

Juridical Review of Nurse's Legal Responsibility for Patient Safety in Self Nursing Practice

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How to cite : Sukendar, et.all. "Juridical Review of Nurse's Legal Responsibility for Patient Safety in Self Nurse Practice" *Unifikasi: Jurnal Ilmu Hukum*. 8(2). 2021.167-175. DOI : <https://doi.org/10.25134/unifikasi.v8i2.2693>

Submitted : 01-05-2021

Revised : 03-10-2021

Accepted : 03-11-2021

Abstract : Patient safety is the main thing in providing nursing services. Nurses must be able to ensure the ongoing patient safety program to suppress or reduce malpractice actions carried out when performing nursing services. The purpose of this study was to determine the form of legal responsibility of nurses for patient safety in independent nursing practice, and the concept of legal protection for patients as consumers of nursing service users. The approach method used in this research is a normative juridical approach, the method of collecting secondary data is that which is obtained through the literature and also sources of statutory law. Furthermore, the data were analyzed using qualitative analysis techniques. The results of the study indicate that the legal responsibility of nurses for patient safety is divided into two types of responsibilities, namely; civil liability as well as criminal liability. The application of patient protection law as a consumer includes preventive protection in the form of; services in accordance with standard operating procedures, professional standards, and standards of legislation with principles on patient safety and security as well as in the form of coaching, education, and supervision for patients. In a repressive manner in the form of; advocacy, efforts to resolve consumer protection disputes properly from the government and consumer protection institutions, in addition to compensation, compensation, and/or replacement of nursing services that are not in accordance with the agreement or not properly, as well as the implementation of justice and punishment for health care providers who has committed a fatal error to the patient.

Keywords: legal liability, nurses, patient safety.

Tinjauan Yuridis Tanggung Jawab Hukum Perawat untuk Keselamatan Pasien dalam Praktik Keperawatan Mandiri

Abstrak : Keselamatan pasien menjadi hal yang utama dalam memberikan pelayanan keperawatan. Perawat harus dapat menjamin berlangsungnya program keselamatan pasien untuk menekan atau mengurangi tindakan malpraktik yang dilakukan saat melakukan pelayan keperawatan. Tujuan penelitian ini adalah untuk mengetahui bentuk pertanggungjawaban hukum perawat atas keselamatan pasien pada praktik keperawatan mandiri, dan konsep perlindungan hukum bagi pasien sebagai konsumen pemakai jasa layanan keperawatan. Metode pendekatan yang digunakan dalam penelitian ini adalah pendekatan yuridis normatif, cara pengumpulan data sekunder yaitu yang diperoleh melalui kepustakaan dan juga sumber hukum perundang-undangan. Selanjutnya data dianalisis menggunakan teknik analisis kualitatif. Hasil penelitian menunjukkan bahwa pertanggungjawaban hukum perawat atas keselamatan pasien terbagi dalam dua macam pertanggungjawaban antara lain; pertanggungjawaban perdata dan juga pertanggungjawaban pidana. Penerapan hukum perlindungan pasien sebagai konsumen meliputi perlindungan Secara preventif yang berupa; pelayanan yang sesuai dengan standar prosedur operasional, standar profesi, dan standar peraturan perundang-undangan yang perprinsip pada keamanan dan keselamatan pasien serta berupa pembinaan, pendidikan, dan pengawasan bagi pasien. Secara represif yang berupa; advokasi, upaya penyelesaian sengketa perlindungan konsumen secara patut dari pemerintah dan lembaga perlindungan konsumen, selain itu juga kompensasi, ganti rugi, dan/atau penggantian jasa pelayanan keperawatan yang tidak sesuai dengan perjanjian atau tidak sebagaimana mestinya, serta terlaksananya keadilan dan hukuman bagi *health care provider* yang telah melakukan kesalahan yang fatal bagi pasien.

Kata Kunci: pertanggungjawaban hukum, perawat, keselamatan pasien.

INTRODUCTION

Health development is one of the elements of general welfare that must be realized by the government in accordance with the ideals of the Indonesian nation as referred to in the 1945 Constitution, namely to fortify the entire Indonesian nation and the entire homeland of Indonesia and to improve general welfare, educate the nation's life and participate in carry out world order based on freedom, eternal peace and social justice.¹ Health is a human right and one of the elements of welfare that must be realized by the state in accordance with the ideals of the Indonesian nation as referred to in Pancasila and the Preamble to the Constitution (1945). Therefore, every activity and effort to improve the highest level of public health is carried out based on non-discriminatory, participatory, protective and sustainable principles which are very important for increasing the nation's resilience and competitiveness, the formation of Indonesian human resources, and national development.

One of the efforts made to improve health status is through independent practice, whether carried out by doctors, midwives, nurses, and other health workers to reduce the increase and transmission of disease in the community, especially in rural areas. Nurses as one of the health workers who provide health services to the general public.² The main task of nurses is to provide health services or provide nursing care according to their skills and expertise. Nurses in providing health services have several roles. First, nurses have a role in overcoming problems faced by patients. Second, nurses have a responsibility to provide counseling to patients/clients. Third, nurses have a role in ensuring and monitoring the quality of nursing care. Fourth, nurses have a duty as researchers in an effort to develop a body of nursing knowledge.³

The issue of patient safety is one of the main issues in health services. Patient safety is something much more important than just service efficiency. Various risks due to medical procedures can occur as part of service to patients.⁴ Nurses have the most dominant role in preventing medication errors, including reporting incidents, educating themselves and others. In line with the 2003 American Nurse Association definition of nursing which states that nursing is the protection, promotion, and optimization of health and abilities, the prevention of disease and injury, the alleviation of suffering through the diagnosis and treatment of human responses, and advocacy in the care of individuals, families, communities, and populations⁵. Therefore, the role of nurses in implementing nursing care and realizing patient safety in homecare can be formulated as follows; nurses must comply with service standards and standard operating procedures that have been established, apply ethical principles in providing nursing care, provide education to patients and their families about nursing care that is being carried out, always cooperate with other health teams in providing nursing care, apply effective communication both towards colleagues, patients and families, always proactive and sensitive in resolving incidents or incidents related to patient safety, documenting all forms of activities that have to do with nursing care carried out to patients. Treatment and management of patients who are not carried out carefully and do not have the potential for procedural incidents. Patient Safety Incidents.⁶

There are reports of patient safety incidents in Indonesia by province in 2007 found DKI Jakarta province ranked among the highest, 37.9% others Central Java province, 15.9%, 13.8% DI

¹ Zaeni Asyhadie, 2017, *Aspek-Aspek Hukum Kesehatan di Indonesia*, Depok: Rajawali Pers, hlm.1.

² Arrie Budhiartie, "Pertanggungjawaban Hukum Perawat dalam Penyelenggaraan Pelayanan Kesehatan Di Rumah Sakit", Jurnal Penelitian Universitas Jambi Seri Humaniora, Vol. 11, No. 2, 2011.

³ Hudi Purnama, 2017, *Tesis: Diskresi Pelimpahan Wewenang Tindakan Medik dari Perawat kepada Perawat di Kotawaringin Timur*, Surakarta: Magister Ilmu Hukum UMS. Hlm. 13.

⁴ Bernadeta Dece Harus, dan Ani Sutriningsih, "Pengetahuan Perawat Tentang Keselamatan Pasien dengan Pelaksanaan Prosedur Keselamatan Pasien Rumah Sakit (KPRS) di Rumah Sakit Panti Waluya Sawahan Malang", Jurnal CARE, Vol. 3, No. 1, 2015.

⁵ Suwari Akhmaddhian, Analisis Pertanggungjawaban Tenaga Medis yang melakukan Tindak Pidana Malpraktek menurut UU Nomor 36 Tahun 2009 Tentang Kesehatan. Unifikasi : Jurnal Ilmu Hukum. Volume 1.1.2014.

⁶ Yennike Tri Herawati, "Budaya Keselamatan Pasien di Ruang Rawat Inap Rumah Sakit X Kabupaten Jember", Jurnal IKESMA, Vol. 11, No. 1, 2015.

Yogyakarta, East Java 11.7%, South Sumatra 6.9%, 2.8% West Java, Bali 1.4%, Aceh 10.7%, South Sulawesi 0.7%.⁷

Then there is also data in Indonesia about Unexpected Events, especially Near Misses, which are still rare, but on the other hand there is an increase in accusations of "malpractice", which are not necessarily in accordance with the final evidence. The 28.3% patient safety violation incident was carried out by nurses.⁸ Data from the Indonesian National Nurses Association regarding nursing malpractice in Indonesia in 2010-2015 there were about 485 cases. Of the 485 cases of malpractice, 357 cases of administrative malpractice, 82 cases of nurses who did not provide their achievements as agreed upon and included in civil malpractice, and 46 cases occurred due to medical actions without the consent of nurses which were carried out carelessly and caused injuries and disabilities. to patients or classified as criminal malpractice with elements of negligence.⁹ The data above shows that as a nurse, she should be aware of her role so that she can actively participate in realizing patient safety. Therefore, nurses must have a strong commitment to patient safety, so that patient safety is the main thing in providing nursing services. Nurses must also be able to ensure the ongoing patient safety program to suppress or reduce malpractice actions carried out when performing nursing services. Based on the above background, the formulation of the problem in this study is as follows: How is the legal responsibility of nurses for patient safety in independent nursing practice.? and How is the legal protection for patients as consumers of nursing service users.?

RESEARCH METHODS

The approach method used in this research is a normative juridical approach, namely the statute approach approach which is carried out based on the main legal material by examining theories, concepts, legal principles and legislation related to this research. Researchers chose to do this method with consideration because the situation was still constrained by Covid-19 if the research was carried out with an empirical approach. The type of research design used is descriptive design. The data collection technique in this study was carried out by collecting secondary data, namely those obtained through the literature and also sources of statutory law. Furthermore, the data were analyzed using qualitative analysis techniques, namely to answer the problem of how nurses are legally responsible for patient safety in independent nursing practice, and how legal protection is for patients as consumers of nursing service users.

RESULTS AND DISCUSSION

1. Nurse's Legal Responsibility for Patient Safety in Independent Nursing Practice

Responsibility in the Indonesian dictionary has the meaning of being obliged to bear everything (if anything happens, it can be prosecuted, blamed, estimated, and so on).¹⁰ In the legal dictionary there are two terms that refer to accountability, namely; liability (the state of being liable) and responsibility (the state of fact being responsible).¹¹ According to the law, responsibility is a consequence of a person's freedom regarding his actions related to ethics or morals in doing an act.¹² Accountability comes from the word responsibility, which means the state of being obliged to bear everything (if there is something, it can be prosecuted, blamed,

⁷ Departemen Kesehatan RI, 2006, *Panduan Nasional Keselamatan Pasien Rumah Sakit (Patient Safety): Utamakan Keselamatan Pasien*, Jakarta: Departemen Kesehatan RI, hlm. 6.

⁸ Selleya Cintya Bawelle, J. S. V. Sinolungan, dan Rivelino S. Hamel, "Hubungan Pengetahuan dan Sikap Perawat dengan Pelaksanaan Keselamatan Pasien (Patient Safety) di Ruang Rawat Inap Rsud Liun Kendage Tahuna", *ejournal Keperawatan (e-Kp)*, Vol.1, No. 1, 2013.

⁹ Mike Asmaria, 2016, *Tesis: Persepsi Perawat Tentang Tanggung Jawab dalam Pelimpahan Kewenangan Perawat kepada Perawat di Ruang Rawat Inap Non Bedah Penyakit Dalam RSUP. DR. M. Djamil Padang*, Padang: Universitas Andalas, hlm. 33.

¹⁰ Daryanto, 1997, *Kamus Bahasa Indonesia Lengkap*, Surabaya: Apollo, hlm. 576.

¹¹ Ridwan HR, 2014, *Hukum Administrasi Negara*, Jakarta: Rajawali Pers, hlm. 318.

¹² Soekidjo Notoatmojo, 2010, *Etika dan Hukum Kesehatan*, Jakarta: Rineka Cipta, hlm. 15.

sued, and so on). According to Black's Law Dictionary there are two terms that refer to responsibility, namely liability (the state of being liable) and responsibility (the state or fact of being responsible). Liability is a broad legal term, which among other things means that, "It has been referred to as of the most comprehensive significance, including almost every character of hazard or responsibility, absolute, contingent, or likely . It has been defined to mean: all character of debts and obligations." and obligations). In addition, liability is also: "Condition of being actually or potentially subject to an obligation; condition of being responsible for a possible or actual loss, penalty, evil, expense, or burden; condition which creates a duty to perform an act immediately or in the future." (Condition of being subject to actual or potential liability; condition of being responsible for actual or possible things such as loss, threat, crime, expense, or burden; condition of creating a duty to enforce the law immediately or in the future).¹³

Liability according to Ridwan HR, namely: the obligation to compensate for losses arising from unlawful acts.¹⁴ According to Sahya Anggara, legal responsibility in state administration is carrying out various legal actions with the main functions and duties it carries out in the administration of government.¹⁵ According to Titik Quarter and Shinta Febrin, accountability must have a basis, namely things that give rise to a legal right for a person to sue others as well as things that give birth to other people's legal obligations to provide accountability.¹⁶ Based on the description above, the author argues that legal accountability in state administration is an attitude in which government officials/agencies are obliged to bear the burden of all government actions that have been caused or carried out in exercising power. In general, the principle of the nurse's responsibility for patient safety can be distinguished as follows:

Table: 1.1

Nurse's Legal Responsibility for Patient Safety

Civil Liability	The principle adopted in civil law that regulates the relationship between individual or individual citizens is that whoever causes harm to another person must provide compensation. There are three elements in civil law liability, namely; there is culpability of negligence; the existence of losses (damages); and a causal relationship.	<i>Contractual liability</i>	In relation to the therapeutic relationship, the obligations or achievements that must be carried out by nurses for patient safety are in the form of efforts (efforts), not results (results). Therefore, the nurse is only responsible for nursing actions that do not meet the standards, in other words, the nurse's responsibility is to carry out performance in accordance with standard operating procedures as a form of guarantee for patient safety.
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¹³ Widodo Tresno Novianto, 2017, *Sengketa Medik (Pergulatan Hukum dalam Menentukan Unsur Kelalaian Medik)*, Solo: UNS Press, hlm. 91-92.

¹⁴ Ridwan HR, *Op. Cit*, hlm. 320.

¹⁵ Sahya Anggara, 2018, *Hukum Administrasi Negara*, Bandung: Pustaka Setia hlm. 141.

¹⁶ Titik Triwulan, dan Shinta Febrin, 2010, *Perlindungan Hukum bagi Pasien*, Jakarta: Prestasi Pustaka, hlm 48.

Liability in tort For example, a Sentinel Event is an unexpected event that results in death or injury (example: the nurse performs the wrong procedure). If this happens, the nurse must pay compensation for the occurrence of errors which are included in the tort category (civil wrong against a person or properties); either intentional or negligent. Article 1365 of the Civil Code states: "Any act that violates the law that brings harm to another person, obliges the person who caused the loss because of his mistake to compensate for the loss".

Strict liability For example, Non-Injury Events are incidents that have been exposed to the patient, but did not cause injury, can occur due to "luck" (eg the patient receives a contraindicated drug but no drug reaction occurs). If this happens, the nurse's responsibility is to immediately give the antidote so as not to harm the patient.

Vicarious liability For example, when a nurse makes a mistake when performing an act of service in an independent nursing practice where the action arises as a result of an order from a doctor or hospital, the giver of the command or delegation of authority, the doctor or hospital is also responsible for the mistakes made by the nurse.

Criminal Liability	The basic difference between ordinary/general crimes and medical crimes lies in the focus of the crime. In ordinary/general crimes, in general, it lies in the consequences of the existence of the crime, while medical crimes, the main focus is on the cause/cause of the crime.	Chapter KUHP	360	<ol style="list-style-type: none"> 1. Whoever because of his negligence causes a person to be seriously injured, shall be punished with a maximum imprisonment of 1 (one) year; 2. Whoever due to negligence causes a person to be injured in such a way that the person becomes temporarily ill or unable to carry out his/her position or job temporarily, shall be punished with imprisonment for a maximum of 9 (nine) months or a maximum imprisonment of 6 (six) months. month. <p style="text-align: right;">That is, if a nurse is proven to have endangered patient safety, the form of responsibility for nurses is imprisonment for mistakes that have been made.</p>
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2. Legal Protection for Patients as Consumers of Nursing Service Users

Patients are people who use health services. As users of health services, patients are also referred to as consumers so that in this case the provisions of the Consumer Protection Act also apply. Referring to the opinion of the researcher from the Indonesian Consumer Protection Foundation, Ida Marlinda, in the article Fulfilling the Rights of Patients Still Discriminatory, according to Ida, it is stated that basically patients have a position as consumers who get services from doctors and other health workers. Ida also argues that doctors tend to disagree if the medical profession is included in the Consumer Protection Law regime.¹⁷

The argument above is not in line with what M. Sofyan Lubis said. According to M. Sofyan Lubis that the relationship between business actors and consumers specifically in the economic field must be distinguished from the relationship between doctors and patients in the health sector (health service relations), so that the legal rules contained in the Consumer Protection Act cannot be taken for granted. applied to the doctor-patient relationship. M. Sofyan Lubis in his book "Consumers and Patients in Indonesian Law" states that:¹⁸

¹⁷ Aris Prio Agus Santoso, 2021, *Hukum Kesehatan (Pengantar Program Studi Sarjana Hukum)*, Yogyakarta: Pustaka Baru Press, hlm. 146.

¹⁸ M. Sofyan Lubis, 2008, *Konsumen dan Pasien Dalam Hukum Indonesia (Cetakan Pertama)*, Yogyakarta: Liberty, hlm. 38.

Juridically, patients cannot be identified with consumers, this is because the relationship that occurs between them is not a buying and selling relationship regulated in the Civil Code and the Commercial Code, but the relationship between doctors and patients is only a form of medical engagement, namely an "effort" agreement (inspanning verbintenis) to be precise a healing (therapeutic) business agreement, not a "result" medical engagement (resultaat verbintenis), besides that the medical profession in medical ethics still adheres to the principle of "devotion and humanity", so it is difficult equated between patients and consumers in general.

Here there has been a difference of opinion between public figures, resulting in turmoil in the health law. The author assumes that the application of consumer protection law to patients can be seen in the context of the services provided. If a service is traded for profit, it can be interpreted that what is being carried out is a form of trading business activity, but if the service is interpreted as a form of humanitarian effort and service (non-profit) then the patient cannot be said to be a consumer because here there is no intention of selling. buy. According to Sukendar and Santoso, legal protection facilities are divided into 2 (two) types, namely:¹⁹

1. Preventive legal protection is a step or method taken to prevent an event that has legal consequences.
2. Repressive legal protection is a step or method taken if an event that results in the law has occurred.

From the explanation of the theory above, it can be given an explanation of the concept of legal protection for patients as consumers, namely:

Table: 2.1

Legal Protection Efforts for Patients

Preventive Protection Measures	Preventive Protection Measures
1. Obtain services in accordance with standard operating procedures, professional standards, and standards of legislation.	1. Implementation of advocacy, protection, and efforts to resolve consumer protection disputes properly from the government and consumer protection institutions.
2. Obtain security and safety for nursing services performed by nurses.	2. The implementation of compensation, compensation, and/or replacement of nursing services that are not in accordance with the agreement or not properly.
3. Obtain guidance, education, and supervision for patients as consumers.	3. Implementing justice and punishment for health care providers who have made fatal mistakes for patients.

CONCLUSION

From the results and discussion above, conclusions can be drawn: That the legal responsibility of nurses for patient safety is divided into two kinds of responsibilities, among others; civil liability which includes: performance in accordance with standard operating procedures as a form of guarantee for patient safety, nurses must pay compensation for errors that have been caused, nurses provide emergency management efforts for incidents that have not yet resulted in injury, and accountability from the delegation of authority. In addition, there is also criminal liability which

¹⁹ Aris Prio Agus Santoso, dan Tatiana Siska Wardani, 2019, *Etika Profesi Kefarmasian dan Hukum Kesehatan*, Jakarta: Trans Info Media, hlm. 43.

includes; responsibility for imprisonment for mistakes and punishments that have been committed. Whereas the application of consumer protection law to patients can be seen in the context of the services provided. If a service is traded for profit, it can be interpreted that what is being carried out is a form of trading business activity, but if the service is interpreted as a form of humanitarian effort and service (non-profit) then the patient cannot be said to be a consumer because here there is no intention of selling, buy. Preventively patients get protection in the form of; services in accordance with standard operating procedures, professional standards, and standards of legislation with principles on patient safety and security as well as in the form of coaching, education, and supervision for patients. Repressively, patients get protection in the form of; advocacy, efforts to resolve consumer protection disputes properly from the government and consumer protection institutions, in addition to compensation, compensation, and/or replacement of nursing services that are not in accordance with the agreement or not properly, as well as the implementation of justice and punishment for health care providers who has committed a fatal error to the patient.

SUGGESTION

The suggestions in this study include: Local governments need to issue a Special Regulation on Patient Protection. District/City Health Offices need to immediately conduct credentialing for nurses. Regional Managers of the Indonesian National Nurses Association Professional Organization need to immediately hold a group discussion forum related to the design of Standard Operating Procedures for Independent Nursing Practice.

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