

Doctors' Legal Protection of Midwives And Nurses Professionals In Medical Actions In Hospitals

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ABSTRACT

The lack of legal understanding by the parties concerned and the lack of legal protection for both patients and health workers. So the results of the nurses' hard work in providing health services if they are not successful will be faced with the law and even categorized as malpractice with criminal sanctions. Focus problems, namely: Doctors' legal protection of midwives and nurses professionals in medical actions in hospitals. The method used in this study is normative juridical research, which is a study using legislation that includes three layers of legal science consisting of the study of legal science, legal theory and legal philosophy. The results of the discussion found that the delegation of Doctor's authority to the nurse profession in medical action from a legal perspective. Nurses are someone who plays a role in caring for and helping someone by protecting them from pain, injury and the process of aging. It is not in accordance with the regulations of Law No. 38 of 2014 concerning Nursing Article 32 Paragraph (1) and Minister of Health Regulation No. 2052 of 2011 Article 23 Paragraph (1). The nature of the act of giving a medical diagnosis and the determination of medical therapy should not be delegated to nurses of Law No. 17 of 2023. The authority of nurses is as follows: Article 30 paragraph 1 and 2. The two legal umbrellas can certainly make nurses' understanding and protection in carrying out medical duties.

Keywords: Protection, Delegation of Authority, Nurse Profession, Medical Action

1. INTRODUCTION

In order to achieve health service goals, of course, health development is carried out in a directed manner or according to procedures, continuously and realistically according to the stages. This is stated in the Decree of the Minister of Health concerning the National Health System in 2009. National development, one element of general welfare is improving health. What is meant by health development is efforts carried out by all components of the nation which aim to increase the awareness, will and ability to live healthily for everyone in order to achieve the highest level of public health. That every activity or series of activities carried out in an integrated and sustainable manner to maintain and improve the level of public health in the form of health services for disease prevention, health improvement, disease treatment and health restoration by the government or community is contained in health efforts for prevention.

Achieving the ability to live a healthy life for each particular population, so the responsibility for realizing an optimal and appropriate level of health is in the hands of all



Indonesian people, both the government and the private sector together in more specific health development goals for the future.

The implementation of health efforts must be comprehensive, characteristic, planned, integrated, sustainable, affordable, tiered, professional and of high quality. As stated in the National Health System, the health effort subsystem consists of two main elements, namely Individual Health Efforts and Community Health Efforts. Public Health Efforts are mainly organized by the Government with the active participation of the community and the private sector, while Individual Health Efforts can be organized by the community, private sector and government. This is due to the limited number of human resources both in terms of quantity and quality. Apart from Community Health Centers, which are important units in health service efforts are hospitals, both private and government. Providing quality services in accordance with established standards and can reach all levels of society.

This is stated in Article 1 paragraph (2) of Law Number 36 of 2009 concerning Health. Meanwhile, Article 1 paragraph (6) states that a Health Personnel is any person who devotes himself or herself to the health sector, especially having competent knowledge or skills through education in the health sector who requires authority to carry out certain health efforts. "The government recognizes factually that a series of medical procedures cannot be completely handled by doctors, but must involve other health workers, in this case professional nursing staff (Sukindar, 2017).

In this case, addressing the health sector certainly needs to be regulated by law, because health development is determined by 3 factors, namely, the need for health care to be regulated with steps and concrete action strategy provisions by the government, the need for legal provisions within the health care system, the need for clarity of boundaries between health care and certain medical procedures. Efforts to implement the provision of health services both for service providers and for all levels of society as recipients of health services in their work areas and to avoid gaps between one health worker and another.

Doctors or dentists who have a registration certificate and must be competent or have a practice permit. Law Number 29 of 2004 concerning Practices that have been carried out with Medicine in it states that the implementation at the medical practice level which is the core of various activities in the implementation of health efforts that have been carried out must be carried out by doctors or dentists who have good ethics and morals. high level, expertise and authority which must continuously be improved according to the quality that has been carried out through



various education and continuous training, certification, registration or monitoring so that the implementation of medical practice is in accordance with developments in science and technology.

2. RESEARCH METHODS

Normative juridical research is in accordance with the unique character of legal scholarship, which lies in the legal study of positive law which includes three layers of legal science consisting of the study of legal dogmatics, legal theory and legal philosophy. Research using statutory regulations which leads to the type of research used is normative juridical research.

"The normative legal research method is a detailed scientific research procedure to find the truth and is based on legal scientific logic from the normative side (Ibrahim, 2005).

Science that has its own and unique way of working in order to help resolve legal problems faced by society is found in legal science. "Therefore, legal science is understood as a science of rules (norms) which is a science that examines law as a rule or system of rules, with legal dogmatics or legal systemics in such a way that law can be clearly understood as a science of rules (Sidharta, 2016). "As a normological science, normative legal science is directly related to legal practice which concerns two main aspects, namely the formation of law and the application of law (Sidharta, 2016).

"According to Morris, as quoted by Peter Mahmud M in his book, Legal Research is the process of finding the law that governs activities in human society. Legal research is the process of organizing activities in human society that will discover the law (Sukindar, 2017).

3. RESULTS AND DISCUSSION

Legal Protection for Midwives

Midwife protection in carrying out Midwifery Practice the right to obtain legal protection as long as they carry out their duties in accordance with their competence, authority and fulfill the code of ethics, standard operational procedures, according to law number 4 of 2019 concerning midwifery Article 60. (Furthermore in Law Number 17 of 2023). Minister of Health Regulation No. 1464 of 2010 Article 19 also states that in carrying out practice/work, midwives have the right to obtain legal protection in carrying out practice/work as long as it is in accordance with the standards.

Legal Protection for Nurses

The term legal protection, namely legal protection, can mean the protection given to the law so that it is not interpreted differently and is not injured by the relevant law enforcement



officials and can also mean that based on something in essence, every person has the right to receive protection from the law, the protection provided by the law (Riasari, 2021) .

Health Legal Aspects

Health services Clear regulations and outlined in the form of statutory regulations. Of course, the existence, role and responsibilities of health workers are very important in health development activities and are protected both for the health workers themselves and for the community who receive these health services as the main components. Legal norms are a social engineering tool that is expected to not only solve various problems in society but can shape a social function in the desired direction (Hidana et al., 2020). When faced with various problems that require decisive action and not just a specific moral appeal, whether we want it or not, binding provisions are needed with strict, clear sanctions and can be enforced by health services (Ratna Kartika Wulan, 2008).

Nursing Ethics

Ethics focuses on problems or dilemmas. Principles concerning right and wrong, good and bad in relationships with other people, principles of honest justice, keeping promises without causing harm, and confidentiality. The code of ethics for Indonesian nurses in the Indonesian National Nurses Association (PPNI) has a Pancasila spirit. Health ethics is the most important part of society's welfare, of course. Discusses directions to nurses or doctors in carrying out their duties or profession, especially in relation to patients in treatment.

1. Nurse and client

Nurses improve nursing services by respecting human dignity.

2. Nursing and practice

Nurses improve the quality of honest, professional nursing services when carrying out according to the desired client needs.

Rights and Obligations of Health Workers

What is meant by the rights and obligations of nurses are rights in a general sense: a person's demands for their personal needs in accordance with legality, justice and morality (Ismani, 2001). Efforts to provide health services carried out by professional nurses in the form of providing nursing care tailored to the needs of clients or patients in health facilities, especially in health service centers that have inpatient facilities such as hospitals, main health centers, clinics, nurses are always near the patient. for 24 hours, carrying out nursing activities with an assignment schedule divided into 3 shifts, namely, morning, afternoon and night.

Roles and Functions of Health Workers

The role and function of a nurse are those who have competence and are declared to have (STR) a Competency Registration Certificate in their field of expertise. In providing professional nursing care to patients. If there are nurses who carry out medical procedures, this is a form of collaborative activity between nurses and doctors. Of course, as a provider of nursing care (ASKEP), we provide nursing services using the nursing process carried out by nurses by paying attention to the basic human needs they need.

Nurse Registration and Practice

Independent nurses must of course have and are required to have a Registration Certificate (STR) so that they can carry out their professional duties and collaborate with health workers in accordance with their authority, especially related to the scope of practice of nurses. The practice of reliable quality nursing care is the independent action of professional nurses' competent service through collaboration with patients and other health workers in providing nursing care according to the scope of their authority and responsibility.

Delegation of Authority

The delegation of authority from doctors to nurses as is currently the case is not appropriate. The procedure for delegating authority for medical procedures from a doctor to a nurse should be preceded by the issuance of a certificate of delegation of authority signed by the instructions of the doctor who is the party giving the overflow and the nurse who is the party receiving the waste, as well as what authority will be delegated by the doctor in this case. The medical procedures to be carried out by the nurse should also be clearly stated in the delegation certificate and in writing or in consultation when accepting new patients.

Doctor's Legal Protection for Health Workers in Medical Procedures in Hospitals and Standard Operating Procedures (SOP)

The relationship between doctors and nurses in providing health services to patients is a partnership relationship that is more binding on each other. In this relationship there must be harmonization of duties, roles, responsibilities and an open system between Doctors and Nurses. The relationship between doctors and nurses also has a legal relationship, due to the delegation of authority, both delegation and mandate, given by doctors to nurses. Juridically, the responsibility lies with the doctor because what the nurse does is an instruction from the doctor in writing or in consultation when receiving the patient or during hospitalization. From a legal perspective, the



action of an instruction is an instruction from a superior to a subordinate to do or not to do something while on duty carrying out their profession.

Relationship between Doctors and Health Workers

In terms of strategy, the reality is that the nursing profession is still less developed than the closely adjacent and parallel profession, namely the medical profession. A new paradigm in providing health services according to which the role of nurses is more equal in collaborating with doctors. From the analysis, the relationship between health workers and partners can be carried out by upholding principles that can support communication provisions within the team, namely (Supriyatin, 2018):

1. Conflict between individuals in the team so that communication or relationships can be better and each individual in the team avoids disputes.
2. Explaining their opinion their view to do an action every individual has the right to present it.

Health partners in communicating between health teams not only require a sense of empathy and sympathy, but also require a complete sense of responsibility for themselves and others, as well as respecting the health of others. Every health worker is required to have the ability to communicate effectively, namely by prioritizing empathy and sympathy for other health workers and clients when carrying out their duties. Health partners not only need detailed communication, but also need fast and accurate communication in order to minimize adverse events that may occur (Etika, 2007).

Talking about the issue of the authority of doctors and nurses in different verses, it is clear that the basis for doctors, dentists and specialist doctors to be able to carry out medical procedures on other people is their knowledge, technology and competence which have been obtained through appropriate education and training.

In health services, as the main activity, hospitals place doctors and nurses as medical personnel who are most closely related to patients in treating disease (Praptianingsih, 2006). These include observation, assessment, planning, determining nursing diagnoses, planning nursing actions, nursing implementation up to the nursing evaluation stage.

Collaboration is a process where doctors and nurses plan and practice together in handling health services, working interdependently within the boundaries of their scope of practice with various values and mutual recognition and respect for each person. Seeing that an important requirement in health services is quality and quality services. A service is said to be of quality if it



can provide satisfaction to patients as recipients of health services according to nursing professional standards in various aspects. One of them is the establishment of good communication between health workers, including doctors and patients or nurses and patients.

Delegation of authority from doctors to health workers

The main obligation of nurses is to provide nursing care (ASKEP) to patients in accordance with the professional standards attached to them. Delegation of authority causes the change in the doctor's responsibility to become the nurse's responsibility. Looking at the list above, it can be analyzed that the relationship between doctors and nurses in providing health services to patients is a more binding partnership relationship. Juridically, the responsibility lies with the doctor because what the nurse does is under instructions from the doctor or superior. In this relationship there must be harmonization of tasks, roles, responsibilities and an open system. The relationship between doctors and nurses also has a legal relationship, because the delegation of authority, both delegations and mandates given by doctors to nurses, must be in accordance with existing procedures and regulations in the hospital.

In detail, the delegation of authority for medical procedures from doctors to nurses can only be done in writing in accordance with Article 32 Article 1 of Law no. 38 of 2014 concerning Nursing. In addition, the type of action delegated must be clear, so that what is delegated is case-by-case, not general. On the other hand, doctors in delegating authority for medical procedures must be adjusted to the nurse's condition, of course it must be given priority to delegate it to senior nurses who already have a lot of experience. So that when there is a delegation of authority for medical action from a doctor, it can run well and undesirable things can be minimized. For actions, it must be distinguished between those that are delegated and those that are delegated by mandate. Delegative delegation can only be delegated to nurses who have the required competencies and mandated delegation is given to nurses under their supervision. So, if the delegation of authority for medical procedures from doctors to nurses is carried out in accordance with applicable laws and regulations, then doctors and nurses will be equally protected by law and of course the public will receive maximum service.

Limits of responsibility and liability for health workers when carrying out medical procedures

Civil lawsuits against nurses in two forms are acts that violate the law in accordance with the provisions of Article 1365 of the Civil Code (every act that violates the law and causes loss to another person, requires the person who caused the loss through his fault to compensate for the



loss). And acts of default are in accordance with the provisions of Article 1239 of the Civil Code (every agreement to do something, or not to do something, must be resolved by providing compensation for costs and losses if the debtor does not fulfill his obligations).

Doctor

His professional duties will be related to this legal responsibility, so the responsibility here is the primary responsibility of the doctor. From this responsibility, consequences will arise on one side. With this heavy responsibility, a professional will try to provide health services as best as possible. Apart from that, in carrying out their profession, doctors must also comply with the Code of Medical Ethics, which is a guideline for Indonesian Doctors and the Doctor's Oath. The doctor's oath is intended to carry out their duties and improve the level of health services, providing quality services in line with medical developments (in summary Article 2 below the doctor's oath).

Midwives and Nurses

According to Law no. 36 of 2014 concerning Health Workers, midwife are health workers Which grouped into midwifery staff, have the authority to provide maternal health services, child health services, and women's reproductive health and family planning services. The legal responsibility of nurses can be viewed from the perspective of the legal field itself. If the issue of the authority it has is reviewed based on the State Administrative Law, legal responsibility will originate from its existing authority. If legal liability is based on civil law then the related element is whether there is an unlawful act or breach of contract and if it is based on criminal law then the elements are whether there is an error regarding an act which should or should not be carried out based on written or unwritten law. Law no. 38 of 2014 concerning Nursing Article 32 Paragraph (1) and Minister of Health Regulation no. 2052 of 2011 Article 23 Paragraph (1).

Hospital

When carrying out health or medical services during surgery, sometimes there is no preparation for sterilization of equipment. Because there are too many patients undergoing surgery. So it doesn't run according to the specified time. Sometimes a lack of suitability may be an element in medical procedures. Due to the lack of equipment infrastructure, the time required for the operation stage is prolonged. The hospital principle is that patients are given services fairly in accordance with the procedures applicable in the hospital and the aim of the hospital is to provide as good a service and protection to patients as possible. The duties and functions of hospitals are to provide services in accordance with certain procedures to improve integrated health service standards. Approval of Medical Procedures or informed consent can be given in writing by



superiors, namely doctors, for high-risk procedures, given after the patient has received adequate information beforehand. In the hospital as an institution that provides itself to provide the maximum possible health services and in accordance with SOP (Standard Operating Procedure) procedures. Treatment and care (cure and care) is also responsible for all events that occur of course in the hospital. First of all, the responsibility is the hospital and of course the main responsibility there is the role of the doctor because the authority when giving instructions is the doctor. After that, the one who carries out his duties is the nurse who is in accordance with his profession when a patient comes in and carries out further actions in accordance with the doctor's procedures and Previously there were provisions from the hospital. (Sources, Principles, Objectives, Functions are summarized in the Hospital Law).

4. CONCLUSION

Legal protection for the mechanism for transferring authority from doctors to the nursing profession in medical procedures discusses carrying out health services to help and treat wounds or illnesses in aging and protect them. That a nurse is someone who plays a role in caring for and helping someone by protecting them from illness, injury and the aging process. This is not in accordance with the regulations of Law no. 38 of 2014 concerning Nursing Article 32 Paragraph (1) and Minister of Health Regulation no. 2052 of 2011 Article 23 Paragraph (1). On the other hand, things that are invasive, providing medical diagnoses and determining medical therapy should not be delegated to nurses. Law no. 38 of 2014. The authority of nurses is as follows: Article 30 paragraphs 1 and 2. These two umbrellas can certainly provide understanding and protection for nurses in carrying out their medical duties.

In the enactment of laws and regulations governing the health sector, this has provided preventive legal protection to both patients and health workers. As for the form of repressive legal protection, there is an element of inequality between health workers in carrying out medical services, causing harm to patients. So the health workers concerned can be punished, while for medical negligence they will face civil lawsuits when resolving the dispute.

As an effort to prevent disputes and lawsuits, health workers, especially doctors and nurses, must always be aware that in carrying out their professional duties they must comply with professional ethics, their respective professional standards and applicable legal regulations and always improve their knowledge and skills in the field. health in accordance with their profession, so that the quality of health services can also be improved.



REFERENCES

- Ethics, S. A. (2007). Health law. Makassar: Hasanuddin University.
- Hidana, R., Ihwanudin, N., & Hadi, I. (2020). Professional Ethics and Legal Aspects of the Health Sector (Volume 4). Publisher Widina.
- Ibrahim, J. (2005). Normative Legal Research Theory and Methods. In Bayumedia Publishing.
- Ismani, N. (2001). Nursing ethics. Jakarta: Widya Medika.
- Praptianingsih, S. (2006). The legal position of nurses in health service efforts in hospitals. Jakarta: PT Raja Grafindo Persada.
- Ratna Kartika Wulan, L. (2008). LEGAL ASPECTS OF HEALTH.
- Riasari, R.H. (2021). Legal Protection for Nurses in Hospitals Based on Law Number 38 of 2014 concerning Nursing. Lex Generalis Law Journal, 2(10), 946–960.
- Siddharta, B. A. (2016). Indonesian legal science: efforts to develop systematic legal science that is responsive to changes in society. Unpar Press.
- Sukindar, S. (2017). Legal Protection for Nurses in Carrying Out Medical Procedures. LEGALITY: Scientific Journal of Legal Studies, 2(1), 1–15.
- Supriyatin, U. (2018). Legal Relationship Between Patients and Medical Personnel (Doctors) in Health Services. Galuh Justisi Scientific Journal, 6(2), 184–194.

