



CIVIL LIABILITY OF NURSES IN THERAPEUTIC AGREEMENTS IN LAW NO. 17 OF 2023 AND EFFORTS TO PREVENT VIOLATIONS OF THE LAW IN THERAPEUTIC AGREEMENTS

Bambang Fitrianto

Panca Budi Development University, Medan, Indonesia

*E-mail: bambangfitrianto@dosen.pancabudi.ac.id

Article Info	Abstract
<p>Article History Received : 2024-09-03 Revised: 2024-09-05 Published: 2024-10-01</p> <p>Keywords: <i>Legal Consequences, Therapeutic Transactions, Civil Liability</i></p>	<p><i>Nurses have a very important role in supporting the quality of hospital services and public health services. Nurses are the spearhead and are often used as indicators of the quality of health services and play a role in determining the level of patient satisfaction. However, in practice, it is possible that negligence or errors made by health workers can occur which can have fatal consequences for patients. In this regard, nurses as medical personnel cannot be separated from the legal consequences of therapeutic transactions carried out as accountability for losses arising from negligence by health workers in carrying out service duties, this is regulated in Article 308 of Law No. 17 of 2023 concerning Health. The purpose of writing this journal is to determine the legal consequences of therapeutic transactions as civil liability for nurses in public health services. The method used in this thesis is normative legal research, with data collection through library research and related laws and regulations.</i></p> <p><i>Based on the results of the research conducted, the legal consequences of therapeutic transactions as civil liability for nurses in public health services are that health workers working in hospitals are also held legally accountable if they meet the requirements as stated in Article 308 of Law No. 17 of 2023 concerning Health, namely: Medical Personnel and Health Personnel who are held accountable for actions/deeds related to the implementation of Health Services that are detrimental to Patients in a Civil Law. Thus, civil liability in a therapeutic health service agreement, the perpetrator can be sued on the basis of breach of contract for the medical agreement made (Article 1243 of the Civil Code) and unlawful acts (Article 1365 of the Civil Code) if they have received a recommendation from the professional disciplinary council as Article 304 of Law No. 17 of 2023.</i></p>

I. INTRODUCTION

Hospitals have Health Human Resources who are tasked with running the health service system. Article 1 Number (5) of Law No. 17 of 2023 states the definition of Health Human Resources, "Health Human Resources are people who work actively in the Health sector, whether they have formal Health education or not, who for certain types require authority in carrying out Health Efforts."

Human resources working in hospitals in Article 197 of Law No. 17 of 2023 concerning Health consist of three parts, namely medical personnel, health personnel, and health support or auxiliary personnel.

Health workers consist of:

1. clinical psychology personnel;
2. nursing staff;
3. midwifery staff;
4. pharmaceutical personnel;
5. community health workers;
6. environmental health workers;
7. nutritionist;

8. physical therapy personnel;
9. medical technical personnel;
10. biomedical engineering personnel;
11. traditional health workers; and
12. Other health workers appointed by the Minister.

Among the health workers are nursing staff. Nursing is a form of professional service that is an integral part of health services, based on nursing science and tips in the form of comprehensive bio-psycho-socio-spiritual services aimed at individuals, families, groups and communities, both healthy and sick, covering the entire human life cycle.

Nursing as a form of professional service is an integral part that cannot be separated from the overall health service effort. In hospitals, nursing services have a very strategic position in determining the quality of service because the number of nurses is the largest compared to other professions and the longest contact with clients. Thus, nursing is the spearhead of health services

and is often used as an indicator of the quality of quality health services, and plays a role in determining the level of client satisfaction.

Nursing staff is one of the most important health workers in health services in the community. Especially in hospitals or health services, nursing staff are also health workers on the front lines, in order to assist doctors who perform medical procedures. Theoretically, the main task of nurses in hospitals is to provide care to patients by providing nursing care (nurturing) to satisfy the physiological and psychological needs of patients. Henderson concretely stated that the goal of nursing is to help patients gain freedom as quickly as possible and to give strength back to patients (Patricia Potter, et al., 2009: 82). Thus, the essence of nursing is to help patients in order to improve their health status.

In health services, the legal relationship between nurses, hospitals, doctors, and patients plays an important role in determining the quality and sustainability of the services provided. This relationship is based on a therapeutic agreement involving the rights and obligations of each party, where nurses play a significant role as providers of nursing services who interact directly with patients. In this context, nurses are not only responsible for carrying out their duties professionally, but must also ensure that the actions taken are in accordance with applicable legal provisions. Along with the enactment of Law No. 17 of 2023 concerning Health, there is a need to evaluate the legal responsibilities of nurses in therapeutic agreements to ensure protection for patients and legal certainty for health workers.

Law No. 17 of 2023 provides a new legal framework that has the potential to change the perspective in viewing therapeutic agreements, including the legal obligations that must be fulfilled by nurses. In practice, violations of the law committed by nurses in therapeutic relationships can have various implications, both for patients and health workers themselves. Therefore, it is important to explore how the legal responsibilities of nurses are regulated in this law and the efforts that can be made to prevent violations of the law. This study aims to analyze the legal relationship between nurses, hospitals, doctors, and patients, examine the legal responsibilities of nurses in therapeutic agreements based on Law No. 17 of 2023, and formulate effective preventive measures to reduce the risk of violations of the law.

With the formulation of the problem

1. What is the legal relationship between nurses, hospitals, doctors and patients in health services?
2. How is the legal responsibility of nurses in therapeutic agreements reviewed from Law No. 17 of 2023?
3. How can nurses prevent violations of the law in therapeutic agreements?

II. RESEARCH METHODS

The type of research used in writing this journal is normative juridical, namely "legal research on norms and legal provisions that have existed or have been in effect both in writing and unwritten." The nature of the research used in this study is analytical descriptive, "intended to provide data that is as accurate as possible about humans, conditions, or other symptoms with the aim of obtaining data on the relationship between one symptom and another."

III. RESULTS AND DISCUSSION

A. Legal relationships that occur between nurses, hospitals, doctors and patients in health services

Every medical or health worker recruited to help run services at this Hospital is a contract worker who works with a joint work agreement based on a work contract agreed by both parties, both the health worker themselves and the Hospital in this case the provider of health facilities led directly by the Hospital Director.

The form of the work agreement made and agreed upon based on a written work contract contains several things that are the rights and obligations of both parties in providing services at health facilities in the Hospital. Based on the joint work agreement that has been agreed upon, it will be a reference in the future if at any time a problem or dispute arises that results in losses for one of them or both of them who made the agreement, it will be resolved by consensus, but if the problem cannot be resolved, legal problems will arise between the two. The Joint Work Agreement for medical personnel or health workers must be based on the provisions of the Laws in force in Indonesia, so that there are no deviations that result in losses for both parties.

The relationship between hospitals and nurses is regulated by an employment agreement in Article 1601 of the Civil Code for private hospitals, while government hospitals are subject to the provisions of employment law. Based on

Article 1601 of the Civil Code in conjunction with 1601a, the relationship between nurses and hospitals is included in the labor agreement, namely an agreement based on certain conditions where one party, in this case the nurse, binds himself to be under the orders of another party, namely the hospital, for a certain period of time to do work in exchange for wages. The aspects of expertise and skills possessed by nurses will determine the type and scope of tasks that will be given to nurses. In carrying out their duties, nurses are bound by nursing service standards and the Nursing Code of Ethics.

Law Number 6 of 2023 concerning the Stipulation of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into Law states that there are two types of employment agreements, namely Fixed Term Employment Agreements (PKWT) and Indefinite Term Employment Agreements (PKWTT). This is as stated in Article 59 of Law Number 6 of 2023 as follows:

- (1) A fixed-term employment agreement can only be made for certain jobs which, according to the type and nature or activities of the work, will be completed within a certain time, namely as follows:
 - a. work that is completed once or is temporary in nature;
 - b. work that is estimated to be completed in a relatively short time;
 - c. seasonal work;
 - d. work related to new products, new activities, or additional products that are still in the experimental or exploratory stage; or
 - e. work whose type, nature or activities are not permanent.
- (2) A fixed-term work agreement cannot be entered into for permanent work.
- (3) A fixed-term employment agreement that does not fulfill the provisions referred to in paragraph (1) and paragraph (2) shall by law become an indefinite-term employment agreement.

Based on the explanation above, in general, the work agreement between the hospital and health workers is an Indefinite Term Work Agreement (PKWTT), especially the work agreement between the hospital and nurses because it does not fulfill the provisions in Paragraph (1) and Paragraph (2) of Law No. 6 of 2023.

The rights and obligations arising from the legal relationship between hospitals and nurses have been regulated in the law, namely as follows:

Hospital Rights are regulated in Article 191 of Law no. 17 of 2023 Calm Health which reads:

- a. Determine the number, type and qualifications of human resources according to the Hospital classification;
- b. Receive service fees and determine remuneration, incentives and awards in accordance with statutory regulations;
- c. collaborate with other parties in developing services;
- d. receive assistance from other parties in accordance with the provisions of laws and regulations;
- e. sue the party who caused the loss;

Hospital obligations are regulated in Article 189 of Law No. 17 of 2023 concerning Health:

Article 189 Points k, l, n, q, r, s, and t:

- (1) Every Hospital has the obligation to:
 - a. rejecting the patient's wishes which are contrary to professional and ethical standards and statutory provisions;
 - l. provide correct, clear and honest information regarding patient rights and obligations;
 - n. implementing hospital ethics
 - q. create a list of Medical Personnel who practice medicine or dentistry and other Health Personnel;
 - r. prepare and implement internal hospital regulations;
 - s. protect and provide legal assistance to all Hospital staff in carrying out their duties; and
 - t. enforce the entire Hospital environment as a smoke-free area.

Nurses' rights to hospitals are regulated in Article 273 of Law No. 17 of 2023, namely:

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;
 - 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. obtain 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.

The relationship between the hospital and the patient begins when the patient registers at the hospital registration counter. Registering a patient at the hospital registration counter is intended to obtain health services. Health services themselves are legal acts that result in a legal relationship between the health service provider in this case the hospital and the patient as the recipient of health services which include professional activities or activities in the field of preventive and curative services for the benefit of the patient.

The relationship between the hospital and the patient can occur if the patient is competent (adult and of sound mind) to visit a hospital that has a doctor working in the hospital. The hospital has a position as a party that must provide performance, while the doctor functions as a worker (subordinate of the hospital) who has a position as a principal and the doctor as an agent. While the patient's position is as a party that is obliged to provide counter-performance. Meanwhile, the pattern of relationship between the hospital and the patient's guarantor will occur if the patient is incompetent (minor patient or not of sound mind) because based on civil law provisions, patients like this cannot carry out legal acts. Here the position of the patient's guarantor (parents or family acting as guardians) becomes the party that is obliged to provide counter-performance.

The legal relationship that arises between patients and hospitals can be divided into two types of agreements, namely:

- a. A treatment agreement where there is an agreement between the hospital and the patient that the hospital provides a treatment room and where the nursing staff performs treatment.
- b. A medical service agreement in which there is an agreement between the hospital and the patient that the medical personnel at the hospital will make maximum efforts to cure the patient through Inspannings Verbintenis medical procedures.

Regulations or legal basis for every health service action in a hospital must be implemented in accordance with the provisions of Article 189 and Article 190 of Law Number 17 of 2023 concerning Health as the basis and general provisions in the implementation of health in hospitals covering all aspects related to health maintenance. The legal regulations regarding the rights and obligations of patients to hospitals are regulated in Articles 276 and 277 of Law Number 17 of 2023 concerning Health.

Doctors as one of the main components of health service providers to the community have a very important role because doctors are directly related to the provision of health services. In hospitals, doctors cannot work without the help of nurses. Conversely, without instructions from doctors, nurses are not authorized to act independently. In addition, where the number of patients being treated is not comparable to the number of doctors, some of the doctor's authority can be delegated to nurses. Usually this delegation of authority is a medical action which is a collaborative action that nurses also have the competence and ability to do which is obtained from education and training. So here there is a transfer of authority to carry out medical actions which were originally only allowed to be carried out by doctors, after the delegation of authority, then legally nurses are also allowed to do it.

The delegation of medical actions has been regulated in Law Number 17 of 2023 concerning Health in Article 290:

- a. Medical personnel and health workers can receive delegation of authority to carry out health services.
- b. The delegation of authority as referred to in paragraph (1) is divided into delegation by mandate and delegation.

- c. The delegation of authority as referred to in paragraph (1) is carried out from Medical Personnel to Health Personnel, between Medical Personnel, and between Health Personnel.
- d. Further provisions regarding the delegation of authority are regulated by Government Regulation.

The basis of the legal relationship between doctors and nurses in providing health services to patients is a legal relationship based on an agreement in the form of a letter of delegation of authority, so they mutually agree to bind themselves in carrying out health services based on a letter of agreement on the delegation of authority which gives rise to an obligation (*verbentenis*). According to Article 1233 of the Criminal Code which reads "An obligation, born because of an agreement or because of the law."

The relationship between nurses and clients (patients) is contained in the Decision of the National Conference of the Indonesian National Nurses Association No. 09/MUNAS IV/PPNI/1989 concerning the Implementation of the Indonesian Nursing Code of Ethics, including:

- a. Nurses in providing health services respect human dignity and the uniqueness of clients and are not influenced by considerations of nationality, ethnicity, skin color, age, gender, political affiliation and religion, as well as social status.
- b. Nurses in providing nursing services always maintain an environmental atmosphere that respects the cultural values, customs, and religious life of the client.
- c. The nurse's primary responsibility is to those who need nursing care.
- d. Nurses are required to keep confidential everything they want in connection with the tasks entrusted to them, unless required by the authorities in accordance with applicable legal provisions.

The rights and obligations of nurses (health workers) towards patients are regulated in Articles 273, 274, and 275 of Law No. 17 of 2023. Patient obligations are specified in Article 277 Points b, c, d, and e of Law No. 17 of 2023 concerning Health. Patient rights are specified in Article 276 Points g, h, i, j, k, and l of Law No. 17 of 2023 concerning Health.

B. Civil Liability of Nurses and Legal Protection for Patients in Therapeutic Agreements Reviewed from Law No. 17 of 2023 Concerning Health

In the relationship between doctors, hospitals and patients, there is a term known as a therapeutic agreement or therapeutic transaction where the agreement is a legal relationship that gives birth to rights and obligations in relation to the health sector. A therapeutic agreement is an agreement that gives authority to a doctor in providing health services to patients based on the skills and expertise of a doctor. The difference between a therapeutic agreement and an agreement in general lies in the object of the agreement where in a therapeutic agreement the object is an effort or therapy to cure the patient. While the core of the implementation of the agreement in general is to carry out an achievement. Article 1234 of the Civil Code (hereinafter referred to as the Civil Code) determines that an achievement is indicated by the act of giving something or doing something or not doing something.

As discussed above, in providing health services, doctors cannot do everything alone. Doctors need the help of nursing staff, considering the number of doctors is not comparable to the number of patients. In health services, nurses do it on the basis of delegation of authority from doctors.

In carrying out health services in this case a therapeutic agreement, there is always the possibility of negligence or malpractice committed by health workers or medical personnel, either intentionally or unintentionally. Muhamad Sadi explained that malpractice in the health sector is a deviation from a case being handled or a health problem (including disease) by health workers including nurses, so that it can have a negative impact on patients in the form of disability or even loss of life (Sadi Is, 2015).

Then what if malpractice in a therapeutic agreement is carried out by a nurse? In general, in Article 193 of Law No. 17 of 2023, the Hospital is legally responsible for all losses caused by negligence committed by the Hospital's Health Human Resources. However, specifically, medical personnel or health workers can also be held accountable (in this case nurses). The following is the form of accountability.

The therapeutic agreement between the nurse and the patient is a legally binding agreement. If the nurse fails to carry out his/her duties in accordance with the agreement (for example,

failing to provide medication or treatment that has been agreed upon in the agreement), then this can be considered a breach of contract. Based on Article 1239 of the Civil Code, the injured party (in this case the patient) can claim compensation for losses arising from the nurse's negligence in carrying out his/her obligations. As one example, in carrying out his/her duties, the nurse does not maintain the patient's medical confidentiality.

Article 1239 of the Civil Code states "Every obligation to do something, or not to do something, if the debtor does not fulfill his obligations, then he is required to replace the costs, losses, and interest." This article states the legal consequences of default, namely if one party does not fulfill the obligations that should be done in the agreement, namely the injured party has the right to claim compensation covering costs, losses, interest in accordance with the agreement or applicable legal provisions. A nurse will be held accountable if the elements of default are met, namely:

- a. Not carrying out his/her duties at all: in this context, if a nurse does not carry out all the duties in accordance with his/her function, whether independent, interdependent or dependent functions.
- b. Carrying out obligations but late; in this case if the obligations in accordance with the function are carried out late which results in losses to the patient.
- c. Carrying out obligations but not as they should be; a task that is done carelessly.
- d. Doing things that should not be done; in this case, when a nurse performs a medical action that is not delegated by the doctor, such as injecting a patient without an order, performing an IV even though he/she has not been trained.

Fulfilling obligations in an agreement is also called achievement. The achievement that must be fulfilled in a therapeutic agreement is to make healing efforts to patients in accordance with the applicable SOP Standard Operating Procedures for health services and professional codes of ethics.

In civil law review, malpractice is not only in the form of breach of contract. Malpractice can also be in the form of an unlawful act (1365 of the Civil Code). Article 1365 of the Civil Code states "Every act that violates the law and causes loss to

another person, requires the person who caused the loss due to his mistake to replace the loss."

However, patients cannot sue medical personnel or health workers directly in court before obtaining a recommendation from the professional council as stated in Article 304 of Law No. 17 of 2023.

Legal responsibility of nurses in health services due to malpractice if the act is carried out with clear rules of delegation of authority by both the doctor and the hospital management, then the nurse is not responsible for the consequences arising from the act, but if the act is carried out without following the provisions of laws and regulations, then the nurse must be willing to be responsible for his actions in the form of malpractice claims in criminal, civil and administrative legal aspects.

Legal action can indeed be taken by victims of alleged violations of therapeutic agreements. However, the case that occurs must first be resolved through non-litigation as stated in Article 310 of Law No. 17 of 2023. Article 310 of Law No. 17 of 2023 states "In the event that Medical Personnel or Health Personnel are suspected of making an error in carrying out their profession which causes harm to the Patient, the dispute arising from the error must first be resolved through alternative dispute resolution outside the courts. And if the victim wants to take the litigation route in resolving the dispute, they must obtain a recommendation from the panel as regulated in Articles 304 and 308 of Law No. 17 of 2023.

C. Efforts to prevent legal violations for nurses in therapeutic agreements

In an effort to prevent legal violations by nurses in therapeutic agreements, nurses must ensure that actions are in accordance with:

In providing health services, health workers have the right to receive legal protection if they carry out work practices in accordance with Standard Operating Procedures. Article

273 Article (1) Medical Personnel and Health Personnel 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 the patient's health needs;
- i Rejecting the wishes of a patient or other party that are contrary to professional

standards, service standards, operational procedure standards, code of ethics, or provisions of laws and regulations;

It is important for nurses to document every action taken, including the patient's health history, assessment, and results of the action. Clear and complete documentation can be evidence in the event of a legal dispute.

Informed consent According to Gregorius Prama Suryaputra, it is "an agreement or consent accompanied by notification of the treatment or service that is the focus of the agreement". Informed Consent in the true sense is not only the relationship between a doctor and a patient, but also includes between researchers and research subjects. When viewed from a legal perspective, informed consent refers to legal regulations that determine the obligations of medical personnel in interactions with patients. It also provides sanctions (in certain circumstances) if there is a deviation from what has been determined. When viewed from an ethical perspective, informed consent is the initiation and is rooted in the belief that it is their right to determine their own destiny if a medical procedure is to be performed. In informed consent, the patient's human rights must be respected. Patients have the right to refuse to have an action taken against them based on information obtained from the medical personnel concerned. This means that if the patient has agreed to the informed consent given by the health worker, then as long as the health worker who provides health services to the patient does so in accordance with the contents of the informed consent, the health worker cannot be subject to sanctions.

Informed consent (consent for medical action) is mandatory in the implementation of health services. This is regulated in Article 197 Paragraph (1) of Law No. 17 of 2023 which states "Every individual Health Service action carried out by Medical Personnel and Health Personnel must obtain approval."

IV. CONCLUSIONS AND RECOMMENDATIONS

The legal relationship that arises between nurses and patients occurs because of the delegation of authority from the doctor to the nurse in carrying out medical actions. This relationship initially arises from a therapeutic agreement between the doctor and the patient. Nurses are present as health workers who assist doctors in medical actions based on the delegation of authority. In the delegation of authority, nurses

must also be responsible for the authority given to them by carrying it out in accordance with the agreement in the therapeutic agreement. Legally, nurses can also be held accountable for the work they do.

The civil liability of nurses in therapeutic agreements lies in the fulfillment of the achievements between the nurse and the patient, namely the efforts to cure the patient's illness. Nurses can be sued by patients if the nurse commits a breach of contract (1239 of the Civil Code) and an unlawful act (1365 of the Civil Code). The form of breach of contract in a therapeutic agreement is Not carrying out his/her obligations at all, in this context if a nurse does not carry out all tasks according to his/her function, whether independent, interdependent or dependent functions; carrying out obligations but late, in this case if the obligations according to the function are carried out late which results in losses to the patient; carrying out obligations but not according to what should be done, a task that is done carelessly; doing things that should not be done; in this case if a nurse carries out medical actions that are not delegated by the doctor, such as injecting a patient without an order, giving an IV even though he/she has not been trained. The form of unlawful acts in a therapeutic agreement is if health workers or medical personnel make mistakes or violate the standard procedures that have been determined.

In an effort to prevent legal violations for nurses in therapeutic agreements, nurses must ensure that actions are in accordance with always carrying out medical actions based on SOP (Standard Operating Procedures), carrying out clear and complete medical documentation, and providing informed consent (approval of medical actions) to protect themselves from accusations of default or malpractice.

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