

LEGAL PROTECTION FOR NURSES IN IMPLEMENTING PROFESSIONAL AND INDEPENDENT HEALTH SERVICES (STUDY AT MURNI TEGUH MEMORIAL HOSPITAL)

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Abstract

Health services are defined as the provision of health efforts in a series of maintenance and improvement of personal health levels, all health service activities are carried out based on legal principles contained in binding regulations. Nursing as an integral part of health services has great leverage in health development efforts. The purpose of this study is to determine and examine the role and responsibilities of nurses in the implementation of professional and independent health services, and to determine and examine legal protection for nurses in the implementation of professional and independent health services. The preparation of this Thesis uses the Normative-Empirical Research Method used in the form of literature, journals, scientific articles and laws and regulations as well as related documents from various written sources related to the research and supported by empirical research in the form of interview results with various related parties. Then analyzed using qualitative analysis techniques and presented descriptively. The results of this study are: (1) The function of nurses in nursing practice consists of independent functions, interdependent functions and dependent functions. In relation to these functions, nurses have the ability to be responsible in carrying out their functions; (2) Legally, the nursing profession receives legal protection based on Article 53 paragraph (1) of Law Number 23 of 1992 and Article 1367 paragraph (1) of the Civil Code and Article 1367 paragraph (3). Based on these findings, Article 273 of Law Number 17 of 2023 concerning Health provides legal protection for health workers and medical personnel who carry out medical actions in health services. Health workers who are proven to be negligent can be subject to legal sanctions as referred to in Article 440 paragraphs (1) and (2); However, before being subject to criminal sanctions, the problem must be resolved through non-judicial channels as referred to in Article 310 of the Law. Medical personnel are not subject to sanctions if they can provide evidence that their work and actions are in accordance with professional standards, professional service standards, operational procedure standards, professional ethics, and patient requirements.

Keywords: *Health Services, Nursing, Legal Protection*

BACKGROUND

Health is a state of physical, mental, and spiritual health that allows everyone to live productively socially and economically. A supporting factor that greatly influences the success of health efforts is the availability of adequate and quality health care facilities. The availability of adequate and quality health care facilities is the duty and responsibility of the state. The state is responsible for providing adequate health care facilities and public services as stated in Article 34 Paragraph 3 of the 1945 Constitution. Health services are

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defined as the implementation of health efforts in a series of maintaining and improving the level of personal health, all health. service activities are carried out based on legal regulations contained in binding regulations.¹ Nursing is a noble profession that is at the forefront of health services.² A nurse is someone who has graduated from nursing education either at home or abroad which is recognized by the government in accordance with the provisions of laws and regulations.³ Nurses who are health workers in hospitals have three functions, namely independent functions or self-sufficient functions in the form of providing nursing care to patients, interdependent functions which are collaborative with other health workers and dependent functions based on doctor's instructions in the form of nurses' actions to help doctors carry out certain medical procedures.⁴ Nursing is a profession, so nursing services must be in accordance with nursing practice standards, codes of ethics and morals so that the community receiving services gets quality nursing care and services. Nursing is not a "complement" in medicine. Because nursing is a form of professional health service. Nursing is based on nursing science and tips in the form of comprehensive bio-psycho-social-spiritual services aimed at individuals, groups or communities.⁵

The development of the increasingly broad field of health law will be followed by the expansion of the rights, authorities and responsibilities of nursing in the context of the growth of mandatory medical record laws and informed consent. Therefore, the progress of the demands of care services must be balanced with an increase in the resources of quality nursing health workers, and for the increasingly broad tasks of nursing professionals, it is necessary to anticipate with an understanding of the sub-field of nursing law in accordance with the growth of health law both nationally and internationally.⁶

The essence of the international agreement is described as human awareness that: "the promotion and protection of health and the promotion of a protection of human rights are now understood to be inextricably linked. Public health seeks to ensure the condition in which people can be healthy, to define health as well being for physical, mental and social takes health for beyond medical services and biomedical J)amaworlZ' (Efforts to improve and protect health and improve and protect human rights must now be interpreted as having an interrelated relationship. Health for the community must be interpreted as healthy and well being for the body, soul and social obtaining health through health services and biomedical networks). So that legal order in the health sector needs to be implemented with a rational "health law" approach in accordance with the development of science and standards produced by professional associations.⁷

In other cases, nurses are also often the object of alleged malpractice. In 2016, for example, the Singkawang Police conducted an investigation into a nurse suspected of malpractice. Likewise, the two nurses in Kebumen who had to deal with the police who were suspected of malpractice.⁸

According to Setiono's thinking, legal protection is an effort or action to protect society from arbitrary actions by the authorities that are not in accordance with legal regulations that create order and peace so that

¹Mela Karina Maya Riza and Ninis Nugraheni, "Legal Responsibility of Dentists for the Risks of Placing Dental Implants in Patients," *Nurses Journal*, Vol. 7, no. 2 (2023), Pg.. 1040–1054

² Mahyuvi Tata et al., Legal Protection for Dialysis Nurses in Carrying Out Nursing Practice in the Hemodialysis Unit (Study at Ngudi Waluyo Hospital, Blitar Regency), *Jurnal Transparency Hukum*, Vol, 4 No, 2, 2021, p. 4.

³ Law of the Republic of Indonesia Number 38 of 2014 concerning Nursing

⁴ Veronica Komalwati, *The Role of Informed Consent in Therapeutic Transactions (Consent in the Relationship between Doctor and Patient)*, Citra Aditya Bakti, Bandung, 2002, p. 74.

⁵ Riasari, RH, Legal Protection for Nurses in Hospitals Based on Law Number 38 of 2014 Concerning Nursing, *Jurnal Hukum Lex Generalis*, Vol. 2, No. 10, 2021, p. 949.

⁶ Bambang Poernomo, tt, *Health Law, Master of Hospital Management UGM*, Yogyakarta, p. 208

⁷ Ibid, p. 2 15

⁸Talupadang Diana, Yovita Indrayati & Djoko Widyarto Js,, For Nurses Who Perform Medical Actions in the Context of Carrying Out Government Duties, Especially in Relation to the Regulation of the Minister of Health Number. 2052/Menkes/Per/X/2011 Concerning Medical Practice and Implementation of Medical Practice, *Soepa Journal: Journal of Health Law*, Vol, 2 No 2016, Page 27.

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humans can enjoy their dignity as human beings.⁹In line with the research conducted by Sukindar that after the enactment of legislation, it can provide preventive legal protection to patients and health workers, especially nurses. The form of repressive protection is if there is an element of intent from health workers in carrying out medical actions that cause harm to patients, then the health worker concerned can be punished, but if it is caused by negligence, the dispute can be resolved through mediation or civil lawsuits.¹⁰

The social fact that is an obstacle in providing legal protection to nurses is the uneven distribution of doctors, which results in nursing staff carrying out medical interventions instead of nursing interventions.¹¹Another obstacle that occurs in providing legal protection for nurses is the culture that is not appropriate, especially the behavior of the habitual pattern of delegation of authority from other professions to nurses as role holders or people subject to law. In addition, another obstacle that hinders legal protection for nursing staff is the nurses themselves who are willing to accept the delegation of authority. As explained by Enie Pratiwi as the Nursing Committee, many nurses do not understand the law and law enforcers. Some of the problems faced by law enforcers are the level of aspiration that is not yet high, very limited enthusiasm for thinking about the future, making it very difficult to make projections, the absence of the ability to delay the satisfaction of a particular need, especially material needs, the lack of innovation which is actually a pair of conservatism and limited ability to place oneself in the role of another party with whom he interacts.¹²

METHOD

This study uses an empirical legal method with analytical descriptive specifications. The data used consists of primary data obtained through interviews with the Hospital Director, Head of Nursing, Head of the Hospital Emergency Unit and the Nursing Committee at Murni Teguh Memorial Hospital, selected based on certain criteria such as the number of patient visits and willingness to be respondents. The names of the respondents include dr. Togar Siallaga, MM., AAK, Ns. Selma Napitu, dr. Rusly, and Ns. Rusty, M.Kep. Secondary data was collected from official documents, books, research reports, theses, dissertations, laws and regulations, and related literature. Data collection was carried out through interviews and literature studies. Data analysis was carried out using a qualitative approach, using inductive and deductive logic to connect data with relevant legal provisions.

RESULTS AND DISCUSSION

Legal Regulations Regarding Nursing in Independent and Professional Health Services

Nurses as professionals are responsible and authorized to provide nursing services independently and in collaboration with health workers in accordance with their authority, especially related to the scope of nursing practice. Nursing practice is an independent action of professional nurses through collaboration with patients and other health workers in providing nursing care in accordance with the scope of their authority and responsibility. The scope of nurses' authority in professional nursing practice includes the client system (individuals, families, special groups and communities) both in healthy and sick conditions)¹³

Based on Article 274 of Law Number 17 of 2023 concerning Health, it explains that Medical Personnel and Health Personnel in carrying out mandatory practices¹⁴:

1. Providing Health Services in accordance with professional standards, professional service standards, operational procedure standards, and professional ethics as well as the health needs of patients;
2. Obtaining consent from the patient or his/her family for the actions to be taken;

⁹ Pesulima, Theresia Louize and Yosia Hetharie, Legal Protection for Occupational Safety for Health Workers Due to the Covid-19 Pandemic, JurnalSasi, Vol. 26, No. 2 April-June 2020, P-Issn: 1693-0061, E-Issn: 2614-2961, p.283

¹⁰Sukindar, Legal Protection for Nurses in Performing Medical Procedures, Jurnal Legalitas, Vol. 2, No. 1, June, 2017, p. 14.

¹¹Moeljatni, 1987, Principles of Criminal Law, Bina Aksara, Jakarta

¹² Abdulkadir Muhammad, Legal Professional Ethics, Citra Aditya Bakti, Bandung

¹³Sukindar, Legal Protection for Nurses in Carrying Out Actions
Medical, Journal of Legality, Vol.2, No.1 (2017), p.8.

¹⁴Article 274 of Law Number 17 of 2023 concerning Health

3. Maintaining Patient Health Confidentiality;
 4. Create and store records and/or documents regarding examinations, care, and actions taken; and
 5. Referring patients to medical personnel or other health workers who have the appropriate competence and authority.
- 1) Nurses as Health Workers
 - a) Article 1 number 2 of Law No. 36 of 2009 states that "Resources in the health sector are all forms of funds, manpower, health supplies, pharmaceutical preparations and health equipment as well as health service facilities and technology that are utilized to organize health efforts carried out by the Government, regional governments, and/or the community.
 - b) Article 1 paragraph 6 of Law No. 36 of 2009 concerning Health states that "Health workers are any person who devotes themselves to the health sector and has knowledge and/or skills through education in the health sector which for certain types requires the authority to carry out health efforts."
 - c) The authority of Nurses in carrying out their duties and professions is in principle regulated in the Decree of the Minister of Health of the Republic of Indonesia No. 1293/Menkes/SK/XI/2001 concerning Registration and Practice of Nurses. This Ministerial Decree is a technical regulation mandated by the 1992 Health Law and the implementing regulations of Government Regulation No. 32 of 1996 concerning Health Workers. In Government Regulation No. 32 of 1996, it is explained that nurses are one of the health workers who have special authority and functions that are different from other health workers.¹⁵
 - 2) Nurses in Carrying Out Obligations and Rights Based on Statutory Regulations

In Law No. 17 of 2023 concerning Health
In Law No. 38 of 2014 concerning Nursing In Law No. 36 of 2009 concerning Health In Regulation of the Minister of Health of the Republic of Indonesia No. HK.02.02/Menkes/148/I/2010 concerning Permits and Implementation of Nursing Practice
 - 3) Nursing Law in Nursing Ethics Violations

In the Nursing Code of Ethics Standards Book, several types of nursing ethics violations are mentioned, including:

 1. Minor violations include:
 - a) neglect of duty;
 - b) behave in a way that is unpleasant to the patient or family;
 - c) not being polite while in the treatment room;
 - d) not looking neat;
 - e) answering the phone without revealing your identity; and
 - f) speaking rudely and discrediting colleagues in public/in forums.
 2. Moderate violations include:
 - a) requesting compensation in the form of money or goods from patients or their families for personal or group interests;
 - b) hitting a patient intentionally;
 - c) For married nurses, it is forbidden to have romantic relationships with patients and their families, husbands or colleagues.
 - d) misusing patient care or treatment funds for personal or group interests;
 - e) smoking and gambling on hospital premises while wearing a nursing uniform;
 - f) telling the shame of fellow professionals or badmouthing the nursing profession in front of other professions; and

¹⁵Sukindar, Legal Protection for Nurses in Performing Medical Procedures, Jurnal Legalitas, Vol. 2, No. 1, June, 2017, p. 14.

- g) committing minor ethical violations (at least 3 times)¹⁶
3. Serious violations include:
- a) carrying out nursing actions without following procedures so that the patient's suffering becomes worse and even results in death;
 - b) giving the wrong medicine which can have fatal consequences for the patient;
 - c) leaving a patient in a state of serious illness or death without providing assistance;
 - d) gambling or drinking alcohol until drunk in the treatment room;
 - e) tarnishing the honor of the patient;
 - f) intentionally hitting or committing violence against a patient to the point of causing physical disability;
 - g) misusing patient medication for personal or group gain; and
 - h) denigrate and/or create hoax stories about the nursing profession in other professions in forums, print media, or online media which results in legal action.

The laws and regulations in Indonesia basically do not explicitly regulate criminal liability for malpractice. Provisions regarding criminal liability for malpractice in Law No. 17 of 2023 concerning Health can be seen from the provisions of Article 447 paragraph (1) which states: in the case of criminal acts as referred to in Article 428, Article 430-Article 435, Article 437, Article 442, Article 444, Article 445, and Article 446 committed by a corporation, criminal liability is imposed on the corporation, managers who have functional positions, order givers, control holders, and/or beneficial owners of the corporation¹⁷. Article 440 of Law Number 17 of 2023 concerning Health also mentions the sanctions given as a form of accountability for doctors, including¹⁸:

- 1) Any 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 IDR 250,000,000.00 (two hundred and fifty million rupiah).
- 2) 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).

The government's legal protection for nurses has been regulated in Article 27 and Article 36 of Law Number 36 of 2009 concerning Health, which explains that nurses have the right to obtain legal protection as long as they carry out their duties in accordance with service standards, professional standards, operational procedure standards and provisions of laws and regulations. The government's legal protection for nurses is in the form of preventive legal protection, namely preventing disputes through the Health Law which regulates nursing registration and practice. The content is that every nurse who wants to practice nursing in a health service facility must have a nurse's practice permit and work permit and Repressive Legal Protection as a form of legal protection that leads to dispute resolution. The repressive legal protection provided by the government is in the form of implementing disputes through general courts if malpractice occurs by doctors or nurses.¹⁹

Legal Protection for Nurses in the Implementation of Professional and Independent Health Services

The definition of independent nursing practice is the independent actions of professional nurses through collaborative cooperation with both clients and other health workers in an effort to provide holistic nursing care in accordance with their authority and responsibility.²⁰ The definition of independent nursing practice is

¹⁶Maryam. (2016). Legal Responsibility of Nurses for Patient Losses Associated with Law Number 8 of 1999 Concerning Consumer Protection. *e Jurnal Katalogis*, 191-201

¹⁷ Yusuf Daeng et al., "Criminal Liability of Hospitals and Medical Personnel for Malpractice Acts Based on Law Number 17 of 2023 Concerning Health," *Journal Of Social Science Research*, Vol. 3, No. 1, 2023, pp. 3453–3461.

¹⁸Article 440 of Law Number 17 of 2023 concerning Health

¹⁹Ayih Sutarih, Synchronization of Arrangements for Delegation of Medical Action Authority to Nurses for Health Services in Hospitals, *Hermeneutika*, Vol.2, No.1 (2018), p.11.

²⁰Prayetri, 2006, Independent Nursing Practice: Home Health Nursing, Paper at the Independent Nursing Practice Meeting, DIY Health Service in collaboration with PPNI. Yogyakarta City, December 18, 2006, p. 10

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professional practice that is based on a solid foundation of science or theory and uses a scientific approach in solving problems, carried out by someone who has certain expertise and authority, carried out independently, using standards, codes of ethics and in accordance with statutory provisions as a basis for carrying out practice.

The characteristics of nursing practice are:²¹

1. Authority, has authority according to expertise
2. Accountability, responsibility for what is implemented in accordance with applicable legal provisions
3. Decision making is independent
4. Collaboration
5. Client advocacy
6. Facilitating Mien's potential sources.

Scope of independent nursing practice:

1. Referring to nursing care standards: assessment to evaluation and documentation
2. Nature of nursing interventions:
 - a. Observation
 - b. Health education/counseling
 - c. Counseling
 - d. Nursing therapy
 - e. Delegated medical therapy

Legal aspects of independent nursing practice:

1. Law Number 23 of 1992 concerning Health Article 32 paragraph (4): Implementation of treatment and/or care based on medical science or nursing science, may only be carried out by health workers who have the expertise and authority to do so.
2. Decree of the Minister of Health No. 12391/2007 concerning Registration and Practice of Nurses: Chapter III

Article 8:

- (1) Nurses can carry out nursing practice in service facilities, individual and/or group practice,
- (3) Nurses who carry out individual/group practice must have a SIPP

Article 12:

- (2) SIPP is only given to nurses who have an associate degree in nursing education or have nursing education with higher competencies.
- (5) Nurses who have a SIPP can carry out group practice.

Article 13:

- (2) Recommendations for obtaining a SIK and/or SIPP are made through an assessment of scientific ability and skills in the field of nursing, compliance with the professional code of ethics and the ability to practice nursing.

Chapter IV

Article 15:

Nurses in carrying out nursing practice have the authority to:

- a. Carrying out nursing care, including: assessment to evaluation
- b. Nursing actions: nursing interventions, educational observations and health counseling.
- c. Carrying out nursing care in accordance with the nursing care standards set by the OP
- d. Medical services can only be carried out based on a written request from a doctor.

Article 17:

Nurses in carrying out nursing practice must comply with the authority given, based on education and experience and in providing services are obliged to comply with professional standards.

Article 21:

- 1) Nurses who run individual practices must include SIPP in their practice room.
- 2) Nurses who run individual practices are not permitted to display practice boards (amendment)

²¹Ibid, p. 11

Article 22:

- (1) Nurses who have SIPP can provide nursing care in the form of home visits.
- (2) Nurses who provide nursing care in the form of home visits must bring care equipment as needed.

Article 23:

- (1) Nurses carrying out individual practice must at least meet the following requirements:
 - a. Have a healthy practice place
 - b. Have equipment for nursing care and home visits
 - c. Have administrative equipment that includes a visit log book, nursing care action record form and referral form.
- (2) The equipment no. (1) is in accordance with the standards set by OP.

Nursing care given to patients aims to improve health conditions. However, sometimes nurses in carrying it out do not improve the patient's condition, but instead their actions worsen the patient's condition or even cause the patient to be disabled or even die.

The criminal law aspect in health service efforts by nurses is related to the responsibility of nurses in health service efforts in hospitals. This 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.²² From these limitations, three elements of a criminal act are known, namely:

1. human actions that fall within the realm of crime
2. is unlawful, and
3. can be blamed

The first element, the act is limited to only human acts that are included in the formulation of a crime. The limitations included in the formulation of a crime are in accordance with the principle of legality as stipulated in Article 1 paragraph (1) of the Criminal Code, that "no act can be punished except by virtue of the criminal rules in the law that existed before the act was committed". Only acts that have been stipulated in the law as reprehensible acts can be categorized as criminal acts. In general, the meaning of protection is all efforts, actions or deeds carried out to provide a sense of security to prevent, to prevent from danger or various things that cause unwanted losses.²³

In terms of language, the word protection in English is called protection, the term protection according to KBBI can be equated with the term protection which means the process or act of protecting, while according to Black's law dictionary, protection is the act of protecting.²⁴ Legal protection is all efforts to fulfill rights and provide assistance to provide a sense of security to someone. The scope of legal protection that will be discussed is the protection provided by the government through its legal instruments such as policies and laws and regulations. Legal protection is intended to provide certainty, benefits and legal justice for the community. One form of legal protection for the community is by realizing regulations and policies that are in accordance with needs based on basic rights mandated by the 1945 Constitution.²⁵

Legal protection is the protection of human rights that are harmed by others and this protection is given to the community so that they can enjoy all the rights granted by law or in other words, legal protection is various legal efforts that must be given by law enforcement officers to provide a sense of security, both mentally and physically, from disturbances and various threats from any party.²⁶

Legal protection based on the opinions of several experts, including:

²²Schaffineister et.al., ed. Translator JE Sahetapy, 1995, Criminal Law, Liberty, Yogyakarta, p. 27

²³Rahman Amin, , Law on the Protection of Children and Women in Indonesia, Cv Budi Utama, Yogyakarta, 2021, p. 1.

²⁴Indar et al., Health Service Dispute and National Health Insurance, Pustaka Pelajar, Yogyakarta, 2020, p. 68

²⁵Ibid, p. 6.

²⁶Satjipto Rahardjo, Legal Science, PT Citra Aditya Bakti, Bandung, 1991, p. 74.

- a. According to Setiono, legal protection is an action or effort to protect society from arbitrary actions by authorities that are not in accordance with legal regulations, to create order and peace so that humans can enjoy their dignity as human beings.²⁷
- b. According to Satjipto Rahardjo, legal protection provides protection for human rights (HAM) that are harmed by other people and this protection is given to the community so that they can enjoy the rights granted by law.
- c. According to Philipus M. Hadjon, legal protection is protection of dignity and honor, as well as recognition of human rights held by legal subjects based on legal provisions from arbitrariness.²⁸
- d. According to Fitzgerald, the theory of legal protection aims to integrate and coordinate the various interests of each individual in society, because in a cross-section of social interests, protection of certain interests is done by limiting the interests of the other party.²⁹

Legal protection can be seen from various stages, namely those born from the voice of the provisions of community law which are basically community agreements to regulate behavioral relations between members of society and between individuals and the government which is considered to represent the interests of society. According to Satjipto Rahardjo, legal protection is to provide protection for Human Rights that are harmed by others and that protection is provided by law.³⁰

Legal protection is a narrowing of the meaning of protection, in this case only protection by law. Protection provided by law is also related to the existence of rights and obligations, in this case owned by humans as legal subjects in their interactions with other humans and their environment. As legal subjects, humans have the rights and obligations to carry out an action.³¹

This explanation is also confirmed in the results of interviews conducted with several parties, namely the Hospital Director, Head of Nursing, Head of the Emergency Unit, and the Nursing Committee at Murni Teguh Memorial Hospital. In this case, what is meant is the importance of education and SOP for health actions, in accordance with Law No. 17 of 2023 Article 264 paragraphs (1) to (6) relating to Article 273 paragraphs (1) and (2) and Article 293 paragraphs (1) to (12).

Thus, it has an important role as Protection Laws for Nurses in the Implementation of Professional and Independent Health Services procedures that strengthen the legal standing of nurses in dealing with disputes. In addition, by providing clear and complete information to patients before health actions, Nurses can prove that they have carried out their professional responsibilities properly. Consent to Action and Documentation in the Care process in the Implementation of Services is very important, because without consent information, Health actions carried out by Nurses can be considered invalid. The Documentation of Consent to Action also serves as written evidence that Nurses have fulfilled their obligations. obligations to provide complete information to patients, thus providing protection against lawsuits.

To support the professionalism of nurses, PPNI was established as an organization formed according to the field of expertise of nursing science. PPNI plays a role in providing guidance to members, developing nursing science and technology, and managing nursing services.³² One form of member development carried out is that PPNI attempts to strengthen the professional status of nurses by trying to compile and enforce the Indonesian Nursing Code of Ethics, which still contains many errors in the use of legal terms. In general, the meaning of protection is all efforts, actions or deeds carried out to provide a sense of security to prevent, to prevent from danger or various things that cause unwanted losses.³³

²⁷ Setiono, Rule of Law (Supremacy of Law) Master of Law Postgraduate Program, Sebelas Maret University, Surakarta, 2004, p. 3

²⁸ Philipus M Hdjon, Legal Protection for the Indonesian People, Pt Bina Ilmu, Surabaya, 1987, p. 117.

²⁹ Satjipto Rahardjo, Other Sides of Law in Indonesia, Kompas, Jakarta, p. 121.

³⁰ Frank Sumarlie, Legal Protection for Obstetrician and Gynecologist Specialists Excessive Service Hours in Hospitals, Scopindo Media Pustaka, Surabaya, 2020, p. 8.

³¹ Cst Kansil, Introduction to Indonesian Law and Legal System, Balai Pustaka, Jakarta, 1989, p. 102

³² La Ode Jumadi Gaffar, Introduction to Professional Nursing, EGC, Jakarta, p. 12

³³ Rahman Amin, , Law on the Protection of Children and Women in Indonesia, Cv Budi Utama, Yogyakarta, 2021, p. 1.

In terms of language, the word protection in English is called protection, the term protection according to KBBI can be equated with the term protection which means the process or act of protecting, while according to Black's law dictionary, protection is the act of protecting.³⁴ Legal protection is all efforts to fulfill rights and provide assistance to provide a sense of security to someone. The scope of legal protection that will be discussed is the protection provided by the government through its legal instruments such as policies and laws and regulations. Legal protection is intended to provide certainty, benefits and legal justice for the community. One form of legal protection for the community is by realizing regulations and policies that are in accordance with needs based on basic rights mandated by the 1945 Constitution.³⁵

Legal protection Legal protection is divided into two, namely:

a. Preventive Legal Protection

Preventive legal protection is an effort of legal protection that is given the opportunity to file objections or opinions before the government's decision gets a definitive form by preventing a dispute from occurring. Preventive legal protection is very important in government actions that are based on freedom of action because with this legal protection the government is encouraged to be careful in making a decision based on discretion. Preventive legal protection efforts are basically a way that is done to prevent an incident that has legal consequences. Preventive legal protection aims to prevent disputes from occurring. So that the efforts made are more focused on minimizing the occurrence of problems which are also to avoid the emergence of the consequences of a problem.

b. Repressive Legal Protection

Repressive legal protection is protection that aims to resolve problems or disputes that arise. This protection will only be carried out when the implementation of the agreement takes place. Thus, the protection provided is more emphasized on efforts to find a resolution to the dispute in order to sharpen the rights of the parties.³⁶

Legal protection according to Philipus M.Hadjon is preventive legal protection and repressive legal protection. Preventive legal protection aims to prevent problems or disputes from occurring. While repressive legal protection aims to resolve problems or disputes that arise.³⁷

Article 5 paragraph (1) of Government Regulation Number 2 of 2002 states that protection for victims and witnesses is carried out based on:

a. Initiative of law enforcement or security forces

Explanation of Article 5 paragraph (1) letter a of Government Regulation Number 2 of 2002 states that what is meant by the initiative of law enforcement or security forces in direct protective measures is based on the consideration of the forces that the victim and witness need immediate protection. This initiative can come from the community.

b. Application submitted directly by the victim or witness

Article 5 paragraph (2) of Government Regulation Number 2 of 2002 stipulates that if a request for protection is submitted by a victim or witness, the request is submitted to the National Human Rights Commission at the investigation stage, the Prosecutor's Office at the investigation and prosecution stage and the Court at the examination stage.

Explanation of Article 5 paragraph (2) states that an application at a certain stage is also an application for the next stage.

Applications for protection from victims or witnesses can also be submitted directly to security forces as stipulated in Article 5 paragraph (4) of Government Regulation Number 2 of 2002 and of course such applications for protection can be submitted both at the investigation stage and at the examination stage in court.

³⁴Indar et al., Health Service Dispute and National Health Insurance, Pustaka Pelajar, Yogyakarta, 2020, p. 68

³⁵Ibid, p. 6.

³⁶Philipus M. Hadjon, Legal Protection for the Indonesian People, Bina Ilmu, Jakarta, 1987, p. 205.

³⁷I Nyoman Sudarta, Legal Protection for Independent National Health Insurance Patients, Scopindo Media

Pustaka, Surabaya, 2020, p. 8

Article of Government Regulation Number 2 of 2002 stipulates that after receiving a request for protection, law enforcement officers or security officers shall:

1. Clarification of the validity of the application
2. Identify the form of protection needed

If the clarification and identification indicate the need for protection in the form of protection for the personal safety of the victim or witness from physical or mental threats, then the security forces will provide the protection in question.

However, if the results of the clarification and identification indicate the need for protection in the form of protection, confidentiality of the victim's identity for witnesses or the provision of information during examination in court without meeting the accused face to face, then the security forces will certainly submit the request for the protection in question to the National Human Rights Commission, the Prosecutor's Office or the Court in accordance with the stages of protection that have been determined as referred to in Article 5 paragraph (2) of Government Regulation Number 2 of 2002.

Article 7 paragraph (1) of Government Regulation Number 2 of 2002 stipulates that protection for victims or witnesses is terminated if:

- 1) Upon the request of the person concerned
- 2) Victim or witness dies
- 3) Based on considerations from law enforcement or security forces.

Protection is no longer needed. If the provision of protection to victims or witnesses is stopped, then in accordance with the provisions contained in Article 7 paragraph (2) of Government Regulation Number 2 of 2002, the termination of protection must be notified in writing to the person concerned no later than 3 (three) days before the protection is stopped.

In carrying out and providing legal protection for nurses, a place is needed in its implementation which is often called a legal protection facility. Legal protection facilities are divided into two, namely:

a) Preventive Legal Protection

The implementation of this form of legal protection is by forming regulatory laws and regulations. The state is expected to apply the purpose of forming laws and regulations, namely protecting the entire Indonesian nation.³⁸

3) Legal protection for health service providers (Health Providers)

a) Law Number 36 of 2009 Concerning Health Law

Health Number 36/2009 functions as a legal umbrella that refers to the responsibility of the central government from the regional government. Provisions that are directly related to legal protection for health workers are contained in Article 23 paragraph (3) which contains the rule that "In providing health services, health workers must have a permit from the government" in Article 23 above explains that health workers must have a permit in the form of a SIK (Work Permit) or SIP (Practice Permit) from the government. Article 27 paragraph (1) Health workers have the right to receive compensation and legal protection in carrying out their duties in accordance with their profession. (2) Health workers in carrying out their duties are obliged to develop and improve the knowledge and skills they have. Paragraph (3) Provisions regarding the rights and obligations of health workers as referred to in paragraph (1) and paragraph (2) are regulated in government regulations. The explanation of Article 27 above is that health workers have the right to receive legal protection if patients as health consumers accuse health workers of causing harm where health workers have carried out their duties according to their expertise and the obligation to develop and improve their knowledge and skills is intended so that health workers can provide quality services in accordance with developments in science and new technology.

b) Law Number 44 of 2009 concerning Hospitals

³⁸Indar et al. Health Service Dispute and National Health Insurance, (Yogyakarta: Pustaka Pelajar, 2020), page 71

The Health Law on Hospitals is mostly closely related to health services and the responsibilities of health workers towards the Hospital, namely, dedicating their expertise fully to service, providing services to patients with full responsibility and in accordance with SOP (Standard Operating Procedures) and complying with regulations in force in the Hospital and maintaining medical confidentiality in the good name of the Hospital. In this case, the Hospital must be able to provide protection and legal certainty for all health workers, including nursing staff who provide health services in the hospital, through the establishment of various sets of rules in the hospital, including internal regulations for medical staff, standard operational procedures and various health service guidelines, as well as through the provision of HR (Human Resources) who have competence in the medicolegal field.

c) Law Number 38 of 2014 Concerning Nursing Practice

Law Number 38 of 2014 concerning Nursing Practice aims to provide and fulfill legal protection for Nurses. The purpose of the Law is to improve the quality of nursing services, provide protection to improve the quality of nurses, and improve the level of public health and legal certainty for nurses and patients. Article 36 of this Law states that nurses in carrying out Nursing practice have the right to:

- a. Obtain legal protection as long as you carry out your duties in accordance with service standards, professional standards, operational procedure standards, and statutory regulations.
- b. Obtain correct, clear and honest information from clients and/or their families.
- c. Providing compensation for nursing services provided;
- d. Rejecting the wishes of clients or other parties that are contrary to the code of ethics, standard operating procedures, or provisions of laws and regulations; and Obtaining work facilities in accordance with standards.

d) Health Law No. 17 of 2023 Article 273 concerning the Rights and Obligations of Medical Personnel and Health Personnel

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

- a. 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 patient health needs;
- b. obtain complete and correct information from the patient or his/her family;
- c. receive a decent salary/wages, service rewards and performance allowances in accordance with the provisions of laws and regulations;
- d. get protection for safety, occupational health and security
- e. get health insurance and employment insurance in accordance with the provisions of laws and regulations
- f. receive protection from treatment that is not in accordance with human dignity, morals, decency and socio-cultural values;
- g. receive awards in accordance with the provisions of laws and regulations;
- h. get the opportunity to develop themselves through developing their competence, knowledge and career in their professional field
- i. reject the wishes of the patient or other party which are contrary to professional standards, service standards, operational procedure standards, code of ethics, or provisions of laws and regulations; and
- j. obtain other rights in accordance with the provisions of laws and regulations.

2) Medical Personnel and Health Personnel may stop Health Services if they receive treatment that is not in accordance with human dignity, morals, decency, and socio-cultural values as referred to in paragraph (1) letter f, including acts of violence, harassment, and bullying.

Article 50 of this Law contains regulations that in carrying out the duties as referred to in Article 49, the Nursing Council has the authority to:

- a) Approve or reject applications for registration of nurses, including foreign nurses;
- b) Issuing and revoking STR;
- c) Investigate and handle problems related to violations of nursing professional discipline;
- d) Determine and provide disciplinary sanctions for the nursing profession; and
- e) Providing consideration for the establishment or closure of nursing education institutions.

b) Law Number 36 of 2014 Concerning Health Workers

Health workers are any person who dedicates himself/herself to the health sector and has knowledge and/or skills through education in the health sector which for certain types requires authority in carrying out health efforts.

This legislation aims to fulfill the community's need for health workers, utilize health workers according to the community's needs, provide protection to the community in receiving the implementation of health efforts, maintain and improve the quality of the implementation of health efforts provided by health workers and provide legal certainty to the community and health workers.

Article 27 paragraph (2) "Health workers who work in remote border and island areas and areas with health problems are entitled to special promotion rights and protection in carrying out their duties."

Article 57 Point a "Health workers in carrying out their practice have the right to obtain legal protection as long as they carry out their duties in accordance with professional standards, professional service standards and operational procedure standards.

Point d "Health workers receive protection for occupational safety and health, treatment in accordance with human dignity, morals, morality, and religious values and point f "Health workers have the right to reject the wishes of Health Service Recipients or other parties that conflict with professional standards, professional service standards and operational procedure standards or statutory provisions.

Article 75 "Health workers in carrying out their practice have the right to receive legal protection in accordance with statutory provisions."

Article 80 "The Government and Regional Governments carry out Guidance and Supervision of Health Workers by involving the respective Health Workers Councils and professional organizations according to their authority.

Article 81 paragraph 1 point c "(1) Guidance and supervision as referred to in Article 80 is directed at providing legal certainty for the community and health workers.

e. The 1945 Constitution of the Republic of Indonesia

Protection for all Indonesian people, including patients, health workers, and health facilities is based on the 1945 Constitution, the opening of the fourth paragraph reads "Then from that to form a government. The Indonesian state that protects all Indonesian people". Generally, until now people rely on the word "all people" so that it is taken as a principle of the unity of the entire Indonesian nation, but from the word "protect" it contains the principle of legal protection for all Indonesian people without exception.

Other legal bases are contained in Article 27 paragraph 2 of the 1945 Constitution of the Republic of Indonesia which states "Every citizen has the right to work and a decent living for humanity". And in Article 28 H (1) of the 1945 Constitution "Everyone has the right to live in physical and spiritual prosperity, to have a place to live and have a good and healthy living environment and has the right to receive health services. (2) Everyone has the right to receive facilities and special treatment to obtain the same opportunities and benefits in order to achieve equality and justice. (3) Everyone has the right to social security that allows for the development of himself/herself as a dignified human being."

f) Law Number 36 of 2009 concerning Health

Article 4, everyone has the right to health. Article 5 paragraph (1) Everyone has the same right to obtain access to health resources. Paragraph (2) Everyone has the right to obtain safe, quality and affordable health. Paragraph (3) Everyone has the right to independently and responsibly determine the health services needed for themselves.

Article 6, everyone has the right to a healthy environment to achieve a high level of health.

Article 7, everyone has the right to receive information and education about balanced and responsible health.

Article 8, everyone has the right to obtain information about their health data including actions and treatments that they have received or will receive from health workers. Article 14 paragraph (1) The government is responsible for planning, organizing, fostering and supervising the implementation of health efforts that are evenly distributed and affordable to the community.

a. Repressive Legal Protection

Repressive legal protection efforts aim to resolve a dispute. Handling of legal protection by general courts and administrative courts in Indonesia falls into this category of protection. Repressive legal protection efforts are steps or methods taken when an incident that has legal consequences has occurred.³⁹ Legal protection in health services and for the people consists of preventive legal protection and repressive legal protection.⁴⁰

Repressive legal protection is protection that aims to resolve problems or disputes that arise. This protection will only be carried out when the implementation of the agreement takes place. Thus, the protection provided is more emphasized on efforts to find a resolution to the dispute in order to sharpen the rights of the parties.

In connection with the settlement of cases in health services, the Attorney General of the Republic of Indonesia has issued a Letter from the High Prosecutor's Office and the Head of the District Prosecutor's Office throughout Indonesia, the contents of which emphasize that for the uniformity of the settlement of violations committed by doctors, dentists, pharmacists, medical personnel, and nursing personnel if there are any that involve the medical profession, they must immediately report to us, not immediately prosecute in court, but first conduct a thorough assessment of the accused's actions, including holding consultations with the head of the local health department regional office.

In addition to the Decree (SK) of the Attorney General of the Republic of Indonesia above, there is a Joint Decree (SKB) between the Minister of Health of the Republic of Indonesia, the Minister of Justice of the Republic of Indonesia, and the Attorney General of the Republic of Indonesia in 1982 which provides government responsibility if a violation occurs in the health sector by prioritizing an ethical examination by a professional organization and then continuing with a legal examination if it turns out that it is not only a violation of ethics but also of the law.

1) Law Number 38 of 2014 concerning Nursing Practice Article 50 The Nursing Council has the following authorities:

1. Approve or reject applications for registration of nurses, including foreign nurses;
2. Issuing and revoking STR;
3. Investigate and handle problems related to violations of nursing professional discipline;
4. Determine and provide disciplinary sanctions for the nursing profession; and
5. Providing consideration for the establishment or closure of nursing educational institutions.

2) Article 66 of Law Number 32 of 2009

Regarding Environmental Protection and Management Every person who fights for the right to a good and healthy environment cannot be prosecuted criminally or sued civilly

3) Article 283 of Law Number 17 of 2023 concerning Health⁴¹

1. Medical Personnel and Health Personnel who conduct individual practices are required to provide clear identity information including SIP and STR numbers at their individual practice location.

³⁹Frank Sumarlie. Legal Protection of Obstetrician and Gynecologist Specialists Excess Service Hours in Hospitals, Scopindo Media Pustaka, Surabaya, 2020, p. 9.

⁴⁰Indar et al., Health Service Dispute and National Health Insurance, Pustaka Pelajar, Yogyakarta, 2020, pp. 71-82

⁴¹Article 283 of Law Number 17 of 2023 concerning Health

2. In the case of Medical Personnel and Health Personnel practicing at a Health Service Facility, the head of the Health Service Facility is required to provide a list of names, SIP and STR numbers, as well as the practice schedule of the Medical Personnel and Health Personnel.
3. Every Medical Personnel, Health Personnel and Head of Health Service Facilities who does not implement the provisions as referred to in paragraph (1) and paragraph (2) will be subject to administrative sanctions.
4. administrative sanctions as referred to in paragraph (3) may be in the form of:
 - a. Verbal warning
 - b. Written warning
 - c. Administrative fines and/or
 - d. Revocation of Permit
5. Administrative sanctions as referred to in paragraph (4) shall be imposed by the Central Government, Provincial Government and District/City Government in accordance with their authority.
6. Further provisions regarding the procedures for the introduction of administrative sanctions are regulated by Government Regulation.

4) Law 44 of 2009 concerning Hospitals

Patients and/or their families who sue the hospital and inform through the media mess are considered to have released their medical rights or secrets to the public. Article 46 The hospital is legally responsible for all losses caused by negligence.

In Article 4 of Government Regulation Number 2 of 2002, the forms of protection include:⁴²

- a. Protection of the personal safety of victims or witnesses from physical and mental threats;
- b. Confidentiality of the identities of victims and witnesses;

Providing information during examination in court without meeting the suspect face to face.

5) Law No.17 of 2023 concerning Hospitals

Article 192

- 1) The Hospital is not legally responsible if the Patient and/or his/her family refuses or stops treatment that could result in the Patient's death after a comprehensive medical explanation has been provided.
- 2) Hospitals cannot be required to carry out their duties in saving human lives.

Article 193

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

6) Criminal Code (KUHP)

Article 310 paragraph 1 "Whoever intentionally damages the honor or good name of someone by accusing them of committing an act with the clear intention that the accusation will be broadcast, shall be punished for slander with a maximum sentence of nine months or a maximum fine of Rp 4,500". Paragraph 2 if this is done with writing or pictures that are broadcast, shown to the public or posted, then the perpetrator shall be punished for slander in writing with a maximum sentence of one year and four months in prison or a maximum fine of Rp 4,500. Paragraph 3 does not include slander or slander in writing, if it turns out that the creator did it for the public interest or because he was forced to defend himself".

Article 315 of the Criminal Code states, "Every deliberate insult that is not defamatory or written defamation committed against a person, either in public orally or in writing, or in front of the person himself, either in writing or orally or by letter sent or received to him, is punished with a light criminal penalty with a maximum imprisonment of four months and two weeks or a maximum fine of Rp. 4,500."

⁴²Bambang Waluyo, *Victimology of Victim and Witness Protection*, Sinar Grafika, Jakarta, 2012, p. 65

Article 351⁴³

- a. Abuse is punishable by a maximum prison sentence of two years and eight months or a maximum fine of four thousand five hundred rupiah.
- b. If the act results in major injuries, the guilty person is threatened with imprisonment for a maximum of five years
- c. If it results in death, the threat of imprisonment is a maximum of seven years.
- d. With abuse is equated with intentionally damaging health
- e. Attempt to commit this crime is not punishable.

Article 352

- a. Except for those mentioned in articles 353 and 356, abuse that does not cause illness or obstacles to carrying out official work or search, is threatened as light abuse, with a maximum prison sentence of three months and a maximum fine of forty thousand five hundred rupiah. The penalty can be increased by one third for a person who commits the crime against a person who works for him or is his subordinate.
- b. Attempt to commit this crime is not punishable.

Article 353

- a. Abuse with prior planning is punishable by a maximum sentence of four years in prison.
- b. If the act results in serious injury, the guilty party is subject to a maximum prison sentence of seven years. If the death results in death, the guilty party is threatened with a maximum prison sentence of nine years.

CONCLUSION

Based on the research results as well as the analysis and discussion that the author has conducted in the previous chapters, the following are the conclusions which are the answers to the problems in this research as follows:

1. Legal regulations regarding Professional and Independent Nursing Actions in Health Services in Indonesia has been regulated in Law Number 17 of 2023 concerning Health. Furthermore, Article 293 of Law Number 17 of 2023 concerning Health states that every individual Health Service action carried out by Medical Personnel and Health Personnel must obtain approval. Every medical action must be preceded by a complete and clear explanation to the patient, as well as free, conscious, and uncoerced consent from the patient. The legal regulation of therapeutic agreements between doctors and patients is based on provisions in various laws and regulations, namely Law Number 36 of 2009 concerning Health, Law Number 44 of 2009 concerning Hospitals, the Civil Code (KUH Perdata) and Law Number 17 of 2023 concerning Health.
2. The nursing profession in health services is a form of professional service that is an integral part of health services based on the science and skills of Nursing aimed at individuals, families, groups, or communities, both healthy and sick. The function of nurses in nursing practice consists of three functions, namely independent functions, interdependent functions and dependent functions, while in nursing care a nurse with the level of education he has has a role as an implementer, educator, manager and also as a researcher. In relation to the function of the nurse, the nurse has the ability to be responsible in carrying out his function in the implementation of professional and independent health services. In addition, in the implementation of functions in collaboration with other health workers, the responsibility lies with the Head of the Health Team and in the implementation of dependent functions, the responsibility lies with the doctor who is authorized to perform certain medical actions on the patient.
3. Legally, the nursing profession in implementing professional and independent health services has received legal protection based on the provisions of Article 274 paragraph (1) of Law Number 17 of 2023 concerning Health, which stipulates that health workers have the right to obtain legal protection in carrying out their duties in accordance with their profession. In addition, based on the provisions of Article 273 paragraph (1), Article 192 paragraphs (1) and (2), and Article 193, a nurse receives legal

⁴³Criminal Code

protection because the nurse works based on the orders of another party and the work as a whole is the responsibility of the other party.

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LEGAL PROTECTION FOR NURSES IN IMPLEMENTING PROFESSIONAL AND INDEPENDENT HEALTH SERVICES (STUDY AT MURNI TEGUH MEMORIAL HOSPITAL)

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