



DELEGATION OF DOCTORS' AUTHORITY TO NURSES IN HOSPITALS: LEGAL ANALYSIS

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ABSTRACT

According to applicable laws and regulations, the law regulates professional behavior in the relationship between doctors and nurses based on the responsibility for delegating tasks and attributive authority. This study aims to analyze juridically the delegation of authority of doctors to nurses in hospitals and juridical analysis of the delegation of authority of doctors to nurses in terms of the existing lex specialist legislation. This study uses secondary data from literature review through online searches of scientific articles using three electronic databases, namely: Google Scholar, Science Direct, and Proquest, with data related to issues of delegation and authority of doctors to nurses in Indonesia. Nurses as health workers need legal protection in carrying out their duties and obligations according to their authority which has been regulated in related laws and regulations. The legal responsibility of nurses is based on the field of law in State Administrative Law, Civil Law, and Criminal Law. Meanwhile, the nurse's attribution authority is based on nursing care and is attached to the independent function of nurses carrying out tasks based on their authority. The mandate authority in the nurse's interdependent function in teamwork and delegation authority is attached to the dependent function where the nurse's interventions are the doctor's responsibility, but the duties and responsibilities are left to nurses who have met certain requirements.

Keywords: authority; delegation; doctors; legal-analysis; nurses

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INTRODUCTION

Law regulates the behavior of relationships between humans as legal subjects that give rise to rights and obligations. Law regulates the behavior of good relationships between one human and another, between groups of humans, and between humans and groups of humans in every aspect of life. (Nora, 2023). Currently, the legal study of the relationship between nurses in hospitals and clients has directly become a focus of the nursing profession. The professional thinking has evolved that nurses are professional personnel who hold an equal position to medical staff in handling clients in hospitals within their authority limits (Prawesti, 2024). However, outside the nursing profession, there are still differing views on nurses in patient care in hospitals because nurses are considered hospital employees tasked with providing nursing services and assisting doctors in performing medical procedures (Safii, 2024). In fact, medical actions and nursing actions are equal and synergistic; in this case, medical actions performed by medical personnel or doctors aim for patient recovery through treatment

(curing) in invasive procedures or other actions. Meanwhile, nursing actions aim to provide comprehensive health care for patients. (caring).

Nursing services assist patients who experience physical and mental weakness, lack knowledge about their illness, and have low independence in carrying out daily activities. Nursing interventions are carried out to improve the health status of patients through promotive, preventive, curative, and rehabilitative efforts that can be performed independently and collaboratively in accordance with the authority, responsibility, and ethics of the nursing profession. Nursing interventions are provided comprehensively in the form of professional services covering the bio-psycho-social-spiritual aspects aimed at individuals, families, and communities, both healthy and sick. (Yetti dkk, 2017). Nursing provides comprehensive and effective assistance to patients/clients to optimally meet their basic needs (Pangabeian, 2018). Philosophically, in legislation, there are several aspects that have not been explained "clearly," making their justification potentially subject to misinterpretation. In several medical action authorities granted to nurses, it is explicitly regulated in Law Number 38 of 2014 concerning Nursing before the enactment of Law No. 17 of 2023 concerning Health. Referring to the legislation, several legal cases involving nurses in Indonesia occur due to a lack of legal knowledge and legal awareness among nurses, and the sub-optimal legal protection based on the understanding and decisions of law enforcement related to nursing profession law. This creates a conflict of authority in the field between the attribution authority of the medical profession to make medical decisions for patients/clients and the authority and collaborative interventions of the nursing profession. (Nora, 2023). This medical decision is part of a series with the implementation of medical actions, so the full responsibility lies with the medical profession.

However, under certain conditions, this action is delegated to the nursing profession, which assists the medical profession in carrying out medical interventions with legal responsibilities that simultaneously transfer the delegation of these actions. (Situmorang, 2020). Nurses are not subjects who, from a medical scientific standpoint, are capable of making a medical action decision. In accordance with the professional competence of medical personnel as stated in the Medical Practice License (SIP), the legality is inherent to the individual medical personnel to make a decision on the delegation of nursing actions in accordance with the nurse's authority. (Trisnadi, 2017). The role of nurses or other healthcare professionals as providers of medical care services is not intended for the purpose of performing medical interventions, such as actions on post-operative patients or special follow-up examinations. Instead, these are medical actions delegated by a doctor and carried out by nurses or other healthcare professionals who assist in the implementation of medical interventions. (Vitrianingsih, 2019). The role of nurses in this condition becomes that of service providers in the implementation of delegated medical interventions. In the implementation of this medical intervention, the orders come from the medical staff or the attending physician according to their authority. Therefore, medical personnel are the executors responsible for controlling and issuing commands to nurses or healthcare workers during the implementation of medical interventions through delegation actions. (UU No.17, 2023). Based on the above explanation, this study aims to analyze the applicable legal regulations related to the delegation of medical actions performed by doctors to nurses with cases occurring in the field.

METHOD

This research is of a juridical-normative nature to understand the resolution of legal issues within the applicable laws and regulations, legal literature, and regulations related to the juridical review of nursing disputes through nursing case mediation. The approaches used are

the statutory approach, conceptual approach, and case approach, which are conducted simultaneously to obtain legal materials related to the research object. (Gaurifa, 2022). This study uses secondary data based on literature review in the thesis preparation. The literature review was obtained through an online literature search using three electronic databases, namely Google Scholar, Science Direct, and Proquest, focusing on case occurrences in Indonesia.

RESULT

Delegation of Authority from Doctors to Nurses in Hospitals
The delegation of medical authority from doctors to nurses can only be done in writing in accordance with regulations, and the type of action delegated must be clear so that the delegation is case-specific and not general. Doctors in delegating medical authority must align with the conditions, work competencies, and authority of nurses. Delegation is prioritized for experienced nurses who meet professional work competencies. This ensures that when medical authority is delegated, it proceeds smoothly and minimizes the risk of undesirable actions. Actions must be distinguished between those delegated and those mandated. Delegated actions can only be assigned to nurses who possess the necessary competencies, while mandated actions are given to nurses under supervision. If the delegation is carried out in accordance with the applicable laws and regulations, then doctors and nurses will be protected by the law, and of course, the community will receive optimal quality healthcare services. (UU No.17, 2023).

Along with the changes in health legislation related to the authority of nursing practice, it impacts the risk of alleged malpractice cases involving nurses in Indonesia. Through a literature review and case data confirmation with the nursing professional organization PPNI, the exact number of reported nurse malpractice cases by its members to the PPNI levels of commissariat, regional, provincial, and central has not been determined. Several case findings published in the media indicate that healthcare workers, including nurses, made medication errors in the ICU/ICCU inpatient units (96%), and the same issue occurred in 80% of community health centers (Puskesmas). (Sudartana, 2007). In addition, there have been several cases that have caught the public's attention, including the case of a nurse allegedly injecting a deceased patient at a hospital in Surabaya. There is also a malpractice case involving a nurse at RSUD in Banda Aceh. (Bernada, 2018).

Referring to the incident, malpractice is an issue that can occur in the provision of healthcare services due to medical actions taken by nurses, other medical teams, or professionals under the supervision of a doctor. Another factor that also contributes to the occurrence of nurse malpractice towards patients is the weak enforcement of regulatory implications in health service policies and standards that involve nurses as part of the healthcare team. Issues that lead to malpractice due to errors in: establishing a diagnosis, not following SOPs, and administering therapy and actions not within the clinical authority of the profession. In addition, there are legal violations in the intervention of patient disease management, propriety, decency, and professional principles, whether done intentionally or through negligence that leads to wrongful actions. (Yunanto, 2024). These mistakes cause harm to patients and their families both physically: pain, wounds, disabilities, and permanent organ damage, psychological disturbances, and even death. Material and financial losses due to having to incur higher costs for patient care, so healthcare workers must be held administratively, civilly, and criminally responsible. The above condition is a potential error that can also be committed by the nursing profession as regulated in Law No. 17 of 2023. Provisions regarding malpractice have not been explicitly regulated in technical guidelines

within health regulations and legislation, although there are explanations related to the derivatives of the relevant legislation that require review for implementation and can serve as a reference in resolving malpractice cases occurring in health and nursing services. (UU No. 17, 2023). Therefore, it is necessary to formulate specific regulations governing malpractice for medical teams and other healthcare personnel.

Professional practice regulations state that nurses are required to possess a Nurse Registration Certificate (STRP) when performing Nursing Practice after passing the competency test and holding a competency certificate to carry out nursing practice. This is important concerning clinical authority in performing nursing actions and practices, as nurses carry out Nursing Practices in Health Service Facilities and/or other places according to their target clients to perform tasks and authorities and evaluate the implementation in accordance with the delegation of authority to perform medical actions from doctors, which can be in the form of delegative authority or mandate. This is one of the regulations that must be adhered to in relation to nursing practice, whether a nurse has carried out their authority in accordance with the applicable regulations (Law No. 17, 2023). The most common issue is civil malpractice that results in the failure to fulfill the terms of the agreement in therapeutic transactions by doctors or other healthcare professionals, or the occurrence of unlawful acts (*onrechtmatiggedaad*), causing harm to patients. Regarding the existence of a lawsuit from a patient in a civil process conducted by healthcare professionals handling their case, almost all of them involve claims for compensation, both financial and material (Erisy & Anggraini, 2023). In order to achieve justice, provide protection, and ensure legal certainty for all parties, alleged malpractice cases must be processed legally. Then, this process does not guarantee that the demands of the patient or their family will be fully met; on the contrary, it may absolve the healthcare workers or the healthcare facility, which in this case are the defendants (Irnawati, 2022).

Here is an example of the case of Samino and Yanti (2019) with an incident in 2019 in one of the villages in North Lampung, where the patient came asking for help from a neighbor, a nurse who had been working as a volunteer at the regional hospital for 11 years, to treat his wound. The nurse then examined the wound, which was swollen and red, and asked about the cause. The patient admitted that the wound was caused by a chicken coop nail. After examining it, the nurse advised the patient to go to the community health center (*Puskesmas*) for treatment. The next day, the patient's sibling visited the nurse's house, asking the nurse to treat the patient. They pleaded because the wounds on the patient's body had not healed despite receiving treatment at the community health center. The family showed the medication given, which included Amoxicillin, Paracetamol, Vitamin C, and CTM. They insisted on bringing the patient to the nurse, who felt pity upon seeing the patient's condition, which appeared pale and was continuously moaning. The nurse finally examined the patient's infected wound, which had spread and swollen, was blue in color, and was oozing blood and pus. The patient's fever measurement shows a body temperature of 39.5 °C. The family said that the patient often pricks the wound with a needle because they feel that the condition improves after being pricked. Then the nurse suggested that the patient go to the hospital or see a doctor, but they said they couldn't afford the treatment.

Because he requested treatment, the nurse finally performed wound care for 30 minutes, which included cleaning the wound with warm water and pressing the wound to expel pus and blood using anatomical tweezers covered with sterile gauze. The patient requested medication because of difficulty sleeping and a fever, the nurse administered paracetamol, antacids, mefenamic acid, and an allergen. (CTM). The nurse still advised the patient to go to the

hospital for further treatment. But, while handing over 50 thousand rupiah, the patient admitted that he didn't have money to go to the hospital or see a doctor. The next day, the family came to the nurse's house to inform her that the patient had been admitted to the hospital because his wound had worsened. However, the nurse was not at home; she was on duty at the hospital until the patient eventually passed away in the hospital. (Samino & Yanti, 2019). The above case clearly shows that the nurse did not collaborate with the doctor because the nurse took action independently without any discussion or orders from the doctor to handle the patient/client. Provisions of Health Law No. 17 of 2023: (1) in an emergency to provide first aid, nurses can perform medical actions and administer medication according to their competence. (2) The first aid referred to in paragraph (1) aims to save the client's life and prevent further disability. (3) Law No. 17 of 2023 on health states: "In Nursing Practice, clients have the right to receive nursing services in accordance with the code of ethics, nursing service standards, professional standards, SOPs, and regulatory provisions." The first case meets the elements of Article 35 mentioned above, which is the nurse's negligence in administering medication, causing the client's hand to turn black, charred, and burned. Article 38 meets the elements in all three cases mentioned above, which is the failure to fulfill the client's rights because the nurse did not practice according to the code of ethics, nursing service standards, and standard operating procedures. On the other hand, nursing staff are also bound by legal provisions regulated in articles that have different legal implications. Although in CHAPTER XI on dispute resolution, Article 77 explains that "every recipient of health services who suffers due to the error or negligence of health workers can claim compensation in accordance with the provisions of the legislation." Article 78 states that in cases where health workers are suspected of negligence in performing their profession, causing harm to the recipient of health services, the disputes arising from such negligence must first be resolved through out-of-court dispute resolution in accordance with the provisions of the legislation. (UU No.17, 2023).

Currently, malpractice committed by nurses is still found, according to a report by the Central Health Law Aid Institute, approximately 405 malpractice cases have been recorded in Indonesia, with 73 cases reported to the police. (Wasisto & Suganda, 2004). The lack of a uniform understanding of medical disputes or malpractice, the absence of regulations governing malpractice in legislation, and the incomplete standardization of health profession services have resulted in sub-optimal handling and resolution of malpractice issues. The court process is one that requires costs and time. The prolonged procedures that must be followed in court proceedings have led to sharp criticism of the judiciary in carrying out its functions. This criticism arises because it is considered too congested, slow and time-consuming, expensive, and unresponsive to public interests, as well as being deemed overly formalities and overly technical. Improvements to the judicial system are expected to move towards being more effective and efficient. Mediation is considered one of the forms of alternative dispute resolution (ADR) or alternative problem-solving outside the court. Mediation is a method of resolving disputes through a negotiation process to reach an agreement between the parties with the assistance of a mediator. Mediation itself can be conducted through court channels or outside the court using a mediator who has a mediator certificate. (Hanifah, 2016). The integration of mediation into court processes can be an effective instrument for addressing the backlog of cases in court, as well as strengthening and maximizing the function of the court institution in resolving disputes, in addition to the adjudicative process of the court. The mediation process that takes place outside the court has its own advantages. (Hanifah, 2016). All civil cases submitted to the first-level court must first be resolved through mediation with the help of a mediator. (Mahkamah Agung, 2008).

Legal Protection for Nurses in Exercising Granted Authority

The delegation of authority conducted delegatively is given to professional nurses with a Bachelor's degree in Nursing Education and a Nursing Profession (Ners) or vocational nurses with a diploma in Nursing Education (trained and certified nurses) who possess the necessary competencies. (UU No.17, 2023). The issue of delegation of authority still occurs due to several situations and conditions in healthcare services, including: a nurse lacking the necessary competence in medical actions delegated or mandated by a medical doctor. Problems can also arise when nurses are overburdened with work, making it difficult for them to perform medical actions according to standard operating procedures. Some incidents in healthcare services involve delegation or mandate orders that are not clear, vague, and ambiguous, leading nurses to misinterpret the delegation of mandates. In certain situations, communication can become a barrier, especially the communication process between doctors-nurses. Ineffective inter-professional communication and obstacles in communication media due to the use of technology such as telephones, WhatsApp, and other communication tools result in the absence of written documentation regarding the delegation of authority or mandate given. (Pujiyono, 2017).

The efforts made to resolve issues arising from mistakes/negligence committed by nurses in carrying out their duties are through mediation. This is regulated by laws related to healthcare workers suspected of negligence in performing their profession, and such negligence must first be resolved through mediation. Mediation is conducted when a dispute arises between healthcare providers and patients or their families as recipients of healthcare and nursing services, with the aim of resolving the dispute outside of court by a mediator agreed upon by both parties (Law No. 17, 2023). In the context of the relationship between doctors and nurses, the legalization of authority can be interpreted as requiring a delegator (doctor) and a delegate (nurse), as well as a written format containing the matters to be delegated. The issue in the delegation of authority is the aspect of responsibility. The delegator should be exempt from legal responsibility or claims from third parties if the use of that authority causes harm or risk to others, so the responsibility and liability fully rest with the nurse as the recipient of the delegation. To prevent errors in the execution of the delegated authority, the doctor is required to provide an explanation to the delegate.

Legislation regarding healthcare personnel has provided space for the nursing profession to perform medical actions in accordance with applicable regulations. (UU No.17, 2023; PP No.28, 2024). The provision explains that doctors or dentists can grant authority to nurses or certain healthcare workers in writing to perform medical and/or dental actions. Medical actions within their competence must be carried out in accordance with existing regulations. However, guidelines in the form of technical instructions or delegation formats are not yet available, resulting in weak documentation in legal regulations and medical personnel lacking legal authority in initiating the design of written delegation formats because the instructions are not yet available. This situation causes nurses to be in a dilemma, as one condition where the actions taken by nurses are considered illegal due to conflicting with the accountability of a nurse's authority. Another condition is that the provision of healthcare services is highly needed by the community, so it cannot be stopped, because if medical actions are not taken, the patient may lose their life or be at risk of experiencing temporary or permanent physical disabilities. This situation has a negative impact on nurses, resulting in a decrease in work motivation and nurses not providing optimal care efforts in delivering nursing interventions to patients.

Legal Responsibility of Nurses in the Delegation of Medical Authority

Nurses have the duty to serve patients with the best quality of care in accordance with professional care standards, the nursing profession's code of ethics, and Standard Operating Procedures in the healthcare service unit. Nurses must be able to maintain patient confidentiality during the treatment and care process in accordance with the individual autonomy of the patient concerning all types of medical actions performed by the doctor on them. Family members and close relatives, even if not permitted by the patient to be informed to others, must keep it a secret as part of the nurse's professional duty. (PPNI, 2010; Yetti, dkk, 2017). Under certain conditions, patients and their families have the right to refuse medical actions from doctors or nurses who receive delegated authority and mandate. In principle, the one who has the right to give consent or refusal for medical actions is the patient concerned. However, if the patient is under guardianship (onder curatele), the approval or rejection of medical actions can be given by close family members such as husband/wife, biological parents, biological children, or biological siblings. (12).

According to civil law, a person is considered to be in default if they do not fulfill their obligations, fulfill their obligations but with delays, fulfill their obligations but not as promised, and do something that is prohibited by the agreement. A nurse's breach of contract lawsuit will be held accountable if the following elements of breach are met: (a) failing to perform their duties; in this context, the nurse does not perform all tasks and authorities according to their role, function, and nursing actions. (b) performing duties but late; in this case, if the duties according to the function are performed late, resulting in harm to the patient. (c) performing duties but not as they should be; a task is done carelessly. Doing what should not be done; in this case, if a nurse performs a medical action without delegation from a doctor. (Subekti, 1990). Basically, civil liability aims to obtain compensation for the elements of loss suffered by a patient due to a breach of contract or unlawful actions by a doctor. The patient must be able to prove that the healthcare professional indeed made an agreement, and then breached that agreement, which in this case is based on professional negligence. Patients must have evidence of losses due to the failure of healthcare workers or nurses to fulfill their obligations according to professional standards in a therapeutic contract (Pujiyono, 2017). The Health Law has protected the nursing profession's work environment, stating that nurses in carrying out nursing practice are entitled to legal protection as long as they perform their duties in accordance with service standards, professional standards, operational procedure standards, and provisions in applicable legislation. Both practice in healthcare facilities and practice in health clinics, as well as independent nursing practice in the community. The agreement is an agreement based on the maximum efforts of the parties involved, meaning it is a best-efforts agreement where both parties promise or agree to make maximum efforts to fulfill what has been agreed upon.

DISCUSSION

Delegation of authority must be carried out in accordance with regulations to protect all parties involved, including doctors, nurses, and patients. Weak technical regulations lead to the risk of malpractice, such as medical procedures without doctor supervision, which have been recorded in several cases in Indonesia. The most common issue is civil malpractice, which leads to the failure to fulfill the terms of the agreement in therapeutic transactions by doctors or other healthcare professionals, or the occurrence of unlawful acts (onrechtmatigedaad), resulting in harm to the patient. Regarding the existence of a lawsuit from a patient in a civil process conducted by healthcare professionals handling their case, almost all of them involve claims for compensation, both financial and material. (Erisy & Anggraini, 2023). In order to achieve justice, provide protection, and ensure legal certainty for

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cases where health workers are suspected of negligence in carrying out their profession causing loss to the recipient of health services, disputes arising from such negligence must first be resolved through out-of-court dispute resolution in accordance with the provisions of the legislation (UU No.17, 2023).

Malpractice can also cause physical, psychological, and financial harm to patients, as well as administrative, civil, and criminal liability for nurses. The lack of a uniform understanding of the definition of malpractice and its resolution procedures complicates case handling. Currently, malpractice committed by nurses is still found, according to a report by the Central Health Law Aid Institute, there are approximately 405 malpractice cases recorded in Indonesia, with 73 cases reported to the police. (Wasisto & Suganda, 2004). The lack of a uniform understanding of medical disputes or malpractice, the absence of regulations governing malpractice in legislation, and the inadequacy of standardization in health profession services have resulted in suboptimal handling and resolution of malpractice issues. Mediation has become an important alternative for resolving civil disputes in malpractice cases because it is faster, cheaper, and more efficient. This process also reduces the burden of cases in court and allows for a more amicable resolution for all parties involved. The integration of mediation into the court process can be an effective instrument in addressing the issue of case backlog in the courts, as well as strengthening and maximizing the court's function in resolving disputes alongside the adjudicative court process. The mediation process that takes place outside the court has its own advantages. (Hanifah, 2016). All civil cases submitted to the first-level court must first be resolved through mediation with the help of a mediator. (Mahkamah Agung, 2008). Legal uncertainty in the implementation of authority delegation can reduce nurses' motivation and affect the quality of service provided. Continuous training and the development of a good documentation system are needed to support the professional execution of authority.

More specific regulations and technical guidelines need to be developed to ensure that the delegation of authority is carried out correctly and documented. Strengthening inter-professional communication through platforms that support written documentation will reduce the risk of misunderstandings and malpractice. The integration of mediation into the court process can be an effective instrument in addressing the backlog of cases in court, as well as strengthening and maximizing the function of the court institution in resolving disputes alongside the adjudicative process. The mediation process that takes place outside the court has its own advantages. (Hanifah, 2016). All civil cases submitted to the first-level court must first be resolved through mediation with the help of a mediator (Mahkamah Agung, 2008).

CONCLUSION

The authority of nurses in their professional duties is regulated by Law Number 17/2023 on Health and Government Regulation Number 28/2024 on the Implementation Regulation of Law 17/2023 on Health. The duties of the nursing profession have authority limitations, namely: providing nursing care including assessment, diagnosis, planning, actions, and evaluation of nursing care according to the nursing care standards set by the professional organization. Medical procedures are performed based on a written order from a doctor, according to the authority inherent in the independent function of nurses in carrying out their duties. Mandated authority exists in the interdependent function obtained through collaboration. Delegated authority is inherent in the dependent function where the nurse's actions are the doctor's responsibility, but the accountability is entrusted to nurses who meet certain qualifications.

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