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Juridical Analysis Of Nurses' Legal Liability For Negligence In Providing Nursing Services

Raras Merbawani

¹Faculty of Health Science, Bina Sehat PPNI University, Mojokerto City, East Java, Indonesia

Email: rmerbawani@gmail.com¹

Abstrak

Perawat merupakan salah satu profesi tenaga kesehatan yang memberikan pelayanan kesehatan yang dalam kesehariannya berhubungan langsung dengan pasien atau tenaga kesehatan lainnya. Tujuan penelitian ini adalah untuk melakukan analisis yuridis tentang tanggung jawab Perdata perawat atas kelalaian dalam memberikan pelayanan keperawatan. Metode penelitian ini menggunakan *Statute Approach* legislatif dan regulasi dengan *Conseptual Approach*. Bahan hukum berupa konsep hukum dan literatur tentang hal yang sedang diselidiki, meliputi: 1) Undang-Undang Nomor 36 Tahun 2009; 2) Undang-Undang Nomor 38 Tahun 2014 tentang Keperawatan; 3) Peraturan Pemerintah Nomor 32 Tahun 1996; 4) Keputusan Menteri Kesehatan, Polisi Kesehatan No. 1239/Menkes/SK/XI/2001; 5) UU Kesehatan Nomor 36 Tahun 2009. Tanggung jawab hukum perawat dalam melakukan tindakan medis, meliputi standar keperawatan, kompetensi profesional, informed consent, dokumentasi, keselamatan pasien, kehadiran perawat dan kewajiban dalam tugas, privacy, melapor kondisi pasien. Tanggung jawab etik perawat dalam melakukan tindakan medis, meliputi otonomi pasien, persetujuan informatif, non-maleficence, beneficence, keadilan, integritas profesional, kepatuhan terhadap kode etik keperawatan, kolabotif, pengembangan profesional. Perlindungan hukum bagi profesi perawat, meliputi lisensi dan regulasi profesi, undang-undang ketenagakerjaan, kode etik keperawatan, perlindungan tuntutan hukum, asuransi malpraktik, hak untuk menolak tindakan medis, pengaduan profesional. Perawat merupakan salah satu profesi tenaga kesehatan yang memiliki tanggung jawab dalam melakukan tugasnya dalam memberikan asuhan secara kompeten. Kode etik keperawatan merupakan standar etika dalam profesi keperawatan. Kode etik keperawatan dijadikan sebagai landasan dalam praktik keperawatan terkait tanggung jawab secara etik, hukum, dan perlindungan perawat dalam praktiknya.

Kata Kunci: *Tanggung Jawab Perdata, Perawat, Pelayanan Keperawatan*

Abstract

A nurse is a professional health worker who provides health services in daily contact with patients or other health workers. This study's aim is a juridical analysis of the legal liability of nurses for negligence in providing nursing services. This research method used a legislative and regulatory Statute Approach with a Conceptual Approach. The legal materials in the form of legal concepts and literature on matters being investigated included: 1) Law Number 36 of 2009; 2) Law Number 38 of 2014 concerning Nursing; 3) Government Regulation Number 32 of 1996; 4) Decree of the Minister of Health, Health Police No. 1239/Menkes/SK/XI/2001; 5) Health Law Number 36 of 2009. The legal responsibility of nurses, included nursing standards, professional competence, informed consent, documentation, patient safety, nurse presence and obligations in their duties, privacy, and reporting the patient's condition. The ethical responsibilities of included patient autonomy, informed consent, non-maleficence, beneficence, justice, professional integrity, compliance with the nursing code of ethics, collaboration, and professional development. Legal protection for nurses, included professional licensing and regulations, employment law, nursing code of ethics, protection from lawsuits, malpractice insurance, the right to refuse medical treatment, and professional complaints. Nurses are one of health professions who have the responsibility to carry out their duties in providing care competently. The nursing code of ethics is an ethical standard in the nursing profession. The nursing code of ethics is used as a basis for nursing practice regarding the ethical, legal, and protection responsibilities of nurses in their practice.

Keywords: *Legal Liability, Nurse, Nursing Services*

INTRODUCTION

Nurses are one of the health professions that provide health services to individuals, families, and communities. Nursing staff are health workers who in their daily lives have direct contact with patients or other health workers (Riasari, 2021). Nurses have a responsibility to carry out their duties as care providers to remain competent. In practice, nurses must have several key elements including 1) Accredited education; 2) License and certification; 3) The nursing code of ethics as a basis for work (Cheraghi et al., 2023; Jacoby & Scruth, 2017).

According to Law Number 38 of 2014 concerning Nursing Article 1 Paragraph (2), a nurse is someone who has graduated from higher education in nursing both domestically and abroad which is recognized by the government by the provisions of statutory regulations. Nurses can carry out medical procedures provided that there is a delegation of authority from a doctor. Nurses have competence in carrying out professional nursing care for patients rather than carrying out certain medical procedures. Certain medical procedures are part of collaborative interventions between nurses and doctors. Medical procedures are only legally carried out by professional doctors, not by nurses (Huda & Huda, 2021; Riasari,

2021).

Nursing practice is supported by the American Nurses Association (ANA) through policies, scope determination, implementation of a nursing code of ethics, and standards of nursing practice. The code of ethics is the central foundation for the nursing profession and guides nurses in the decision-making process in nursing practice. The standards set out in the code of ethics cannot be negotiated in all roles and environments so nurses need to understand the code of ethics and be responsible for the nursing actions carried out (Cheluvappa & Selvendran, 2020; Jacoby & Scruth, 2017).

Negligence is a form of professional malpractice committed in carrying out professional duties. The standards used are what kind of service the patient should receive and whether the nurse acts with the level of competence expected based on the standards set. The losses experienced by patients in nursing practice are the basis of malpractice (Cheluvappa & Selvendran, 2020; Griffith, 2019). This research aims to conduct a juridical analysis of the legal liability of nurses for negligence in providing nursing services.

RESEARCH METHOD

This research method used a legislative and regulatory approach with a conceptual approach. Sources and types of legal materials included primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials in the form of legal concepts and literature on matters being investigated included: 1) Law Number 36 of 2009; 2) Law Number 38 of 2014 concerning Nursing; 3) Government Regulation Number 32 of 1996; 4) Decree of the Minister of Health, Health Police No. 1239/Menkes/SK/XI/2001; 5) Health Law Number 36 of 2009. The data collection technology used in the research was library research technology, namely through research on various types of literature or literary research. The data analysis used a qualitative analysis method with the help of various related literature and sources as well as studying existing data.

RESULTS AND DISCUSSION

Legal Responsibilities of Nurses in Carrying Out Medical Procedures

The legal responsibilities of nurses in carrying out medical procedures may include the following: 1) Nursing Standards: Nurses are responsible for complying with the nursing standards applicable in their country; 2) This standard includes medical procedures and practices that must be followed in providing care to patients; 3) Professional Competence: Nurses must have the qualifications and competencies required to carry out medical procedures. They must have licensing and education that complies with applicable

regulations in their state; 4) Informed Consent: In some cases, the nurse may have to ensure that the patient or the patient's guardian provides valid consent before performing certain medical procedures; 4) Documentation: Nurses must accurately document all medical procedures performed on patients. This documentation is important for tracking patient progress and providing information necessary for follow-up care; 5) Patient Safety: Nurses have the responsibility to ensure patient safety during medical procedures. They must comply with infection control procedures, use medical equipment correctly, and avoid medical errors; 6) Attendance and Time Obligations: Nurses are also expected to be present according to their schedule and time obligations in providing care to patients; 7) Privacy and Confidentiality: Nurses must maintain the confidentiality of patient medical information and ensure patient privacy is maintained; 8) Reporting the Patient's Condition: If there is a change in the patient's condition or other problems related to treatment, the nurse must immediately report it to the relevant medical team.

Informed consent is the basis for services in the form of informed consent for patients. Nurses as professional providers of care who collaborate with multidisciplinary teams are also responsible for obtaining patient consent through informed consent. The purpose of informed consent is a mechanism that involves the patient in his participation in making decisions regarding the action or treatment to be obtained. Ethically and legally, before carrying out an invasive procedure, informed consent is required as the patient's authorization for the action they are receiving (Axson et al., 2019; Glaser et al., 2020).

It should be noted that the legal responsibilities of nurses may vary based on the jurisdiction and legal regulations in each country. Therefore, it is very important for nurses to always follow the rules and regulations that apply in the region or country where they practice. If you are a nurse or plan to become a nurse, it is important to seek out trusted sources of legal information and gain a comprehensive understanding of your legal obligations and responsibilities as a nurse. The results of previous research indicate that nurses view informed consent as a task that must be completed and nurses also feel tired of this responsibility.

Nurses' Ethical Responsibilities in Carrying Out Medical Procedures

The ethical responsibilities of nurses in carrying out medical procedures include ethical principles and moral norms that must be followed by nurses in providing care to patients. The following are some important aspects of responsibility in carrying out medical procedures: 1) Patient Autonomy: Nurses must respect the autonomy and rights of patients to make decisions about their care. Nurses must provide sufficient information to patients

to enable them to make informed decisions based on knowledge and understanding; 2) Informative Consent: Nurses must ensure that patients provide informed consent before carrying out medical procedures. Patients should be given clear and complete information about the diagnosis, procedure, risks, and benefits so they can make informed decisions; 3) Non-maleficence: Nurses have an ethical obligation not to cause harm to patients. The nurse must attempt to prevent further injury or damage to the patient; 4) Beneficence: Nurses must act for the good of the patient and strive to provide the best care by applicable nursing standards; 5) Fairness: Nurses must treat all patients fairly without discrimination and ensure that care is provided based on the patient's medical needs and condition; 6) Privacy and Confidentiality: Nurses must maintain the privacy and confidentiality of patient medical information. They should not divulge personal or medical information about patients without appropriate authorization; 7) Professional Integrity: Nurses must maintain integrity and morality in their nursing practice. They must avoid conflicts of interest and conduct themselves honestly and honestly; 8) Compliance with the Nursing Code of Ethics: Nurses are expected to follow the nursing code of ethics applicable in the country or region where they practice. This code of ethics guides the ethical behavior and responsibilities of nurses; 9) Medical Team Collaboration: Nurses must collaborate with other members of the medical team and value their contribution to providing holistic care to patients; 10) Professional Development: Nurses have a responsibility to continually improve their knowledge and skills in nursing practice. They must participate in relevant education and training activities.

Nursing autonomy is multidimensional because it is recognized from various elements, such as self-governance, independence, and accountability. Nursing autonomy consists of two categories, namely clinical autonomy and professional autonomy. Clinical autonomy of nurses, namely nurses providing care directly to patients, refers to the ability of nurses to carry out actions that go beyond standards and make individual decisions regarding the actions to be given to patients. Meanwhile, nurses' professional autonomy is the participation of nurses in making decisions related to patient care which aims to improve nursing quality and patient safety (Pursio et al., 2021).

Beneficence is an action that encourages patient progress and welfare. Professional care provided by nurses can improve patient recovery. The principle of beneficent consists of 3 components, including: 1) Preventing danger or crime; 2) Eliminate danger or evil; 3) Doing or promoting good. Apart from that, beneficence also considers the balance between the treatment the patient is undergoing and the risks and costs incurred so that nurses as professionals must act with beneficence toward patients (Cheraghi et al., 2023).

Doctors and nurses are two professions that complement each other so nurses cannot work without collaboration with doctors. Interdisciplinary collaboration between doctors and nurses will be well established if it is carried out by professional standards. Meanwhile, if this collaboration is not carried out well, it will cause problems that can be detrimental to patients, doctors, and nurses. One of the problems that may occur in a collaborative relationship between nurses and doctors without paying attention to clear authority is the extent to which nurses are allowed to carry out actions ordered by doctors (Mahaputri et al., 2019). It is important for nurses to always put the interests and well-being of patients first, and follow ethical principles in every aspect of their nursing practice. Ethics is an integral part of the nursing profession and helps maintain the integrity and quality of care provided to patients.

Legal Protection for the Nursing Profession

Legal protection for the nursing profession can vary and is usually aimed at protecting the rights and interests of nurses in carrying out their duties, as well as ensuring that patients receive safe and quality care. The following are several forms of legal protection that are appropriate to the nursing profession: 1) Professional Licenses and Regulations: The issuance of licenses and strict regulations by government bodies or nursing professional bodies helps protect the reputation and credibility of nurses. Licensure indicates that a nurse has met certain standards of education, training, and competency, and is legally permitted to practice; 2) Labor Laws: Protection from labor laws protects nurses' rights in the workplace, including working hours, fair wages, leave, and other rights by the labor laws of their respective countries; 3) Nursing Code of Ethics: A nursing code of ethics is a moral guide that regulates the behavior and practice of nurses. It provides a framework for nurses to act ethically and professionally and protects them from situations that could harm patients or harm themselves; 4) Protection from Meaningless Lawsuits: Some states or jurisdictions have laws that protect nurses from lawsuits that are unwarranted or that aim to hinder the legitimate practice of nursing; 5) Protection of Privacy and Confidentiality: Nurses must maintain the confidentiality of patient medical information. Laws on privacy and confidentiality of medical data protect nurses from violations of laws relating to the flight of patients' personal and medical information; 6) Protection from Violence and Harassment: Some countries have laws that protect nurses from physical or verbal violence or abuse that occurs in the course of carrying out their professional duties; 7) Malpractice Insurance: Malpractice insurance is a form of financial protection that can help nurses if they are faced with a lawsuit for a medical procedure that is deemed to be wrong; 8) Right to Refuse

Medical Procedures: Nurses, like other medical personnel, have the right to refuse to carry out medical procedures that are contrary to the code of ethics, personal beliefs, or applicable laws; 9) Professional Complaints: There are professional complaint mechanisms through which nurses can report unethical or unsafe practices by colleagues or superiors to regulatory bodies or professional organizations.

The code of ethics for nurses is an ethical standard in the nursing profession, advocates for human rights (patients, patient families, and community and social issues), emphasizes the responsibilities of nurses' work in the health care system and other health services (Stievano & Tschudin, 2019). This legal protection is important to maintain the integrity, trust, and professionalism of the nursing profession and to provide protection for nurses in carrying out their complex and important duties. All nurses must understand their rights and obligations under the laws of the region or country where they practice.

CONCLUSION

Nurses are one of the health professions who have the responsibility to carry out their duties in providing care competently. The nursing code of ethics is an ethical standard in the nursing profession. The nursing code of ethics is used as a basis for nursing practice regarding the ethical, legal, and protection responsibilities of nurses in their practice.

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