

Reconstruction of Legal Protection Policy for Nurses as Civil Servant

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Abstract

The legal protection applied in Indonesia must be the same to all citizens, it currently still can not provide adequate interests to some State Civil Apparatus (ASN), especially nurses in carrying out government duties as they are in dire need of legal protection when facing legal problems while carrying out their duties. This is the basis for the author to raise it into a study where the type of research is a Empirical-Legal type of research that is used to examine the function of a norm that lays the law as an instrument that regulates and controls society. The approach used in this research is conceptual, a statute approach, a philosophical approach, and a comparative approach. The analysis used in this research is descriptive-qualitative. The results of the study show that Nurses basically do not bear the burden of responsibility for errors that occur in health services, especially medical actions carried out by nurses based on the delegation of authority from doctors as long as their implementation is in accordance with doctor's advice. Therefore, Regarding the Condition of Legal Protection for Nurses as Civil Servants It is necessary to reconstruct Law number 5 of 2014 concerning State Civil Apparatus article 92 paragraph 1 point d relating to legal protection of State Civil Apparatus to issue implementing regulations so that State Civil Apparatuses in carrying out their duties The government's duties have clear legal protection so that the delegation of authority for medical actions carried out by nurses must be in written form given by doctors.

Keywords: Reconstruction, Legal Policy, Nurse, Civil Servant.

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Introduction

The State of Indonesia is a state based on law not on power, as stated in the 1945's Constitution of the Republic of Indonesia Article 1 paragraph (3). this is in accordance with The three basic values that exist in the law according to Gustav Radbruch in Walter (2009), that is justice, certainty, and benefit to society when the law is applied in society.

Although The legal protection applied in Indonesia must be the same to all citizens, it currently still can not provide adequate interests to some State Civil Apparatus (ASN), especially nurses in carrying out government duties as they are in dire need of legal protection when facing legal problems while carrying out their duties. This Problem can be seen in an array of cases, such as the case of a Nurse named Sony who works in a hospital and lives in the countryside. At home, she practices by accepting patients from the surrounding community which is increasing more and more as time goes on where she provides treatment the same as when she treats patients at the hospital. One day Mr. Ahmad with complaints of nausea, vomiting, dizziness, and hypertension. Sony then gave injections and drugs to patients. After two hours Mr. Ahmad had a seizure and was unconscious. The family panicked and was going to report her to the police resulting in her case against the law for acting outside her jurisdiction. Another case can be seen in Karawang where Tearysa Kariztiani (10 years old) the son of Sardi and Enung Suryani, a fourth-grade student at SD Kedawung 1 had to die, allegedly due to illness after being given the Diphtheria vaccine by the Lemahabang Health Center at his school. After being vaccinated, his son had a high fever, so he took his son to the Public health center (*Puskesmas*). The same thing happened at the Medika clinic located in Pemalang City which was unable to handle until he was referred to the regional public hospital (RSUD), where on Monday, January 8, 2018, the child finally received treatment for 24 hours although unfortunately died later (Tempo, 2010). In Pemalang Regency, a prospective bride also demanded a pregnancy test result that was not in accordance with the condition of the prospective bride. Because she was dissatisfied that she was tested positive for pregnancy by nurses at the Losari Ampelgading Public Health Center Pemalang. these many cases shows that nurses were vulnerable to problems in practicing Nursery as they must often act beyond their authority.

The state of Indonesia is a state based on law (*rechstaat*) and not based on power (*machstaat*). it is as stated in the 1945's Constitution of the Republic of Indonesia article 1 paragraph (3). The main purpose of law is to create an orderly social order, to create order and balance. With the achievement of order in society, it is hoped that human interests will be protected (Sudikno, 2005). The law regulates human behavior in society when doing activities and interacting with other people. The application of law is one of the efforts to create order, security, and peace in society as a prevention of law violations. Other principles related to the main principles above are that in a state of law, all people are equal before the law without distinction of race, religion, social position, and wealth (Mochtar, 2000). In line with that, to regulate relations between citizens so that there is no conflict

between interests, a rule of law is needed to guarantee legal certainty for every Indonesian citizen. With good law application, it is hoped that human interests can be protected from a criminal act. According to Moeljatno (1987), a criminal act is an act that is prohibited by a rule of law, the prohibition is accompanied by threats (sanctions) in the form of certain crimes for anyone who violates the prohibition. So it can be said that a criminal act is an act that is prohibited and is punishable by a penalty.

To realize the Indonesian state with an orderly social order, create order and balance, and provide legal protection for the State Civil Apparatus in cases faced in the relevant courts in carrying out their duties. this is stated in the Law of the Republic of Indonesia Number 5 of 2014 article 92 paragraph (1) letter d concerning the State Civil Apparatus which reads "*The government is obliged to provide protection in the form of legal aid*". Legal assistance as referred to in article 92 paragraph (1) letter d is in the form of providing legal assistance in cases of having to be brought to court related to the implementation of their duties. Furthermore, in Law No. 36 of 2009 article 27 paragraph (1) concerning Health, it is stated That health workers have the right to receive compensation and legal protection in carrying out their duties in accordance with their profession. Nurses as State Civil Apparatus are legal subjects who need to get legal aid protection when facing legal problems in carrying out their duties.

Then, in relation to this, as stated by Susanto (1999), the primary function of the rule of law can be stated in three ways, namely protection, justice, and development.

The Indonesian state as a pillar of the rule of law does not necessarily provide protection and guarantees of legal certainty for every citizen. In accordance to this, Satjipto Rahardjo (2002) said that the Indonesian people have always claimed to be a state of law and the rule of law, but the law enforcement that has been going on so far is really disappointing. There are still many interests that are found in relation to the problem of protection and guarantee of legal certainty, where there are still many people's rights that are imprisoned and one of them is Human Rights in the criminal justice process.

Based on the things mentioned above, the authors are interested in researching legal protection for nurses as State Civil Apparatus in carrying out medical actions at the Public health center (*Puskesmas*) as a means to carry out government duties so that nurses can work optimally in providing health services to the community where in this case, the author, to further increase the accuracy of the research, conduct the research in Pematang Rejang Regency where the problem discussed in this research is as follows:

1. What is the legal responsibility of nurses in carrying out medical actions in carrying out government duties?
2. How is the reconstruction of just legal protection for nurses as Civil Servants?

Method of Research

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do (Faisal, 2010).

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in this research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of:

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Legislation relating to the practice of medicine and health.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

Research Result and Discussion

1. The Legal Responsibility Of Nurses In Carrying Out Medical Actions In Carrying Out Government Duties

According to Law Number 5 of 2014 article 6 concerning the State Civil Apparatus, a State Civil Apparatus consists of Civil Servants (PNS) and Government Employees with Work-Contract (P3K). With the Implication

that the nurses are the State Civil Apparatus, then according to the Regulation of the Minister of Health No. Hk.02.02 / Menkes / 148 / 2010 concerning Permits and Implementation of Nursing Practice in Article 1 number (1) stated that a nurse is "a person who has passed nursing education both at Indonesia and abroad in accordance with the provisions of the applicable legislation." Furthermore, according to Sri Praptianingsih (2017), the function of a nurse consists of three, namely The authority, competence, and code of ethics of nurses in health services according to professional standards. According to Sri Praptiningsih, the nurse's authority is an autonomous right to carry out nursing care based on ability, level of education, and position of health facilities. The nurse's authority is to carry out nursing care covering health and illness conditions which include Medical Personnel, Medical Actions, and Legal Liability.

The provisions of the legal protection authority for nurses as State Civil Apparatus have not been specifically regulated by the Pemalang Regency Government. However, in the 1945 Constitution of the Republic of Indonesia Article 28 D paragraph (1) states that "everyone has the right to recognition, guarantees, protection, and fair legal certainty and equal treatment before the law". Constitutionally, that legal protection and fair legal certainty, and equal legal treatment before the law is clearly regulated in Article 28 D paragraph (1) of the Constitution of the Republic of Indonesia. In line with that, it is reinforced by Law Number 5 of 2014 article 92 paragraph (1) letter d which states that "The government is obliged to provide protection in the form of legal aid". Legal assistance as referred to in paragraph (1) letter d, is in the form of providing legal assistance in cases faced in court related to the implementation of their duties. So legal protection for the State Civil Apparatus, especially nurses, is needed and is the state's obligation to support health services in the community. In line with this, it is also reinforced by Law Number 36 of the Year 2009 article 27 paragraph (1) concerning Health which states that "Health workers have the right to receive compensation and legal protection in carrying out their duties in accordance with their profession".

Decree of the Minister of Health of the Republic of Indonesia Number 128 / Menkes / SK / II / 2004 regarding the basic policies of *Puskesmas*, among others, it is stated that the definition of *Puskesmas* is a technical implementing unit of the district/city health office which is responsible for carrying out health development in a work area. In practice in the field, the role of nurses is very much needed in health services in the community, because the number of doctors available cannot meet the needs of health services in the community. The nurse's job is a delegated task from doctors which sometimes causes problems in the community, on the one hand, health services are needed in the community, on the other hand, it is not justified by regulation. Referring to the Minister of Health Regulation Number 2052 / Menkes / Per / X / 2011 concerning Medical Practice Licenses and Medical Practitioners in particular article 23 paragraph (1) states that "Doctors or dentists can delegate a medical or dental action to nurses, midwives, or health workers certain other in writing in carrying out medical or dental procedures from a legal basis".

The Ministry of Health Law (*Permenkes*) above clearly states that the delegation of medical or dental actions to nurses, midwives, or certain other health workers is in writing. From the side of the regulation, a nurse may not practice medicine. On the other hand, there is a regulation of the Minister of Health HK.02.02/148/Menkes/2010 concerning Permits and the Implementation of Nursing Practices which allow nurses to perform health services outside their authority as regulated in article 10 paragraph (1) which states "In an emergency, to save someone's life/ patient and there is no doctor at the scene, nurses can provide health services outside their authority". From *Permenkes* HK. 02.02/148/Menkes/2010 concerning Permits and Implementation of Nursing Practices allow nurses to practice health services as long as there are no doctors in the location.

Whereas in practice, it is very difficult to implement *Permenkes* Number 2052/ Menkes/ Per/X/2011 concerning Medical Practice Permits and Medical Practitioners because the number of doctors is limited and uneven in health services in the community. In connection with the limited number of doctors, the role of nurses is very supportive in health services in the community, namely by implementing the *Permenkes* HK. 02.02./148/Menkes/2010 concerning Licenses and Implementation of Nursing Practices. That the law is for the benefit of society.

Permenkes No. 2052/Menkes/Per/X/2011 article 23 paragraph (3) number e concerning Medical Practice Licenses and the Implementation of Medical Practices explains that "The actions delegated are not continuous", it is not explained here how long the time specified in the delegation of authority is, whether each medical action to be delegated must be made at any time.

As explained above, medical actions performed by a nurse must go through a written delegation. *Permenkes* Number 2052/Menkes/Per/X/2011 concerning Medical Practice Permits and Implementation of Medical Practices, in carrying out medical actions because the *Permenkes* must delegate in writing to carry out medical actions. Delegation in writing from a doctor to a nurse in carrying out medical actions is closely related to legal responsibility that there has been a delegation of authority from doctors to nurses in carrying out medical actions. This is to provide protection to nurses if an error occurs in providing health services to the community. Accountability of the law for each error or omission in the form of medical malpractice committed by a doctor

and malpractice committed by a nurse is legally responsible according to the degree of the error. If you have practiced according to the existing SOP, a nurse has received a written delegation of authority from a doctor to practice in health services, if something goes wrong, the doctor who gives the delegation of authority is legally responsible, but if the delegation of authority is not in writing then legally the responsibility lies with the nurse. In line with that, the existing SOPs must be implemented properly in accordance with the applicable laws and regulations. Therefore, nurses in carrying out medical actions must comply with the SOPs that have been delegated to health services. By referring to *Permenkes* Number 290/Menkes/Per/2008 concerning Approval of Medical Actions, especially in Article 1 paragraph (3) which explains that "*Medicine or dental action, hereinafter referred to as medical action, is a medical action in the form of preventive, diagnostic, therapeutic, or rehabilitative performed by a doctor or dentist against a patient*". Underlying *Permenkes* No.02/Menkes/148/2010 concerning Licenses and Implementation of Nursing Practices, nurses may take medical actions in accordance with the *Permenkes*. In terms of the need for nurses in health services in the community, it is urgently needed, so it is necessary to provide legal protection in accountability in carrying out government duties in the health sector.

2. The Reconstruction Of Just Legal Protection For Nurses As Civil Servants

In essence, laws and regulations have legal norms that are tiered and layered, Hans Nawiasky in Mahendra (2016) asserts that a legal norm of any country is always layered and tiered. The levels of legal norms include: First, the fundamental norm of the state, which is the highest norm in a country, is a norm that is not formed by a higher norm but is "*pre-supposed*" or "*pre-determined*" by the people in a country. and is the norm on which the legal norms under it depend.

One of the efforts that can be made to reduce the symptoms of obesity in laws, and in regulations, including encouraging the political will of the government to reconstruct regulations, by re-actualizing the nature of the norm hierarchy, as described by Hans Nawiasky on the theory of the hierarchy of laws and regulations. That is, only positioning laws and regulations on four classifications of levels of legislation, including First, the state's fundamental norms. Second, the basic rules of the state. Third, formal laws. Fourth, implementing regulations and autonomous regulations.

Provisions of legal protection for nurses as State Civil Apparatus in carrying out government duties, especially related to the Law on State Civil Apparatus, until now there is a need for a revision of the Act in completing legal protection for nurses who perform medical actions associated with ministerial regulations. health care number 2052/Menkes/Per/X/2011 concerning medical practice permits and the implementation of medical practices, especially in terms of medical actions carried out by nurses as state civil servants have not received clear legal protection from the government even though according to Law Number 5 of 2014 concerning State Civil Apparatus, especially article 92 paragraph 1 point d that the government is obliged to provide protection in the form of legal assistance. Legal assistance as referred to in article 92 paragraph 1 letter d is in the form of providing legal assistance in cases faced in court related to the implementation of their duties and according to Law Number 36 of 2009 concerning health, more specifically article 27 paragraph 1 that health workers are entitled to compensation and legal protection in carrying out their duties in accordance with their profession. In line with that, legal protection is one of the rights of nurses in carrying out their duties.

The responsibility of nurses as State Civil Apparatuses in providing health services, especially in terms of medical actions based on the delegation of authority from doctors, can be seen based on three forms of legal discussion, namely administrative responsibility for civil law and criminal law when associated with the implementation of the nurse's function, errors that occur in carrying out the independent function of nurses will give birth to a form of direct accountability, both in administrative law, civil law and criminal law. Meanwhile, in the function of carrying out interdependent functions, the burden of responsibility lies with the team leader. And in the dependent function, nurses do not bear the burden of responsibility for errors that occur in health services, especially medical actions carried out by nurses based on the delegation of authority from doctors as long as their implementation is in accordance with doctor's orders/advice. If it is related to the regulation of the minister of health number 2052/Menkes/Per/X/2011 concerning the permit to practice medicine and the implementation of the practice of medical nurses as State Civil Apparatus in writing, they have received a delegation of authority from the doctor. the nurse must be legally responsible for both administrative, civil, and criminal.

The government should reconstruct Law number 5 of 2014 concerning State Civil Apparatus article 92 paragraph 1 point d relating to legal protection of State Civil Apparatus to issue implementing regulations so that State Civil Apparatuses in carrying out government duties have clear legal protection. On the one hand, the government's right to protect the State Civil Apparatus has been neglected. Law Number 36 of 2009 concerning Health Article 27 paragraph 1 states that health workers are entitled to compensation and legal protection in carrying out their duties in accordance with their profession. Regulation of the minister of health number HK.02.02/Menkes/148/1/2010 concerning Permits and Implementation of Nurse Practices. Nurses are given the

authority to take medical actions. and Implementation of Medical Practice. Nurses do not have the authority to take medical actions because those who have the authority are doctors or dentists. In line with that, the government needs to reconstruct the existing laws and regulations by considering justice for the community and nurses as State Civil Apparatuses who have provided health services to the community.

Conclusion

1. Nurses basically do not bear the burden of responsibility for errors that occur in health services, especially medical actions carried out by nurses based on the delegation of authority from doctors as long as their implementation is in accordance with doctor's advice concerning the permit to practice medicine and the implementation of the medical practice of nurses as State Civil Apparatus in writing has received a delegation of authority from the doctor. However, if the nurse does not comply with the advice from the doctor, the nurse must be legally responsible for both administrative, civil, and criminal.
2. Regarding the Condition of Legal Protection for Nurses as Civil Servants It is necessary to reconstruct Law number 5 of 2014 concerning State Civil Apparatus article 92 paragraph 1 point d relating to legal protection of State Civil Apparatus to issue implementing regulations so that State Civil Apparatuses in carrying out their duties The government's duties have clear legal protection so that the delegation of authority for medical actions carried out by nurses must be in written form given by doctors.

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