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DELEGATION OF MEDICAL TASKS AND DELIVERY OF INFORMATION BY DOCTORS TO NURSES BASED ON LAW NUMBER 38 OF 2014 CONCERNING NURSING

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Abstract

Delegation is the delegation of authority in the process of transferring duties and responsibilities given by doctors to nurses, program implementers, or services to carry out certain tasks within a certain time. Legal actions in the medical world are carried out with the delegation of authority and informed consent in the provision of health care. Health is a human right that is recognized and protected by the 1945 Constitution of the Republic of Indonesia.

Based on the results of the study, it is understood that the application of the law regarding the legal force of delegation of authority and informed consent must be carried out correctly following the Standard Operating Procedures (SOP) that have been established. there are, in addition, medical and non-medical already know and understand the rules and consequences of the actions to be taken in connection with the delegation of authority and the provision of informed consent.

Keywords: *Delegation of Medical Authority, Doctor, Nurse.*

INTRODUCTION

Health law is all legal provisions that are directly related to the maintenance or service of health and its application. This means that health law is a written rule regarding the relationship between the health service provider and the community or community members. By itself, this health law regulates the rights and obligations of each service provider and service recipient or the community, either as individuals (patients) or community groups.¹

The law has developed for a long time, but the health law has only been known in the last two decades and has begun to be noticed by people or society. The legal community does not yet know and understand health law because it is very technical and specific. Sometimes the health professionals themselves do not know anything and only startle when their profession begins to be touched by problems or enters the realm of law.²

Health services by health resources are strongly influenced by the availability of medical and non-medical personnel. Current services in Indonesia are still limited to medical personnel (doctors) who require non-medical personnel, such as nurses to take medical action on patients who are not under their authority. This action was taken because of the urge of medical personnel to heal patients and with the delegation of authority over them. So medical actions may cause legal consequences in connection with the delegation of the authority charged by doctors so that it will harm nurses. The success of health efforts in hospitals to run optimally can be seen from the availability of health resources and human resources (medical personnel) who are workers, facilities, and infrastructure in sufficient quantity and quality. The hospital is a health service institution that provides individual health services or one of the health facilities organized by both the government and the community. Health services as the main activity of hospitals place doctors and nurses as health workers who are closest to patients in handling diseases. There are several relationships in these health efforts, namely the relationship between hospitals and doctors; nurses

¹ Soekidjo Notoatmodjo, *Etika Dan Hukum Kesehatan* (Jakarta: Rineka Cipta, 2010).

² Sri Siswati, *Etika Dan Hukum Kesehatan Dalam Perspektif Undang-Undang Kesehatan* (Jakarta: PT. Raja Grafindo Persada). Page. 4.

with a patient; the relationship between doctors and nurses and patients; and the nurse-patient relationship.³

The relationship between medical personnel must have clear rules and must be very carefully considered, just like doctors and nurses because both will have a relationship with the process of carrying out their duties, therefore this relationship must be regulated in law so that both doctors and nurses alike work well and get their rights as medical personnel. Each regulates the rights and obligations of both parties, both those who provide health services and receive health services so as not to harm each other.⁴ The basis of the relationship is a mutually beneficial relationship (*mutual humanity*), and essentially a relationship that is interdependent in realizing patient expectations for nursing action decisions.

Nurses are doctors' partners in the practice of providing health services to patients with health problems, where doctors provide diagnoses and provide therapy, while nurses are tasked with caring for and meeting patient needs, but in reality what happens in the field is very different, where the implementation and authority nurses are not the same even nurses often replace the duties of doctors in their interactions with patients for example: administering drugs and injections. Whereas in essence, the task is the doctor's authority, here is a big problem that has not been resolved until now, even nurses are often said to be doctor's assistants even though the nursing profession and the medical profession are partners whose roles of each profession greatly affect the patient's recovery. providers of medical diagnoses and treatment therapies and nurses as providers of nursing care and help meet basic needs.

Nurse arrangements specifically are needed concerning their duties as executors of duties based on the delegation of authority from medical personnel (doctors). Judging from the position of nurses who are very important in the world of health in Indonesia, the nursing profession still receives less attention in the world of health. Although nurses are already regulated as health workers in the Health Act and the Nursing Act. The law on nursing is intended to provide legal protection and

³ Sri Praptianingsih, *Kedudukan Hukum Perawat Dalam Upaya Pelayanan Kesehatan Di Rumah Sakit* (Jakarta: PT. Raja Grafindo Persada, 2007). Page. 3.

⁴ Notoatmodjo. *Op.Cit*, page. 45.

certainty to nurses regarding the implementation of tasks based on the delegation of authority.

Although there are already rules on nursing, which regulate the actions or duties of nurses as executors of the task of delegating authority, it is not clear and incomplete regarding the sanctions that will be given to medical personnel and nurses whose actions are not under existing laws and regulations.

PROBLEM FORMULATION

Based on the description and background above, the writer can formulate several problems as follows:

- 1) What is the nurse's authority according to Law Number 38 of 2014?
- 2) What is the process of transferring medical authority by doctors to nurses and *informed consent*?

RESEARCH METHODS

Making a scientific work, especially scientific work, legal research is required to use legal research methods. Legal science strives to display law integrally in accordance with the needs of the study of legal science itself, so that research methods are needed to obtain a comprehensive research direction.⁵ The scope of this research is limited to legal disciplines, especially Administrative Law and Health Law, so the author uses a research method with a normative juridical approach. The normative juridical approach in this study focuses more on the aspects of constitutional law and its interactions in the political field. The political aspect is very closely related to the law so legal facts that are directly related to the administration of government need to be studied more deeply.⁶ The desire to absorb living law or the need to criticize laws and regulations is impossible if research and legal reasoning are carried out simply following a closed logical system. Therefore, the legal facts become one of the references in this research. In addition, as a data source, the authors look for data on library books, journals, laws, regulations, and news sources from the media or the

⁵ Yati Nurhayati, 'Perdebatan Metode Normatif Dengan Metode Empirik Dalam Penelitian Ilmu Hukum Ditinjau Dari Karakter, Fungsi Dan Tujuan Ilmu Hukum', *Jurnal Al Adl*, 5.10 (2013), Hlm. 15.

⁶ Irwansyah, *Penelitian Hukum* (Mirra Buana Media, 2020). page. 96.

internet. Furthermore, the author will analyze and conclude in a descriptive-analytical manner.

DISCUSSION

The authority of nurses according to Law Number 38 of 2014

Authority is a public legal concept, which is related to power, in this case, it can be interpreted that a person because of his position can/may take an action legally so that someone who has the right/authority has the freedom to use or not the authority/rights they have.⁷

Responsibility according to the Big Indonesian Dictionary (KBBI) is a state of being obliged to bear everything, take responsibility, bear everything, be responsible and bear the consequences, and give accountability. conducted. However, these actions must be accounted for morally (ethically).

Authority or authority is a term commonly used in the field of public law, which has differences concerning power. According to Law Number 30 of 2014 concerning Government Administration, in article 1 points (5) and (6) Authority is the right owned by a Government Agency and/or official or another State administrator to take decisions and/or actions in the administration of government. Meanwhile, Government Authority hereinafter referred to as Authority, is the power of government agencies and/or officials or other state administrators to act in the realm of public law.

According to Law Number 38 of 2014 concerning Nursing, in article 1, number (1) that "Nursing is an activity of providing care to individuals, families, groups, or communities both in sickness and in health". 1983, "Nursing is a form of professional service which is an integral part of health services based on nursing science and tips, in the form of comprehensive bio-psycho-socio-spiritual services, shown to individuals, families, and communities, both sick and healthy who covers the entire human life cycle. While Law Number 38 of 2014 concerning nursing, in article 1, number (2) that "Nurse is someone who has passed nursing higher education, both at home and abroad which is recognized by the government following the provisions

⁷ KBBI Online, 'Kamus Besar Bahasa Indonesia Online'. Accessed on 12 February 2017, at 14:35 WIB

of the legislation".

According to Law Number 30 of 2014 concerning Government Administration, the delegation of authority is called Delegation and Mandate. Delegation is the transfer of authority from a higher Government Agency and/or Official to a lower Government Agency and/or Official with responsibility and accountability fully transferred to the recipient of the delegation, while Mandate is the transfer of authority from a higher Government Agency and/or Government Official. higher to lower Government Agencies and/or Officials with responsibility and accountability remains with the mandate giver.

In Koziar's 2010 book, delegation is a process of transferring responsibility and authority in carrying out activities to competent individuals.⁸ *Informed consent* consists of two words "*informed*" which means having received information (information), and "*consensus*" which means approval or giving permission. Thus, this *informed consent* is an agreement from the patient or the medical party based on medical action and the risks associated with it. The importance of *informed consent* is also related to the existence of article 351 of the Criminal Code regarding persecution, which can be accused of being a doctor or hospital, related to medical actions taken against patients.⁹

Informed Consent is essentially a law of engagement, civil provisions will apply and this is closely related to professional responsibilities regarding treatment agreements that will be carried out by doctors or nurses. The 1945 Constitution of the Republic of Indonesia recognizes and protects that health is a human right. So all actions that will be taken by health workers must provide information in advance that is appropriate and true to the patient about the medical action to be carried out.

According to Law Number 38 of 2014 concerning nursing, in article 1, number (1) that "nursing is an activity of providing care to individuals, families, groups, or communities both in sickness and in health". 1983, "Nursing is a form of professional service that is an integral part of health services based on nursing knowledge and tips, in the form of comprehensive bio-psycho-socio-spiritual services, shown to individuals, families, and communities, both sick and healthy who are covers the

⁸ Dede Nasrullah, *Etika Dan Hukum Keperawatan Untuk Mahasiswa Dan Keperawatan*. page.105.

⁹ Siswati. *Op.Cit*, page. 3.

entire human life cycle". While Law Number 38 of 2014 concerning nursing, in article 1, number (2) that "Nurse is someone who has passed higher nursing education, both at home and abroad which is recognized by the government in accordance with with the provisions of the legislation".

Nursing services are actions that will be carried out related to nursing care and several aspects that have been determined which in this case are actions taken by nurses to patients for service actions carried out according to their tips and abilities. Nursing is a form of nursing care for individuals, families, and communities based on science and art and has a nurse-patient relationship as a professional relationship.¹⁰

The process of providing nursing care to patients is a method for nurses to provide nursing care to patients. Nursing practice according to Henderson in his book on nursing theory, namely everything that nurses do in overcoming nursing problems using the scientific method when talking about nursing practice cannot be separated from the phenomenon of nursing and the relationship between patients and nurses.¹¹

A nurse is someone who has completed a nursing education program, is authorized in the country concerned to provide services, and is responsible for health promotion, disease prevention, and patient care (*International Council of Nursing*, 1965). According to Henderson (1980), nurses have a unique function, namely helping individuals who are both healthy and sick, from birth to death to be able to carry out daily activities independently, using their strength, will, or knowledge.¹²

Nurses are doctors' partners in the practice of providing health services to patients with health problems. Therefore, the doctor gave a diagnosis and gave therapy. While nurses are tasked with caring for and meeting patient needs (care and cure), therefore nurses in hospitals must have good abilities and competencies and must meet the requirements of a nursing profession as determined by law.

In the health sector, this professional ethics naturally develops from the relationship between health workers and the community they serve.¹³ Nurses also play a very important role in the advancement of the world of health in Indonesia. The relationship between nurses and the community must always be maintained

¹⁰ Nasrullah, *Op.Cit*, page 3

¹¹ *Ibid*, page 3

¹² *Nasrullah, Op.Cit*, page.25.

¹³ Notoatmodjo. *Op.Cit.*, page. 34.

properly, this is because nurses will always interact with the community in the continuity of the interaction of providing nursing care. Nurses share the responsibility of the community to initiate and support various activities to meet the needs and health of the community.¹⁴

Nurses must also respect and appreciate fellow nurses to create harmony between nurses who will always support and create a good and harmonious atmosphere between health workers. Nurses always maintain good relations with fellow nurses and with other health workers, in maintaining a harmonious working environment and in achieving overall health service goals.¹⁵

Nurses in relation to health services must use an organized approach to achieve a goal and improve the quality of nursing care and avoid problems that conflict with the goals of health or nursing services. In overcoming health problems that will arise in patients, it must be carried out continuously. Health improvement is one form of developing physical or biological aspects of humans. Good health is an indicator of quality resources.¹⁶ To improve the quality of health services, accreditation must be carried out periodically at least once every 3 (three) years, where this accreditation is carried out by an independent institution both from within and from abroad based on applicable accreditation standards, and cooperation is expected for all parties, both for providers health services, recipients of hospital services, as well as the government and hospital associations to form networks to realize the highest degree of health for each individual in society.¹⁷

Every activity and/or series of activities are carried out in an integrated, integrated, and sustainable manner. This is done to maintain and improve the health status of the community in the form of disease prevention, health promotion, disease treatment, and health restoration by the government and/or the community.¹⁸ Like other sectors, the government is in charge of all development. Therefore, in the health sector, the government is also responsible for planning, regulating, organizing, fostering, and supervising providers of health efforts that are evenly distributed and

¹⁴ Nasrullah *op.cit*, page. 16.

¹⁵ *Ibid*.

¹⁶ Notoatmodjo. *Op.Cit*, page. 19.

¹⁷ Siska Elvandari, *Hukum Penyelesaian Sengketa Medis* (Yogyakarta: Thafa Media). page. 171-172.

¹⁸ Notoatmodjo. *Op.Cit*, page. 51.

affordable by the community.¹⁹ Based on the above definition of definition, we can know that nursing is a form of service provided based on nursing knowledge and tips. The scope of nursing care covers a very broad field, including physical and psychological aspects, in individual capacities, relationships with family, and social.²⁰

Transfer of Medical Authority by Doctors to Nurses Explanation of the transfer of authority and *Informed Consent*

Health is a human right and one of the elements of welfare that must be realized following the ideals of the Indonesian nation as referred to in Pancasila and the 1945 Constitution of the Republic of Indonesia, every activity to maintain and improve the highest degree of public health is carried out based on non-discriminatory, participatory, and sustainable principles in the context of the formation of Indonesian human resources, as well as increasing the nation's resilience and competitiveness for national development.²¹

The implementation of health services is carried out in a responsible, safe, quality, as well as equitable and non-discriminatory manner. The government and local governments are responsible for the delivery of health services as referred to above. Supervision of the implementation of health services is carried out by the government, local government, and the community.²²

Everyone who devotes himself to the health sector and has the knowledge and/or skills through education in the health sector which for certain types requires the authority to carry out health efforts.²³ Health services as a process of providing health services are legal actions related to the functions, duties, and authorities of health workers that will have legal consequences. Legal actions in the medical world are carried out with the transfer of authority and the provision of health care.

According to Law Number 30 of 2014 concerning Government Administration, as explained in general, Delegation is the transfer of authority from a higher Government Agency and/or Official to a lower Government Agency and/or Official with

¹⁹ Notoatmodjo. *Ibid*, page. 54.

²⁰ Praptianingsih. *Op.Cit.*, page. 25-26.

²¹ Notoatmodjo. *Op.Cit*, page. 49.

²² Notoatmodjo. *Ibid*, page.63

²³ Notoatmodjo. *Ibid*, page.50-51.

full responsibility and accountability. to the recipient of the delegation, while the Mandate is the transfer of authority from a higher Government Agency and/or Official to a lower Government Agency and/or Official with responsibility and accountability remaining with the mandate giver.

To be one of the legal bases for Government Agencies and/or Officials, Community Citizens, and other parties related to Government Administration to improve the quality of government administration, so that the expected goals can be achieved and create legal certainty, and can prevent the occurrence of abuse of authority in every area of government. The delegation of authority according to Law Number 38 of 2014 concerning nursing, related to the duties of nurses as executor of duties based on the transfer of authority in article 29 paragraph (1) letter e can be carried out by delegation or mandate which can only be given in writing by medical personnel to nurses to perform a medical action and evaluate its implementation. The medical action must be given to nurses who have the competence and are considered capable of carrying out these tasks.

Delegative delegation of authority to perform a medical action is given by a medical officer to a nurse accompanied by a transfer of responsibility, which can only be given to a professional nurse or a trained vocational nurse who has the required competence, while a mandated handover is given by medical personnel to nurses to perform a medical action under the supervision and responsibility for medical action on the delegation of mandate authority rests with the grantor of delegation of authority. Arrangements regarding the delegation of authority or assignment of delivery in nursing are related to the running of government by existing health resources. This delegation of authority is usually based on the legal relationship between nurses and doctors and/or other health workers that occurs due to delegation related to the duties, functions, and roles of nurses. The delegation of authority must be in writing including clear instructions regarding its implementation, how to act if complications arise, and the next steps. There must be medical guidance or supervision at the implementation stage. The person who is given the delegation has the right to refuse if he feels unable to carry out the medical action.²⁴

²⁴ Pitono Soeparto (Alm) [dkk], *Etika Dan Hukum Dibidang Kesehatan* (Surabaya: Airlangga University Press). Page. 141.

Assignment of medical action should only be done if the doctor is sure that the person assigned will act properly.²⁵ With the act of supervising or the doctor is sure that the chosen nurse can reduce the symptoms experienced by the patient and the nurse will be a little far away and it will be difficult to get caught in the case that will happen to him for the action taken.

Medical care (treatment) and its supervision must be given depending on the circumstances, whether the doctor must be present at that time or only then be present when it is needed immediately.²⁶ The legal relationship between doctors and nurses can be a reference or delegation of authority. In the referral relationship, the other health worker takes action according to his own decision based on his knowledge, while the delegation of authority to other health workers cannot make their own decision but takes action following the delegation's authority given by the doctor.²⁷ Consent for medical treatment is the Indonesian term for "*Informed Consent*". Actually, the term *Informed Consent* is more representative of what is meant than the term Consent for medical treatment. The term *Informed Consent* implicitly includes information and consent. Consent is given after the person concerned is informed or given information. It can be said that *Informed Consent* is *informed consent*. A medical agreement will arise after the patient is explained his illness, and the consequences that will be taken into account according to medical science in terms of his treatment, and then the patient accepts (gives permission) for treatment. This permission is called "*Informed Consent*".²⁸

Informed consent consists of two words "which means having received information (information), and "informed consensus" which means approval or giving permission. Thus, this *informed consent* is an agreement from the patient or the medical party based on medical action and the risks associated with it. The importance of *informed consent* is also related to the existence of article 351 of the Criminal Code regarding persecution, which can be accused of being a doctor or hospital, related to medical actions taken against patients.²⁹

²⁵ [dkk]. *Ibid*, page. 146.

²⁶ [dkk]. *Ibid.*, page. 147.

²⁷ [dkk]. *ibid*, page. 139-140.

²⁸ Elvandari. *Op.Cit.*, page. 140.

²⁹ Siswati. *Op.Cit*, page. 98

Informed Consent is essentially a law of engagement, civil provisions will apply and this is closely related to professional responsibilities regarding treatment agreements that will be carried out by doctors or nurses. *Informed Consent* is one of the patient's rights to obtain information which is part of the right to self-determination (*The Right of Self-Determination*). Personality rights are human rights to themselves. The rights referred to, the most important of which are the human rights to their soul (article 1406 of the Civil Code), their body (Article 1407 of the Civil Code), honor (Article 1408 of the Civil Code), and their family names.³⁰

The public has the right to: (1) obtain correct information and education regarding mental health; (2) Have the same rights as citizens of the State; (3) Obtain services for those experiencing mental health disorders.

The function of the information is to protect and ensure the implementation of the patient's rights, namely to determine what to do with his body which is considered more important than the restoration of his health itself.³¹ Actions carried out contain risks such as surgery or invasive examination and treatment procedures, it is better to ask for medical action approval (PTM) in writing. patient action.³²

The obligation of health workers to provide information, whether requested or unsolicited, is given adequately about the need for medical action and the risks that can arise, given orally and the method of delivering information must be adapted to the condition and situation of the patient, in the sense that doctors must provide complete information except the doctor considers that the information to be provided is detrimental to the patient or the patient refuses to receive information, in this case, information with the patient's consent, can be forwarded to the next of kin of the patient and accompanied by a nurse or paramedic.³³

All medical actions that will be carried out on patients must obtain approval and approval can be given in writing or orally, but medical actions that contain high risks must be approved in writing and signed by those who have the right to give consent.³⁴

This means that it is based on the belief of the Indonesian people, that life does

³⁰ Elvandari. *Op.Cit.*, page. 141.

³¹ H. Zainuddin Ali, *Filsafat Hukum*, 2014. page. 38.

³² Ali. *Ibid.*

³³ Ali. *Ibid*, page. 147.

³⁴ Ali. *Ibid*, page. 148.

not belong to humans but is a gift from God Almighty that must be protected, respected by everyone, and even must be protected by the government and the state.³⁵

CLOSING

Conclusion

Based on the discussion carried out in the previous chapters, the author will conclude the SCIENTIFIC WORK entitled: "Delegation of Medical Authority by Doctors to Nurses Judging from the Legal Aspects of Law Number 38 of 2014 concerning nursing, Regarding Nurses as doctors' partners with one of their duties as the executor of the task from the delegation of authority, who must obtain legal protection as long as he carries out his duties following service standards, professional standards, standard operating procedures, and provisions of laws and regulations because his actions will be easily caught by the law.

The government must be more assertive and always pay attention to progress in the health sector, because without the intervention and facilities of the government, health in Indonesia will not be able to develop, to create quality health workers. Health workers should know and understand the actions taken related to the transfer of medical authority both by delegation and mandate, as well as the importance of informed consent regarding actions to provide health care to patients, and related to Standard Operating Procedures (SOP), should be clarified and explained in detail. emphasized so that it is easier for health workers to provide health services to patients.

³⁵ Ali. *Ibid.*, page. 262.

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