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Hospital criminal liability for JKN claim fraud: reconstructing corporate fault across indonesia's criminal, corruption and health laws

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ABSTRACT

Fraudulent claims under Indonesia's National Health Insurance (Jaminan Kesehatan Nasional, JKN) program have predominantly been addressed through administrative sanctions, despite hospitals submitting claims and receiving payments. Indonesia's new Criminal Code (Law No. 1 of 2023), effective January 2, 2026, and adjusted by Law No. 1 of 2026, recognizes corporations as subjects of criminal offenses. However, the attribution of corporate fault to hospitals remains legally complex. This normative juridical study employs statutory and conceptual approaches to examine hospital criminal liability under the Criminal Code, the Corruption Eradication Law, and the Health Law, and to determine how unlawful corporate benefit and fault can be established in fraudulent JKN claims. The study proposes a Three-Layer Corporate Fault Test encompassing attribution of conduct to individuals acting within or controlling the hospital, unlawful corporate benefit, and failure to prevent or tolerance of criminal conduct. The third layer is assessed using anti-fraud obligations under Minister of Health Regulation No. 16 of 2019. The analysis demonstrates that the Health Law does not specifically criminalize JKN claim fraud or expressly recognize failure to prevent as a basis of corporate fault. Furthermore, the legal separation of JKN fund assets from BPJS assets complicates the establishment of losses to state finances. The new Criminal Procedure Code also introduces deferred prosecution agreements exclusively for corporations, subject to judicial oversight. The proposed test provides a structured evidentiary framework for prosecutors and judges to distinguish individual misconduct from institutional fault and establish hospital criminal liability.

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1. INTRODUCTION

The National Health Insurance (Jaminan Kesehatan Nasional, JKN) program in Indonesia is administered by BPJS Kesehatan, a public legal entity established under Article 7(1) of Law No. 24

of 2011 (Republik Indonesia, 2011). Contributions are allocated to the Social Security Fund (Dana Jaminan Sosial), which the same law defines as a trust fund belonging to all participants and managed by BPJS to finance healthcare benefits (Article 1(3)). When a hospital submits fraudulent claims, it obtains payments from this fund. Health insurance fraud has been examined as a broader problem affecting healthcare financing and institutional accountability (Villegas-Ortega et al., 2021). In the United States, healthcare fraud has also been identified as a major category of violations under the False Claims Act (Adashi & Cohen, 2022). In Indonesia, however, a fundamental question arises when the claimant is a hospital: who should bear criminal responsibility, the physician who manipulates diagnostic codes, the manager who approves the claims, or the hospital as an organization that receives the payments?

The regulatory response to JKN claim fraud has primarily relied on administrative law. Minister of Health Regulation No. 16 of 2019 requires referral hospitals cooperating with BPJS Kesehatan to establish fraud prevention systems through institutional policies and guidelines, an anti-fraud culture, quality and cost control mechanisms, and dedicated prevention teams (Kementerian Kesehatan Republik Indonesia, 2019, Article 3(1)). The regulation provides administrative sanctions, including verbal and written warnings, orders to reimburse losses, and, in more serious cases, fines or license revocation (Articles 6–8). Article 6(7) further stipulates that these administrative sanctions do not eliminate the possibility of criminal sanctions. Consequently, the regulation leaves unresolved the circumstances under which criminal law may be applied directly to the hospital and the legal basis for establishing its criminal responsibility.

This issue has acquired particular significance since January 2, 2026, when Indonesia's new Criminal Code, established under Law No. 1 of 2023, entered into force (Republik Indonesia, 2023a). The new Criminal Code expressly recognizes corporations as subjects of criminal offenses (Article 45), establishes the circumstances under which an offense is attributable to a corporation (Articles 46–47), and provides criteria for corporate criminal liability, including unlawful corporate benefit, failure to take necessary preventive measures, and tolerance of criminal conduct (Article 48). Law No. 1 of 2026 subsequently adjusted this framework by removing vicarious liability from Article 37, restructuring Article 49 to distinguish corporate criminal responsibility from the potential extension of liability to managers and controlling parties, and allowing an additional corporate fine of up to ten percent of annual profits for offenses subject to the highest fine category (Republik Indonesia, 2026, Article 121(3)). The same law maps provisions concerning corruption offenses under the previous legislation to Articles 603–606 of the Criminal Code (Article 622(4)), while Article 20 of the Corruption Eradication Law (Republik Indonesia, 1999), which governs corporate liability, is not among the repealed provisions. Meanwhile, Law No. 17 of 2023 concerning Health establishes separate provisions on corporate criminal responsibility (Republik Indonesia, 2023b, Articles 447–448), and the new Criminal Procedure Code, Law No. 20 of 2025, introduces corporate criminal procedure provisions, including deferred prosecution agreements (Republik Indonesia, 2025, Articles 326–332).

Previous studies on JKN fraud have addressed the effectiveness of administrative sanctions against healthcare facilities (Purnomo & Hosein, 2025), law enforcement against perpetrators under Minister of Health Regulation No. 16 of 2019 (Wulandari, 2025), the transition from administrative correction to criminal prosecution (Risqilah et al., 2026), fraud in healthcare services and its legal framework (Zuvarcan et al., 2025), and fraud prevention policies within the national health insurance system (Putri & Achadi, 2024). Purnomo and Hosein (2025) identify weak supervision and inconsistent enforcement of administrative sanctions but do not establish the criteria for attributing fraudulent claims to hospitals as criminally liable corporations. Wulandari (2025) similarly finds that administrative sanctions provide insufficient deterrence and emphasizes stronger enforcement and clearer institutional responsibilities, without examining the legal requirements for establishing a hospital's own criminal fault. Risqilah et al. (2026) develop a risk-based model for escalating administrative violations into criminal proceedings, but leave unresolved the evidentiary requirements for establishing corporate attribution, unlawful benefit, and institutional failure under Articles 46–48 of the new Criminal Code. Research on corporate criminal liability in Indonesia has examined liability models and theories under the new Criminal Code (Alfakar et al., 2023), corruption offenses (Lubis et al., 2021), environmental damage (Wibisana et al., 2021), human rights violations (Amiati et al., 2024), and hospital liability in procurement activities and cases involving patient losses (Ardiana et al., 2023; Yusyanti, 2021). Comparative scholarship has further examined attribution through corporate controllers (Yu, 2025), the identification principle (Beebeejaun & Mandarun, 2024),

corporate personality (Horder, 2026), corporate culture and organizational systems (Bant & Faugno, 2023; Cheong, 2026), reforms of corporate criminal liability in the United Kingdom (Ma & Ryder, 2025), and failure-to-prevent offenses (Horder, 2025; Korotana, 2024). Studies concerning law enforcement in healthcare have investigated organizational accountability in healthcare services (Bennett & Alghrani, 2026), regulation and litigation relating to healthcare fraud (Eliason et al., 2025), whistleblowing within Medicare (Leder-Luis, 2025), and criminal liability for gift-giving practices in Lithuania's healthcare system (Gruodytė & Orlauskas, 2024). Despite these contributions, the specific legal and evidentiary framework for distinguishing individual misconduct from institutional fault in hospital-related JKN claim fraud under Articles 46–48 of Indonesia's new Criminal Code remains insufficiently developed.

This article addresses that research gap through two questions. First, how can hospital criminal liability be reconstructed under the Criminal Code, the Corruption Eradication Law, and the Health Law? Second, how can corporate benefit and corporate fault be established in cases of JKN claim fraud? The article makes three contributions: it proposes a Three-Layer Corporate Fault Test for prosecuting hospitals, compares the three legal regimes to identify their similarities and differences, and analyzes two issues that may determine the effectiveness of prosecution, namely whether JKN funds constitute state finances and under what circumstances deferred prosecution agreements should be applied. Section 2 explains the research method. Section 3 presents the legal analysis in two parts corresponding to the research questions. Section 4 concludes the article.

2. METHOD

This study employs normative juridical research. Law is examined as a system of written norms, with the analysis focusing on what those norms regulate, how they relate to one another, and how they should be applied to the legal issues under examination. Two approaches are employed. The statutory approach examines relevant legal provisions and assesses their consistency, including circumstances in which one provision repeals, replaces, or supplements another. The conceptual approach uses doctrines of corporate criminal liability to interpret the applicable statutory provisions. Four doctrines provide the analytical foundation: identification, under which the conduct of senior corporate officers is attributed to the corporation; vicarious liability, under which a corporation may be held responsible for acts committed by persons acting on its behalf; aggregation, which combines the conduct and knowledge of multiple individuals; and corporate culture or systems-based fault, under which a corporation is held accountable for its own policies, practices, and institutional failures. Comparative scholarship on controller-based attribution, organizational systems, and failure-to-prevent offenses is used to refine these concepts rather than to incorporate foreign legal rules directly into Indonesian law.

The legal materials are classified into three categories. Primary legal materials comprise Law No. 1 of 2023 concerning the Criminal Code and Law No. 1 of 2026 concerning Criminal Law Adjustments; Law No. 31 of 1999 concerning the Eradication of Corruption, as amended by Law No. 20 of 2001; Law No. 17 of 2023 concerning Health; Law No. 24 of 2011 concerning Social Security Administration Bodies; Law No. 20 of 2025 concerning Criminal Procedure; Minister of Health Regulation No. 16 of 2019 concerning the prevention and handling of fraud in the health insurance program; and Constitutional Court Decisions No. 25/PUU-XIV/2016 and No. 28/PUU-XXIV/2026, both of which were examined in full. Secondary legal materials consist of scholarly journal articles published between 2021 and 2026, identified through targeted searches in Google Scholar using the keywords "JKN claim fraud," "hospital criminal liability," "corporate criminal liability," and "corporate fault." Articles were selected based on their substantive relevance to JKN fraud, corporate attribution, organizational fault, and comparative doctrines of corporate criminal liability. Publications lacking relevance to these issues or verifiable bibliographic information were excluded, while available digital object identifiers were cross-checked through Crossref and the respective journal websites. Tertiary legal materials, including statutory explanations, are used only to clarify legal terminology. The relevant provisions are examined through official legislative and regulatory texts and subsequently compared article by article.

The analysis is prescriptive. Grammatical, systematic, and teleological methods of legal interpretation are applied to the relevant provisions to formulate a test that prosecutors and judges can use in cases involving hospitals. The transitional rules under Article 618 of the Criminal Code

determine the applicable legal regime: ongoing cases are subject to the new Criminal Code unless the previous provisions are more favorable to the suspect or defendant. Article 622(4) of Law No. 1 of 2026 maps the previous corruption provisions to Articles 603–606 of the Criminal Code. Minister of Health Regulation No. 16 of 2019 is treated as a benchmark for determining the meaning of the "necessary measures" required under the Criminal Code, rather than as an independent source of criminal liability. Government Regulation No. 28 of 2024 concerning the Implementation of the Health Law was also examined but does not contain provisions specifically addressing health insurance fraud; therefore, it is not used in the substantive analysis (Republik Indonesia, 2024).

3. RESULTS AND DISCUSSION

3.1 Reconstructing Hospital Criminal Liability Under Three Legal Regimes

Hospitals in Indonesia may qualify as corporations under the Criminal Code. Article 45(2) encompasses limited liability companies, foundations, cooperatives, state-owned and regionally owned enterprises, incorporated and unincorporated associations, partnerships, and limited partnerships. Law No. 31 of 1999 provides a simpler definition of a corporation as an organized collection of persons and/or assets, whether or not it possesses legal entity status (Article 1(1)). Accordingly, hospitals operated by companies, foundations, or regional enterprises fall within both definitions. Table 1 compares how the three legal regimes attribute criminal offenses to corporations.

Table 1. Corporate Criminal Liability Under the Criminal Code, the Corruption Eradication Law, and the Health Law

Legal Regime	Parties Subject to Liability	Basis of Corporate Fault	Sanctions Against Corporations
Law No. 31 of 1999, Article 20	The corporation and/or its management (Article 20(1))	Conduct committed by individuals acting within the corporation on the basis of employment or other relationships (Article 20(2)); no separate corporate fault test	Criminal fines only, with the maximum amount increased by one-third (Article 20(7))
Criminal Code, Articles 45–49, as adjusted by Law No. 1 of 2026	The corporation, with liability potentially extending to functional managers, persons issuing instructions, controlling parties, and beneficial owners (Article 49)	Conduct by functional managers or other persons acting for the corporation (Article 46), or controllers outside its organizational structure (Article 47), assessed according to the criteria in Article 48(a)–(e)	Criminal fines and measures (Articles 118–123); for Category VIII fines, an additional fine of up to 10% of annual profits (Article 121(3))
Law No. 17 of 2023, Articles 447–448	The corporation, functional managers, persons issuing instructions, controlling parties, and beneficial owners	Scope of business activities (Article 447(3)); corporate objectives, acceptance as policy, or unlawful benefit (Article 447(4)); no failure-to-prevent basis	Fines of IDR 2 billion, IDR 5 billion, or IDR 50 billion depending on the applicable criminal penalty; compensation, license revocation, and closure (Article 448)

Article 46 of the Criminal Code extends beyond functional managers to include persons acting under employment or other relationships, for or on behalf of the corporation or in its interests, within the scope of its business activities. Article 20(2) of Law No. 31 of 1999 adopts a similar standard. Physicians, medical coders, and claims officers may therefore be individuals whose conduct is attributable to a hospital, provided that their actions fall within the hospital's business activities. Article 47 further includes persons issuing instructions, controlling parties, and beneficial owners who operate outside the formal organizational structure but exercise control over the corporation. This provision is particularly important for hospitals owned by foundations or investor groups, where actual decision-making authority may reside outside the board of directors. The Criminal Procedure Code recognizes the same four categories of responsible parties (Article 326(2)) and permits corporations and the individuals responsible for their conduct to be prosecuted together (Article 332).

Law No. 1 of 2026 removed the vicarious liability component from Article 37, which now addresses only strict liability. Corporate criminal responsibility is governed by Articles 46–49, while Article 48 provides general criteria for assessing corporate fault, subject to specific provisions governing offenses under other laws. These criteria include conduct within the corporation's business activities, unlawful corporate benefit, acceptance of criminal conduct as corporate policy, failure to take necessary measures to prevent criminal offenses and ensure compliance, and tolerance of

criminal conduct. The explanatory memorandum to the amended Article 49 indicates that the amendment distinguishes the commission of a criminal offense from the attribution of criminal responsibility. Article 447(4) of the Health Law, in turn, specifies corporate objectives, acceptance of criminal conduct as corporate policy, and unlawful benefit as criteria for liability concerning the offenses enumerated in Article 447(1). These sector-specific provisions operate alongside the Criminal Code's general framework, which applies unless otherwise provided by law. Where a single act potentially falls under multiple criminal provisions, the applicable rule must be determined by comparing their statutory elements and giving precedence to the specific provision when it governs the same conduct. Law No. 31 of 1999 does not establish a separate corporate fault test. This framework reflects the transition from vicarious liability toward fault-based corporate responsibility discussed in Indonesian scholarship on the evolution of corporate liability (Alfakar et al., 2023). It is also consistent with comparative discussions of corporate culture and organizational systems (Bant & Faugno, 2023; Cheong, 2026; Mohd Ali et al., 2023), as well as failure-to-prevent offenses (Horder, 2025; Korotana, 2024; Stratton, 2022).

The offenses covered by Article 447 of the Health Law include employing healthcare professionals without valid practice licenses (Article 442), but none specifically concern the submission of fraudulent claims to a health insurance administrator. Consequently, JKN claim fraud must be prosecuted under corruption provisions or general criminal offenses. Potential general offenses include fraud under Article 492 of the Criminal Code, punishable by imprisonment for up to four years, and document forgery under Article 391, punishable by imprisonment for up to six years. The Criminal Code's definition of property includes non-cash monetary assets. The choice of offense therefore affects the applicable corporate sanctions, as discussed in Section 3.2.

A final consideration concerns the temporal application of criminal law. Article 618 applies the new Criminal Code to ongoing cases unless the previous provisions are more favorable to the suspect or defendant. Article 622(4) of Law No. 1 of 2026 maps Articles 2(1), 3, 5, 11, and 13 of Law No. 31 of 1999 to Articles 603, 604, 605, 606(2), and 606(1) of the Criminal Code, respectively. For hospital-related offenses originating before 2026, prosecutors and judges must therefore compare the applicable provisions on a case-by-case basis. Article 330 of the Criminal Procedure Code further provides that corporations may remain criminally liable following mergers, consolidations, separations, or dissolution, thereby preventing organizational restructuring from automatically eliminating responsibility for previously committed fraud.

3.2 Establishing Corporate Benefit and Fault in JKN Claim Fraud

Section 3.1 demonstrates that the Criminal Code provides the most comprehensive corporate fault framework, while the Health Law does not establish an offense specifically addressing fraudulent insurance claims. The analysis now turns to evidentiary requirements. This section proposes a test for establishing hospital criminal liability, uses Minister of Health Regulation No. 16 of 2019 as a benchmark for assessing one of its components, and examines two issues that may determine the effectiveness of prosecution: whether JKN funds qualify as state finances and when deferred prosecution agreements may be appropriate.

3.2.1 The Three-Layer Corporate Fault Test

Articles 46–48 of the Criminal Code can be interpreted as establishing three questions that prosecutors should address sequentially. First, who committed the relevant conduct? Second, did the hospital obtain an unlawful benefit? Third, did the hospital itself fail to prevent the offense or tolerate its commission? Table 2 presents the proposed test.

Table 2. The Three-Layer Corporate Fault Test for Hospital Claim Fraud

Layer	Legal Basis	Key Question	Proposed Categories of Evidence
1. Attribution	Criminal Code, Articles 46–47; Criminal Procedure Code, Article 326	Were the fraudulent claims submitted by functional managers or other persons acting for the hospital (Article 46), or were they instructed or controlled by individuals outside the formal organizational structure (Article 47)?	Organizational charts; appointment decisions for directors and heads of coding and claims units; claim submission approvals; instructions to alter diagnostic or procedural codes
2. Unlawful Corporate Benefit	Criminal Code, Article 48(b), considered together with Article 48(a) and (c)	Did the claim payments unlawfully benefit the hospital?	BPJS claim payment records; hospital revenue ledgers; discrepancies between billed and delivered healthcare services

3. Failure to Prevent or Tolerance	Criminal Code, Article 48(d)–(e); anti-fraud obligations under Minister of Health Regulation No. 16 of 2019 as a benchmark for necessary measures	Did the hospital fail to establish, implement, or maintain reasonable anti-fraud measures, or disregard existing measures?	Anti-fraud teams and procedures; training records; internal audits; responses to previous verification findings

The proposed test serves two functions in criminal prosecution. First, it distinguishes individual criminal conduct from the hospital's own fault, consistent with the objective expressed in the explanatory memorandum to the amended Article 49. Second, it identifies the types of evidence prosecutors should collect for each layer. Article 329 of the Criminal Procedure Code requires indictments against corporations to describe the alleged criminal offense accurately, clearly, and comprehensively. Presenting the three layers separately therefore provides a structured basis for constructing the indictment.

Nevertheless, caution is necessary when interpreting how the criteria under Article 48 operate together. The provision contains five requirements, with the expression “and/or” appearing only between the final two criteria, and the Criminal Code does not expressly clarify whether all criteria must be satisfied. This article interprets them as grounds of attribution that become stronger when several elements are established. Prosecutors should therefore substantiate at least Layer 1 and Layer 2 together with one component of Layer 3. An allegation based solely on corporate benefit may invite the defense that the hospital itself was a victim of misconduct committed by an employee acting outside institutional authorization.

Layers 1 and 2 can be established through factual patterns identified in the appendix to Minister of Health Regulation No. 16 of 2019. The regulation identifies various forms of hospital fraud, including manipulation of diagnoses or procedures, duplication of claims from other patients (cloning), billing for services never provided (phantom billing), inflation of medication and medical device charges, and division of a single episode of care into multiple claims (unbundling). These practices generally leave documentary evidence in medical records and claim submissions. Consequently, Layer 2 may frequently be established by comparing payment records with discrepancies between services billed and services actually delivered.

3.2.2 Minister of Health Regulation No. 16 of 2019 as a Benchmark for Layer 3

Layer 3 presents the greatest evidentiary challenge because it concerns actions that the hospital failed to undertake. Article 48(d) of the Criminal Code refers to the “necessary measures” required to prevent criminal offenses, prevent more serious consequences, and ensure legal compliance, but it does not specify those measures. For hospitals participating in the JKN program, Minister of Health Regulation No. 16 of 2019 provides a relevant regulatory benchmark. Article 3(1) requires referral hospitals to establish fraud prevention systems, while Chapter III, Section 4 of the regulation's appendix specifies the corresponding institutional obligations. Table 3 categorizes these obligations and identifies the issues that judges should examine.

Table 3. Hospital Obligations Under Minister of Health Regulation No. 16 of 2019 and Their Evidentiary Assessment

Obligations (Appendix, Chapter III, Section 4)	Matters to Be Examined
Policies and guidelines: Good corporate and clinical governance; authority and job descriptions of healthcare and non-healthcare personnel; standard clinical operating procedures; internal claim submission procedures; fraud risk management	Do these documents exist, have they been approved by hospital management, and are they genuinely applied in claim processing?
Prevention, detection, and resolution: Internal supervision and control; whistleblowing systems and follow-up procedures; information technology support; routine data surveillance or audits; training for physicians, medical coders, and claims officers concerning coding and medical summaries	Does the hospital conduct data audits and train coding personnel, and does it follow up on complaints?
Anti-fraud culture: Integrity pacts signed by all employees, including management; codes of ethics; education and awareness activities	Is management bound by the integrity pact, and are educational activities conducted repeatedly?
Quality and cost control: Control teams; clinical audits and utilization reviews; claim procedures incorporating claims data analysis; real-time information technology monitoring	Were audits and claims analyses conducted before the fraud occurred, and what were their findings?
Prevention teams: Early detection using claims data; referral of suspected fraud to internal supervisors; monitoring and reporting	Did the team report suspected misconduct, and did management respond through corrective action?

Two limitations must be recognized. First, a ministerial regulation does not itself constitute criminal law. Its appendix helps clarify the meaning of “necessary measures” but does not define

criminal offenses, and noncompliance does not automatically establish Layer 3. A hospital with a documented prevention program that operates effectively in practice may have a defense against allegations under Article 48(d). Conversely, a hospital whose compliance program exists only on paper cannot rely on its formal existence to demonstrate effective prevention. Comparative scholarship concerning the effects of failure-to-prevent offenses on corporate compliance reporting discusses related concerns (Harris & Campbell, 2024).

Second, the regulation establishes only administrative sanctions, including verbal and written warnings, orders to reimburse losses, and, for serious violations, fines or license revocation (Articles 6–8). Article 6(7) expressly provides that these sanctions do not eliminate criminal sanctions. Administrative enforcement and criminal prosecution therefore operate through separate legal mechanisms. An order requiring reimbursement does not, by itself, resolve whether the hospital bears criminal responsibility.

3.2.3 Do JKN Funds Constitute State Finances?

Prosecution under corruption law involves an element that is absent from general criminal offenses. Article 603 criminalizes conduct that unlawfully enriches an individual, another person, or a corporation and causes losses to state finances or the national economy. Article 604 criminalizes the abuse of authority, opportunity, or facilities arising from an official position or status, including conduct intended to benefit a corporation, where the same form of loss occurs.

The explanatory memorandum to Article 603 provides that losses to state finances are determined through an examination conducted by a state financial auditing institution. In Decision No. 28/PUU-XXIV/2026, the Constitutional Court interpreted this institution as the Audit Board of Indonesia (Badan Pemeriksa Keuangan, BPK), pursuant to Article 23E(1) of the 1945 Constitution (Mahkamah Konstitusi Republik Indonesia, 2026). The Court dismissed the petition challenging Articles 603–604 and the explanatory memorandum to Article 603 in its entirety, thereby leaving those provisions in force. In its reasoning, the Court referred to Decision No. 25/PUU-XIV/2016, which removed the word “may” (dapat) from Articles 2(1) and 3 of Law No. 31 of 1999 (Mahkamah Konstitusi Republik Indonesia, 2017). That decision established corruption offenses as material offenses requiring proof of actual losses. Articles 603–604 likewise refer to conduct that causes losses to state finances.

The legal structure of JKN is particularly important in this context. Law No. 24 of 2011 requires BPJS to separate the assets of the Social Security Fund from its own assets and expressly provides that the fund's assets are not BPJS assets (Article 40(1)–(3)). The law defines the fund as a trust fund belonging to all participants (Article 1(3)). Under this interpretation, fraudulent claims paid from the fund cause losses to assets belonging to participants rather than directly to BPJS or the state. Only the initial capital of BPJS is expressly characterized as separated state assets (Article 41(1)(a)).

A competing interpretation is that the fund is managed by a public legal entity accountable to the President (Article 7), that the government pays contributions on behalf of contribution assistance recipients, and that the fund supports the state's constitutional obligation to provide social security. Where the contributions underlying a particular claim originate from government payments, the argument that the loss involves state finances becomes stronger. Articles 603 and 604 also recognize losses to the national economy as an alternative basis, which prosecutors may invoke when the state-finance element is contested.

This article does not claim to resolve that legal classification conclusively. Rather, it demonstrates that prosecutors choosing the corruption-law route must establish the relevant loss element through case-specific evidence, supported by an assessment conducted by the competent financial auditing institution.

Article 604 presents an additional challenge in cases involving private hospitals. The provision requires the misuse of authority, opportunity, or facilities obtained by virtue of an official position or status. This element may be easier to establish where the hospital is publicly owned or the perpetrator is a public official. For private hospitals, prosecutors must identify the specific authority or facilities available to the perpetrator because of their position, such as authorization to approve and submit claims to BPJS Kesehatan.

The choice of prosecutorial route also affects the maximum applicable sanctions. Articles 603 and 604 provide for life imprisonment or imprisonment ranging from two to twenty years. Consequently, the maximum fine applicable to a corporation falls within Category VIII, amounting to IDR 50 billion, with the possibility of an additional fine of up to ten percent of annual profits (Articles

79 and 121(2)(c), (3)). By comparison, fraud under Article 492, punishable by imprisonment for up to four years, and document forgery under Article 391, punishable by imprisonment for up to six years, carry maximum imprisonment terms of less than seven years. The maximum corporate fine for these offenses therefore falls within Category VI, amounting to IDR 2 billion (Article 121(2)(a)).

Under Article 20(7) of Law No. 31 of 1999, the only principal criminal punishment available against a corporation is a fine, with its maximum amount increased by one-third. Accordingly, whether JKN funds are classified as state finances may determine the availability of corruption charges and the maximum sanctions imposed on hospitals. Administrative enforcement and criminal liability may also produce different outcomes. Administrative proceedings may conclude with reimbursement of losses, whereas criminal proceedings may result in fines and additional measures, including compensation, license revocation, or closure where the relevant provisions of the Health Law apply (Article 448).

3.2.4 Deferred Prosecution Agreements as a Proportionate Response

The new Criminal Procedure Code introduces a prosecutorial mechanism available exclusively to corporations: deferred prosecution agreements under Article 328. The objectives of this mechanism include ensuring legal compliance, recovering losses, and improving procedural efficiency (Article 328(1)). A suspect, defendant, or legal counsel may submit a request to the prosecutor before the case is transferred to the court. The prosecutor may accept or reject the request after considering justice, the interests of victims, and the applicant's compliance record (Article 328(3)–(4)).

A deferred prosecution agreement is not a purely private arrangement between the prosecutor and the corporation. The prosecutor must report the agreement to the court, which conducts a hearing and evaluates the proportionality of its conditions, its implications for victims, society, and the national economy, and the applicant's capacity to fulfill its obligations before approving or rejecting it (Article 328(5)–(11)). The conditions may include restitution, the implementation of compliance programs or improvements in anti-corruption governance, reporting and cooperation obligations, and other corrective measures (Article 328(12)). If the corporation fulfills its obligations, the case may be closed. If it fails to comply, prosecution may proceed (Article 328(13), (15)).

Article 328 does not impose a requirement that the applicant be a first-time offender. Such a restriction appears only in the provisions concerning restorative justice under Article 327(6). The corporation-specific nature of this mechanism is consistent with discussions of deferred prosecution and corporate culture in Indonesian legal scholarship (Zakaria et al., 2024).

In cases of fraudulent hospital claims, the test presented in Table 2 provides a basis for determining when a deferred prosecution agreement may be appropriate. These criteria constitute the proposal advanced in this article rather than requirements expressly established by the Criminal Procedure Code. Such an agreement may be suitable when Layer 1 indicates isolated misconduct by an employee without the involvement of directors or controlling parties, Layer 3 demonstrates the existence of a prevention system that nevertheless failed, the hospital fully reimburses the losses, and the hospital agrees to implement a compliance program aligned with the obligations identified in Table 3.

Conversely, a deferred prosecution agreement would be inappropriate where Layer 1 indicates instructions or control by senior management or controlling parties, or where Layer 3 establishes that previous warnings were ignored or similar fraudulent conduct occurred repeatedly. Judicial approval and the obligation to consider victims' interests under Article 328(4) and (8) help prevent such agreements from becoming a means by which corporations can simply pay to avoid accountability.
Meanwhile, Minister of Health Regulation No. 16 of 2019 continues to provide an administrative enforcement mechanism. Reimbursement orders imposed under that regulation may complement the conditions of a deferred prosecution agreement, but they do not replace the agreement's requirements or independently resolve questions of corporate criminal responsibility.

4. CONCLUSION

This article examined how hospital criminal liability can be reconstructed under the Criminal Code, the Corruption Eradication Law, and the Health Law, as well as how corporate benefit and corporate fault can be established in cases involving fraudulent claims under Indonesia's National Health Insurance (JKN) program. Regarding the first research question, the three legal regimes provide broad grounds for attributing criminal conduct to corporations. The actions of functional managers,

individuals acting on behalf of hospitals, and controlling parties operating outside formal organizational structures may be attributed to the hospital. However, these regimes differ in their treatment of corporate fault. The Criminal Code is the only regime that expressly recognizes failure to prevent criminal offenses and tolerance of criminal conduct as grounds for corporate responsibility. Law No. 1 of 2026 further reinforces the distinction between corporate fault and vicarious liability. The Health Law does not specifically cover fraudulent insurance claims, while the Corruption Eradication Law does not establish a separate corporate fault test and limits the principal criminal punishment imposed on corporations to fines.

Regarding the second research question, the proposed Three-Layer Corporate Fault Test translates Articles 46–48 of the Criminal Code into a structured evidentiary framework. The test examines who committed the relevant conduct, whether the hospital obtained an unlawful benefit, and whether the hospital failed to prevent or tolerated the criminal offense. Minister of Health Regulation No. 16 of 2019 provides a regulatory benchmark for assessing the necessary preventive measures without making noncompliance automatic proof of criminal fault. Two issues remain particularly important in practice. The classification of JKN funds as state finances determines whether prosecution under corruption provisions is available and whether corporate fines may reach Category VIII. Meanwhile, deferred prosecution agreements, which are available exclusively to corporations under the new Criminal Procedure Code, offer a proportionate response to isolated institutional failures when hospitals reimburse losses and undertake meaningful corrective measures.

Three recommendations follow from these findings. Prosecutors should establish each layer of corporate fault separately and support allegations concerning institutional failures with evidence of the anti-fraud obligations prescribed by Minister of Health Regulation No. 16 of 2019. The Ministry of Health should clarify the preventive obligations expected of hospitals so that the interpretation of necessary measures does not depend entirely on judicial discretion. Prosecutorial guidelines should also specify the circumstances under which deferred prosecution agreements are appropriate for hospitals and the conditions under which such agreements should be excluded.

This study has several limitations. As normative juridical research, it relies on statutory provisions and secondary legal literature rather than actual case files. Consequently, it cannot determine how courts will apply the proposed test in individual proceedings. The legal classification of JKN funds may also develop as courts interpret Articles 603–604 of the Criminal Code and the new Criminal Procedure Code. Future research should examine how prosecutors formulate criminal charges against hospitals involved in fraudulent claims and how courts evaluate evidence of institutional failures under the third layer of the proposed framework.

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