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Legal protection for nurses in certain limited circumstances

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Abstract

The uneven distribution of health workers throughout Indonesia and the quality of health workers still need to be improved in various ways, especially in the field of nursing, thus the problem of developing health human resources and legal protection is one of the priorities. The main role of nurses in society is as providers of nursing care, nurses can provide nursing services directly and indirectly to clients, using the nursing process approach in general circumstances and certain limited circumstances. This background results in the formulation of problems in the form of arrangements regarding the role of nurses in certain limited circumstances and legal protection for nurses in certain limited circumstances. The method used in this research is the normative legal method. The purpose of the study was to determine the regulation of the role of nurses in certain limited circumstances and legal protection for nurses in certain limited circumstances. It can be concluded that the main and most highlighted role of nurses and known by the public is as a perpetrator/provider of nursing care, nurses can provide nursing services directly and indirectly to clients and government legal protection against nurses in the form of preventive legal protection and repressive legal protection.

Keywords: Certain limited circumstances; Legal protection; Limited circumstances; Nursing practice; Services

1. Introduction

Health is a human right and one element of prosperity that must be realized. Human Rights (HR) are natural rights that are inherent in humans from the moment they are born into the world [1]. These rights must be respected, upheld and protected by the state. The 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) has guaranteed the right to health as stated in Article 28H paragraph (1) that every person has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good living environment and healthy and have the right to receive health services. The task of providing services and administration in the health sector in general for the community is a burden on health workers. One of the health workers who contributes to improving the level of public health is nurses. A nurse is someone who has completed a nursing education program, is authorized in the country concerned to provide services, and is responsible for improving health, preventing disease and providing services to patients [2].

Nurses have an important role in realizing health efforts in society through their authority [3]. His authority includes providing nursing care, as an instructor and counselor, manager of nursing services, nursing researcher, executor of duties based on delegation of authority, as executor of duties in certain circumstances [4]. Every nurse who carries out authority in the health sector is someone who has graduated from higher education in nursing based on the competencies they possess.

Juridically, nurses do not have the authority to carry out medical procedures, unless they have obtained a written delegation of authority from a doctor to carry out tasks within the authority of the doctor concerned in accordance with statutory regulations. However, in certain situations and conditions, nurses are allowed to carry out medical procedures outside the limits of their authority, namely in emergency situations that threaten the life of a person/patient. These

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situations and conditions are the duty of nurses in certain limited circumstances. Prior to the promulgation of Law Number 17 of 2023 concerning Health, nurses were regulated in Law Number 38 of 2014 concerning Nursing. The duties of nurses in certain limited conditions are regulated in Article 33 of Law Number 38 of 2014 concerning Nursing which regulates carrying out duties in certain limited conditions. Nurses have the authority to: a. carry out treatment in the absence of b. refer patients according to the referral system; and for general illnesses of medical personnel; with the provisions in c. provide limited pharmaceutical services in the event that there are no pharmaceutical personnel. After the promulgation of Law Number 17 of 2023 concerning Health, the duties of nurses in certain limited conditions are regulated in Article 286 paragraph (1) "In certain circumstances, Medical Personnel and Health Personnel can provide services outside their authority", but does not explain in detail regarding the nurse's authority in certain limited circumstances.

Medical procedures carried out by nurses, even though they are only basic/standard treatment, basically still contain risks. Although in carrying out medical procedures, nurses do not intend to harm the patients they treat. It does not rule out the possibility of non-compliance with Standard Operating Procedures (SPO)/negligence in carrying out their duties, so that the nurse concerned is forced to deal with the law. For this reason, legal protection is needed for nurses when carrying out medical procedures outside the limits of their authority, namely in emergency situations that threaten the life of a person/patient. Satjipto Raharjo defines legal protection as providing protection for human rights that are harmed by other people and this protection is given to the community so that they can enjoy all the rights provided by law [5]. The meaning of legal protection itself is providing certainty or guarantee that someone who carries out their rights and obligations is protected by law. The aim of this research is to examine legal protection for nurses in certain limited circumstances.

2. Material and method

This type of research was normative legal research. Normative legal research is a process of discovering legal rules, legal principles and legal doctrines that were faced and this research was carried out to produce new arguments, theories or concepts as prescriptions for solving problems. There were two types of approaches used by researchers, namely:

2.1. Legislative Regulation Approach (Statute Approach)

The statutory approach (Statute Approach) is an approach taken by examining all laws and regulations that are related to the legal issue being handled. In the legislative approach method, researchers need to understand the hierarchy and principles in statutory regulations. As defined in article 1 number 2 of Republic of Indonesia Law Number 10 of 2004, statutory regulations were written regulations established by state institutions or authorized officials and were generally binding. From this definition, it can be briefly said that what is meant by statute is in the form of legislation and regulations. Thus, the legislative approach was an approach that uses legislation and regulations.

2.2. Conceptual Approach

The conceptual approach is a type of approach in legal research that provides an analytical perspective on problem solving in legal research seen from the aspect of the legal concepts behind it, or can even be seen from the values contained in the norming of a regulation relating to the concepts used. Some types of this approach were used to understand concepts related to whether norms in legislation are in accordance with the spirit contained in the underlying legal concepts. This approach departs from the views and doctrines that develop in legal science. This approach is important because understanding the views or doctrines that develop in legal science can be a basis for building legal arguments when resolving the legal issues at hand. Views or doctrines will clarify ideas by providing legal definitions, legal concepts, and legal principles that are relevant to the problem.

3. Result and Discussion

3.1. Regulations regarding the role of nurses in certain limited circumstances

The definition of a nurse is regulated in Article 1 number 1 of the Regulation of the Minister of Health of the Republic of Indonesia Number 26 of 2019: Concerning Implementing Regulations of Law Number 38 of 2014 concerning Nursing, which states "A nurse is someone who has graduated from higher education in Nursing, both inside and outside countries recognized by the Government in accordance with the provisions of statutory regulations." Nurses carry out Nursing Practice in Health Service Facilities and/or other places, namely: (a) nurse's independent practice place; (b) clinic; (c) community Health centers; and/or (d) hospital.

In Law Number 17 of 2023, it is explained that a Health Personnel is every person who dedicates themselves to the field of Health and has a professional attitude, knowledge and skills through higher education, which for certain types requires authority to carry out Health Efforts. The Council is an institution that carries out tasks independently in order to improve the quality of practice and professional technical competence of Medical Personnel and Health Personnel as well as providing legal protection and certainty to the public. In the official registration of medical personnel and health workers who have a competency certificate and/or professional certificate, a registration certificate, hereinafter abbreviated as STR, is written evidence given to medical personnel and health workers who have been registered, as well as a practice permit, hereinafter abbreviated as SIP is written evidence given to Medical Personnel and Health Personnel as giving authority to carry out practice.

A role is a set of behaviors that other people expect of a person according to their position in a system. Roles are influenced by social conditions both from within and from outside and are stable. Roles are forms of behavior expected from someone in certain social situations [6]. Nursing services as an integral part of health services have an important role in helping to achieve optimal health status by maintaining the health status of individuals, families and communities at the highest level [6].

Nurses have an important role in realizing health efforts in society through their duties and authority. The duties of nurses are regulated in Article 16 of the Regulation of the Minister of Health of the Republic of Indonesia Number 26 of 2019 concerning Implementing Regulations of Law Number 38 of 2014 concerning Nursing, which states: "In carrying out Nursing Practice, Nurses serve as: (a) providers of Nursing Care; (b) counselors and counselors for clients; (c) Nursing Service Manager; (d) Nursing researchers; (e) executor of duties based on delegation of authority; and/or (f) carrying out tasks under certain limitations."

Law Number 17 of 2023 concerning Health uses the nomenclature of health workers for nursing. As regulated in Article 197 of the Health Law as follows: (a) Medical Personnel; (b) Health Workers; and (c) Supporting or health support personnel. Nursing is included in the human resources for health workers, as regulated in article 199 paragraph (1) point b, which is further emphasized in paragraph (3) of article 199 which regulates the types of health workers who are included in the group of nursing personnel as intended in paragraph (1) letter b, consisting of vocational nurses, nurses and specialist nurses.

The Nursing Registration Certificate (STR) in the latest Health Law applies to live wells as regulated in article 260 paragraph (4), related to article 260 there are exceptions as regulated in article 261 which regulates that the STR as intended in Article 260 does not apply if: (a) the person concerned dies; (b) deactivated or revoked by the Council on behalf of the Minister; or (c) revoked based on a court decision that has permanent legal force.

Comparison of Nursing STRs in Law Number 38 of 2014 is valid for 5 (five) years and can be re-registered every 5 (five) years as regulated in article 18 paragraph (4).

The difference lies in the practice permit which in the Health Law and the Nursing Law is located at the time the SIPP comes into force as follows: Law no. 17 of 2023, article 264 regulates that the SIP is still valid as long as the place of practice is still in accordance with what is stated in the SIP. It is further regulated in paragraph (3), namely, the SIP as referred to in paragraph (1) is valid for 5 (five) years and can be extended as long as it meets the requirements. Meanwhile, Law Number 38 of 2014 concerning Nursing: in 19 paragraph (5) regulates: SIPP is still valid if: (a) STR is still valid; and (b) Nurses practice in the location as stated in the SIPP.

Article 454 of Law Number 17 of 2023 regulates 11 laws that are revoked and declared invalid. First, Law Number 419 of 1949 concerning Hard Drugs Ordinance (Staatsblad 1949 Number 419). Second, Law Number 4 of 1984 concerning Infectious Disease Outbreaks. Third, Law Number 29 of 2004 concerning Medical Practice. Fourth, Law Number 36 of 2009 concerning Health. Fifth, Law Number 44 of 2009 concerning Hospitals. Sixth, Law Number 20 of 2013 concerning Medical Education. Seventh, Law Number 18 of 2014 concerning Mental Health. Eighth, Law Number 36 of 2014 concerning Health Workers. Ninth, Law Number 38 of 2014 concerning Nursing. Tenth, Law Number 6 of 2018 concerning Health Quarantine. Eleventh, Law Number 4 of 2019 concerning Midwifery. "Revoked and declared invalid," reads Article 454 of Law Number 17 of 2023.

Even though the 11 Laws are declared invalid, the implementing regulations of the various Laws are still declared valid as long as they do not conflict with the provisions in Law Number 17 of 2023. There are at least 10 Laws whose implementing regulations are still valid as per these provisions. . Namely Law Number 4 of 1984, Law Number 29 of 2004, Law Number 36 of 2009, Law Number 44 of 2009, Law Number 20 of 2013, Law Number 18 of 2014, Law -Law Number 36 of 2014. Then Law Number 38 of 2014, Law Number 6 of 2018 and Law Number 4 of 2019.

The roles of professional nurses are as follows:

- **Nursing Care Provider:** As providers of nursing care, nurses help clients regain their health through the healing process. Nurses focus care on clients' health needs holistically, including efforts to restore emotional, spiritual and social health. The caregiver provides assistance to the client and the client's family using minimal energy and time. In addition, in their role as providers of nursing care, nurses provide care by paying attention to the condition of basic human needs that are needed through providing nursing services using the nursing process so that a nursing diagnosis can be determined so that appropriate action can be planned and implemented and in accordance with the level of basic human needs. then the level of development can be evaluated. The provision of nursing care ranges from simple to complex.
- **Making Clinical Decisions:** Making clinical decisions is central to nursing practice. To provide effective care, nurses use their critical thinking skills through the nursing process. Before taking nursing action, whether in assessing the client's condition, providing care, and evaluating results, the nurse develops an action plan by determining the best approach for the client. Nurses make decisions themselves or collaborate with clients and families. In every situation like this, nurses work together, and consult with other professional health care providers [7].
- **Client Protector and Advocate:** As a protector, nurses help maintain a safe environment for clients and take action to prevent accidents and protect clients from possible undesirable effects from a diagnostic or treatment procedure. Examples of the nurse's role as a protector are ensuring that clients do not have allergies to drugs and providing immunizations against diseases in the community. Meanwhile, the nurse's role is as an advocate, the nurse protects the client's rights as a human being and legally, and assists the client in asserting his rights if needed. For example, the nurse provides additional information to a client who is trying to decide the best course of action for him. In addition, nurses also protect clients' rights through general means by rejecting rules or actions that might endanger the client's health or challenge the client's rights. This role is also carried out by nurses in helping clients and families in interpreting various information from service providers or other information, especially in taking approval for nursing actions given to patients. They can also play a role in maintaining and protecting patient rights which include the right to the best possible service. , the right to information about the disease, the right to privacy, the right to determine one's own fate and the right to receive compensation due to negligence.
- **Case Manager:** In their role as case managers, nurses coordinate the activities of other health team members, such as nutritionists and physical therapists, when managing groups that provide care to clients. The development of practice models gives nurses the opportunity to make choices about the career path they want to pursue. In various workplaces, nurses can choose between the role of nursing care manager or as an associate nurse who carries out the manager's decisions [8]. As managers, nurses coordinate and delegate care responsibilities and supervise other health care personnel.
- **Rehabilitator:** Rehabilitation is the process by which individuals return to their maximum level of function after illness, accident, or other disabling event. Often clients experience physical and emotional disorders that change their lives. Here, the nurse acts as a rehabilitator by helping the client adapt as best as possible to the situation.
- **Comfort Giver:** The client nurse as a human being, because nursing care must be aimed at the whole person, not just physically, providing comfort and emotional support often provides strength for the client as an individual who has unique feelings and needs. In providing comfort, nurses should help clients to achieve therapeutic goals rather than fulfilling their emotional and physical dependence.
- **Communicator:** Nursing includes communication with clients and families, among nurses and other health professions, information sources and the community. Providing effective care and making decisions with clients and families is impossible without clear communication. The quality of communication is a determining factor in meeting the needs of individuals, families and communities.
- **Extension Officer:** As an educator, the nurse explains to the client concepts and data about health, demonstrates procedures such as self-care activities, assesses whether the client understands the things explained and evaluates progress in learning. Nurses use teaching methods that suit the client's abilities and needs and involve other sources, such as the family, in the teaching they plan.
- **Collaborators:** The role of nurses here is carried out because nurses work through a health team consisting of doctors, physiotherapists, nutritionists and others by trying to identify the necessary nursing services including discussions or exchange of opinions in determining the next form of service.
- **Educator:** This role is carried out by helping clients increase their level of health knowledge, disease symptoms and even the actions given so that there is a change in client behavior after health education is carried out.

- Consultant: The role here is as a place for consultation regarding problems or appropriate nursing actions to be given. This role is carried out at the client's request for information about the objectives of the nursing services provided.
- Reformer: The role as a reformer can be carried out by planning, collaborating, making systematic and targeted changes in accordance with the method of providing nursing services.

In certain circumstances, a nurse can provide medical and/or pharmaceutical services within certain limits, and there are no Health Workers who have the authority to carry out the necessary health service actions and it is not possible to be referred. Regarding carrying out nursing duties in certain limited circumstances, Article 286 of Law no. 17 of 2023 concerning Health regulates the authority of nurses, namely:

- "Under certain circumstances, Medical Personnel and Health Personnel can provide services outside their authority.
- Certain circumstances as intended in paragraph (1)
- includes at least: (a) absence of Medical Personnel and/or Health Personnel in an area where Medical Personnel or Health Personnel are on duty; (b) government program needs; (c) handling medical emergencies; and/or (d) Extraordinary outbreak, epidemic, and/or disaster emergency.
- Medical Personnel and Health Personnel as intended in paragraph (1) include: (a) doctors/dentists who provide medical and/or pharmaceutical services within certain limits; (b) nurses or midwives who provide medical and/or pharmaceutical services within certain limits; or (c) pharmaceutical vocational staff who provide pharmaceutical services which fall under the authority of pharmacists within certain limits."

In certain circumstances, nurses who provide medical and/or pharmaceutical services within certain limitations, and there are no Health Workers who have the authority to carry out the necessary health service actions and it is not possible to be referred. The role of nurses in certain limited circumstances is regulated in Article 286 of the Health Law which states that nurses can provide medical and/or pharmaceutical services within certain limits. The role of nurses within certain limitations is further regulated in Article 30 paragraph (5) of the Regulation of the Minister of Health of the Republic of Indonesia Number 26 of 2019, namely: (a) provide treatment for general illnesses in the absence of medical personnel; (b) refer clients in accordance with the provisions of the referral system; and (c) provide limited pharmaceutical services in the event that there are no pharmaceutical personnel.

General illnesses are diseases or symptoms that are mild and often found every day and are based on visible symptoms (symptomatic), including headaches, coughs and colds, diarrhea without dehydration, bloating, fever and toothache. Nurses can also provide limited pharmaceutical services, namely in the form of storing and handing over medication to clients [9].

3.2. Legal Protection for Nurses in Certain Limited Circumstances.

Health workers, including nurses, are an element of health resources and also have an obligation to carry out their service duties professionally. Considering that health workers are legal subjects, the legal subjects of health are patients and health workers including health institutions, while the object of health law is health care/health care which is one of the efforts to improve the health status of both individuals, groups or communities. , then in essence the relationship that occurs between health workers, patients and health facilities is a legal relationship [10]. Legal relationships always give rise to reciprocal rights and obligations, the rights of one party become the obligations of the other party and vice versa. Nurses as legal subjects certainly require legality for their profession in carrying out their service duties. The authority possessed by a nurse to carry out her service duties is legal authority (rechtsbevoegheid).

One of the authorities of nurses is that they can provide services outside their authority in the form of providing medical and/or pharmaceutical services within certain limits as regulated in Article 286 of Law Number 17 of 2023 concerning Health. However, Law Number 17 of 2023 concerning Health does not explain in detail the authority of nurses in the form of providing medical and/or pharmaceutical services within certain limits, thus having a negative impact on implementation in the field which does not rule out the possibility of nurses providing medical services outside conditions of limitations and the occurrence of errors/negligence in carrying out these duties. Thus, nurses need legal protection in carrying out their duties and authority. The meaning of legal protection itself is providing certainty or guarantee that someone who carries out their rights and obligations is protected by law [11] believes that there are two types of legal protection, namely: (1) Preventive legal protection, is legal protection that is preventative in nature dan (2) Repressive legal protection, is legal protection that aims to resolve disputes.

As a health worker, in carrying out his duties, not only will things go according to expectations, there will be problems that may arise, therefore legal protection is very necessary as a form of legal certainty. The government's legal protection for nurses is regulated in article 27 of Law Number 36 of 2009 concerning Health and article 36, the contents of which explain that nurses have the right to obtain legal protection as long as they carry out their duties in accordance with service standards, professional standards, standard operational procedures and statutory provisions.

The government's legal protection for nurses is in the form of preventive legal protection, namely preventing disputes through the issuance of laws regarding registration and nursing practice contained in the Health Law which states that every nurse who wants to practice nursing in a health service facility is required to have a practice permit, nurse and work permit letter.

The repressive legal protection provided by the government in the form of dispute resolution outside of court as regulated in Article 310 of Law Number 17 of 2023 concerning Health, states: "In the event that a Medical Personnel or Health Personnel is suspected of making a mistake in carrying out their profession which causes harm to the Patient, the dispute that arises as a result of the mistake is resolved first through alternative dispute resolution outside of court."

Restorative justice is a process where all parties interested in a particular violation meet together to resolve together how to resolve the consequences of the violation for the sake of the future, with the main aim of Restorative Justice being to encourage the perpetrator to be held accountable, actions and strive for recovery of victims and restoration of disturbed relationships [12]. Therefore, this process must be focused on efforts to correct the negative impacts arising from criminal acts.

4. Conclusion

The main role of the nurse which is most widely highlighted and known by the public is as an actor/provider of nursing care. Nurses can provide nursing services directly and indirectly to clients, in general conditions and in certain limited conditions, using a nursing process approach. Legal protection for The duties of nurses are within certain limitations, namely the government towards nurses in the form of preventive legal protection, namely preventing disputes from occurring through the issuance of laws regarding registration and nursing practice contained in Law No. 17 of 2023 and repressive legal protection provided by the government in the form of implementing disputes through the judiciary. It is common for malpractice to occur by doctors or nurses.

Compliance with ethical standards

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Disclosure of conflict of interest

All authors have no conflict of interest with the manuscripts mentioned in the research presented.

Statement of ethical approval

This research has been approved by the animal ethics commission, from the Faculty of Veterinary Medicine, Udayana University, Denpasar, Indonesia

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