

## Legal Responsibility of Hospital for Case of Exchange of Baby Identity Reviewed from Legal Certainty (Case of Alleged Exchange of Babies at Cempaka White Islamic Hospital)

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Article Info	ABSTRACT
<p><b>Keywords:</b> Legal responsibility, hospital, baby's identity being exchanged.</p>	<p>In the process of providing health services, errors or negligence can occur in the form of patient identification errors either in the process of diagnosis, treatment, or other medical procedures. Such negligence or error can potentially result in injury or loss to the patient. The purpose of providing correct patients identification is to identify patients who will be given appropriate services, actions, or treatment. One of the vulnerabilities of services for newborns is the error of health workers in providing identification. Newborn babies must be matched with the mother who gave birth to them, namely immediately attaching an identity bracelet immediately after the baby is born to avoid the baby being exchanged. The formulation of the problems discussed are: 1) How is the mechanism and verification of the identity of babies born in hospitals to prevent cases of baby exchange? and 2) What is the form of legal responsibility of the hospital if there is a case of baby identity exchange according to laws and regulations in the context of legal certainty? The research method used is the normative juridical method, namely the research is conducted with a literature approach, namely by studying books, laws and regulations and other documents related to this research. Based on the results of the study, the author concludes that the legal responsibility of the hospital in the event of a case of a baby's identity being exchanged according to laws and regulations in the context of legal certainty is that the hospital can be held accountable for criminal, civil, state administration, and professional ethics or for negligence that results in losses for patients and families. Referring to the provisions of Article 46 of Law Number 44 of 2009 concerning Hospitals, it states that: the hospital is legally responsible for all losses caused by negligence by health workers in the hospital. In an effort to hold the hospital criminally responsible, it was first started by providing a number of compensation, and/or compensation, of course the hospital must sit down together with the policy makers of the hospital.</p>
<p>This is an open access article under the <a href="https://creativecommons.org/licenses/by-nc/4.0/">CC BY-NC</a> license</p> 	<p><b>Corresponding Author:</b> Precia Widyatomo IBLAM College of Law, Campus A, Jl. Kramat Raya No. 25, Senen, Central Jakarta</p>

### INTRODUCTION

Law and health are two things that play a significant role in Indonesia, particularly in

human resource development, and are also a major focus for supporting the nation's welfare. Generally, everyone needs both law and health. Health plays a role in maintaining health and healing efforts for each person, while law plays a role in protecting everyone from undesirable events. As Aristotle stated, "*Law can be determined only in relation to the just*," which means Law serves as an instrument for realizing justice. Law enforcement is not limited to issues of justice alone, but rather how the law can provide legal certainty and protection for everyone, because the purpose of law is to create order and justice. In practice, the principle of democracy or people's sovereignty can guarantee the participation of the community in the decision-making process, so that every law that is implemented and enforced truly reflects the community's sense of justice.

According to Lj Van Apeldoorn, quoted by Peter Mahmud Marzuki, the aim of law is to maintain legal order and must equally protect the interests of all parties. There is in public. Can it is said every person have the right to receive legal and health protection because of that become a basic right of every individual.

According to WHO, health is "*a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity.*" (Health is a state of complete physical, mental, and social well-being that enables everyone to live productively socially and economically.) Furthermore, the right to health is a human right. fundamental and important for every person, including the right to health services and the right to self-determination. The legal basis is Article 5 paragraph (1), (2), (3) Constitution Number 36 Year 2009 concerning Health. Article 5 paragraph (1) of Law Number 36 of 2009 concerning Health, which states that: Everyone has the same rights in gaining access to source power in the field health. Article 5 paragraph (2) of Law Number 36 of 2009 concerning Health, which states that: Everyone has the right to obtain safe, quality, and affordable health services. This can happen if supported by adequate institutions, namely hospitals that are able to provide maximum service to their patients. Article 5 paragraph (3) of Law Number 36 of 2009 concerning Health, which has been amended by Law Number 17 of 2023 concerning Health, (UU Health) Which state, that: Every person entitled to independent, And responsible determine Alone necessary health services for himself. Can concluded that right Patient care will be achieved if doctors carry out their obligations, which is the core of the Health Law.

Hospitals are advanced healthcare institutions that have a significant responsibility for improving the quality and safety of patients and are accountable for all services they provide to patients. Law Number 44 of 2009 About House Sick (UU) House Sick) Article 29 letter b states that "Hospitals are obliged to provide safe, quality, anti-discrimination and effective health care by prioritizing the interests of patients." in accordance with hospital service standards".

To carry out its healthcare services, hospitals are tasked with providing comprehensive individual healthcare services. Individual healthcare services are healthcare activities provided by healthcare professionals to maintain and improve health, prevent and

cure illness, and restore health. While comprehensive healthcare services are: health services that include promotive, preventive, curative and rehabilitative.

In providing safe and quality health services, hospitals are required to manage human resources, especially medical personnel. Health workers who work according to their competencies as stipulated in the law. Hospitals are required to provide health services in accordance with hospital service standards, and health workers must comply with professional standards in carrying out their duties.

In the process of providing healthcare services, errors or omissions can occur, such as misidentifying patients, whether during diagnosis, treatment, or other medical procedures. These omissions or errors can potentially result in injury or harm to the patient. The goal is to provide correct patient identification. is to identify patients who will be given appropriate services, actions or treatment.

One vulnerability in newborn care is errors in identification by healthcare workers. Newborns must be matched with their mothers by immediately attaching an identification bracelet upon birth. Correct patient identification is a key component of patient safety and is mandatory for every patient. The risk of mistakenly identifying newborns is the risk of babies being swapped.

The fact that currently there are still errors in providing identity. new baby birth carried out by force health, resulting in the baby switched And given on person wrong old. As in case at home Islamic Sickness Cempaka White. A man with the initials MR (27) suspects that his babies were swapped at the Jakarta Islamic Hospital, Cempaka Putih, Central Jakarta. MR received his baby in a dead state. He became suspicious because the physical characteristics of the baby's body differed from medical records. MR explained that the incident occurred while his wife was pregnant. pregnant old experience contraction on 15 September 2024. Then, MR took his wife to a clinic in the Cilincing area, North Jakarta. However, the clinic referred his wife to a hospital in the Cempaka Putih area, Central Jakarta. The referral was received on September 15, 2024, a Sunday. According to MR, she was referred from the clinic to Cempaka Putih Hospital by a doctor. MR admitted that his wife received the referral because her amniotic fluid was dry and required further medical treatment. After arriving at the Cempaka Putih hospital, MR's wife underwent surgery on Monday, September 16, 2025.

After birth, according to MR, the family was forbidden from seeing the baby girl, claiming she was still undergoing medical treatment. The baby was not shown to her mother. Her gender was also revealed, and her entire body was not shown. member his body even No shown The same I The same wife I, I only come called For to recite the prayer baby the," So, In the afternoon, MR was informed by the hospital that his baby was in critical condition. After that, party Hospital request MR For sign documents For administering supplemental oxygen. The next day, MR was informed by the hospital that her baby had died. MR admitted that she didn't have time to see her child's body and only received the baby's body from the hospital wrapped in a shroud. According to MR, the baby's body in the grave differed from what was recorded in the hospital's medical records.

The baby MR buried was approximately 70-80 centimeters (cm) tall, while the medical records only stated he was 47 cm.

Negligence by healthcare workers in infant misidentification incidents can result in patient harm. These errors can occur due to human error or inadequate procedural systems. Adequate. The process of accurate patient identification is one of the patient safety goals that serves to reduce the risk of patient safety incidents. The author's focus in this study is related to the mechanism and verification of the identity of babies born in hospitals to prevent cases of baby swapping and the form of legal liability of hospitals in the event of a baby's identity swapping case according to laws and regulations for the sake of legal certainty. Based on the description above, so writer determination title study This is : ACCOUNTABILITY LAW HOUSE SICK ON THE CASE OF SWAPING UP IDENTITY BABY REVIEWED FROM LEGAL CERTAINTY (Case Alleged Baby Switched In Islamic Hospital Cempaka White). The formulation of the problem in this research is 1) What is the mechanism and verification of the identity of babies born in hospitals to prevent cases of baby swapping? 2) What is the form of legal responsibility of the hospital if a case of baby identity swapping occurs according to laws and regulations in the context of legal certainty?

This type of research is normative and uses a qualitative approach. What is meant by qualitative research is: research procedures that produce descriptive data in the form of written or spoken words from people and observed behavior. Data collected in the form of words, picture, And No numbers So in this research the author tries as much as possible to describe a symptom of an event, an incident that is happening in the present time or take problems current as existence in research. Normative legal approach: This approach uses literature and legal regulations that are linked to the social phenomenon to obtain results and conclusions.

## RESULTS AND DISCUSSION

### **Mechanism and Baby Identity Verification Which Born in House Sick to Prevent Baby Swapping Cases**

#### **Mechanism and Verification of Infant Identity in Hospitals**

To prevent baby swapping, hospitals implement various identification mechanisms. Key steps include placing a unique identification bracelet on the baby that includes the mother's name and medical record number, fingerprinting or footprinting, recording the baby's physical characteristics, re-examination by nurses and parents, and using an electronic medical record system. Furthermore, hospitals are required to have a Standard Operating Procedure (SOP) that consistently and systematically verifies the baby's identity.

If there is a suspicion that the babies have been swapped, verification is carried out through examination of physical characteristics, medical records, and DNA tests, and involves a comprehensive medical team.

#### **Legal Basis for Hospital Services and the Role of Health Workers**

Hospital services refer to several laws, such as:

- a. Law No. 44 of 2009 concerning Hospitals, which emphasizes health services as a basic right of the people, and hospitals as important institutions in the development of public health.
- b. Law No. 36 of 2014 concerning Health Workers, which emphasizes the importance of competent health workers in providing quality services.
- c. Law No. 38 of 2014 concerning Nursing, which emphasizes that nurses have a professional role in nursing practice, including carrying out medical actions based on the delegation of authority from medical personnel with certain procedures, both delegated and mandated.

Negligence in carrying out procedures, such as errors in identity bracelets, can contribute to cases of baby swapping, so SOPs and caution from all parties are essential.

#### Practical Tips for Parents to Avoid Getting Babies Mixed Up

1. Always monitor the baby's whereabouts while in the hospital.
2. Check your baby's ID bracelet regularly.
3. Pay attention to the baby's physical characteristics, such as skin color, birthmarks, or facial shape.
4. Take a photo of the baby to help with more accurate recognition.
5. Document or ask the hospital to take the baby's footprints/fingerprints.
6. Dress the baby in distinctive clothing or swaddling to distinguish them.
7. Don't hesitate to ask medical personnel if there are any abnormalities.

#### The Role of Electronic Medical Records (EMR)

EMR is a crucial tool in preventing infant swapping because it stores patient identity data digitally and accurately. This system enhances data security and facilitates access by authorities. The use of EMR is also regulated by Minister of Health Regulation No. 24 of 2022 concerning Medical Records, which supports digital transformation in the healthcare sector. One example of its implementation is the "SATUSEHAT" application, which allows patients to securely access their own health data.

#### Forms of Legal Responsibility of Hospitals in Cases of Swapping of Baby's Identity According to Statutory Regulations in the Context of Legal Certainty

##### Chronology of the Alleged Baby Swap at Cempaka Putih Islamic Hospital

A suspected case of a baby's identity swap emerged at Cempaka Putih Islamic Hospital in Jakarta after a father named Muhammad Rauf questioned the identity of a baby who reportedly died after birth and was being treated in the NICU due to low oxygen saturation. This incident occurred on September 17, 2024. Suspicions arose due to the difference in the baby's size at birth (47 cm) and at burial (80 cm). This gave rise to strong suspicions that the baby buried was not his biological child. This suspicion prompted the police to form a special team to investigate the case seriously.

The chronology of events includes several stages, namely: the baby was born and immediately treated in the NICU; the baby was declared dead on September 17; the suspicion of a baby swap emerged from the family; the formation of an investigation team

by the Central Jakarta Police; and strengthening evidence through differences in the babies' body sizes and the collection of samples for DNA testing.

### **Factors Causing Babies to Be Swapped in Hospitals**

The Ministry of Health (Kemenkes) states that several factors can contribute to baby swapping in healthcare facilities. While such cases are rare, they can also occur due to human error or system weaknesses. The identified factors include:

1. The high number of births handled by hospitals every day can cause staff to make errors in registering identities.
2. The physical resemblance of newborns, without clear visual identification, makes identification difficult.
3. Inadequate identification systems, such as missing or improperly attached ID bracelets, can disrupt the baby's identity matching.
4. Inconsistent postpartum procedures, such as failure to adhere to standards for returning the baby after care.
5. Hospital staff fatigue is also a high-risk factor, as it can reduce concentration levels when collecting data or matching baby identities.

### **Handling Steps by the Police**

After the case went viral on social media, the Central Jakarta Police launched a thorough investigation. Police began by examining the crime scene (Cempaka Putih Islamic Hospital), gathering information from the baby's parents, and confiscating CCTV footage of the birth.

The investigation culminated in the exhumation of the baby at Semper Public Cemetery in Cilincing on December 17, 2024. The forensic team took samples from the baby's body for DNA testing, which matched the DNA of both parents, MR and FS. Both parents were immediately taken to the National Police Hospital for sample collection. Police estimated the DNA results would be available within two weeks.

#### **Response and Explanation from Cempaka Putih Islamic Hospital**

The President Director of Cempaka Putih Islamic Hospital, Dr. Jack Pradono, issued an official clarification. He stated that the hospital had met directly with the patient's family, expressed sympathy, and agreed to resolve the matter amicably. The hospital is also willing to pay for DNA testing at a laboratory of the family's choosing. In his statement, Dr. Jack urged all parties to await the DNA test results and avoid controversy to protect the family's privacy.

However, it was later discovered that the agreement between the hospital and the family contained a clause stating that the family could not pursue legal action, regardless of the DNA test results. This raised concerns and prompted the family to request that the Indonesian Child Protection Commission (KPAI) intervene to review the legality and ethics of the agreement.

### **Forms of Hospital Legal Responsibility**

If it is proven that a case of a baby's identity being swapped has occurred, the hospital can be held responsible in the following four legal forms:

1. Criminal Liability

Hospitals can be subject to criminal sanctions if negligence results in serious harm or death. Criminal liability applies specifically to negligent medical personnel, such as nurses, under Article 193 of Law Number 17 of 2023 concerning Health. Negligence includes failure to follow standard operating procedures (SOPs) and inadequate supervision of newborns. Criminal sanctions can include imprisonment, fines, or both, depending on the severity of the error and the consequences.

2. Civil Liability

In addition to criminal charges, hospitals can also be sued civilly. Article 1367 of the Civil Code states that a person is responsible for losses caused by a person under their supervision. In this context, the hospital is responsible for the actions or negligence of its medical personnel. The losses that can be claimed include material losses (costs of care, treatment, etc.) and immaterial losses (psychological trauma, mental distress, etc.). The hospital can even be asked to provide compensation in the form of a scholarship for the child's education up to high school, as mandated by Article 46 of Law No. 4 of 2009 concerning Hospitals.

3. Professional Ethical Responsibility

Medical personnel involved, such as nurses or doctors, may be subject to ethical sanctions by professional organizations (such as the Indonesian National Association of Indonesian Nurses (PPNI) or the Indonesian Doctors Association (IDI). Sanctions can range from warnings, temporary suspensions, to revocation of practice permits. Professional codes of ethics require healthcare workers to carry out their duties professionally, diligently, and responsibly, especially in matters that involve the life and safety of infants.

4. Administrative Legal Accountability

If a hospital violates healthcare regulations and internal SOPs, the government, through relevant agencies (the Health Office, the Ministry of Health, etc.), can impose administrative sanctions. These sanctions can include written warnings, suspension of services, revocation of operating permits, and even permanent closure. This serves as a form of administrative accountability for the hospital's negligence in providing safe and accurate healthcare services.

### **Aspects of Legal Certainty and Sanction Enforcement**

Strict and comprehensive legal accountability is expected to provide legal certainty for the public, especially patients and their families. Cases such as baby swapping must be handled professionally, transparently, and without interference from any party. The goal is not only to uphold justice but also to increase public trust in healthcare institutions. Therefore, investigations must be thorough, courts must render fair decisions, and sanctions must be consistently enforced.

## CONCLUSION

The mechanism and verification of the identity of babies born in hospitals to prevent cases of baby swapping includes the use of unique identity bracelets, fingerprints or feet, baby portraits, and medical records. integrated and accurate. The mechanism and verification of infant identity include: a) Identity bracelet, each infant must be given a unique and clear identity bracelet, which is matched with the mother's bracelet and recorded. in medical records; b) Fingerprints/Footprints, The baby's fingerprints or feet can be used as an additional method for identity verification; c) Baby Portraits, Photos of newborn babies can be used as proof of identity; d) Medical Records, An integrated and accurate medical record system is essential for recording and verifying identity; and e) Identity Matching, The baby's identity must be matched with the mother's identity and medical records before the baby is handed over. The hospital's legal responsibility in the event of a case of a baby's identity being exchanged according to statutory regulations in the context of legal certainty is that the hospital can be held criminally responsible. civil, administration country, And ethics profession and on negligence Which result in loss for patient And family. Referring to the provisions of Article 46 of Law Number 44 of 2009 concerning Hospitals, it states that: hospitals are legally responsible for all losses caused by negligence committed by health workers in the hospital. In an effort to hold the hospital criminally responsible, it must first be done by providing a certain amount of compensation and/or restitution. Of course, the hospital must sit down with the policy makers of the hospital.

## SUGGESTION

To prevent infant swapping in hospitals, it is recommended that identity mechanisms and verification be effective using identification bracelets or bands, fingerprints/footprints, photographs of the infant, and observation of unique birthmarks. Furthermore, infants should not be separated from their parents, and the use of easily identifiable clothing/swaddling is also helpful. Although hospitals can be held legally responsible, whether criminally, civilly or administratively for the sake of legal certainty, in resolving cases of swapped babies, as long as it is possible, efforts should be made to ensure that the resolution is prioritized through deliberation. consensus.

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