

Formulation of The Concept of Nurse Liability for Delegation of Authority in Health Services at Bhayangkara TK II Hospital Medan Based on Law Number 17 of 2023 on Health

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Abstract

Law Number 17 of 2023 on Health. Article 290 of Law No. 17 of 2023 states that further provisions regarding the delegation of authority will be regulated by Government Regulations, which have not yet been established, resulting in a legal vacuum in the criteria for delegation of authority between doctors and nurses. The explanation of this article also outlines aspects of liability in the implementation of delegated and mandated authority. The difference between "responsibility" and "liability" in English legal literature affects the understanding of "responsibility." "responsibility" (responsibility) and "responsibility" (liability) in the context of Indonesian law. This study uses a conceptual and legislative approach to examine the formulation of liability for the delegation of authority in health services at the hospital. The research results show that the delegation of clinical authority at Bhayangkara TK II Hospital Medan is regulated in hospital by laws and divided into independent and delegated medical actions consisting of conditional, temporary, and emergency, granted based on education and competence. The Nursing Committee maintains professionalism and ensures that only competent personnel perform clinical tasks. Synchronization with Article 290 of Law No. 17 of 2023 is necessary to provide legal certainty and clear guidelines. It shifts to the recipient. The delegation of clinical authority at Bhayangkara TK II Hospital Medan ensures that medical actions are carried out by competent personnel, but further synchronization with higher regulations is needed for legal clarity.

Keyword: Liability, Delegation of Authority, Bhayangkara TK II Hospital Medan

1. INTRODUCTION

Article 290 of Law No. 17 of 2023 on Health regulates the delegation of Health Services authority to Medical Personnel and Health Workers, either by mandate or delegation. The delegation can be carried out between both parties. Further provisions are regulated by Government Regulations. Based on the provisions of Article 290, it is known that the forms of delegation of authority are distinguished into delegation and mandate. Delegation is the process by which authority, duties, responsibilities, rights, and obligations are transferred or assigned to another party (Utami & Mauliana, 2022), while Authority is the legitimate and legal power possessed by a person to direct others to do or not to do an action (Utami & Mauliana, 2022). Referring back to Article 290 of Law No. 17 of 2023 on Health, paragraph (4) states that "further provisions regarding the delegation of authority are regulated by Government Regulation," which means that there is currently a legal vacuum regarding the criteria for health care delegation between doctors and nurses in health services. Furthermore, in the explanation of Article 290 paragraph (2) of Law No. 17 of 2023, it is explained that there are aspects of liability in the implementation of delegation or mandate. Essentially, the term "liability" in Indonesian legal nomenclature is a new concept. The term "liability" was first encountered in Law No. 30 of 2014 on Government Administration. Based on this, it is known that the concept of liability in Article 290 of Law No. 17 of 2023 on Health is adopted from Law No. 30 of 2024 on Government Administration. The adoption of the liability concept in health from administrative law certainly has differences both in terms of object and subject. In English literature, "responsibility" and "liability"

distinguish "responsibility." "responsibility" (responsibility) and "responsibility sue" (liability) (Efendi, 2016). Responsibility is often equated with "responsibility," while liability is equated with "liability." "Liability" can also mean "accountability," which is the willingness to demand someone's responsibility. In criminal law, there is criminal responsibility involving prosecution by the public prosecutor. In civil law, there is civil liability involving a lawsuit by the plaintiff against the defendant (Santo, 2016). Compensate for losses due to norm violations.

This can occur either due to unlawful acts or breach of contract. According to JH Niewenhuis, aligned with Peter Mahmud Marzuki's view, liability is based on two main aspects, namely legal violations and fault (Santo, 2016). In this context, there are two situations explaining the occurrence of liability. First, there are cases where a person or party is considered liable not because of their fault, but because of provisions stipulated in the law. This type of liability is known as risk liability. Second, liability can also arise due to faults in an agreement between parties that subsequently harms one party, in accordance with Article 1365 of the Civil Code, which regulates unlawful acts. In this situation, liability is referred to as fault-based liability, where the burden of proof to establish liability can arise based on the assumption that the party is at fault. Based on the above description, it is interesting to further examine the formulation of the concept of nurse liability for the delegation of authority in health services at hospitals based on Law No. 17 of 2023 on Health. Legally, responsibility in medical actions is transferred when the actions are delegated to nurses (Istikomah et al., 2020; Sylvana et al., 2021). This means that if such delegation causes harm to the patient, the nurse can also be held liable for the harm (Sylvana et al., 2021; Wati & Nuraini, 2019). There is a universal understanding that a written letter is required to delegate tasks from doctors to nurses to avoid confusion or errors in legal evidence later (Gunawan & Christianto, 2020; Sylvana et al., 2021). The delegation of authority from doctors to nurses can be through delegation or mandate (Merdekawati, 2013; Sylvana et al., 2021). Delegation involves the transfer of responsibility, while mandate does not (Pramesti, 2013; Sylvana et al., 2021). Task delegation often occurs verbally, such as over the phone, especially when the doctor is not in the same location as the health service. Although not explicitly regulated in the law, this can be acceptable if it can be accounted for and does not harm the patient (Anam, 2018; Sylvana et al., 2021).

Concept of Liability (Responsibility)

In Indonesia, liability emphasizes the obligation to answer, explain, enforce rules, and accept punishment for wrongdoing. This is crucial in good governance in both the private and public sectors. Liability means being accountable to others, explaining actions and decisions, and being ready to accept punishment if rules are violated, especially in the context of leadership and administration (Milamarta, 2012). Law Number 30 of 2014 on Government Administration, Article 1 point 23, states that delegation involves the transfer of authority with responsibility and liability shifting to the recipient. However, this law does not clearly define these terms and is inconsistent with Article 13 Paragraph (7), which only mentions responsibility. This distinction is influenced by English terminology, where liability is different from responsibility. Liability is also often interpreted as accountability.

Delegation of Authority (Delegation Authority)

Authority is the ability to act granted by law to establish legal relationships and can only be exercised if it is legitimate (Sutarih, 2018). Legitimate authority is divided into three types: attributive, delegative, and mandate. Attributive authority originates from regulations and is executed by appointed officials. Delegative authority is the transfer of authority between government organs, with responsibility shifting to the recipient. Mandate authority is the transfer from a higher-ranking official to a lower-ranking one, unless prohibited (Jamillah & Sutarno, 2018). The delegation of medical authority from doctors to nurses must be in writing and following hospital SOPs. Nurses require a written delegation from doctors for medical actions. Legally, instructions are directives from superiors to subordinates while working. Doctors should delegate authority to senior, experienced nurses (Vitrianingsih & Budiarsih, 2019).

2. RESEARCH METHODOLOGY

The type of research in the writing of this journal is normative legal research, which involves the study of legal principles, norms, and doctrines regarding the Formulation of the Concept of Nurse Liability for Delegation of Authority in Health Services at Bhayangkara Hospital Medan Based on Law Number 17 of

2023 on Health. This research uses a conceptual approach to examine the formulation of liability for the delegation of authority in hospital health services and a statutory approach to study the concept based on various laws, including Law Number 17 of 2023 on Health as well as the Hospital By Laws of Bhayangkara TK II Hospital Medan.

3. RESULT AND DISCUSSION

Delegation of Clinical Authority in Health Services at Bhayangkara TK II Hospital Medan

There are several forms of authority transfer systems, including the system of attributive delegation, delegation, and mandate. Attributive delegation in the context of administrative law means the granting of governmental authority from and by the legislator to a government organ (Gandara, 2020). The juridical consequences of an official's authority differ depending on whether the authority stems from delegation or is assigned in the form of a mandate (Sutarih, 2018). These differences can be seen in several aspects: the nature, delegation procedure, official responsibility and liability, personal responsibility for maladministration, the possibility for the grantor to reuse the authority, and the underlying legal source. In the delegation system, official responsibility and liability are transferred to the delegatee, while in a mandate, responsibility remains with the grantor (Susanto, 2020). The system of authority delegation in the context of health services from a civil law perspective, the delegation of authority from the attending physician to a general practitioner or nurse can be considered a power of attorney (Anwar, 2014). This power of attorney is based on Article 1792 of the Indonesian Civil Code, which means an agreement where one person entrusts another person with the power to manage an affair on their behalf (Anwar, 2014). Referring to this, the delegation of medical authority can be carried out between medical professionals, but further provisions regarding this matter are regulated in Article 290 paragraph (4) of Law Number 17 of 2023 on Health, which states that further regulations will be established by government regulations that have yet to be determined (Rangkutir & Risdawati, 2024). The delegation of medical authority between medical professionals and nurses must be done according to the competency standards of each profession. This is based on the decision of the Constitutional Court of the Republic of Indonesia that doctors are not considered health workers and vice versa (Wiradharma et al., 2023). Before the Constitutional Court Decision Number 82/PUU-XIII/2015, the delegation of authority from the attending physician to a general practitioner was regulated under the Health Workers Law and the Nursing Law. This delegation can be considered delegative if the medical actions performed are within the competence of the general practitioner. On the other hand, if the medical actions are beyond the competence of the general practitioner, the delegation is categorized as a mandate.

This indicates the need for a clear and in-depth understanding of the limits of authority and responsibility of each party in health service practices. Law Number 17 of 2023 on Health, in Article 290, explains that the delegation of medical authority can be done between medical professionals or between medical professionals and nurses, with further provisions regulated by government regulations. Paragraph (2) of Article 290 states that delegation by mandate is the delegation of authority with responsibility remaining with the grantor, while delegative delegation is the delegation of authority with responsibility transferred to the delegatee (Rangkutir & Risdawati, 2024). The delegation of medical authority from the attending physician to the on-duty doctor or nurse must refer to the Indonesian Medical Competency Standards (SKDI), which is the minimum competency standard for general practitioners (Indonesia, 2006) and according to the required nurse competencies (Atik, 2020) in the case of delegative delegation (Sapri, 2017). According to the Indonesian Medical Council Regulation Number 11 of 2012, general practitioners must achieve four levels of capability: recognizing and explaining, diagnosing and referring, diagnosing and providing initial management and referring, and diagnosing and managing independently (Veronica Komalawati, 2018). Furthermore, the delegation of authority in health services at Bhayangkara TK II Hospital Medan will be analyzed based on the Decree of the Head of Bhayangkara TK II Hospital Medan Number: Kep/45/VI/KEP./2022RS. Bhayangkara concerning Internal Regulations of the Hospital (Hospital Bylaws) Bhayangkara TK II Hospital Medan. Below is an outline of the forms of clinical authority delegation in the Decree of the Head of Bhayangkara TK II Hospital Medan Number: Kep/45/VI/KEP./2022RS. Bhayangkara concerning Internal Regulations of the Hospital (Hospital Bylaws) Bhayangkara TK II Hospital Medan.

Table 1. Regulation of Clinical Authority Delegation in the Decree of the Head of Bhayangkara TK II Hospital Medan Number: Kep/45/VI/KEP./2022RS. Bhayangkara concerning Internal Regulations of the Hospital (Hospital Bylaws) Bhayangkara TK II Hospital Medan

Articles	Topics	Content
123	Delegation of Medical Actions	The delegation of medical actions is divided into two types: independent medical actions and delegated medical actions. Independent medical actions are the primary competencies of the nursing profession acquired through education and training, and are the full responsibility of the nursing staff. Delegated medical actions require specific clinical authority and need to be credentialed, and are the full responsibility of the medical personnel who delegate the actions.
121	Clinical Authority for Nursing Staff	Clinical authority includes conditional, temporary, and emergency clinical authority. Conditional clinical authority is granted based on the education and competencies possessed, allowing the appropriate implementation of nursing interventions. Temporary clinical authority is granted based on temporary needs, while emergency clinical authority is granted in unexpected situations without prior recommendation from the Nursing Committee.
122	Clinical Assignments	Nursing staff who meet the criteria for review, verification, and evaluation will be given clinical assignments. This assignment includes the granting of clinical authority for a certain period through a clinical assignment letter issued by the hospital head based on the recommendation of the Nursing Committee.
124-126	Nursing Committee	The Nursing Committee is a non-structural body responsible for maintaining and enhancing the professionalism of nursing staff through credentialing, professional quality maintenance, and the enforcement of professional ethics and discipline. This committee collaborates with hospital leadership and other relevant personnel to ensure that only competent nursing staff perform clinical duties.
134	Sub-Committee Credentialing	The Credentialing Sub-Committee recommends appropriate clinical authority based on competencies.
135	Professional Quality Sub-Committee	The Professional Quality Sub-Committee conducts nursing audits and recommends continuous professional development.
36	Professional Ethics and Discipline Sub-Committee	The Professional Ethics and Discipline Sub-Committee recommends ethical and disciplinary actions.

Source: Decree of the Head of Bhayangkara TK II Hospital Medan Number: Kep/45/VI/KEP./2022RS. Bhayangkara concerning Internal Regulations of the Hospital (Hospital Bylaws) Bhayangkara TK II Hospital Medan

Meanwhile based on Article 123, the delegation of medical actions at Bhayangkara TK II Hospital Medan is divided into two types: independent medical actions and delegated medical actions. Independent medical actions are the core competencies of the nursing profession acquired through education and training (Butarbutar et al., 2023), with a system of responsibility that can refer to the principle of respondeat superior or vicarious liability (Amir & Purnama, 2021). Meanwhile, delegated medical actions require specific clinical authority and a credentialing process, and are the full responsibility of the medical personnel who delegate the actions. This division ensures that medical actions are performed by the most competent personnel, maintaining the quality of service and patient safety (Hadi, 2016). Meanwhile, based on Article 121, clinical authority at Bhayangkara TK II Hospital Medan is divided into three types: conditional, temporary, and emergency. Conditional clinical authority is granted based on the education and

competencies possessed by the nursing staff, allowing for the appropriate implementation of nursing interventions. Temporary clinical authority is granted to meet temporary needs that may arise, while emergency clinical authority is granted in unexpected situations without requiring prior recommendation from the Nursing Committee. This division ensures that nursing staff can provide appropriate and responsive care according to the clinical situation and needs, while maintaining standards of competence and patient safety. Clinical assignments at Bhayangkara TK II Hospital Medan are given to competent and verified nursing staff through a process of review, verification, and evaluation. Clinical assignment letters are issued by the hospital head based on the recommendation of the Nursing Committee. The Nursing Committee maintains and enhances the professionalism of nursing staff through the credentialing process, professional quality maintenance, and the enforcement of professional ethics and discipline.

This ensures that only competent and verified nursing staff are allowed to perform clinical duties, maintaining high standards in healthcare service, and ensuring patient safety and satisfaction. Article 134 of the Credentialing Sub-Committee at Bhayangkara TK II Hospital Medan plays a crucial role in ensuring that nursing staff performing clinical duties possess adequate competencies. This sub-committee is responsible for recommending appropriate clinical authority for nursing staff based on their competency assessments. This process involves a thorough evaluation of the nursing staff's education, training, and clinical experience, ensuring that only individuals who meet strict competency standards are granted clinical authority. Thus, the Credentialing Sub-Committee helps maintain the quality of healthcare services, enhances the professionalism of nursing staff, and ensures that patients receive safe and effective care. The hospital bylaws of Bhayangkara TK II Medan also outlines the responsibilities and authority of medical staff, ensuring that all medical actions are performed by credentialed and competent personnel, and maintaining high standards of medical practice and patient safety. In conclusion, the internal regulations of Bhayangkara TK II Hospital Medan provide a comprehensive framework for the delegation of medical authority. This ensures that both independent and delegated medical actions are performed by competent and credentialed personnel. The roles of various committees and sub-committees are clearly defined to uphold professionalism, quality, and ethical standards in medical practice. Based on the clinical authority delegation outlined in the hospital bylaws of Bhayangkara TK II Hospital, the synchronization with the provisions and explanations in Article 290 of Law Number 17 of 2023 concerning Health will be analyzed as follows:

1. Regarding the Regulation of Authority Delegation by Mandate
The Hospital Bylaws of Bhayangkara TK II Hospital Medan have not yet found regulations on the delegation of clinical authority by mandate as referred to in Article 290 of Law Number 17 of 2023 concerning Health. This can cause confusion among medical and healthcare personnel regarding responsibilities and clear boundaries between mandate and delegated delegation, including the accompanying responsibilities.
2. Compliance with Government Regulations
According to the provisions of Article 290 paragraph (4) of Law No. 17 of 2023, further provisions regarding the delegation of authority will be regulated by Government Regulations. This becomes one of the concrete legal norms needed to synchronize the norms of clinical authority delegation, including for nurses, in the hospital's internal regulations.
3. Responsibility and Accountability
According to the explanation of Article 290 paragraph (2), delegation by mandate means that responsibility and accountability remain with the mandate, whereas delegated delegation means that responsibility and accountability fully transfer to the delegatee. The phrase "accountability" in the explanation of Article 290 can cause confusion as the meaning of "accountability" is not explained in Law Number 17 of 2023 concerning Health.

There are several legal norms that need to be synchronized between the hospitals by laws of Bhayangkara TK II Hospital Medan and Law Number 17 of 2023 concerning Health. Additionally, derivative regulations from Article 290 are very necessary to provide guidelines and legal certainty in the formulation and adjustment of the hospital's internal regulations.

Concept of Nurse Liability for Delegation of Clinical Authority

Lexically, the term "liability" does not exist in the Indonesian Dictionary. The more commonly used term is "responsibility," which means the obligation to bear everything and can be sued or prosecuted if problems occur (Anwar, 2018). The difference in terms between responsibility and liability is influenced by

terminology in English literature. Responsibility is defined as responsibility, while liability is defined as liability. There are also views that equate liability with accountability, which is the willingness to account for the authority given. The Principle of Liability Based on Fault requires the plaintiff to prove that the defendant has committed a fault that caused damage. The Principle of Presumed Fault Liability stipulates that the defendant is presumed guilty until they can prove otherwise, thus shifting the burden of proof to the defendant. The Principle of Vicarious Liability requires someone to be liable for the actions of another person, usually in the context of an employer-employee or agent-corporation relationship, with varying burdens of evidence depending on the context. The Principle of Strict Liability establishes that the defendant is liable regardless of fault, so the plaintiff only needs to prove that the damage occurred (Anwar, 2018). Here is an example of the legal consequences of delegating clinical medical authority to healthcare workers in health services as in the decision 62/Pid/2020/PT BNA. In this case, the defendants, namely Amd. Keb. and AMD . Kep., were charged with gross negligence that resulted in the death of a patient at Cut Nyak Dhien General Hospital. They were alleged to have improperly administered medications, including Ketorolac, Ranitidine, and Atracurium Besylate, which according to expert testimony, can cause muscle spasms in the respiratory tract if given in excessive doses. Other facts revealed that the hospital's regulatory system was not functioning properly, standard operating procedures (SOPs) were unclear, and there was no division of responsibilities among healthcare personnel. Worse, the second defendant, who was an administrative staff member, was assigned medical duties without having a Registration Certificate (STR) and a Practice License (SIP).

The delegation of medical clinical authority to nurses, known as delegation, involves assigning medical tasks from a doctor to a nurse who is qualified and competent to perform those tasks. The credentialing process, regulated by Minister of Health Regulation Number 49 of 2013 concerning the Nursing Committee, is crucial to ensure the competence of nurses before being granted clinical authority. Credentialing involves competency testing and the issuance of Clinical Assignment Letters by the hospital director. Although tasks can be delegated, the final responsibility remains with the healthcare professional who delegates the task. In this case, the hospital management failed to ensure that the staff performing medical tasks had the necessary qualifications. Clear SOPs are also crucial in ensuring that the delegation of authority is done correctly. The absence of clear SOPs indicates a management system failure that can lead to medical errors. Negligence in the delegation of authority is evident when the second defendant performed medical actions without the required qualifications, showing that the delegation of clinical authority was not carried out according to credentialing rules. This became the root cause of the negligence that led to the patient's death. Poor hospital management, with a non-functioning system and unclear SOPs, also represents a form of negligence by hospital management. This exacerbates the situation where incompetent staff perform medical actions. This case highlights the importance of delegating clinical authority according to established procedures. Negligence in following credentialing rules and unclear SOPs can have fatal consequences, as seen in this case. Hospital management must ensure that every staff member performing medical tasks has the necessary qualifications and permits to avoid similar incidents in the future. In a legal context, the theory of authority is highly relevant for analyzing the case decision 62/Pid/2020/PT BNA, particularly in the delegation of clinical medical authority to nurses. The theory of formal authority refers to the authority granted by legislation or an organization to individuals to perform specific actions. In this case, the second defendant performed medical actions without having a Registration Certificate (STR) and a Practice License (SIP), meaning those actions were unlawful. The theory of delegation of authority emphasizes that delegation must be carried out by ensuring that the recipient of the delegation has the necessary competence and qualifications. The hospital in this case failed to ensure that the delegated medical tasks were performed by staff with the required qualifications and licenses, demonstrating negligence with fatal consequences.

The theory of discretionary authority indicates that decisions to administer certain medications must be based on competent professional judgment. In this case, the administration of medication was done without proper consideration by an incompetent individual, indicating an abuse of discretionary authority. The legal implications of this breach of authority are clear. A breach of formal authority occurs when medical actions are performed by staff without STR and SIP, which is a clear legal violation subject to criminal sanctions. A breach of delegated authority occurs when authority is delegated to an incompetent individual, demonstrating negligence in the credentialing and supervision process by hospital management. The hospital as an institution is responsible for the actions of its staff and can be subject to legal sanctions if

authority is delegated without ensuring appropriate qualifications. Staff who perform medical actions without formal authority are also personally liable and may face criminal sanctions. The case decision 62/Pid/2020/PT BNA highlights the importance of ensuring that formal authority and delegated authority are exercised in accordance with applicable regulations. Violations of the theory of authority, whether formal or delegated, can result in serious negligence and legal contraventions. Hospital management must ensure that all staff performing medical actions have the necessary qualifications and licenses, and follow strict credentialing procedures to avoid adverse incidents as seen in this case. The delegation of authority requires the consent of both parties. In disputes, the recipient (eg, nurse) cannot sue the delegator (eg, doctor) because they understand the legal consequences. Responsibility is hierarchical. The theory of cascade liability refers to hierarchical responsibility. In corporations, the delegation of authority carries hierarchical legal consequences. Each position has rights and responsibilities according to its authority. The higher the position, the greater the responsibility (Pramudito & Widjaja, 2022).

4. CONCLUSION

The delegation of clinical authority at Bhayangkara TK II Hospital in Medan, according to the hospital's internal regulations (hospital bylaws), is divided into independent medical actions and delegation. Clinical authority consists of conditional, temporary, and emergency authorities, granted based on education and competence. Clinical assignments are formalized through assignment letters based on recommendations from the Nursing Committee. The Nursing Committee maintains professionalism and ensures that only competent personnel perform clinical tasks. Synchronization with Article 290 of Law No. 17 of 2023 concerning Health is necessary for legal certainty and clear guidelines. Responsibility in the delegation of authority remains with the delegator, whereas in delegation, it shifts to the recipient. The delegation of clinical authority at Bhayangkara TK II Hospital in Medan ensures that medical actions are performed by competent personnel, but further synchronization with higher regulations is needed for legal clarity.

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