

LEGAL ASPECT OF DOCTORS' RESPONSIBILITY IN PRESCRIPTION

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Abstract:

Indonesia is a country of laws so that to run a country and protect human rights must be based on law where the basic rules are regulated in the 1945 Constitution. This becomes a guideline for making regulations under it. Formulated in Article 4 of Law 36/2009 which states that "Everyone has the right to health". This concept of the right to health refers to the meaning of the right to obtain health services from health facilities in order to realize the highest degree of health. The profession of a doctor is related to the safety and health of other people, the main basis for doctors to be able to perform medical actions on other people is knowledge, technology and competence. lead to errors in therapy to the detriment of other people and institutions.

Keywords: Indonesia; Country of laws; Human Rights

I. INTRODUCTION

Health is a human right and one of the elements of well-being that must be realized. So important is the state of health for everyone that the legislators have determined and regulated it clearly that health is the right of every person as stipulated in Law No. 36 of 2009 concerning Health. This acknowledgment means giving birth to a responsibility for the government/state to make this happen, then it means that it is everyone's right to get health services from every existing health facility and it is the state's responsibility to provide various health facilities according to the level of community/citizen needs. Included in this is the protection of individual rights to health. Therefore, every activity and effort to improve the highest degree of public health is carried out based on non-discriminatory, participatory, protective and sustainable principles which are very important for the formation of human resources, increasing the resilience and competitiveness of the nation, as well as national development. Efforts to cure disease to improve health status as high as possible develop towards integrated health efforts for the whole community by involving the wider community which includes promotive (efforts to improve), preventive (prevention efforts), curative (healing efforts), and rehabilitative (efforts to improve) recovery) that is comprehensive, integrated and sustainable. To realize this effort, adequate infrastructure and human resources are needed.

The key figures in the process of healing an illness are health workers, more specifically doctors. According to law No. 29 of 2004 concerning Medical Practice, the medical profession is based on a science, competence obtained through tiered education and a service code of ethics. The fact is that there are still many doctors who provide health services not in accordance with applicable regulations. Existing regulations are not fully followed by health workers. The non-compliance of health workers with these regulations includes many health workers who provide health services beyond their professional authority, one of which is in terms of prescribing.

The medical profession is bound by a set of rules known as professional ethics. Professional ethics are regulated in various legal policies as the development of various professions and the obligation to carry out the profession with its standards. This is regulated in Law Number 29 of 2004 Article 13 Paragraph (1) Medical personnel who practice medicine in hospitals are required to have a Practice Permit in accordance with statutory provisions. (2) Certain health workers who work in hospitals are required to have permits in accordance with the provisions of laws and regulations. (3) Every health worker working in a hospital must work in accordance with professional standards, hospital service standards, and applicable standard operating procedures. Doctors not only carry out ethical norms but also have to master clinical standards and skills to diagnose and treat health problems. Administration of drug therapy by a doctor will indirectly be written on a piece of paper known as a prescription sheet or prescription blank. A prescription in a narrow sense is a written request from a doctor, dentist, veterinarian to a pharmacist to make medicine in a certain dosage form and hand it over to the patient. In fact, the prescription is the ultimate embodiment of the competence of knowledge and expertise of

doctors in applying their knowledge in the field of pharmacology and therapy. The use of drugs is a very important therapeutic action in the management of patients.¹

II. RESEARCH METHOD

Legal Responsibilities in the Medical Profession

Regulations made by the central government in the form of laws to regulations made by regional governments as a form of implementation must be in harmony, harmony and there must be no conflict between these regulations. The tiered implementation from the center to the regions is a manifestation of Hans Kelsen's theory of the Hierarchy of Legislation. The applicable laws and regulations can be classified into general regulations and special regulations. For example, regulations that are general in nature in the health sector, namely Law Number 36 of 2009 concerning Health, while regulations that include special regulations, namely Law Number 38 of 2014 concerning Nursing, Health workers who have been placed in health service facilities must carry out their duties in accordance with competence and authority. Nursing Professional Standards, hereinafter referred to as Professional Standards, are the minimum limits of ability in the form of knowledge, skills and professional behavior that must be mastered and owned by nurses to be able to carry out nursing practice. in society independently made by the Professional Organization. Understanding the values stated in Law Number 44 of 2009 will become the basis for health workers providing health services. In order for the health services provided to be responsible and professional health services, there are various standards that must be applied by health workers. These standards have been described in detail in 24 paragraph (1) of Law Number 36 of 2009 stating that:

"Health workers as referred to in Article 23 must comply with the provisions of the code of ethics, professional standards, rights of health service users, service standards, and standard operating procedures".

Every health worker must always try to apply these standards so that patient safety can be prioritized. In addition, health workers are also given the right to legal protection as stipulated in Law Number 36 of 2014 concerning Health Workers. Legal protection is available for health workers who have carried out their duties in accordance with established standards. Article 57 point a of Law Number 36 of 2014 which states as follows: "Health workers in practicing have the right to: obtain legal protection as long as they carry out their duties in accordance with Professional Standards, Professional Service Standards, and Standard Operating Procedures"; Furthermore, detailed rights and obligations of health workers are contained in Article 57 of Law Number 36 of 2014 namely

- a) obtain legal protection as long as carrying out duties in accordance with professional standards, professional service standards and procedural and operational standards.
- b) obtain complete and correct information from recipients of health services or their families receiving remuneration for services
- c) obtain protection for occupational safety and health, treatment in accordance with human dignity, morals, decency and religious values.
- d) get the opportunity to develop their profession

¹Zaman-Joenoel N., 1994, *Ars Prescribendi Rational Recipes*, Volume I, Airlangga Press, Surabaya

- e) reject the wishes of recipients of health services or other parties that conflict with professional standards, codes of ethics, service standards, standard operating procedures or provisions of laws and regulations
- f) obtain other rights in accordance with the provisions of the laws and regulations.

In addition to having rights, there are also obligations for health workers in article 58 of Law Number 36 of 2014, namely:

- a) provide health services in accordance with professional standards, professional service standards, standard operating procedures and professional ethics as well as the health needs of recipients of health services
- b) obtain approval from recipients of health services or their families for the actions given (only applies to individual health services)
- c) maintain the health confidentiality of health service recipients
- d) make and keep records and or documents regarding examinations, care and actions taken (only applies to individual health services)
- e) refer recipients of health services to other health workers who have the appropriate competence and authority.

The rights and obligations as mentioned above are at the same time a means of legal protection for patients, health workers and also for health service facilities. Protection for all parties is an important thing, especially because health services for patients are clearly regulated in Article 59 of Law Number 36 of 2014 which states that health workers who practice in health care facilities are required to provide first aid to patients who are in an emergency or at disasters to save lives and prevent disability. Health workers have an important role to improve the maximum quality of health services to the community so that people are able to increase awareness, willingness,²

In connection with the Covid 19 pandemic, there were already applicable laws and regulations. The regulation is Law Number 4 of 1984 concerning Outbreaks.

Health workers in carrying out the practice of obtaining protection include health workers who work in hospitals, especially during the Covid 19 pandemic. Article 2 of Law Number 4 of 1984 concerning Outbreaks states that the purpose of this Law is to protect the population from disasters caused by epidemics as early as possible , in order to improve people's ability to live healthily.

The formation of general and abstract legal norms in the form of statutory forms is generally based on two things. First, its formation is ordered by the constitution; Second, its establishment is deemed necessary due to legal requirements. In terms of forming legal or statutory norms, it is actually necessary to pay attention

²Endang Sutrisno, Riris Eka Sri Rahayu, The Legal Culture of Dentists in the Delegation of Authority and Legal Consequences, *Kanun Journal of Legal Studies* Vol. 19, No. 3, (August, 2017), p.404.

to their relationship with statutory regulations at a higher level, as stipulated in the hierarchy of statutory regulations in force in Indonesia.³

The concept or theory of the hierarchy of laws and regulations, is a legal principle that requires that legal norms in a country are arranged in stages and in a chain of validity that forms a legal pyramid (stufen-theory). Historically, the theory of levels or levels of legal norms was pioneered by Adolf Merkl, which was later adopted by Hans Kelsen. In this theory, Kelsen illustrates that the validity chain ends in the state constitution, where the constitution is the final presupposition, the final postulate, on which the validity of all norms in the rule of law depends. That is, this presupposition is called the transcendental logical presupposition.⁴

Furthermore, related to legal tiers in a country, Jimly Asshiddiqie in another essay argued that both Adolf Merkl and Hans Kelsen developed the doctrine of "hierarchy of norms" (Stufenbau der Rechtsordnung) by placing the constitution (verfassungsrecht) at the top of the hierarchy of legal norms. So that it is this highest law that determines the form and scope of the contents of ordinary laws (einfaches gesetzesrecht, statutory law).⁵ So that this is in line with Hans Kelsen's view quoted by Maria Farida Indrati who stated that legal norms are tiered and layered in a hierarchy (organization) which implies that, a lower norm originates from and is based on a higher norm, and higher norms apply sourced and based on even higher norms and thus onward to a norm that cannot be traced further and is hypothetical and fictitious in nature, namely the basic norm (grundnorm).⁶ So that Maria Farida Indrati's opinion was agreed by Maruar Siahaan with the argument that law is structured in a level. That is, laws and regulations that are higher in position become the source of lower laws and regulations and lower laws and regulations may not conflict with higher laws and regulations.⁷

To reinforce the meaning of the theory of hierarchy of laws and regulations as the basic principle of enforcing a law and regulation, Soerjono Soekanto and Purnadi Purbacaraka, in their book on "concerns of the rule of law" state that in order for a statutory regulation to be enacted, the statutory regulation must meet the applicable strength requirements.⁸

The Order of Legislation in the Health Sector, especially in the handling of Covid 19 consists of:

- 1) The 1945 Constitution of the Republic of Indonesia.
- 2) Law No. 4 of 1984 concerning Outbreaks of Infectious Diseases
- 3) Law Number 36 of 2009 Concerning Health.
- 4) Law Number 44 of 2009 concerning Hospitals.
- 5) Law Number 36 of 2014 concerning Health Workers.

⁷ Umbu Rauta, *Constitutionality of Testing Regional Regulations*, Publisher: Genta Publishing, Yogyakarta, 2016. p. 65.

⁸ Jimly Asshiddiqie and M. Ali Safa'at, *Hans Kelsen's Theory of Law*, Publisher: Constitution, pp.169-172; in Umbu Rauta, *Constitutionality of Testing Regional Regulations*, Publisher: Genta Publishing, Yogyakarta, 2016. P.65.

⁵Ibid., p. 66.

⁶hans Kelsen, *Op., Cit.*, p.113. quoted by Maria Farida Indrati, *Legislation (Types, Functions and Content Material-Volume 1)*, Publisher: Kanisius, Yogyakarta, 2007, p.41.

⁷maruar Siahaan, *Testing the Constitutionality of Our Country's Legislation: Problems and Challenges*, Journal of the Constitutional Secretariat General of the Constitutional Court, Volume 7 Number 4, August 2010, p. 26. In Umbu Rauta, *Constitutionality of Testing Regional Regulations*, Publisher: Genta Publishing, Yogyakarta, 2016. p. 66.

⁸Soerjono Soekanto and Purnadi Purbacaraka, *Concerning Legal Rules*,

- 6) Government Regulation Number 40 of 1991 concerning Control of Outbreaks of Infectious Diseases.
- 7) Regulation of the Minister of Health of the Republic of Indonesia Number 1501/Menkes/Per/X/2010 concerning Certain Types of Infectious Diseases that Can Cause Outbreaks and Efforts to Control them.
- 8) Decree of the Governor of Central Java Number 445/42 of 2020 concerning Management of Certain Emerging Infectious Diseases Second Line in Central Java is still limited and difficulties in accessibility.
- 9) Regent A Decree (SK) Number 440/153 of 2020 concerning Designation of a 3rd line Referral Hospital for the Treatment of Certain Emerging Infectious Diseases in District A
- 10) Regent Regulation A Number 82 of 2002 Concerning Hospital By Laws Hospital A
- 11) Hospital Director Regulation A Number 445/126/2021 Concerning Guide to the Ethics and Discipline of the Nursing and Midwifery Profession In the Hospital Environment A.

According to Hans Kelsen, in his theory of legal responsibility, it states that: "a person is legally responsible for a certain action or that he bears legal responsibility, the subject means that he is responsible for a sanction in the event of a conflicting act. According to Hans Kelsen, a concept related to the concept of legal obligation is the concept of legal responsibility (responsibility). That a person is legally responsible for certain actions or that he is responsible for a sanction if his actions are contrary. Usually, that is, if the sanction is directed at the direct perpetrator, a person is responsible for his own actions.

In the case of hospital A, the subject of legal responsibility is identical to the subject of legal liability. In general law theory, it states that everyone, including the government, must be held accountable for their actions, whether due to fault or no fault.

Hans Kelsen's theory of legal liability divides into:

1. *Culpability*

A concept related to the concept of legal obligation is the concept of legal responsibility (liability). Someone said to be legally responsible for a particular action is that he can be subject to a sanction in the case of the opposite act. Normally, in the case of sanctions that make the person responsible. In this case the subjective responsibility and the subject of legal obligations are the same. According to traditional theory, there are two distinct meanings of accountability, namely accountability based on fault and absolute responsibility.

The primitive law sees that the relationship between action and its effect has no psychological qualifications. Whether an individual's action was anticipated or carried out with the intention of causing a result or not is irrelevant. It is enough that the act has brought about the effect that the legislator declared as harmful, which means showing an external connection between the act and its effect. There is no need for the mental attitude of the perpetrator and the effects of the act. This kind of accountability is known as absolute accountability.

The principle of imposing sanctions on individual actions only because the consequences of these actions have been planned and with wrong intentions

is not fully accepted in modern law. Individuals are legally responsible not only for the objectively beneficial effects carried out in a prohibited manner, but also if the consequences of these actions have been intended or planned by the individual perpetrators. However, the sanctions may differ in different cases.⁹

A dilequent mental attitude, or called *mens rea*, is an element of delict. This element is called the term fault (in a broader sense it is called *dolus* or *culpa*). When sanctions are given only to offenses with psychological qualifications, this is called responsibility based on fault or culpability. Modern law also recognizes other forms of wrongdoing without intent or planning, namely negligence, negligence is a form of omission, and accountability for negligence is more absolute accountability than culpability.¹⁰

2. Individual and Collective Responsibilities

The terminological distinction between legal obligation and legal liability is necessary when sanctions are not or not only imposed against the delinquent but also against individuals who are legally related to it. The relationship is determined by the rule of law. Corporate responsibility for an offense committed by its organs can be an example.¹¹

A sanction can be imposed on individuals who do not commit an offense themselves but are in a certain legal relationship with the perpetrator of the offense. In legal language, corporations or countries are personified; they are a juristic person as opposed to a natural person. When a sanction is imposed on individuals who have the same legal community as individuals who commit offenses as organs of that community, it is referred to as collective responsibility which is a characteristic element of primitive law.¹²

Individual accountability occurs when sanctions are imposed only on the delinquent. Both individual and collective accountability can be exercised bearing in mind the fact that no individual in society is completely independent. It is even said that the contrast between the individual and the community is the ideological reason of the liberal system, which must be placed on the same level as the postulates of communist ideology. When sanctions are not applied to the delinquent, but to individuals who have a legal relationship with the delinquent, then the individual's responsibility has the character of absolute responsibility. Collective accountability is always absolute accountability.¹³

According to Houston stated that: "The responsibility of nurses in realizing patient recovery by providing nursing services, in providing nursing services, nurses must meet established service standards, apply ethical principles, good communication, provide Health Education to clients and collaborate with Health workers another" .¹⁴

Nurses' legal responsibilities in carrying out services during the Covid-19 pandemic must comply with nursing service standards,

⁹Kelsen, *General Theory*, pp 55-66

¹⁰*Ibid.*, pp. 66-67

¹¹Asshiddiqie, Jimly Ali Safa'at, M.2006. *Hans Kelsen's Theory of Law*, Jakarta, Secretariat General and Registrar of the Constitutional Court of the Republic of Indonesia

¹²Kelsen, *General Theory*. p. 68

¹³*Kelsen, General Theory*, p. 71.

¹⁴ Houston, CJ 2010. *Leadership Roles and Management Functions in Nursing; Theory and Application*; third edition: Philadelphia : Lippincott

professional standards, operational standards and statutory provisions, so that patients get a safe care service. Treatment services that are not in accordance with the procedure, can pose a risk to the patient.¹⁵The law on professional nursing practice basically functions to regulate nursing practice so that people's rights to obtain good care can be fulfilled. This law aims to improve the quality of nurses, improve the quality of nursing services, provide legal protection and certainty to nurses and patients and improve public health status. Article 28 of Law Number 38 of 2014 Concerning Nursing Practice reads paragraph (1) nursing practice is carried out in health service facilities and other places according to the target patient paragraph (2) nursing practice as referred to in paragraph (1) consists of: a) practice independent nursing; b) nursing practice in health care facilities,

Legal consequences if a nurse violates legal provisions, the nurse will be held legally responsible, which means legal consequences for the irregularities committed by the nurse. Legal consequences in health services can be divided into three, namely:

1. Administrative Legal Accountability

Administrative legal responsibility is internal to the professional organization of nurses, namely the Indonesian National Nurses Association, especially in matters of upholding professional ethics. The institution that supervises ethical issues in nursing in the articles of association of the Indonesian National Nurses Association (PPNI) is the Honorary Council of Nursing Ethics (MKEK). In the hospital it is carried out by a nursing committee, namely the ethics and discipline sub-committee.

Article 188 Law no. 36 of 2009 concerning Health states that if health workers and health facilities carry out services that are not in accordance with the law, the relevant ministries can take administrative action. Article 82 Law no. 36 of 2014 concerning health, every health worker who does not implement the provisions of article 58 paragraph 1 is subject to administrative sanctions, namely Health Workers in carrying out mandatory practice:

"providing health services in accordance with Professional Standards, Professional Service Standards, Standard Operating Procedures, and professional ethics as well as the health needs of Recipients of Health Services".

Administrative sanctions as referred to in paragraph 3 can be in the form of:

- a. Verbal reprimand
- b. Written warning
- c. Administrative fines and or license revocation.
- d. Until properly given clinical authority.

Guarantee of protection for the public as recipients of Nursing Services and to guarantee protection for Nurses as providers of nursing services, it is necessary to provide comprehensive nursing arrangements regulated in law. Aside from being a legal requirement for nurses, this arrangement is also an implementation of a mutual recognition agreement regarding nursing services in

¹⁵Maryam "Nurses' Legal Responsibility for Patient Losses Associated with Law Number 8 of 1999 Concerning Consumer Protection". 2016

the Southeast Asian region. On that basis, the Law on Nursing was formed to provide legal certainty and legal protection as well as to improve, direct and organize various legal instruments governing the implementation of responsible, accountable, quality and safe nursing and nursing practice in accordance with scientific developments. science And Technology, This law contains arrangements regarding types of nurses, higher education in nursing, registration, license to practice and re-registration, nursing practice, rights and obligations for nurses and clients, institutions related to nurses (such as professional organizations, collegiums and councils), development, coaching, and supervision for nurses, as well as administrative sanctions. What is meant by "principles of ethics and professionalism" is that the regulation of Nursing Practice must be able to achieve and improve the professionalism of Nurses in carrying out Nursing Practices and have professional ethics and a professional attitude. institutions related to nurses (such as professional organizations, collegiums and councils), development, coaching and supervision for nurses, as well as administrative sanctions. What is meant by "principles of ethics and professionalism" is that the regulation of Nursing Practice must be able to achieve and improve the professionalism of Nurses in carrying out Nursing Practice and have professional ethics and professional attitudes. institutions related to nurses (such as professional organizations, collegiums and councils), development, coaching and supervision for nurses, as well as administrative sanctions. What is meant by "principles of ethics and professionalism" is that the regulation of Nursing Practice must be able to achieve and improve the professionalism of Nurses in carrying out Nursing Practice and have professional ethics and professional attitudes.

2. Civil Law Accountability

When viewed from the perspective of civil law, such violations can occur due to acts against the law. According to Article 1365 of the Civil Code, what is meant by an unlawful act is an act committed by a person who because of his fault has caused harm to another person. Legal science recognizes 3 (three) categories of unlawful acts, viz¹⁶:

- a. Intentional unlawful act;
- b. Unlawful act without fault (without intention or negligence);
- c. Unlawful acts due to negligence.

And there are also elements that must be met so that someone can be said to have committed an unlawful act, namely:¹⁷:

- a. The act must be against the law (Onrechtmatigedaad);
- b. The act must cause a loss;
- c. The act must be done with fault (negligence);
- d. Between the deed and the loss that arises there must be a causal relationship.

Unlawful acts, whether intentionally or unintentionally, which are in violation. This means that the elements of intent and negligence here have been fulfilled. Then what is meant by the law mentioned above is all provisions and regulations or rules, both written and unwritten and everything that is considered

¹⁶Munir Fuady, 2002, Acts Against the Law, Bandung, Citra Aditya Bakti, p.3.

¹⁷Salim HS, 2006, The Development of InNominated Contract Law in Indonesia, Jakarta, Sinar Graphics, p. 24.

as law. It means that it is clear that what is violated is the law and what is seen or considered as law, such as laws, binding customs, judge's decisions and so on.

In connection with an unlawful act, legal responsibility will arise here. According to Wahyu Sasongko that:

"Legal responsibility is the obligation to bear a consequence according to applicable legal provisions and here there are norms or legal regulations governing responsibility".

When there is an act that violates the legal norm, the perpetrator can be held accountable according to the legal norm that was violated.¹⁸ Every health worker must know and understand the legal norms contained in legislation in the health sector so that they can realize responsible health services. This is very reasonable considering that law is a system that exists in society, so there must be an affirmation that an understanding of law must understand its paradigm, even though it is an approach that is still under further discussion through a more holistic alternative paradigm.

Civil Law Accountability according to Junaedi In therapeutic transactions, nurses and patients have the same position of accountability. Lawsuits to hold nurses accountable based on Default in Health services, will be fulfilled if the following elements are present:

- a. There is therapeutic contact between health workers and clients/patients¹⁹
- b. Inappropriate health services
- c. Patients suffer losses as a result of the actions of health workers. Violations of the law which are facts can be sued, even though there is no agreement between the two parties, and there must be 4 conditions met:
 - 1) There is a loss by the client/patient
 - 2) An error occurred
 - 3) Mistakes and losses are a causal relationship
 - 4) Unlawful act Fuady stated that in law there are terms of compensation for unlawful acts, namely nominal compensation, compensation and punishment.

3. Criminal Law Accountability

Criminal Legal Accountability Nurses who do work that is not in accordance with the standards of the nursing profession and commit irregularities in practice mean that they have made a mistake/negligence. Nurses who make mistakes/negligence will be sued for civil compensation and if they have fulfilled the criminal requirements then there will be a criminal lawsuit.

¹⁸Legal Angle, "Legal Responsibilities", (<https://www.Angkum Hukum.com/2017/02/accounts for law.html?m=1>, accessed on date September 13, 2021.

¹⁹Deddy Utomo 1, Sarsintorini Putra², Endang Sutrisno³, Legal Responsibilities of Independent Practice Nurses for Nursing Care in Holistic Service Efforts. 2021

III. CONCLUSION

There is a prescription by a doctor problems that have occurred for a long time and continuously, namely doctor's prescriptions that are difficult to read, incomplete prescription administration as patient treatment information (legality), this is one of the factors that can lead to medication errors from a health service.

Doctors' legal responsibilities in prescribing doctors must be in accordance with the Medical Practice Act, doctors must carry out according to their profession by practicing and carrying out the applicable code of ethics by writing prescriptions in a complete and clear manner, in fact there are still cases of violations committed by doctors because of awareness and poor legal compliance. Legal consequences in relation to prescribing doctors who are not in accordance with the Code of Medical Ethics include disciplinary sanctions, administrative sanctions and criminal sanctions

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