular audits, and providing training to their staff.

#### *Benefits of Strict Implementation liability*

1. Improving Hospital Accountability  
With *strict liability*, hospitals are forced to be more careful in managing EMR and protecting patient data. This principle provides incentives for hospitals to adopt safer technologies and improve the competence of their staff.
2. Providing Legal Certainty to Patients;  
Patients do not need to prove hospital negligence in a civil lawsuit. Simply by proving that there was a loss resulting from the failure of the EMR system, patients can obtain compensation;
3. Increasing Public Trust  
Assurance that hospitals are responsible for patient data security can increase public trust in technology-based health services.

#### *Challenges in Strict Implementation liability*

1. Infrastructure Limitations  
Many hospitals in Indonesia, especially in remote areas, do not have adequate technological infrastructure to meet established security standards. This limitation can increase the risk of data breaches and lawsuits.
2. Cyber Attack Threat  
Increasingly complex cyber threats make it difficult for hospitals to ensure complete security of patient data. *Strict Liability* places hospitals in a difficult position because responsibility remains even if the loss is caused by an external party.
3. Lack of HR Competence  
Many healthcare workers and hospital management do not fully understand the regulations regarding data protection and EMR management, thus increasing the risk of negligence.

*Strict implementation liability* provides a strong legal basis for protecting patients and increasing hospital accountability. However, this principle also requires more comprehensive policy support, such as strengthening technical regulations, developing infrastructure, and educating human resources. Without such support, *strict liability* has the potential to create a disproportionate legal burden for hospitals, especially those with limited resources. Referring to existing regulations, the *strict theory liability* can be an effective tool to protect patient rights while encouraging hospitals to improve their health service standards. However, the implementation of this principle must be accompanied by comprehensive risk mitigation efforts so as not to have a negative impact on the sustainability of hospital operations.

### *Legal Strategies that can be Implemented by Hospitals in Mitigating The Risk of Civil Lawsuits Related to Electronic Medical Records (EMR) Management*

The implementation of Electronic Medical Records (EMR) provides many benefits to healthcare services, including efficiency, accuracy, and integration of medical data. However, the legal challenges that come with it, such as data breaches, privacy breaches, and system failures, require hospitals to implement effective legal strategies to mitigate the risk of civil lawsuits. These strategies should include preventive, corrective, and adaptive measures that are in accordance with *strict legal theory. liability*, where the hospital is responsible for all direct consequences of RME management, even without any direct fault. Regulations in Indonesia, especially the Health Law and the Personal Data Protection Law, provide a comprehensive legal framework for the management of EMR. Compliance with these regulations is the first step to mitigate legal risks. Some strategies that can be implemented are:

1. Implementation of Data Security Standards Article 172 of the Health Law requires hospitals to use information technology that meets security and reliability standards. To meet this provision, hospitals need to implement:
  - o Data Encryption System: Protects patient data with encryption technology to prevent unauthorized access .
  - Multi- Factor Authentication (MFA): Adds a layer of security with double authentication .
  - o Firewall and Intrusion Detection System (IDS): Detects and prevents cyber attacks that could potentially compromise patient data
2. Periodic Audit of Information Systems Article 190 of the Health Law mandates hospitals to conduct periodic audits of health information systems. These audits aim to ensure that the RME system is functioning according to standards and to identify potential vulnerabilities before problems occur
3. Incident Reporting Protocol Article 193 of the Health Law gives hospitals the right to receive legal protection. However, hospitals are also required to report any data security incidents to the relevant authorities in a transparent manner to demonstrate good faith.

Hospitals need to develop internal policies that address the management of EMR in detail. These policies should cover data security protocols, staff responsibilities, and incident response mechanisms. Some important elements of these policies include:

1. Patient Data Management Protocol The policy should govern how patient data is collected, stored, and accessed. *The need-to-know principle* should be applied to limit data access to authorized parties
2. Security Incident Handling Procedures Hospitals should have clear procedures for handling incidents of data breaches or cyber attacks. These procedures should include identification, mitigation , and recovery steps, as well as reporting incidents to patients and authorities
3. Human Resources Training and Education Article 172 of the Health Law emphasizes the importance of health workers' competence in using technology. Hospitals need to provide regular training to staff on RME management and patient data protection. This training not only improves staff understanding, but also serves as a risk mitigation measure in the *vicarious doctrine. liability* , where the institution is responsible for the actions of its staff.

Hospitals often work with technology providers to manage EMR. In this context, drafting a comprehensive contract is an important step to fairly share legal responsibilities. Contract elements to consider include:

1. The Contract Data Protection Clause should include the technology provider's obligations to maintain the confidentiality of patient data and implement established security standards.
2. Indemnity Clause Technology providers must be held liable for losses arising from system failures or security breaches caused by their products or services.
3. Dispute Resolution Provisions The contract should include a dispute resolution mechanism, such as mediation or arbitration, to avoid lengthy litigation that can damage the hospital's reputation.

Insurance can be an important instrument for managing legal risks in RME management. Some relevant types of insurance include:

1. Data Protection Insurance This policy covers the risks of data leaks, cyber attacks, and system recovery costs, including compensation to patients.
2. Professional Liability Insurance This insurance protects hospitals from lawsuits related to negligence or errors in medical services.

The use of insurance reflects a responsible risk mitigation effort in civil law. Insurance policies can reduce the financial burden of hospitals in facing lawsuits and increase public trust in the hospital's commitment to protecting patient data. In the event of a legal dispute, hospitals can adopt a restorative



approach that focuses on dialogue and out-of-court settlement. This approach involves mediation between the hospital and the patient to reach a mutually beneficial agreement. This step not only reduces litigation costs but also helps the hospital maintain its reputation. The restorative approach is in line with Article 193 of the Health Law, which gives hospitals the right to obtain legal protection in resolving disputes. Out-of-court dispute resolution also reflects the restorative principle, justice, which emphasizes reconciliation and restoration of relations between the parties involved. To minimize the risk of lawsuits, hospitals need to invest in developing technology infrastructure that meets security standards. The government also has an important role in providing technical and financial support, especially for hospitals in remote areas. Collaboration between the government, hospitals, and technology providers can improve the readiness of the health sector to face legal threats in the digital era. Legal strategies to mitigate the risk of civil lawsuits in RME management include strengthening regulatory compliance, drafting internal policies, managing contracts with technology providers, using insurance, a restorative approach to dispute resolution, and strengthening infrastructure. By implementing these steps, hospitals can reduce legal risks, maintain their good name, and increase public trust in technology-based health services. This strategy is an important foundation for ensuring the sustainability of hospital operations in facing the digitalization era.

#### 4. CONCLUSION

Hospitals as organizers of Electronic Medical Records (EMR) have a major legal responsibility in maintaining the confidentiality of patient data and ensuring that the health information system runs according to established standards. Legal strategies that can be applied to mitigate the risk of civil lawsuits include compliance with regulations, the preparation of comprehensive internal policies, contract management with technology providers, the use of data protection insurance, and the application of a restorative approach in dispute resolution. By integrating these steps, hospitals can not only minimize legal risks, but also increase public trust in safe, quality, and technology-based health services. This reflects the application of the principles of prudence and accountability in accordance with the *strict theory liability* in the management of the RME system.

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