

Legal Protection for Nurses in Pharmaceutical Services Where there are No Pharmaceutical Staffs at the Community Health Center

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Abstract

Puskesmas is a first-level healthcare service facility that organizes health efforts prioritized promotive and preventive actions. In executing its health efforts, puskesmas must take actions according to standards, including in pharmaceutical services. It will be different when the pharmacy service is provided by nurses instead of provided by pharmacy staffs. Following the prevailing law in Indonesia today, nurses' authority in carrying out their pharmacy duties in practice is only limited. To provide assurance and legal protection for nurses in performing pharmaceutical services in health centres where there are no pharmacists/pharmaceutical technical staff, laws and regulations related to nursing protection have an essential function. It also protects nurses to avoid criminalization of nurses by law enforcement officials.

Keywords: *the community health center, Nurses, Pharmacy, Law, Protection*

Introduction

In the National Health Insurance System era, healthcare services are no longer concentrated in hospitals or advanced healthcare facilities, but every healthcare facility level must provide it based on the patient's medical needs. This condition aims to improve the community's healthcare services, mainly focused on healthcare services at Authorized Primary Care Facilities. One of which is the community health center.¹

The community health center, as a healthcare service facility, organizes public health efforts and first-level individual health efforts by prioritizing promotive and preventive actions in its working area. The working area of the puskesmas covers based on the

administrative working area; it is one sub-district or part of a sub-district. It has regional responsibility as one basic principle where Puskesmas must empower and be responsible for health development in its working area.

One of the efforts to strengthen primary healthcare facilities requires health staff, including pharmacists and the person in charge of pharmacy at puskesmas, to provide standardized healthcare services. It needs sufficient human resources as the critical factor and also standardized facilities and infrastructures. Pharmacists as the person in charge of pharmaceutical services at the puskesmas are expected to be able to carry out standardized pharmaceutical services to improve service quality and patient safety.¹

A situation becomes different when there are no pharmaceutical staffs at the puskesmas. Other health staffs will take this duty so that pharmaceutical services can continue to run, and health staffs who usually replace pharmaceutical services at puskesmas are nurses. As stated in Decree of the Minister of Health

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No. 74 of 2016 on Standard Pharmaceutical Services in Community Health Centers, Article 12 (paragraph 1), "At the time this Ministerial Regulation came into force, for Puskesmas with no pharmacists as the person in charge, the implementation of limited pharmaceutical services was carried out by pharmaceutical technical staffs or other health staffs assigned by the head of the district/city health office."²

According to the Law No. 38 of 2014 on Nursing (from now on referred to as Law of Nursing) article 29 paragraph (1).³

In organizing nursing practices, nurses serve as:

- a. nursing care provider;
- b. counsellors for patients;
- c. manager of the nursing service;
- d. nursing researchers;
- e. executing tasks based on the delegation of authority; and
- f. task holder under certain limitations.

Article 33 paragraph (1): Implementation of duties in certain circumstances of limitations as referred to in Article 29 paragraph (1) letter f is an assignment of government carried out in the absence of medical staff and pharmacy staff in an area where nurses work.

Article 34 paragraph (3): In implementing the duties in certain circumstances of limitations as referred to in paragraph (1), the Nurse is authorized to:

- a. giving treatment for common diseases in the absence of medical staffs;
- b. refer patients according to the provisions of the referral system; and
- c. perform limited pharmaceutical services in the absence of pharmaceutical staffs.

Based on the articles above, the nurse can carry out limited pharmaceutical services, include a. management

of pharmaceutical preparations and medical consumables; and b. prescription services in the form of drug compounding, drug delivery, and drug information provision.⁴

In line with science and technology development, pharmacy has shifted pharmaceutical services from managing medicines as a commodity to comprehensive services (pharmaceutical care). This orientation means that they are not only managing drugs but, in a broader sense, including the implementation of providing information to support the correct and rational use of drugs, monitoring of drug use to determine the ultimate goal, and the possibility of medication errors.⁵

Pharmaceutical services are also required to directly interact with patients, such as providing drug information and counselling to patients in need. Pharmacists must understand and be aware of the possibility of medication errors in the service process and identify, prevent, and overcome drug-related problems, pharmaco-economic problems, and social pharmacy (socio-pharmacoeconomic). In order to avoid errors, pharmaceutical services must be based on service standards.⁶

According to the enactment of Law no. 8 of 1999 on Consumer Protection provide opportunities for users of service or goods to file lawsuits against the business actors if there is a conflict between the customers and the business actors deemed to have violated their rights, being late in doing/not doing/being late in making something that causes losses to the users of service/goods, property loss or injury, or it could be death. In this case, the patients as consumers of healthcare services can sue hospitals, doctors or other health staffs if there is a conflict.⁷

The current positive law applied in Indonesia only gives nurses authority in the pharmacy practice to have a limited pharmaceutical service. To guarantee legal certainty and protection for nurses who carry out pharmaceutical services at health centers where there are no pharmacists/pharmaceutical technical staff, laws and regulations related to nursing protection have an

essential function and effect to avoid criminalization of nurses by law enforcement officials (police).⁸

Discussion

Standard Operational Procedure for Medical Services at The Community Health Center with the shortage of pharmaceutical staffs

Pharmaceutical services in puskesmas are an integral part of implementing health efforts, which play an essential role in improving the community's healthcare services quality. It aims to identify, prevent and resolve drug problems and health-related problems. Patients and the community's demands for a better quality of pharmaceutical services require a transformation to the new paradigm from the product-oriented (drug-oriented) into the patient-oriented paradigm.⁹

The regulations on pharmaceutical practices are listed in Law No.36 of 2009 on Health and Government Regulation No.51 of 2009 on Pharmaceutical Works. As listed as follows:

1. Law No.36 of 2009 concerning Health - Article 108: Pharmaceutical practice covers manufacturing, including quality control of pharmaceutical preparations, security, procurement, storage and distribution of drugs, drug services for doctor's prescription, drug information services and development of drugs, medicinal ingredients and traditional medicines carried out by authorized health staffs following statutory provisions.¹⁰

2. PP No.51 of 2009 on Pharmaceutical Works as follows:¹¹

Article 2 paragraph 1: The Government Regulation regulates pharmaceutical works that include the procurement, production, distribution, distribution, and pharmaceutical preparations services.

Article 2 paragraph 2: Pharmaceutical works as intended in paragraph (1) must be carried out by a pharmaceutical staff with expertise and authority. The expertise and authority of the pharmaceutical staffs are proven by a license to practice. The pharmaceutical

staffs referred to in this article are pharmacists and pharmaceutical technical personnel. A pharmacist is a bachelor of pharmacy who has graduated as a pharmacist and has taken the oath of office of a pharmacist. Meanwhile, what is meant by pharmaceutical technical staffs are personnel who assist pharmacists in carrying out their pharmaceutical work, consisting of bachelor of pharmacy, pharmacy intermediates, pharmaceutical analysts, and pharmacy intermediate staff/pharmacist assistants.

Article 21 article 3: In remote areas where there are no pharmacists, the Minister can place pharmaceutical technical staff whose Registration Certificate for Pharmaceutical Technical Officers at basic healthcare service facilities is given the authority to mix and deliver medicines to patients. The Registration Certificate for Pharmaceutical Technical Officers is written evidence provided by the Minister to registered pharmaceutical technical staffs.

Article 22: In remote areas where there are no pharmacy, doctor or dentist who already has a Registration Certificate has the authority to mix and deliver medicines to patients, which is carried out following the provisions of laws and regulations. The above laws and regulations are made as a legal basis for the public to obtain professional pharmaceutical care and protect the pharmacist profession in carrying out their pharmaceutical practices.

Legal protection for nurses in pharmaceutical services at the Puskesmas where there are no pharmaceutical staffs

Enforcement of regulations in the pharmaceutical sector creates contradictions when applied in areas with a shortage of health staff. Nurses as unauthorized health staffs to practice pharmacy are confused by the conditions in which both pharmacist and doctors are difficult to reach in the area. It causes a dilemma and is vulnerable to be blamed by law enforcement officials. On one side, there are limitations to the authority granted by law, and on the other hand, there is a shortage of authorized and having-expertise health staffs.¹²

Pharmaceutical practice by nurses where pharmaceutical practice regulation is enforced amid limited pharmacy in various places, nurses who practice pharmacy should not be legally blamed. It is usual for nurses, as health staffs have a bigger number than doctors and pharmacy staffs. They commonly play a double role in carrying out medical procedures and treatment in areas with no other authorized health staff.¹³

As stated in article 108, paragraph (2) of Law No.36 of 2009 on Health, pharmaceutical practices can only be carried out by health staffs who have the authority and expertise following statutory provisions; it called pharmaceutical staffs. In the absence of pharmaceutical staffs, sure health staffs can carry out limited pharmaceutical practices; it is the provision of free drugs and limited over-the-counter drugs, while hard drugs such as antibiotics and analgesics are prohibited from giving by nurses.¹⁴

Ethical considerations are the justification basis of pharmaceutical practice by nursing staffs.

Based on the ethical decision-making framework above, the violations of pharmaceutical practices committed by nursing staffs where there are no other authorized and having-expertise health staffs in pharmacy can be described as follows:¹⁵

Value of Personal Belief

The value of personal belief is influenced by religious principles and primary education (science). Religious teachings can provide a foundation of belief for humans in determining their attitudes and behaviour. Although it is rather challenging to be used as a guide in solving concrete problems, the principles in religious teachings can become the basis for a person to understand what is good and evil, the obligation to help others, and the threat of sanctions for violations. Primary education can influence a person's perspective too. The fewer references to someone's knowledge, the less their ability to study a problem based on scientific thinking.

Code of Ethics.

A code of ethics is a statement of professional standards used as a code of conduct and provides a framework for making decisions. In carrying out the duties and functions, a nurse in Indonesia is bound by the Indonesian national nurse code of ethics rules to avoid ethical violations. In article 9 of the nurse code of ethics, it is stated that "Nurses always prioritize the protection and safety of patients in performing nursing duties and are mature in considering abilities if they accept or transfer responsibilities related to nursing."¹⁶ Likewise, in the Indonesian medical code of ethics, Article 10 states, "Every doctor must always remember his obligation to protect human life". The health professional oath always prioritizes humanity and high respect for life. It is one aspect of health science, called a nurturer, where all aspects of life are respected and strived to be maintained and a balancing aspect that views disease and death as a cycle that is also respected naturally.

Law

Referring to Article 108 of Law No.36 of 2009 on Health and Article 2 and Article 22 of Government Regulation No.51 of 2009 on Pharmaceutical Works, the actions of nurses who give hard drugs to their patients are indeed against the law. However, as a guideline, the rule of law, in general, is applied to anyone, anywhere. Indonesia has a geographical condition consisting of thousands of islands and heterogeneous communities. Based on this background, law enforcement should adapt to the local wisdom conditions to achieve the values of justice and order in society. If it is applied without paying attention to society's condition, the law loses its sociological effect. On the other hand, health science also has its legal principles. Although the law principle is not a concrete legal rule, it can be used as a general basis or a guide for applicable law. The principle in health science is *Agroti Salus Lex Suprema* (patient safety is the highest law) and *Sa science et sa conscience* (both knowledge and conscience are good). The point is that the intelligence of a health professional should not conflict with his conscience and humanity. Deminis

noncurat lex (the law does not interfere in trivial matters). Meaning is negligence committed by health staff; as long as it does not adversely affect the patient, the law will not prosecute.¹⁶

The moral concept determines whether a behaviour is good or bad from an ethical point of view. Therefore, the moral principle is the highest and cannot be conquered by other rules. This principle is formulated in positive and negative forms into a concept of action (moral concept). According to this view, every health profession in directing action is not based on choice but on what should be done for patients' safety.

Ethical principles and theories

In classical ethical theory, there is something called teleology which means goal. This theory provides the basis that whether an action is correct or not depends on the results. It means if the action has a good result, it is permissible to do so. On the other hand, if the action has a bad result, it is prohibited. Second, still in classical theory, there is also a view of utilitarianism, which views an action as considered good if it benefits many people. One of the approaches is the intuitionism approach, which is the human view of knowing right and wrong regardless of the rational or irrational thinking of a situation. For example, a nurse in a remote area treats a patient, where no doctor can treat the patient immediately because of the long-distance and challenging terrain. Although professionally nurses are incompetent in providing diagnosis and treatment, their actions can be justified in the absence of a doctor. These actions result in more benefits for many people.

From the various considerations in ethical decision-making, giving hard drugs to patients by nurses is acceptable as long as they aim to save the patient and emergency. The emergency itself is defined as there is no pharmaceutical staffs or doctors in the area. This justification also applies legally because the nurses are put in a condition to escape from punishment even though they act against the law. The justification used includes the first because the nurses are in an emergency where there is no authorized health personnel, but the patient

needs help. Second, orders and oaths as a nurse can be subject to criminal sanctions if they do not intentionally assist patients in an emergency. It is precisely the act of leaving patients in need of help that should not be justified because the community's right to get healthcare services is not fulfilled.

Nurses who practise pharmacy where there are no authorized health staffs assigned to the area concerned is not an act of violation of the law. Such action is justified based on various considerations in making ethical decisions in health. However, this condition cannot be allowed to continue. Pharmaceutical practice is an essential element in the health sector, so that its implementation must be provided by authorized staffs and have expertise. Besides, nurses assigned to remote areas need legal certainty to improve their community's health level but are confused about legal violations if they act outside their authority. Therefore, the distribution of health staffs, especially pharmacy staffs and doctors, must be considered evenly. The realization of Article 21 Government Regulation No.51 of 2009 on Pharmaceutical Works, which contains provisions for the placement of authorized pharmaceutical technical staffs at basic healthcare service facilities in remote areas, needs to be carried out immediately. Furthermore, the preparation of legal products, especially those concerning fundamental rights and the community's welfare, must pay more attention to various realities in society so that the legal products produced are not viewed solely based on urban conditions. Regulations on authorized health staffs in pharmaceutical practices, which is contained in the Health Law and Government Regulations on Pharmaceutical Works, need to reconsider their application in emergencies involving the patient's life.

Conclusions

One of the efforts to strengthen primary healthcare facilities requires health staff, including pharmacists and the person in charge of pharmacy at the community health center, to provide standardized healthcare services. It will be different when there are no pharmaceutical

staffs at the puskesmas. Pharmaceutical services at puskesmas will be carried out by other health staffs so that pharmaceutical services can continue to run. The current positive law applied in Indonesia only gives authority to nurses to practice limited pharmaceutical services. Nurses who practice pharmacy where there are no authorized health staff assigned to the area concerned are not acting against the law. Such action is justified based on various considerations in making ethical decisions in health. However, this condition cannot be allowed to continue. Pharmaceutical practice is an essential element in the health sector, so that its implementation must be provided by authorized staffs and have expertise.

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