



## LEGAL PROTECTION FOR NURSES AS HEALTH WORKERS WHO COMMIT MALPRACTICE CRIMES

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### ABSTRACT

*This study examines how legal protection for health workers nurses who commit malpractice in hospitals. Nurses are the most important human resources in hospitals because in addition to their dominant number reaching 55-65%, nurses are also a profession that provides constant and continuous services for 24 hours to patients every day. The nursing profession often comes into contact with legal problems, such as malpractice lawsuits as a result of errors and negligence made, or if the patient's expectations of the nurse do not match reality. So in providing health services, a nurse must comply with professional ethics (professional code of ethics) and also comply with applicable laws, regulations and legislation. This study aims to determine the legal regulations for nurses as health workers who commit malpractice and how their legal protection is. This study was conducted using a qualitative method with a normative juridical approach, examining laws, books, journals and articles that discuss the protection of health workers. The results of this study show that nurses as health workers carry out their health services as regulated in Law No. 17 of 2023 concerning Health and comply with Law No. 11 of 2020 concerning Job Creation and receive legal protection as stated in Law No. 17 of 2023 concerning Health, Article 3 (h), Article 12 (d), Article 193 and Article 273.*

**Keywords:** *Legal Protection, Malpractice, Nurses.*

### A. INTRODUCTION

Health is very much needed by the community, so that health is a right for every citizen protected by the Constitution. Every country recognizes that health is the greatest capital to achieve prosperity. As stated in Law No. 17 of 2023 concerning Health, it is stated that the provision of health services is carried out by human resources consisting of medical personnel, health workers and supporting or supporting health personnel. Health workers are everyone who devotes themselves to the health sector and has professional qualities, knowledge, and skills through higher education which are grouped into several categories including nursing personnel consisting of vocational, nurses and specialist nurses.

The definition of a nurse is a person who cares for and cares for others who have health problems. However, in its development, the definition of a nurse has become broader. At present, the definition of a nurse refers to its position as part of the health workforce that provides services to the community professionally. And the ICN (International Council of Nursing) in 1965 said that a nurse is someone who has completed a qualified nursing education and is authorized in the country concerned to provide nursing services that are responsible for improving health, preventing disease and caring for sick people.

Nurses are the most important human resources in hospitals because in addition to their dominant number reaching 55-65%, nurses are also a profession that provides constant and continuous services for 24 hours to patients every day. Therefore, nursing services as an integral part of health services clearly have a very decisive contribution to the quality of

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hospital services and must also be accompanied by efforts to improve the quality of service. The nursing profession often comes into contact with legal problems, such as malpractice lawsuits as a result of errors and negligence made, or if the patient's expectations of nurses do not match reality. Moreover, nursing staff are not just a passive profession behind a desk. So in providing health services, a nurse must comply with professional ethics (professional code of ethics) and also comply with applicable laws, regulations and legislation which if violated will be given ethical sanctions from professional organizations and given legal sanctions if they violate the provisions of regulations or legislation.

In this modern era, all information is very easy to obtain among the public through electronic media and social media, but it has a bad impact when the public obtains information that is not clear, especially in the health sector. The public is getting smarter and knows their rights, the public not only places hope in hospitals and health workers in the healing process but also suspects the services provided. We often hear discussions about the practice of health workers who perform abortions, patients are disabled and even die after receiving health services. Then the issue that is circulating is that health workers are committing malpractice, performing abortions, causing patients to be disabled for life and even die. This shows an increase in public awareness of health law and patient rights and is evidenced by the many complaints and complaints from the public against health workers who are suspected of committing criminal acts of malpractice.

Julius said that malpractice is a mistake made by health workers in carrying out their profession that is not in accordance with professional standards and operational procedure standards, as a result of this mistake the patient suffers serious injuries, disabilities and even death. Malpractice is an error or negligence that occurs consciously or unconsciously by health workers which results in health and safety losses for community patients and this action can also affect the quality of hospitals in providing services to the community.

Areas where malpractice may occur for nurses:

Assessment Errors, namely failure to collect data or information about the patient adequately or failure to identify the necessary information, such as laboratory test results, vital signs, or patient complaints that require immediate action. Failure to collect data will result in inaccurate nursing diagnoses and will further result in errors or inaccuracies in action.

Planning Errors are divided into several things, namely:

Failure to record patient problems and neglect to write them in the nursing care plan.

Failure to effectively communicate the nursing care plan that has been created, for example using language in the nursing care plan that other nurses do not understand with certainty.

Failure to provide continuous nursing care due to lack of information obtained from the nursing plan. Failure to provide instructions that are understandable to the patient. Intervention

Errors, namely failure to interpret and implement collaborative actions, following/recording failure of orders/messages from doctors. Including errors in nursing actions that often occur are errors in reading/messages/orders, identifying patients who have not undergone action/procedures, giving drugs and restrictive therapy. Of all these activities, the most dangerous is the improper administration of medication. Therefore, there must be good communication between members of the health team and the patient and his family. Negligence in criminal law is also called negligence. Langemeyer argues that negligence is a very gecompliceerd (complicated) structure that means an error in action and indicates a

certain state of mind (intention). Van Hammel said that negligence contains two conditions, namely not making assumptions as required by law and not making caution as required by law. The criminal law aspect in health service efforts by nurses is related to the responsibility of nurses in health service efforts in hospitals. The ability to be responsible is closely related to criminal acts. Criminal acts are human actions that are included in the realm of crimes, are against the law and can be reprimanded.

Moeljatno uses the term criminal act which is interpreted as an act prohibited by a legal rule of prohibition accompanied by a threat in the form of a certain penalty for those who violate the prohibition. And in the law there are several formulations of criminal acts in the Criminal Code, namely:

1. Elements of behavior
2. Unlawful elements
3. Elements of error
4. Constitutive effect elements
5. Elements of accompanying circumstances
6. Additional elements required to be prosecuted
7. Additional elements to increase the penalty
8. Additional elements required for receiving a criminal penalty
9. Elements of the object of criminal law
10. Elements of the quality of the subject of criminal law
11. Additional conditions for mitigating criminal penalties

Viewed from the perspective of a state of law, legal protection is one of the very basic elements and must be possessed by a state of law. Every state formation must have laws to regulate its state and there is a relationship between the state and its citizens. This relationship is what gives birth to rights and obligations. Legal protection will be a right for citizens and an obligation for the state. Satjipto Raharjo stated that the law protects a person's interests by placing a power that is carried out in a measured manner to act in the context of these interests. Salmond also stated that legal protection aims to integrate and coordinate various interests in society. because in the traffic of interests, protection of certain interests can be done by limiting the interests of other parties. Every citizen has the right to legal protection without distinguishing between groups and has the right to receive legal protection from anything that threatens them.

## **B. RESEARCH METHODS**

This research was conducted using a qualitative method with a normative legal approach examining laws, books, journals and articles that discuss the protection of health workers.

## **C. DISCUSSION**

### **1. Legal Regulations for Nurses as Health Workers Who Commit Criminal Acts of Malpractice**

The law plays a very important role in maintaining the security of the rights and fulfillment of the obligations of nurses as health workers. Through legal provisions, nurses

can guarantee their rights, guarantees of work safety and security, working hour standards, protection against treatment that is not in accordance with human dignity, morals, morality, and socio-cultural values to getting the opportunity to develop themselves through the development of their competence, knowledge and career. 13 All these rights and obligations are stated in Law No. 17 of 2023 concerning Health which is a legal regulation for nurses in providing health services whose technical implementation is explained in Government Regulation No. 28 of 2024 concerning the Implementing Regulations of Law Number 17 of 2023 concerning Health.

Nurses as health workers, who work in hospitals and other health institutions, have the same rights, responsibilities and regulations as employees in other fields. Which means that nurses must also provide health services in accordance with the Job Creation Law. In Law Number 11 of 2020 concerning Job Creation, namely in Article 86, it is stated that workers receive occupational safety and health, moral and moral rights, and treatment in accordance with human dignity and religious values. These principles are in line with Article 273 and Article 274 of Law Number 17 of 2023 concerning Health, which stipulate the rights and obligations of health workers to provide quality and ethical health services. As a result, people who work in the health sector have the right to work in a safe and healthy environment where they are protected and their physical and mental well-being is maintained. This regulation not only protects health workers, but also ensures that ethical and professional standards are adhered to in clinical practice. Therefore, in order to improve the overall quality of health services, it is important to uphold the rights and obligations of health workers.

Legal Protection for Nurses as Health Workers Who Commit Criminal Acts of Malpractice Law No. 17 of 2023 concerning Health provides a more comprehensive legal framework to protect health workers from lawsuits, provided that they act in accordance with applicable professional standards and regulations. Several articles that provide protection for nurses as health workers are as follows:

Article 3 point h

h. provide protection and legal certainty for patients, health human resources and the community.

Article 12 point d

Protection of Patients and Health Human Resources.

Article 193

The Hospital is legally responsible for all losses caused by negligence committed by the Hospital's Health Human Resources.

Article 273

Medical personnel and health workers in carrying out their practice have the right to:

receive legal protection as long as they carry out their duties in accordance with professional standards, professional service standards, operational procedure standards, and professional ethics, as well as the needs of Patient Health; Health services contain risks, no matter how small the action, it can cause a big risk that results in the patient experiencing losses. The responsibility of the health profession can be accounted for if they make mistakes or negligence, some acts that are categorized as criminal malpractice

include, Abuse, Negligence causing injuries and negligence causing death. Nurses who practice health services can be prosecuted criminally if there is culpa lata, namely permanent or non-permanent disability, and death occurs in the implementation of the health service, in addition to committing culpa lata, nurses can also be prosecuted criminally if they commit unlawful acts, in carrying out their service practices contrary to or not in accordance with the rules or order required by law as stated in the laws and regulations in this case nurses can only provide health services in accordance with the provisions of laws and regulations so that later it does not cause unlawful acts that can be prosecuted criminally. If the nurse is negligent, it will be resolved through litigation and non-litigation. The hospital as the institution where they work will seek mediation as a form of accountability to patients and a form of protection for nurses as health workers. Mediation is carried out in accordance with Supreme Court Regulation No. 1 of 2024 concerning guidelines for trying criminal cases.

Law No. 17 of 2023 states the sanctions for health workers:

Article 440 "Every Medical Personnel or Health Personnel who commits negligence resulting in serious injury to a Patient shall be punished with a maximum imprisonment of 3 (three) years or a maximum fine of Rp. 250,000,000.00 (two hundred and fifty million rupiah).

If the negligence as referred to in paragraph (1) results in death, every Medical Personnel or Health Personnel shall be punished with a maximum imprisonment of 5 (five) years or a maximum fine of IDR 500,000,000.00 (five hundred million rupiah).

One of the cases of alleged malpractice that has recently surfaced on social media is "Baby Dies After Surgery So Parents Report to the Police". The baby's parents suspected malpractice in the treatment of their child who underwent surgery on his stomach when he was 7 days old. The hospital assessed that the baby had complications. The baby had to undergo surgery because he had a congenital abnormality in his intestines so that the patient could not defecate and had a heart defect. The baby died 9 days after the operation. The next case is a boy in city C who is suspected of being a victim of malpractice by a health center nurse, died after 5 hours of treatment. This case began when the 10-year-old boy was taken to the paramedic for treatment because of a fever, then the paramedic suggested that he be taken to the health center. At the health center, treatment was given and his fever began to go down. When given an antibiotic injection, the child suddenly had a seizure and was given a sedative injection. Then the third injection was given and the child did not respond then fell into a coma and was declared dead some time later. In this case, it is better to conduct an examination of whether this case is a criminal act of malpractice or not by assessing whether it fulfills the elements of malpractice as stated by M. Jusuf Hanafiah and Amri Amir, namely:

There is an element of error/negligence committed by health workers in carrying out their profession;

There are actions that do not comply with standard operational procedures, there are serious injuries or death, which result in the patient becoming disabled or dying;

There is a causal relationship, where the serious injuries experienced by the patient are the result of the doctor's actions that do not comply with medical service standards.

And hospitals are given the opportunity to protect their medical personnel and health workers in accordance with the law and the theory of legal protection by Philipus M. Hadjon who stated that protection of dignity and recognition of human rights owned by legal subjects based on legal provisions from arbitrariness. Hadjon said that there are two legal protections, namely preventive and repressive protection. Preventive protection is that people are given the opportunity to submit opinions to prevent disputes and repressive protection aims to resolve disputes. Legal protection is a guarantee given by the state to all parties to be able to exercise their legal rights and interests.

In order to achieve a sense of justice and also to achieve legal certainty for all parties in deciding cases by implementing the concept of restorative justice, namely handling problem solving that offers comprehensive and effective solutions. Restorative Justice aims to empower all parties to find solutions and improve community life. Restorative justice is very much in accordance with the resolution of cases by means of deliberation as stated in the fifth principle of Pancasila. And on that basis, restorative justice has also been in accordance with the legal values and sense of justice that live in society because it is in line with Pancasila as the nation's philosophy.

#### **D. CLOSING**

##### **Conclusion**

Nurses as health workers carry out their services in compliance with Law No. 17 of 2023 concerning health and as workers are subject to the rules stated in Law No. 11 of 2020 on Job Creation. In providing health services, nurses receive legal protection as long as they carry out their duties in accordance with professional standards. In Law no. 17 of 2023, there are articles that protect nurses in carrying out their duties, including Article 3 point h, Article 12 point d, Article 193 and Article 273.

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