



CRIMINAL LEGAL RESPONSIBILITY FOR THE USE OF NURSING PERSONNEL IN ANESTHESIA SERVICES: A LEGAL ANALYSIS FROM THE PERSPECTIVE OF LAW NUMBER 17 OF 2023 CONCERNING HEALTH

Bahrn Sihotang^{1*}, Moh. Lubsi Tuqo Romadhan².

S1 PJJ Hukum, Universitas Siber Muhammadiyah

E-mail: bahrn20220600045@sibermu.ac.id, lubsi.dosen@sibermu.ac.id.

Received: 02/03/2026 | Revised: 11/03/2026 | Accepted: 01/04/2026 | Published: 18/04/2026

Abstract

The use of nursing staff in anesthesia services has become a common practice in various Indonesian healthcare facilities. However, the arrangement of authority between "Nurse Anesthesiologist" and "Anesthesia Administrator" creates legal ambiguity that has the potential to lead to criminal liability in the event of malpractice. The purpose of this study is to analyze the construction of criminal liability for nurses and healthcare institutions in anesthesia services based on Law No. 17/2023 and to examine the limits of clinical authority that form the basis of such liability. The research method used is a normative juridical method with a statutory and conceptual approach. Analysis was conducted on related sectoral regulations and court decisions. The results of the study show that Law No. 17/2023 provides a clear legal basis regarding the obligations, authority, and criminal sanctions for nursing staff in anesthesia services. Negligence in anesthesia practice is a form of legal error that can give rise to criminal liability. Criminal liability is personal in nature, but under certain conditions it can be extended to healthcare institutions. The integration between Law No. 17/2023 emphasizes the importance of professional, safe and effective health service management obey the law. The implications of the research results are that Law No. 17/2023 have provided a strong legal basis in regulating the practice of nursing personnel in anesthesia services, so that any negligence committed must be in accordance with the established authority. Negligence in anesthesia practice is not only seen as a professional error, but also as an unlawful act that can give rise to criminal liability both individually and under certain conditions on a procedural basis.

Keywords: Criminal Legal Responsibility, Use of Nursing Personnel in Anesthesia Services, Law No. 17/2023.

INTRODUCTION

Health is everyone's right. To fulfill the public's right to a healthy life, the government provides healthcare facilities. Hospitals are the only healthcare facilities that provide comprehensive health care, encompassing promotive, preventive, curative, and rehabilitative services. Healthcare jurisdictions are currently increasingly prevalent. To balance this, healthcare workers working in hospitals must adhere to professional standards and possess a practice license to legally validate their practice. In modern healthcare, legal aspects are an integral element of medical and nursing practice, particularly in high-risk procedures such as anesthesia services. High-risk medical procedures must be performed by healthcare workers with clear legal competence and authority, as errors in these procedures can result in criminal, civil, and administrative legal consequences. In practice, healthcare workers are required to implement the principle of professionalism in carrying out their work, based on a code of ethics and laws. Anesthesia services are one form of healthcare service in hospitals, requiring swift, precise, and accurate action for life-saving. Anesthesiology services are a component of healthcare that is rapidly evolving along with advances in science and technology in the field of anesthesia. Legally, anesthesia services are specialized medical procedures that require professional expertise and specific authority. However, in practice in various healthcare facilities, particularly hospitals with limited medical personnel resources, nursing staff are often involved in anesthesia procedures. This phenomenon raises legal issues when these procedures are carried out beyond the scope of the nursing profession's authority. Every exercise of professional authority must be based on clear legal norms, as violations of these limits can be classified as unlawful acts. Law Number 17 of 2023 concerning Health explicitly regulates the classification of healthcare workers and the scope of their authority. Nursing personnel, in principle,

have limited authority in nursing practice, except under certain conditions regulated through a delegation mechanism. The delegation of authority in nursing practice must be carried out in writing, proportionally, and remain under the supervision of the medical personnel holding primary authority. If the delegation is carried out illegally, the full legal risk can be borne by the healthcare worker performing the procedure. The involvement of nursing personnel in anesthesia services is only permitted within certain limits and cannot be carried out independently. This is in line with Sutanto's view that the implementation of medical actions by health workers outside their professional competence has the potential to give rise to criminal liability if it results in harm to patients. There are no regulations governing nursing (PPNI) nurses have authority in pre, intra and post anesthesia care, (in the nursing STR also states Nursing Practice Permit) does not explicitly mention the nursing anesthesia practice permit while in the STR Anesthesia Administrator clearly mentions the Anesthesia Administrator Practice Permit, and through the Minister of Health Regulation above explains the scope of its authority

In the context of criminal legal liability, the use of nursing personnel in anesthesia services involves not only individual responsibility but also institutional responsibility. In modern healthcare, legal responsibility is not only individual. This responsibility is also institutional if there is systemic negligence or negligence. Healthcare institutions can be held legally accountable if proven negligent in ensuring the competence and authority of healthcare personnel providing services to patients. Based on this description, the use of nursing personnel in anesthesia services raises significant legal problems, particularly regarding the fulfillment of the elements of criminal liability as regulated in criminal health law. An in-depth legal study to analyze the limits of nursing personnel's authority, the mechanism for delegation of authority, and the implications of criminal legal liability under Law Number 17 of 2023 concerning Health is urgently needed. The goal is to provide legal certainty and protection for both patients and healthcare personnel.

LITERATURE REVIEW

a. The Concept of Criminal Legal Responsibility in Health Services

Criminal liability in healthcare essentially relates to the application of general criminal law principles to the actions of healthcare professionals that result in legal consequences for patients. Criminal liability requires the elements of an unlawful act, fault (schuld), the capacity to take responsibility, and the absence of an excuse. This principle also applies in the context of healthcare services, including medical and nursing procedures. Criminal liability in the context of health law does not necessarily arise from patient harm, but must be proven to have violated professional standards and standard operating procedures. Medical errors that are criminally liable are those that are clearly and demonstrably negligent or intentional, exceeding the limits of tolerable medical risk. Criminal negligence (culpa) is the most common form of wrongdoing in criminal health cases. This is because it involves a lack of care or failure to comply with professional obligations. Therefore, in high-risk anesthesia services, the standard of care is the primary criterion for determining criminal liability.

b. Authority and Limitations of Nursing Practice

Nursing staff are part of the healthcare workforce with limited authority based on their professional competence and education. Law Number 17 of 2023 concerning Health stipulates that all healthcare workers may only practice within their authority and competence. Violations of these provisions can result in legal consequences. Professional nursing practice, in principle, focuses on nursing care, not invasive medical procedures that require specialized expertise. Delegation of authority from medical personnel to nurses can only be limited, delegated, and remains under the supervision of the delegating medical personnel. If a nurse performs a medical procedure outside of the authorized delegation of authority, such action may be classified as a violation of the law. The boundaries of nursing staff's authority are crucial in determining legal liability. Clear boundaries of authority not only protect patients but also protect nurses from the risk of criminalization due to practices that violate legal norms.

c. Anesthesia Services as a High-Risk Medical Procedure

Anesthesia care is a medical procedure that carries a high level of risk to patient safety. Anesthesia involves managing vital patient functions, such as breathing and circulation, thus requiring specialized competency and emergency preparedness. Therefore, anesthesia care cannot be equated with general nursing care. The involvement of nursing staff is solely for assistance and cannot be performed independently. This aligns with Sutanto's (2021) opinion, which states that high-risk medical procedures performed by healthcare professionals outside their competence have the potential to result in criminal liability if they result in patient injury or death.

Anesthesia services performed by nursing staff without a valid legal basis, from a criminal health law perspective, can be classified as a form of professional negligence. Fitriani (2022) explains that the risk of criminal liability increases when such actions are carried out routinely and systematically without adequate oversight mechanisms.

d. Individual and Institutional Accountability in Health Services

Legal accountability in healthcare services rests not only with healthcare workers but also with healthcare institutions. Soekanto explained that institutions can be held legally accountable for negligence, failure to supervise, or internal policies that violate the law. Accountability in modern healthcare is both collective and systemic. Healthcare institutions can be held legally accountable if they are proven negligent in ensuring the competence and authority of healthcare workers providing services to patients. Hospitals or healthcare facilities, in the context of using nursing personnel for anesthesia services, have a legal obligation to ensure that all healthcare workers operate in accordance with their authority and professional standards. If a violation occurs that impacts a patient, criminal liability can extend not only to the direct perpetrator but also to the management of the healthcare institution.

METHOD

This research uses a normative legal research method. The approaches used are:

- a. Statutory Approach: Analyzing Law Number 17 of 2023 concerning Health, as well as other derivative and related regulations.
- b. Conceptual Approach: Examines legal concepts such as criminal liability, clinical authority, malpractice, and causal relationships in health law.

Data collection techniques were conducted through document studies of regulations, health law literature, and relevant court decisions (if any). The data were analyzed qualitatively using descriptive analytical methods to systematically develop legal arguments.

RESULTS AND DISCUSSION

a. Research result

The research results show that anesthesia services involving nursing staff have criminal legal implications if carried out outside of their authority, without competence, or not in accordance with professional standards and laws and regulations. Law Number 17 of 2023 concerning Health serves as the primary normative basis for determining the limits of authority, obligations, and sanctions for healthcare workers, including nursing staff.

This study found that the use of nursing personnel in anesthesia services still has the potential to result in criminal law violations, especially when:

- a. Nursing staff perform anesthesia without competence and a valid practice permit;
- b. There was negligence (*culpa*) in carrying out anesthesia which resulted in serious injury or death of the patient;
- c. There is no clear supervision and division of responsibilities between doctors, nursing staff, and health care facilities.

DISCUSSION

1) Legal Position of Nursing Personnel in Anesthesia Services

Law Number 17 of 2023 concerning Health stipulates that nursing personnel are part of the healthcare workforce and, in carrying out their practice, are required to meet professional standards and service standards, as well as possess a Registration Certificate (STR) and Practice Permit (SIP). These obligations serve as legal instruments to ensure patient safety and legal certainty for healthcare workers. Criminal liability for those employing healthcare workers without a Practice License (SIP)—for example, employing nurse anesthetists who do not have a SIP but perform anesthesia services—is regulated in Law Number 17 of 2023 concerning Health. The relevant articles are as follows:

1. Prohibition on practicing without STR and/or SIP

The basis for the prohibition is contained in Article 312 letter c of Law No. 17 of 2023 which states that: Every person is prohibited from practicing as a Medical Personnel or Health Personnel without having a STR and/or SIP. A health worker (including anesthesiologist/nurse anesthesiologist) may not provide health services if they do not have a Registration Certificate (STR) and Practice Permit (SIP).

Sofyan and Parawansa wrote that Indonesian health law serves as a normative umbrella governing the legal relationship between healthcare workers, patients, and healthcare facilities. They emphasized that any deviation from professional standards and licensing can result in legal sanctions, including criminal sanctions if they cause serious harm to patients. Fulfillment of professional standards and compliance with licensing are absolute requirements for healthcare practice. Violation of these provisions can result in criminal liability. Nursing staff in the context of anesthesia services can only act in accordance with the authority granted by statutory regulations and within a collaborative framework with anesthesia specialists.

2) Elements of Error and Negligence in Anaesthesia Practice

Criminal liability in anesthesia services cannot be separated from the concept of fault (*schuld*), which encompasses both intent (*dolus*) and negligence (*culpa*). Anesthesia services are high-risk medical procedures, so the standard of care is very strict. The elements of medical professional misconduct under health law must be assessed based on the professional standards in effect at the time the action was taken. Negligence in medical procedures can be classified as a criminal offense if it meets the elements of an unlawful act and results in harm to the patient. Negligence in medical procedures can be the basis for criminal liability if it is proven to deviate from professional standards and cause serious harm to the patient. Thus, if nursing staff perform or assist with anesthesia without adequate competence, do not follow standard operating procedures, or make technical errors that have fatal consequences, then the elements of error in criminal law can be fulfilled.

3) Criminal Legal Liability of Nursing Personnel

Law Number 17 of 2023 concerning Health provides the basis for imposing criminal sanctions on healthcare workers who practice without a license or violate legal provisions in the provision of healthcare services. The principle adopted is personal criminal liability, meaning that each individual is responsible for their criminal acts. The legal regulations for health workers place criminal liability as the *ultimum remedium* which is applied when professional violations have caused serious impacts on patient safety. Criminal liability for health workers arises when violations of professional obligations and service standards have exceeded administrative and ethical limits. In anesthesia services, criminal liability of nursing staff can arise if:

- a. Performing anesthesia without legal authority;
- b. Ignoring standard operating procedures;
- c. Acting outside the instructions or supervision of a competent physician.

Criminal liability for employers (hospitals, clinics or other parties) is regulated in:

Article 442 of Law No. 17 of 2023 states that

Any person who employs Medical Personnel and/or Health Personnel who do not have a SIP as referred to in Article 312 letter c shall be punished with:

- 1) A maximum prison sentence of 5 years, or
- 2) The maximum fine is IDR 500,000,000.

Thus, if the head of a health facility or hospital management employs anesthesia personnel without a SIP, they can be held criminally responsible.

Apart from employers, health workers who practice without a permit can also be subject to sanctions, including:

- 1) Article 312 letter c; prohibition on practicing without STR/SIP
- 2) Article 313; administrative sanctions (administrative fines, warnings, up to revocation of permits)
- 3) Article 439; criminal penalties for those who practice as if they were health workers with official permits.

The criminal liability of nursing personnel in anesthesia services is rooted in the principles of legality and professional authority as stipulated in Law Number 17 of 2023 concerning Health. The three conditions mentioned—performing actions without authority, ignoring standard operating procedures (SOPs), and acting outside of a doctor's instructions—constitute violations of professional standards and medical service standards. From a criminal law perspective, these actions can be classified as *culpa* (negligence) or even *dolus* (intentional), depending on the intent and consequences. Specifically in anesthesia services, which are high-risk procedures, violations of SOPs or authority can easily meet the elements of an unlawful act if they result in harm or endanger patient safety.

Furthermore, the provisions regarding employer liability in Article 442 emphasize the expansion of criminal law subjects, not only to individual direct perpetrators but also to parties who facilitate the violation. This provision implies that hospitals or management have an active legal obligation to ensure that every healthcare worker they employ has a Practice Permit (SIP). Failure to do so can be categorized as a form of gross negligence with criminal implications, with the threat of up to 5 years in prison or a maximum fine of Rp 500,000,000. This norm also serves

as a preventative instrument to prevent institutions from engaging in "tolerance" practices against personnel who do not meet legal requirements, especially in critical procedures such as anesthesia. Furthermore, the sanction system in the law is multi-layered, encompassing both administrative and criminal sanctions. Article 312 letter c stipulates a prohibition on practicing without a STR and SIP as the basis for professional legality, while Article 313 provides scope for enforcement through administrative sanctions ranging from warnings to license revocation. Article 439 regulates criminal sanctions for those who pretend or pretend to have the authority to act as legitimate health workers. Thus, there is a comprehensive legal structure: nursing personnel can be sanctioned for individual violations, while employers can be punished for structural negligence. This demonstrates that Indonesian health law prioritizes patient safety by establishing accountability mechanisms that target all actors in the health care system.

4) Institutional Responsibility

In modern healthcare, legal responsibility is not only individual, but can also be institutional in nature if there is systemic negligence or negligence. Healthcare institutions can be held legally accountable if they are proven negligent in ensuring the competence and authority of healthcare workers providing services to patients. (Sukmawati et al., 2025) Thus, if a hospital uses nursing staff for anesthesia services without paying attention to the limits of authority and competence, then in addition to personal criminal responsibility, institutional legal responsibility may also arise.

Within the framework of contemporary health law, a paradigm shift has occurred from individual responsibility to collective or institutional responsibility. This principle aligns with the provisions of Law Number 17 of 2023 concerning Health, which emphasizes the importance of safe and competency-based healthcare facility governance. A quote from Sukmawati et al. (2025) reinforces that institutions cannot escape legal responsibility for systemic negligence, such as failing to verify competency or providing practice space to healthcare workers outside their jurisdiction. Thus, legal responsibility is no longer understood narrowly as individual error, but also encompasses the failure of organizational systems to ensure service quality.

This concept of institutional responsibility can be analyzed through the doctrines of corporate liability and vicarious liability in criminal law. As a legal entity, hospitals are obligated to ensure that all healthcare workers possess the appropriate qualifications, competencies, and practice permits. If a hospital continues to employ or assign nurses to perform anesthesia services without a clear basis for authority, this can be classified as both administrative negligence and legal negligence. In this context, the fault lies not only with the individual implementing the service, but also with management who omit or even actively assign tasks that do not meet professional standards.

Furthermore, the legal implication of this situation is the emergence of two layers of accountability: personal criminal liability and institutional liability. Nursing staff remain responsible for the medical actions they perform, especially if errors or negligence occur during anesthesia procedures. However, on the other hand, hospitals can also be held accountable if they are proven to have failed to optimally perform their oversight, credentialing, and quality assurance functions. This demonstrates that the practice of anesthesia services without regard for the limits of authority not only violates ethical and administrative norms but also has the potential to result in serious legal consequences for all parties involved, both individuals and institutions.

5) Criminal Legal Responsibility for the Use of Nursing Personnel in Anesthesia Services: A Legal Analysis from the Perspective of Law Number 17 of 2023 concerning Health

Law No. 17 of 2023 concerning Health provides a clear legal basis for the obligations, authorities, and criminal sanctions for nursing personnel in anesthesia services. Negligence in the practice of anesthesia constitutes a legal error that can give rise to criminal liability. Criminal liability is personal, but under certain circumstances can be extended to healthcare institutions. Law No. 17 of 2023 concerning Health emphasizes the importance of professional, safe, and lawful healthcare governance. Law No. 17 of 2023 concerning Health requires all healthcare workers to obtain a practice permit at a health care facility.

So, in terms of regulations, there are no rules governing nursing (PPNI) nurses have authority in pre, intra and post anesthesia care, (in the nursing STR it also states Nursing Practice Permit) does not explicitly mention the anesthesia nursing practice permit, while in the Anesthesia Administrator STR it clearly mentions the Anesthesia Administrator Practice Permit, and through the Minister of Health Regulation above explains the scope of its authority. Law Number 17 of 2023 concerning Health provides a clear normative basis for healthcare practices, including aspects of anesthesia. From a criminal law perspective, this norm affirms the legal obligation for healthcare workers to work in accordance with their competence, authority, and valid licensing. Negligence in the practice of anesthesia is not only viewed as a violation of professional ethics but also as an unlawful act (*onrechtmatige daad*)

that has the potential to give rise to criminal liability if it meets the elements of fault (*mens rea*) and consequence (*actus reus*). Therefore, the norms in this law serve as both an instrument for patient protection and a means of monitoring the professionalism of healthcare workers.

Furthermore, the concept of criminal liability mentioned in the paragraph is essentially personal (individual liability), meaning that the person responsible is the healthcare worker who directly performed the action. However, in the development of modern healthcare law, there has been an expansion towards institutional liability (corporate liability), especially when there is an element of systemic negligence, such as hospital management's tolerance of unlicensed practice. This aligns with the principle of vicarious liability in criminal law, where healthcare institutions can be held accountable if proven negligent in the supervision, recruitment, or placement of healthcare workers who lack the appropriate competency or practice permit.

Finally, there is the issue of disharmony in norms between the nursing profession and anesthesiologists. Regulatory, nurses, through professional organizations such as the Indonesian National Nurses Association, are not explicitly granted specific authority in anesthesia procedures, either in their Registration Certificate (STR) or Practice Permit (SIP). This contrasts with anesthesiologists, who are explicitly granted legitimate authority through derivative regulations such as the Minister of Health Regulation. This creates a gray area in field practice, particularly when nurses are involved in pre-, intra-, and post-anesthesia care without explicit authority. This situation has the potential to pose legal risks for nurses because their actions could be deemed to exceed their authority (*ultra vires*), thus increasing the potential for criminal liability in the event of errors or negligence.

CONCLUSION

Law Number 17 of 2023 concerning Health provides a clear legal basis for the obligations, authorities, and criminal sanctions for nursing personnel in anesthesia services. Negligence in the practice of anesthesia is a form of legal error that can give rise to criminal liability. Criminal liability is personal, but under certain circumstances can be extended to healthcare institutions. Law Number 17 of 2023 concerning Health emphasizes the importance of professional, safe, and lawful healthcare governance.

Law Number 17 of 2023 concerning Health provides a strong legal basis for regulating nursing practice in anesthesia services, ensuring that all actions taken must be in accordance with established authority. Negligence in anesthesia practice is not only considered professional misconduct but also an unlawful act that can result in criminal liability, both individually and, under certain circumstances, institutionally.

The implications of this research are to provide legal clarity regarding the limits of nursing authority in anesthesia services, thereby preventing the practice of delegated medical duties that are inconsistent with statutory provisions. This research also has implications for improving healthcare workers' compliance with Law Number 17 of 2023 concerning Health and encouraging hospitals to improve their monitoring systems and develop standard operating procedures to avoid the risk of future criminal liability.

SUGGESTION

1. For Further Research

Future research is recommended to further examine the application of criminal liability for nursing staff in anesthesia practice through empirical studies in hospitals, so that we can clearly understand how authority is exercised, oversight mechanisms, and obstacles encountered in practice. Furthermore, future research could expand the scope of study by comparing anesthesia regulations with those of other countries or linking them to forms of civil and administrative liability to obtain a more comprehensive picture of legal protection in healthcare.

2. Practical

1) For Educational Institutions and Professional Organizations:

- There needs to be clarity and consistency in naming study programs and professions to avoid confusion between "Anesthesia Nursing" and "Anesthesia Management".
- Developing Clear Standards: Professional organizations (PPNI for nurses, IPAI for anesthesiologists) need to develop detailed, non-overlapping competency and authority standards that are disseminated to all health facilities.

2) For Hospitals and Management:

- Authority Audit: Before issuing a SPK, hospitals must conduct a rigorous verification of the healthcare worker's educational background and registration. Assignments must be appropriate for the healthcare worker's group.
- Supervision System and Protocols: Establish clear supervision protocols for delegated tasks. The anesthesiologist, acting as supervisor, is medically and legally responsible for the actions delegated.

3) For Health Workers (Nurses):

- Understanding Boundaries: Nurses must understand and adhere to the limits of their legal authority. Accepting assignments beyond their authority not only poses legal risks to patients but also to themselves.
- Good Documentation: Record every action, indication, and consent clearly in the medical record.

4) The Importance of Regulatory Clarity:

Further harmonization of regulations, educational standards, and professional standards is needed to provide legal certainty, protect patients, and create safe collaborative practices in the operating room.

REFERENCES

Book :

- Fitriani, R. (2022). *Criminal Law on Health*. Jakarta: Prenadamedia Group.
- Hanafiah, MJ, & Amir, A. (2018). *Medical Ethics and Health Law*. Jakarta: EGC.
- Hidayat, AA (2019). *Introduction to Anesthesia*. Jakarta: Salemba Medika.
- Moeljatno. (2018). *Principles of Criminal Law*. Jakarta: Rineka Cipta.
- Nursalam. (2020). *Nursing Management: Application in Professional Nursing Practice*. Jakarta: Salemba Medika.
- Sirait, TM (2023). *Health Workforce Law and Its Development*. Yogyakarta: Deepublish.
- Soekanto, S. (2019). *Factors Influencing Law Enforcement*. Jakarta: Rajawali Pers.
- Sofyan, AM, & Parawansa, A. (2025). *Health Law*. Jakarta: Kencana.
- Sukmawati, E., et al. (2025). *Legal Perspectives in Health Services: Protection of Patients and Medical Personnel*. Malang: Get Press Indonesia.
- Sutanto, H. (2021). *Health Law and Medical Malpractice*. Yogyakarta: Genta Publishing
- Wahyudi. (2024). *Health Law: A Review of Legal Aspects*. Bandung: Penamuda Media.

Constitution

Law of the Republic of Indonesia Number 17 of 2023 concerning Health

Journal :

- Adiana, I Nyoman, Ida Bagus Anggapurana Pidada, Kadek Mery Herawati (2024). Legal Liability of Hospitals for Medical Personnel Negligence Resulting in Permanent Disability of Patients. *Journal of Multidisciplinary Research and Technological Innovation*. 2 (1).
- Negoro, Widigdo Rekso (2025). Legal Protection and Implementation of Regulations on the Authority of Anesthesia Administrators in Unsupervised Hospitals. *Dedication to Law. Journal of Legal Engagement and Social Justice*. 5 (2)
- Prayitno, Edi (2021) Legal Responsibility for Unlicensed Practice by Anesthesiologists in Hospitals (Study at Sangatta Regional General Hospital). *Journal of Health Law and Ethics*. 1 (1)
- Wahyudiono, Gunawan, Joko Ismono, Nuryanto A. Daim (2024) Legal Protection of Health Workers (Anesthesiologists) After the Issuance of Health Law Number 17 of 2023. *Master of Law Journal "Law and Humanity"*