

Legal Protection of Nurses in Medical Action on the Basis of Delegation of Doctors

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Abstract

This study aims to determine the legal protection of nurses in performing medical actions on the basis of an abundance of doctors. This study uses a sociological juridical approach by examining what is behind the appearance of the application of laws and regulations. The type of data used is primary data, namely research conducted directly in the community in the Bengkulu City General Hospital and secondary data is data obtained from a review of the literature, and analyzed by qualitative methods. The results showed that nurses in Bengkulu City Hospital received protection from the hospital as long as the nurse carried out their duties in accordance with service standards, professional standards and standard operating procedures. The Indonesian National Nurses Association (PPNI) in Bengkulu City also provides legal protection in the form of defense and assistance as long as the nurse is registered as a member of the PPNI. Meanwhile, the criminal responsibility of nurses in carrying out medical actions on the basis of the abundance of doctors in the Bengkulu City Hospital has not been clearly regulated, because there has not been a written delegation of authority from doctors to nurses in carrying out medical actions. Pursuant to Article 55 and Article 56 of the Criminal Code, if it is proven that what a nurse has done on an abundance of doctors is a criminal act (offense), the nurse can be punished as the perpetrator (pleger), and the doctor as the one who ordered it.

Keywords: criminal liability; medical treatment; nurse; legal protection.

Introduction

Health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian people as referred to in Pancasila and the 1945 Constitution of the Republic of Indonesia, this is explained in Article 28 H paragraph (1) of 1945 Indonesian Constitution. The government is responsible for planning, regulating, organizing, fostering, and supervising the implementation of health efforts that are evenly affordable to the public as regulated in Article 14 paragraph (1) of Law Number 36 of 2009 concerning Health. Health service efforts carried out by health workers are expected to provide benefits to

all Indonesian people, which cannot be separated from human values. This has been regulated in the general explanation of Law Number 36 of 2009 concerning Health that: "Every activity in an effort to maintain and improve the highest public health status is carried out on the basis of non-discriminatory, participatory and sustainable principles in the framework of forming Indonesia's human resources, as well as increasing the nation's resilience and competitiveness for national development.

Doctors and nurses have a big role and responsibility regarding public health issues, without discrimination or differentiation of services to patients. Health services must be provided by competent health workers, both in terms of education and licensing in accordance with the provisions of the applicable laws. In health services, the main activity of the hospital places doctors and nurses as health workers who are most closely related to patients in handling disease¹. Nurse change from being a doctor's

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arm to a doctor's partner is very complex.² Legal liability will be separate for individual errors or omissions, in medical malpractice, and in nursing malpractice.³

Nurses are health workers whose quantity is more than doctors (medical personnel), and are very interested in dealing directly with patients, so that nurses are most vulnerable to risks arising from the consequences of actions taken in carrying out health services and nursing actions, as well as the task of delegating authority from doctors. which is an invasive medical action,¹ therefore nurses in medical action are only limited to helping doctors, because they are carried out according to the doctor's orders and instructions. Therefore, there must be clear authority between medical actions performed by doctors and actions that are under the authority of nurses, so that there is no overlap.

Regulations regarding the duties and authorities of nurses are contained in Law Number 38 of 2014 concerning Nursing, Article 29 paragraph (1) letter e, which states that: "In carrying out Nursing Practices, Nurses serve as executors of tasks based on the delegation of authority". The nurse's job is not to perform medical actions but to provide nursing services. Even though in the field, many nurses take medical action due to a lack of medical personnel. In carrying out their duties and functions, nurses are required to be responsible for every action, both in carrying out their duties at the hospital, health center or in the clinic. As a nurse, of course you already know their role and function, and this was agreed upon when carrying out the oath as a nurse. There are many cases that make nurses face legal problems related to the actions taken.

The legal relationship between doctors and nurses in health service efforts can be in the form of delegation/ delegation of authority by delegative or mandate. Doctors in giving delegated/delegated tasks must be sure that the nurse who is given the delegation/delegation is able to carry out their duties properly and must pay attention to the competence of a nurse, so that patients who seek treatment with the doctor are sure and believe that the actions taken by the nurse are under the supervision and responsibility of the doctor. Medical action is very risky, so it can be detrimental to the patient if it is carried out by someone who is not competent. Nurses as recipients

of the delegation or who are delegated with authority have the right to reject or accept it. The implementation of tasks based on the delegation of authority in medical action can be carried out by delegation or mandate. Article 32 of Law Number 38 of 2014 concerning Nursing explains that delegation of authority means that the delegation of responsibility lies with the nurses who carry out the task. Mandatory delegation of authority means that nurses carry out medical actions under the supervision of doctors. The exception to the duties and powers of nurses is based on Article 29 of Law Number 38 of 2014 concerning Nursing, with the aim of providing legal protection for nurses in the administration and health services. The exception provisions in Article 35 paragraph (1) stated that in an emergency to provide first aid, nurses can take medical action and administer drugs according to their competence.

Nurses who work in remote areas, have to deal with natural conditions that are far from medical reach, sometimes instead of being rewarded or protected, they are even punished, for helping patients with a sense of humanity to prevent disability or death. There is a dilemma faced by nurses that require medical action without overflow from doctors. Medical action is an action carried out according to the professional standards of a doctor, namely a medical action of a doctor in accordance with the standards of the medical profession carried out carefully according to medical standards, as a doctor who has an average ability compared to doctors from the same category of medical expertise in the same condition, with means of effort that meet a reasonable (proportional) comparison with the concrete goals of the medical action.⁴

Several cases encountered were related to medical actions taken by nurses in helping patients which resulted in death and resulted in crime, namely the fatal injection that occurred at the Cut Nyak Dhien General Hospital (RSU CND) Meulaboh, on suspicion of negligence by the on-duty nurse when giving medication to the patient. until the patient dies after being injected, and the Head of the Assistant Public Health Center (Puskesmas) in Kuala Samboja, Kutai Kertanegara East Kalimantan, Misran, a nurse, was sentenced to 3 months imprisonment by a judge for prescribing medicine to the community. □ In

his decision dated 19 November 2009, a judge at the Tenggara District Court chaired by Bahuri and member judges Nugraheni Maenasti and Agus Nardiansyah sentenced him to 3 months imprisonment, a fine of Rp. 2 million rupiah and a subsidiary of 1 month in prison. The judge gave a sentence based on Law Number 36 of 2009 concerning Health Article 82 (1) letter D in conjunction with Article 63 (1) Law Number 32 of 1992 concerning Health. There is a mismatch in the exercise of authority between doctors and nurses, which is the right of doctors to be carried out by nurses. With the limited number of doctors, it creates a situation that requires nurses to take medical actions, which are carried out with the presence or absence of delegation of authority to save patients' lives, this is a dilemma faced by the nursing profession. The delegation of authority from doctors to nurses must be in writing in accordance with applicable regulations, because it is risky and detrimental to nurses or can harm others for the risks that occur, so that responsibility is borne unilaterally which can harm the nurse.

Research Methods

This research is a juridical empirical/sociological research, with a qualitative approach. In sociological juridical research, the task of the researcher is to examine "what is behind the appearance of the application of laws and regulations" (something behind the law).⁶ The type of data used is primary data, namely research conducted directly in the community (RSUD Kota Bengkulu) and secondary data is data obtained from a review of the literature related to research problems. The data collection technique is done by triangulation, which combines various data collection techniques and existing data sources (primary data sources).

The research was conducted at Bengkulu City Regional General Hospital (RSUD) is one of the hospitals that provides health services to the people of Bengkulu City. Bengkulu City Regional General Hospital began operating in January 2014. RSUD Kota Bengkulu has a vision "Providing Quality and Affordable Services by Prioritizing Customer Satisfaction Towards the best hospitals in Bengkulu Province", while the mission is: Making Bengkulu City Regional General Hospital a quality service provider, oriented to customer needs and satisfaction, Increasing quality of professional human

resources. Improve the welfare of all employees and create community independence for healthy living.

RSUD Kota Bengkulu has a total of 15 general practitioners, 3 general dentists, 15 basic specialist doctors consisting of: 4 internal diseases, 1 health person children, 3 surgeons, 4 obstetricians and gynecologists, 1 neurologist, 1 ENT person, and 1 dermatologist. In addition, there are 4 supporting specialists consisting of: 1 anesthesiologist, 2 radiologists, and 1 clinical pathologist. Then there are 2 specialist dentists consisting of: 1 conservation person and 1 prosthodontist. There are 25 pharmacy personnel consisting of: 1 pharmacist Head of Hospital Pharmacy Unit, 10 Pharmacists in outpatient/dispensary, 12 pharmacists in inpatient, and 2 pharmacists who coordinate admissions. The number of nurses is 147 (people, and 61 midwives. Meanwhile, the other health workers totaled 51 people, and non-health workers amounted to 91 people, consisting of: 5 structural people, and 86 general functional people. Based on the number of health workers in Bengkulu City Hospital, the number of nurses is the largest compared to other health workers. This illustrates that most nurses provide health services in Bengkulu City Hospital.

Legal Protection for Nurses Who Perform Medical Actions

Legal protection is providing protection to human rights that have been harmed by others and this protection is given to the community so that they enjoy all the rights given by law.⁷ As citizens, the constitutional protection of the law has been stipulated in Article 28 letter D paragraph (1) of the 1945 Constitution, that "everyone has the right to recognition, guarantees, protection and legal certainty that is just and equal treatment before the law. With reference to Article 36 letter a, Law Number 38 of 2014 concerning Nursing, confirms that in carrying out nursing practice nurses have the right to obtain legal protection as long as they carry out their duties in accordance with service standards, professional standards, standard operating procedures, and provisions of laws and regulations. Legal protection is also provided for health workers in carrying out their duties according to their profession, this has been stated in Article 27 paragraph (1) of Law Number 36 of 2009 concerning Health. It is stated that health workers are entitled to

compensation and legal protection in carrying out their duties in accordance with profession.

Medical action is fully the competence of medical personnel. Nurses can perform medical actions based on the delegation of authority/delegation from medical personnel in writing. Nurses cannot make their own decisions in carrying out medical actions, but based on the delegation from the doctor and under supervision. This is confirmed in Article 32 paragraph (1) of Law Number 38 of 2014 concerning Nursing, that the implementation of duties based on the delegation of authority as referred to in Article 29 paragraph (1) letter e can only be given in writing by medical personnel to nurses to carry out a medical action and evaluate its implementation.

Referring to the provisions of Article 23 paragraph (1), (2) and (3) Regulation of the Minister of Health of the Republic of Indonesia Number 2052/Menkes/PER/X/2011, it can be concluded that a doctor or dentist can delegate medical treatment to nurses, midwives or staff. other specified health in writing. Medical action can only be performed in situations where there is a need for services that exceeds the availability of a doctor or dentist at the service facility. And it is not clear how long it will take for the delegation of authority, whether it is made at any time for medical action.

Nurses who carry out nursing care measures in health care facilities (homes and Community Health centers/Puskesmas) are required to have a registration certificate (STR) and a license to practice nurses, in order to provide legal protection, where the nurse is the service provider, and regarding the legality of the nurse in providing health services. From the results of observations and interviews with informants who are implementing nurses in the internal disease room of the Bengkulu City Regional General Hospital, nurses are more involved in carrying out medical actions to assist doctors' duties (such as injections, inserting Nasogastric tubes/NGT and inserting infusions), but delegation of authority or written delegation given by doctors to nurses does not yet exist, only based on the delegation of authority in medical action as a whole in 2016.

This indicates that nurses continue to carry out medical actions without a written delegation of authority

from doctors to nurses, with the principle of humanity and benefit, solely to help patients, who feel neglected, even though they are aware of what is being done and the risks. RSUD Kota Bengkulu will facilitate if there is negligence by its health personnel. To avoid or minimize the occurrence of mistakes made by nurses in health care efforts, the policy taken by the Bengkulu City Hospital for legality is that nurses who work must have a license to practice (SIP) and a registration certificate (STR), and are a legal umbrella for nurses. Every action taken must be guided by existing standard operating procedures (SOPs). Nurses who carry out medical actions such as insertion of a Nasogastric tube/NGT are nurses who are competent/expert and must also have informed consent. Regarding the competence of nurses, the Bengkulu City Regional Hospital also conducts evaluation and nurse credentials. The same is the case with Malaysia. The granting of special status for nurses, assistant medical workers and their health workers who have completed their residency,⁸ and have expertise in certain fields of medicine is an important process for the credential system.⁹ In dealing with such problems, according to the Bengkulu City Indonesian National Nursing Committee (PPNI), nurses are entitled to protection from PPNI in the form of defense and assistance as long as the nurse is registered as a member of PPNI and is accompanied by a lawyer. Professional legal protection can be given to nurses who work in accordance with their competencies.

Nurse's Criminal Responsibility in Carrying out Medical Actions

In principle, the duty and authority of the nurse is to carry out nursing practice. As explained above, nurses can perform medical actions based on written delegation/delegation of authority from doctors. Nurses at the Bengkulu general hospital took more medical actions to assist doctors without delegation of authority in writing, so that the nurses did not focus on providing nursing care, even though they are aware of what is being done and the risks.

Nurses can be held liable for the penalty if they take medical action and treatment that is not in accordance with standards, which can cause damage/pain/loss (damage) arising from the action. In carrying out nursing practice, nurses must know their functions,

there are three functions of nurses, namely, independent, interdependent and dependent functions.¹ Meanwhile, the roles of nurses in health services are: Nurse as executor, nurse as educator, nurse as manager, and nurse as researcher.

Based on this function, only the dependent function of the nurse can be held accountable to the doctor because the nurse works on the basis of the doctor's order, so when the doctor's order has been carried out by the nurse properly and properly, it turns out that he has experienced a failure in the medical service, then this failure can be accounted for. doctor. This transfer of responsibility is called the doctrine of vicarious liability or Respondent Superior. Thus, this vicarious liability, even if a person has not committed a crime or crime by himself, is still responsible. In addition to individuals who can be prosecuted criminally, based on modern criminal law theory, a corporate or legal entity (in this case a hospital) can also be prosecuted.¹⁰ Meanwhile, criminal liability can only be carried out against someone who has committed a criminal act. The attitude of neglecting one's own obligations relating to the delegation can make accountability for the losses incurred, shifting from the doctor in charge to the recipient of the delegation, if it is true that the doctor has acted appropriately. In addition, the recipient of the delegation must be responsible himself for the medical actions he has taken, if these actions have been carried out without instructions, or deviate from the instructions he received.¹¹

Aspects of criminal law for nurses in health services are related to the responsibilities of nurses in health services both in hospitals. The ability to take responsibility is closely related to criminal acts. Criminal action is an act which is prohibited by the criminal law and is punishable by punishment.¹² Based on the principle of legality "no act can be punished, except based on the provisions of the existing criminal legislation". Every act of a nurse that causes a loss in health care efforts both in carrying out doctor orders, carrying out collaborative and independent functions, nurses can only be convicted if this has been regulated in law.¹³

In principle, actions that are called against the law that are violated are not only violations of positive law,

but also unwritten law, decency and propriety. To be able to be convicted of nurses in health service efforts, besides the element of having fulfilled the legality principle, which has the nature of violating the law is an element of error in the form of deliberate or negligence. To prove whether there is negligence or deliberation in health services due to violations of the code of ethics, professional standards, practice standards, or swearing in by nurses as health workers, it is examined and determined by the Health Workforce Disciplinary Council.¹ Thus, for the existence of an error must meet the elements, namely: a) Committing a criminal act (nature against the law), b) Above a certain age can be responsible, c) Have a form of error in the form of intent or negligence, and d) Absence of excuses. If the four elements above are fulfilled, then the nurse who provides health services in the hospital can be found guilty so that he is considered responsible for the action he/she has committed.¹²

Regarding the criminal responsibility of nurses in the hospital if there is an error in medical action on the basis of an abundance of doctors, Article 51 paragraph (1) of the Criminal Code stipulates that "whoever commits an act to carry out a position order given by the competent authority, does not convicted".¹⁴ Paragraph (2) stipulates that "An order of office without authority does not lead to the abolition of a crime, unless the one ordered, in good faith thinks that the order is given with authority and its implementation is included in the environment of his work". This means that nurses are not responsible for the consequences arising from their actions if they are carried out according to orders from doctors or superiors at the hospital. Furthermore, if the order is given outside the limits of the authority of giving the order, but the nurse in good faith thinks that the order is being carried out by lawful authority and its implementation in health services in the hospital. Liability in criminal law is known as participation in committing a criminal act. Inclusion occurs when a delict (criminal act) involves several or more of the perpetrators.¹⁵ Inclusion according to the Indonesian Criminal Code, namely: a) maker (Article 55) consisting of a manager, who orders to do, participant and promoter; b) assistant (Article 56) which consists of servants at the time the crime was committed, and servants before the

crime was committed.¹⁶ Based on Article 55 and Article 56 of the Criminal Code above, it can be explained that if it is proven that what a nurse has done on an abundance of doctors is a criminal act (offense),¹⁷ then the nurse can be punished as the perpetrator, and the doctor as the one who ordered it.¹⁸ Punishment is also for people who deliberately helped when the crime was committed.¹⁹

Conclusion

After what has been described based on the results of the research, the discussion in the previous section regarding legal protection of nurses in carrying out medical actions on the basis of an abundance of doctors, it can be concluded that the provisions of legal protection for nurses who carry out medical actions on an abundance of doctors are nurses who work at the Bengkulu City Regional General Hospital who receive protection from the hospital as long as the nurse carries out duties in accordance with service standards, professional standards and standard operating procedures And the Indonesian National Nurses Association (PPNI) Bengkulu City also provides legal protection in the form of defense and assistance as long as the nurse is registered as a member of the PPNI. Moreover, the criminal responsibility of nurses in carrying out medical actions on the basis of the abundance of doctors at the Bengkulu City Hospital has not been clearly regulated, because there has not been a written delegation of authority from doctors to nurses in carrying out medical actions. Meanwhile, the nurse's criminal responsibility is based on a dependent function that can be accounted for by the doctor, because the nurse works on the doctor's order. When the doctor's order has been carried out by the nurse properly and properly, it turns out that he has failed in the medical service, then this failure can be accounted to the doctor. Every act of a nurse that causes a loss in health care efforts both in carrying out doctor orders, carrying out collaborative and independent functions, nurses can only be convicted if this has been regulated in law. Pursuant to Article 55 and Article 56 of the Criminal Code, that if it is proven that what the nurse did against the abundance of doctors was a criminal act (offense), then the nurse could be punished as the perpetrator (and the doctor as the one who ordered to do it.

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