International Journal of Law
ISSN: 2455-2194; Impact Factor: RJIF 5.12
Received: 16-02-2019; Accepted: 18-03-2019
www.lawjournals.org
Volume 5; Issue 3; May 2019; Page No. 121-128

Legal consequences in the delegation of medical authority to nurses: the Indonesian legal perspective

Tarsianus Golo[1], Widodo Tresno Novianto[2], Isharyanto[3]
[1-3] Faculty of Law, Universitas Sebelas Maret Surakarta, Indonesia

Abstract
This article discusses about the legal consequences of the delegation of medical authority by doctors to nurses. The delegation of medical authority is an important part of the development of clinical care in order to improve the public health in the midst of various limitations of medical personnel along with the inequality of its distribution urging the right skills of delegates. The rise of verbal delegation, unclear authority limits that can be delegated, the uncertainty when a delegation of authority is still a complex legal issue in the midst of the need for delegation of medical authority in Indonesia. The type of this study was a doctrinal research with the legal approach. The used sources of legal material were primary legal materials and secondary legal materials. The technique of collecting data was a literature study and analyzed based on the interactive model with the deductive pattern. The result of the study showed that the delegation of medical authority occurred in the legal relationship of nurses-doctors both through law and agreement and caused the legal consequences that could be reviewed based on administrative law, civil law and criminal law.

Keywords: delegation of medical authority, doctors, nurses, legal consequences

1. Introduction

The discourse on the delegation of medical authority is growing rapidly along with the important diversification in health services in which clinical care space is given greater for the involvement of other health personnel like nurses [1]. This leads to the creation of a space for collaborative work between nurses and doctors followed by the efforts to develop the nurse profession as an autonomous profession with body of knowledge and form of service.

Nurses are paramedics who intensely meet patients and often involved in collaborative work with doctors. Ethically, the nurse has the duty to care, while the doctor is to cure. There is a clear dichotomy related to the basic authority of these two professions. In practice, these two professions are present in collaborative relationships that need each other [2]. Doctors gave the duty to cure, based on the scientific autonomy, nurses complete the doctors' work by carrying out nursing actions. Therefore, there is no doubt that these two professions complement each other significantly [3].

One of the forms of collaborative work of these two professions is the written delegation of medical authority by doctors to nurses. In the delegation of the authority, nurses are involved in carrying out the medical actions at the behest of doctors. In other words, medical actions are the legal authority of doctors, but they can be delegated to nurses.

In the Indonesian context, in fact, medical personnel are limited along with the uneven distribution of medical personnel [4] and the dominance of nurses over physicians quantitatively [5], then the delegation of medical authority to nurses is an important part of health services in order to help medical personnel in maintaining the holistic health service and the realization of universal health coverage. There is no doubt that the delegation of appropriate medical authority can significantly improve the quality of health services. Researchers think that the quality of health services is only possible in collaborative work between health workers in which each health worker within the limits of the scientific autonomy is convergently involved.

In practice, the delegation of medical authority has not been carried out properly according to the law. The law still causes reproach which can be a trap space for nurses and doctors. The absence of implementing regulations that regulate the delegation of medical authority to nurses and the vague boundaries of authority or types of medical actions that can and cannot be delegated to nurses makes this issue increasingly strategic in the development of Indonesian health law politics. In addition, the proliferation of oral delegations and the uncertainty of the delegation of medical authority have made this issue more complicated in the law.

[1] The focus of this study was the field of law. Outside the field of law, there are many perspectives to review the relationship between doctors and nurses. For an example, Sue Pullon, Competence, Respect, and Trust: Key Features of Successful Inter-professionalism Nurse-Doctor Relationships. *Journal of Inter-professionalism Care*, 2008: 22 (2): 133-147. See also, Jane Stein-Parbury & Joan Liaschenko, Understanding Collaboration between Nurses and Physicians as Knowledge at Work. *American Journal of Critical Care*, 2007; 16 (5): 470-477.

[2] Joan Liaschenko & Elizabeth Peter, Nursing Ethics and Conceptualizations of Nursing: Profession, Practice and Work. *Journal of Advanced Nursing*, 2004; 46 (5): 488-495.

[3] Jiri Simek, Specifics of Nursing Ethics. *Kontakt*, 2016; 16 (6): e64-68.

[4] Didik Budijanto & Wahyu Dwi Astuti, Tingkat Kecukupan Tenaga Kesehatan Strategis Puskesmas di Indonesia (Analisis Implementasi Permenkes No. 75 tahun 2014). *Buletin Penelitian Sistem Kesehatan*, 2015; 18 (2): 181.

[5] The report on nurse infodatim in 2017 showed that nurses occupied the highest number of all health workers in Indonesia. The number of nurses reached 49% (296,876 people), followed by midwives 27% (163,451 people), and medical specialists 8% (48,367 people). *http://www.depkes.go.id/resources/download/pusdatin/infodatin/infodatin%20perawat%202017.pdf*., on March 21, 2019.

Written delegations in the Indonesian legal perspective have the legal force if the action is held to be held accountable for both criminal and civil law [6]. However, a written delegation does not simultaneously lead to such legal force. If the appropriate process and procedure are not carried out in a delegation, the written delegation does not guarantee the legal legitimacy in carrying out the delegated medical actions.

Based on the various problems above, the researchers argued that the inappropriate delegation of medical authority was open to the emergence of legal conflicts both in the internal relationship of doctors-nurses and the external relationship towards the served patients or community. On one hand, the inappropriate delegation of medical authority can place nurses with doctors in the dilemma of legal liability when there is a suspicion of medical malpractice [7] and the dilution of the rights of patients to obtain health services [8] can occur on the other side. At the end, this will influence the satisfaction of patients and the quality measure [9] in fulfilling constitutional and fundamental health rights [10].

This study aimed to find out the legal regulations regarding the delegation of medical authority and the emergence of legal consequences in the framework of this collaborative work in the Indonesian legal perspective. The writer thought that the implementation of the delegation of medical authority and the emergence of legal consequences from such a relationship could be a good model in developing the skills of the delegation of medical authority to doctors-nurses in administering health services.

2. Research Method

This study used the normative legal research method (doctrinal research) based on both the primary legal material sources in the form of law and the secondary legal material sources in the form of the journal articles and the legal books which were relevant to the core of the problem in this study. According to Marzuki, a normative research is oriented to produce new argumentation, theory, or concept as prescription in solving the problem [11].

The used approach in this study was the statute approach based on the deductive logic. This study description was based on a major premise in the form of legal provisions related to the delegation of medical authority. The existing data was analyzed qualitatively using the interactive model starting from the process of data condensation, data display, and conclusion drawing/verification [12].

3. Result and Discussion

3.1 Regulation of the Delegation of Medical Authority in the Indonesian Legal Perspective

The delegation of medical action authority to nurses has been regulated in several products of health law in Indonesia. According to Abbot [13]. this juridical provision provides an overview of the extent to which the profession has the authority and autonomy to determine the care assignments to be given and who provides the care assignments, uses special knowledge and assessment. In this case, the law becomes the basis of juridical health care, in addition to being a function of the greater public perception in which the profession has the legitimate expertise to deal with certain problems [14]. The following will be described about the legal basis as a foundation for doctors-nurses in implementing the devolution of medical authority that is appropriate according to the law in Indonesia.

3.1.2 Review of Nursing Law

Law No. 38 of 2014 concerning Nursing (abbreviated as the Nursing Law) has regulated the delegation of this medical authority to nurses. The Nursing Law affirms that the implementation of duties based on the delegation of authority for nurses can only be given in writing by medical personnel to nurses to carry out a medical action and conduct an evaluation (see Article 32 paragraph (1) of the Nursing Law). In other parts, this Law adds that the delegation of authority can be conducted in a delegate or mandate. The delegate delegation is the delegation of authority accompanied by delegation of responsibility, while the mandate delegation is the delegation of authority under the supervision of a doctor because the responsibility lies with the doctor as the creditor (see Article 32 paragraph (4), (5) and (6)).

The differences in mandate and delegation are not explained in more detail. In fact, in the Explanation of Article 32 paragraph (4) and paragraph (5), it is explained that the types of actions that can be delegated by mandate include injecting, putting up an IV, and providing basic immunization according to the programs of the government, while the types of actions that can be delegated by delegate include providing parenteral therapy and suturing wounds.

The authority of the nurse in carrying out the task based on the delegation of authority is described in Article 32 paragraph (7), namely a) conducting medical action in accordance with its competence for delegating the delegative authority of medical personnel; b) take medical action under the supervision of delegation of mandate authority; and c) providing health services according to government programs. The authority of nurses here is determined based on the type of delegation received which states delegation, mandate and in line with government programs in providing health services including immunization and other efforts to control infectious

---

[6] Aning Pattypeilohy, Sutarno & Adriano, Kekuatan Hukum Pelimpahan Wewenang dari Dokter kepada Ners Ditinjau dari Aspek Pidana dan Perdata. *Legality*, 2017; 25 (2): 172-184.

[7] Based on the data from the Indonesian National Nurses Association *(PPNI)* regarding nursing malpractice in Indonesia in 2010-2015, there were around 485 cases with the details: 357 administrative malpractice cases, 82 cases of nurses who did not give their achievements as agreed and included in civil malpractice, and 46 cases occurred due to the medical actions without the consent of the doctor which were carried out inadvertently and caused injury and disability to the patients or classified as criminal malpractice with an element of negligence.

[8] C. Maddox, at.al., Factors Influencing Nurse and Pharmacist Willingness to Take or Not Take Responsibility for Non-Medical Prescribing. *Research in Social and Administrative Pharmacy*, 2016; 12 (1): 41-55.

[9] Nancy Phoenix Bittner & Gayle Gravlin, "Critical Thinking, Delegation, and Missed Care in Nursing Practice." *JONA: The Journal of Nursing Administration*, 2009; 39 (3): 142-146.

[10] T. Sudrajat & A. Mardianto, Hak atas Pelayanan dan Perlindungan Kesehatan Ibu dan Anak (Implementasi Kebijakan di Kabupaten Banyumas). *Jurnal Dinamika Hukum*, 2012; 12 (2): 261-269.

[11] Peter Mahmud Marzuki, Penelitian Hukum-Edisi Revisi. Kencana, Jakarta, 2014, 55-56.

[12] Matthew B. Miles, A. Michael Huberman and Johy Saldana, Qualitative Data Analysis: A Methods Sourcebook-Third Edition. SAGE Publications, California, 2014, 31-32.

[13] Corazzini, et.al., RN Jurisdiction over Nursing Care Systems in Nursing Homes: Application of Latent Class Analysis. *National Center for Biotechnology Information*, 2012; 61 (1): 28-38.

[14] *Ibid*.

diseases, and handling disasters, including outbreaks and outbreaks and surveillance activities.

3.1.2 Review of the Law on Health Workers

Arrangements regarding the delegation of medical authority are also described in Law Number 36 of 2014 concerning Health Workers (hereinafter *UU TK*). Article 65 paragraph (1) of *UU TK* explains that in conducting health services, Health Workers can receive the transfer of medical action from medical personnel. This provision does not require that the transfer must be done in writing. The provisions concerning how an action is carried out are described in Article 65 paragraph (3): a) the delegated actions include the abilities and skills possessed by the recipients of the delegation; b) the implementation of the delegated actions remains under the supervision of the delegator; c) the delegator remains responsible for the delegated actions as long as the implementation of the actions in accordance with the provided delegation; and d) the delegated actions do not include decision making as the basis for the implementation of the actions.

This provision is still general and further regulation is needed in the ministerial regulation that specifically regulates about the delegation of medical authority (see Article 65 paragraph (4)). However, until now there has been no ministerial regulation that specifically regulates about this. In general, *UU TK* emphasizes that not all sets of medical actions can be delegated to nurses in which the delegation does not include decision making as the basis for the implementation of the actions. This regulation is more abstract and does not describe the types of actions that can be delegated to nurses. When referring to the pattern of the described supervision, the form of the conducted delegation is in a mandate in which the supervision and responsibility and decision making are in the hands of doctors. In other words, the nurses only do what are instructed by the doctor.

3.1.3 Review of the Regulation of the Minister of Health of the Republic of Indonesia

The regulation regarding the delegation of medical authority has actually been alluded to in the Regulation of the Minister of Health of the Republic of Indonesia number 2052/MENKES/PER/X/2011 concerning Permit for Practice and Implementation of Medical Practice (hereinafter, PMK No. 2052/MENKES/PER/X/2011). This is stated in Article 23 paragraph (1) that a doctor or dentist can provide the delegation of a medical or dental actions to nurses, midwives or other certain health personnel in writing in carrying out medical or dental actions. (2) The medical or dental actions as referred to in paragraph (1) can only be carried out in situations in which there is a need for services that exceeds the availability of a doctor or dentist in the service facility. (3) The delegation of actions as referred to in paragraph (1) is carried out with the following provisions: a. the delegated actions include the abilities and skills that have been possessed by the recipients of the delegation; b. the implementation of the delegated actions remains under the supervision of the delegator; c. the delegator remains responsible for the delegated actions as long as the implementation of the actions is appropriate with the provided delegation; d. the delegated actions do not include taking clinical decisions as the basis for the implementation of the actions; and f. the delegated actions are not continuous.

When looking at the model of responsibility in PMK No. 2052/MENKES/PER/X/2011, the intended model of delegation is the delegation of authority in a mandate in which the responsibility is in the hands of the authority (doctor or dentist). As an implementing regulation, this regulation has not described in detail about the types of the delegated actions to nurses. The emphasis is similar to *UU TK* in which the boundaries of the delegated actions must pay attention to the competencies and skills of the recipients of the delegation.

Based on the juridical review above, it was found that the delegation of authority in the Nursing Law can be carried out using two models, namely delegate and mandate, while in *UU TK* and PMK No. 2052/MENKES/PER/X/2011, it only recognizes the mandate delegation. This can be known by tracing the pattern of supervision and the emergence of the legal responsibility in the provided delegation.

3.2 Legal Consequences of the Delegation of Medical Authority

Legal consequences are the result of a legal incident. The legal consequences do not emerge from the law because the legal consequences only exist if they have been preceded by legal incidents. According to Mertokusumo [15]. legal incidents are the incidents, circumstances or actions of people who are connected by law to legal consequences. The legal incidents that have legal consequences can occur due to the natural incidents (not the legal subjects) and the actions made by the legal subjects.

Furthermore, Mertokusumo [16] explains that legal action is an action of the legal subject that is intended to cause legal consequences that are intentionally desired by the legal subject or have been determined by law without the intention of the legal subject. The basic element of the legal action is the will and the statement of the will which is intended to cause legal consequences. The legal acts are further divided into one-sided legal actions and double legal actions. One-sided legal actions only require the will and the statement of the will to cause legal consequences of a single legal subject, while the double legal actions require the will and the statement of the will from at least two legal subjects aimed at the same legal consequences.

According to Satjipto Rahardjo [17]. a legal incident is something that can move legal regulations so that it effectively shows its potential to regulate. Not all incidents can be regarded as legal incidents because there are ordinary incidents that do not cause legal consequences. Therefore, for Rahardjo, only the incidents included in the law can move the law that are called the legal incidents. The legal incidents are the incidents that occur in the legal relationships in which there are rights on one side and obligations on the other.

The legal relationship of doctors-nurses provides birth to the rights and obligations inherent in each party in providing health services. Every incident that occurs in a legal relationship in the form of a bond of rights and obligations always has legal consequences. Therefore, the delegation of medical authority is a legal incident that has legal consequences for the legal subjects of nurses, doctors and

[15] Sudikno Mertokusumo, Mengenal Hukum Suatu Pengantar. Liberty, Yogyakarta, 2008, 50.
[16] *Ibid*., 51-53.
[17] Satjipto Rahardjo, Ilmu Hukum-Cetakan Ketujuh. PT. Citra Aditya Bakti, Bandung, 2012, 35.

other health workers.

Legal actions or incidents that have legal consequences can be passive and active [18]. Active actions mean that the actions require certain body movements or body parts to make them happen, while passive actions are not doing what the health worker should do. The necessity to do due to his position, job duties, etc. causes health workers in certain circumstances to be legally obliged to do. If the health worker does not act according to the legal obligations, he is guilty and liable for the legal responsibility when it causes harm. The delegation of medical authority as a legal action that has legal consequences can be traced based on the perspective of administrative, civil and criminal law.

3.2.1 The Perspective of Administrative Law

The delegation of medical authority is the realm of administrative law because it deals with the granting of permits or authority of health workers in administering health. Administrative law review focuses on the source and legal basis of a person to act or not to act. On this side, prioritization of licensing both formally and materially from the implementation of health by health workers is carried out to do something that is generally prohibited [19].

Juridically, the permit or providing medical authority to nurses is preceded by several obligations that must be fulfilled by nurses and doctors. Practical permits are only obtained if nurses and doctors already have a Registration Certificate *(STR)* provided by the council of each health worker and will be extended every five years (see Article 44 of *UU TK*). In addition to *STR*, health workers are also required to pocket a Practice Permit *(SIP)* prior to practicing issued by the district/city government on the recommendation of an authorized health official in the district/city where health workers carry out the practice and must put a sign in their practice (see Article 46 and Article 47 of *UU TK*).

The existence of *STR* and *SIP* for doctors shows that the concerned doctor is feasible and authorized to conduct medical practice and has scientific competence that can be accounted for (see Article 29 of Law Number 29 of 2004 concerning Medical Practices/hereinafter *UU PK*). More explicitly, the existence of *STR* and *SIP* allows a doctor/dentist to have the authority to: a. interview patients; b. examine the physicality and mentality of the patients; c. determine investigation; d. make a diagnosis; e. determine the management and treatment of the patients; f. take actions on medicine or dentistry; g. prescribe medicines and medical devices; h. issue the certificate of a doctor or dentist; i. store drugs in the permitted quantities and types; and j. mix and deliver medicine to the patients, for those who practice in remote areas where there is no pharmacy (see Article 35 paragraph (1) of *UU PK*).

For nurses, *STR* and *SIPP* are also an acknowledgment that these nurses have competency based authority and are given permission to practice nursing (see Article 18 of the Nursing Law). The nurses who have had *STR* and *SIPP* have the authority as a) nursing care providers; b) counselors for clients; c) management of nursing services; d) nursing researchers; e) implementing tasks based on the delegation of authority; and/or f) implementing tasks under certain circumstances of limitations (see Article 29 of the Nursing Law). Therefore, both doctors and nurses involved in the delegation of medical authority at Community Health Centers must have *STR* and *SIP* as the source of authority stipulated by the rules and regulations.

In the next stage, administrative law also discusses about the authority of doctors-nurses during carrying out medical actions including taking the medical actions based on the delegation. During carrying out the medical actions, both doctors and nurses are subject to the obligations stated in the professional standards, standard operating procedures and medical needs, profession oaths, professional codes of ethics and legal obligations including the appropriate mechanism of the delegation of medical authority to nurses.

The mechanism of the delegation of authority has been mentioned at the beginning of this article. In essence, any delegation of medical authority must be carried out in writing by the doctor to the nurses by paying attention to the competencies of the nurses who receive the delegation. The obligation to have written delegations is actually more precisely categorized as an authority before taking actions. The delegation of the written authority can also be included in the second category, namely the authority when carrying out the delegated medical action when the nurse as the recipient of the delegation is the subject to the job description specified by the doctor in the written delegation. In other words, the existence of the written delegations and detailed task instructions can be an administrative requirement before taking action simultaneously to become a guideline during taking actions.

The delegation of the written medical authority as an obligation before taking actions is directly related to the nurse to make a decision whether to refuse, whether to accept the delegated assignment. The decision is taken by considering the competencies and skills of the nurses towards the types of actions described by the doctor in the delegation. There is the existence of the detailed job descriptions including the possibility of the offered alternatives when problems occur in the implementation that put the written delegation that must be a reference for nurses, not only at the beginning, but also during the intended actions. Thus, the nurses do not work outside from what the doctor has described in the delegation.

According to Novianto [20]. administrative violations by doctors (health workers) are the violations towards the administrative legal obligations both before taking actions or legal obligations during or taking actions. The disobedience of a medical delegation can be categorized as a violation of the legal obligation before taking medical actions resulting in the elimination of the authority of the nurses or can be worse in placing the nurses in a circumstance of acting without the authority.

The actions without the authority in administrative law can be categorized in three terms, namely not authorized by region, not in terms of time authority and not material in terms of authority [21]. In regions, the delegation of medical authority is generally not too much in question. This is

[18] Widodo Tresno Novianto, Penafsiran Hukum dalam Menentukan Unsur-Unsur Kelalaian Malpraktek Medik *(Medical Malpractice). Yustisia*, 2015; 4 (2): 491.

[19] Hargianti Dini Iswandari, Aspek Hukum Penyelenggaraan Praktik Kedokteran: Suatu Tinjauan Berdasarkan Undang-Undang No. 29 Tahun 2004 tentang Praktik Kedokteran. *Jurnal Manajemen Pelayanan Kesehatan*, 2006; 09 (2): 53.

[20] Widodo Tresno Novianto, Sengketa Medik: Pergulatan Hukum dalam Menentukan Unsur Kelalaian Medik. UNS Press, Surakarta, 2017, 70.

[21] Ridwan HR., Hukum Administrasi Negara-Edisi Revisi-Cet. 13. Rajawi Press, Jakarta, 2017, 113-114.

because every delegation of medical authority is always carried out in the scope of certain health facilities where nurses and doctors work. In contrast, the delegation of medical authority often emerges legal dilemmas in its implementation when viewed in terms of time and material.

Nurses and doctors can be involved in an improper delegation when doing so not at the appropriate time. A legal vacuum that provides clear instructions about when a delegation must take place even if the written delegation can become powerless in the law, not authorized materially regarding the delegated assignments, whether the assignment given to the nurses is in accordance with the competency and does not conflict with the applicable law. Authorizing nurses to make diagnoses, making the informed consent for medical actions and prescribing medicine are things that are prohibited by the law. Therefore, if the written delegation is not accompanied by a limitation of the types of clear actions, it can cause the nurse as the executor of the task being trapped in an action without material authority.

The frequency of actions without authority in the perspective of health administration law can be a subject to administrative action. In principle, the administrative actions are provided to health personnel both doctors and nurses in the form of the verbal reprimands, written reprimands, administrative fines and revocation of permit (see Article 82 of *UU TK* and Article 58 of the Nursing Law).

In more detail, administrative sanctions for doctors are in the form of oral warnings, written up to the revocation of *SIP* conducted by the Head of District/City Health Service where the doctor works, while the revocation of *STR* is carried out by the Indonesian Medical Council *(KKI)*, (see Article 31 PMK No. 2052/MENKES/PER/X/2011). The revocation of SIP of the doctor is based on the recommendations of the Indonesian Medical Disciplinary Board *(MKDKI)*, the *STR* that has been revoked by *KKI*, the practice is no longer in accordance with the *SIP*, and the recommendations are revoked by professional organizations through the special session (see Article 32 PMK No. 2052/MENKES/PER/X/2011).

Potential administrative law violations become medical malpractice. If due to the violation of administrative law causing loss or death for the patient, nurses and doctors are open to the possibility of being held accountable both criminal and civil. Administrative law violations which become criminal actions of medical practice have the potential to become criminal malpractice as well as civil malpractice in which every criminal malpractice as well as civil malpractice, but civil malpractice does not always become criminal malpractice [22]. Therefore, both nurses and doctors can be held accountable both criminal and civil.

3.2.2 The Perspective of Civil Law

The agreement between doctors-nurses and patients in civil therapeutic transactions is generally *inspaning verbentenis* (agreement for maximum effort). *Inspaning verbentenis* in a therapeutic contract does not promise specific results, but rather emphasizes the maximum effort of health workers to patients in health services. Article 1313 of Code of Civil law describes that an agreement is an action by that one person or more ties himself (ties himself together) to one or more other people. The legal requirements for an agreement must include the following things: agreeing that they are binding, the ability to make an agreement, a certain thing (object of agreement) and a lawful reason (see Article 1320 of Code of Civil law).

The relationship between doctors-nurses in the delegation of medical authority can be examined from the agreement perspective in which nurses and doctors bind themselves to take medical actions to patients. In this perspective, an agreement must fulfill the four conditions as stated above. Therefore, if there is a loss to the patients, nurses and doctor have the civil responsibility to bear or replace the loss caused by the failure to fulfill the agreed achievements in the agreement of the delegation of medical authority.

Medical violations in civil relations are oriented to default and unlawful actions. First, it is default. Default is a bad achievement because it violates the content/agreement in an agreement/contract by one of the parties [23]. In essence, every engagement that comes from the law or is because an agreement has certain achievements. Article 1234 of the Code of Civil law confirms that each engagement is to give something, to do something or not to do something.

Based on the provisions above, the breach of default can be in the form of a) not giving any achievement at all as agreed, b) giving an achievement not as it should not be in accordance with the quality or quantity with the agreed one, c) giving an achievement but it is too late, not on time as promised, and d) providing other achievements than agreed upon [24]. For these violations, a person is asked to compensate for the loss arising from not fulfilling the specified achievements in the agreement. This is confirmed in Article 1239 of the Code of Civil law which reads: each engagement to do something or not to do something if the debtor does not fulfill his obligation to get a settlement in his obligation to provide compensation for costs, losses and interest.

The specified achievements in the delegation of medical authority are to provide medical services to patients maximally in accordance with the procedures of the discipline of the medical profession and the competencies and other administrative obligations like *STR*, *SIP* and written delegation letters. Nurses and doctors agree to realize the intended achievements to the third parties, namely patients or service recipients. The delegation of medical authority means that nurses and doctors bind themselves to each other based on the legal conditions of an agreement to do or not to make certain achievements to patients.

The realization of the agreed achievements is related to the third parties, namely the people who receive medical services or patients. Contractual relationships that are built are the subjects to the legal relationship of doctors-nurses as service providers with patients as recipients of services. In this context, the nurse-doctor is bound to the form of agreement (*inspaning verbentenis*) with the patients. Therefore, default always occurs in the failure to fulfill the determined achievements in the therapeutic contract with the patients.

According to B.J. Nasution [25], default is when some of the following conditions are fulfilled, namely: a) the

[22] Widodo Tresno Novianto, *Loc.Cit*.

[23] *Ibid*., 71.
[24] *Ibid*.
[25] *Ibid*, 72.

relationship between doctors-nurses and patients occurs based on the therapeutic contract; b) doctors-nurses have provided inappropriate health services that violate the purposes of the therapeutic contracts; and c) the patients suffer losses due to the actions of the concerned doctor. Therefore, to say that there has been a default, it is needed to prove that it occurs in a legal relationship. There has been a proven error or failure of the doctor in which the doctor has provided the services that violate the agreement achievements, and the wrong actions have a correlation with the loss experienced by the patients [26].

Second, actions against the law. Article 1365 of the Code of Civil law affirms that every action that violates the law that brings harm to another person, requires that the person who by mistake, issues the loss to replace the loss. According to Novianto [27]. an action is said to be against the law if it fulfills four criteria which are contrary to the legal obligations of the perpetrator, against the law of the subjective rights of other people, against the rules of moral conduct and contradicts propriety, accuracy and caution that must be possessed by someone.

Based on the provisions above, the delegation of medical authority becomes an unlawful act if the delegation is not carried out in writing, the recipient of the delegation is proved not to have *STR*, *SIP* or *SIKP*, does not pay attention to the competencies of the nurses which results in errors or negligence due to the lack of prudence and thoroughness for an appropriate action, acting inaccurate with the delegated assignment and the action proved to be the closest cause that causes loss or death for the patient. Therefore, an action against the law requires proof of an error and this error results in a loss for the patient.

Unlawful actions require legal responsibility by referring to Articles 1365, 1366 and 1367 of the Code of Civil Law. According to Article 1366, the form of responsibility is that everyone is responsible not only for losses caused by his actions, but also for losses caused by negligence or lack of prudence. In Article 1367 of the Code of Civil Law, a person is not only responsible for damages caused by his own actions, but also for losses caused by the actions of people who are his responsibility or caused by goods under his supervision. Based on this provision, doctors are responsible for civil law for those who are under his supervision.

The delegation of medical authority is generally a delegate and mandate. The delegation is the delegation of medical authority to nurses by surrendering the authority of the doctor to the nurses to carry out and decide on particular actions in accordance with the competency towards the goodness of the patients. The mandate is the partial delegation of medical authority to the nurses with legal decisions and responsibilities in the hands of the doctor as the delegator. This model of mandate is very close to the responsibility relation for illegal actions based on the provisions of Article 1366 and 1367 of the Code of Civil Law.

Based on those explanations, the doctor is responsible for defaults and unlawful actions carried out by nurses as partners who are under the supervision of a doctor in carrying out medical actions. Any negligence or error that causes harm to the patients can be held liable by compensating for the loss caused by the mistake or negligence. Therefore, the improper delegation of medical authority can cause defaults and unlawful actions.

3.2.3 The Perspective of Criminal Law

The juridical search for criminal sanctions against a disobedience of the delegation of medical authority is not explicitly stated as an offense in a number of related regulations. This does not mean that administrative violations that result in loss or disability in patients cannot be prosecuted criminally. An action can be categorized as a criminal act if it fulfills the formulations of offense, such as the action must be a disgraceful action *(actus reus*), carried out with the wrong mental attitudes (*means rea*) like intentional, recklessness or negligence [28].

According to C. Robinson, "Actions" in the phrase of "illegal actions" have the meanings as follows [29]. nonfeasance: that is not doing something that is required by the law; misfeasance: an action that is carried out wrongly, an action which is an obligation or an action that has the right to do so; and malfeasance means that the action is carried out although the right is not entitled to do so. The element is against the law of an action if it fulfills the following elements, such as the element of intentionality, the element of negligence and no justification and reason for forgiveness.

The action of breaking the law *(onrecht-matige daad*) in its development was expanded to 4 (four) criteria [30]. First, it was contrary to the legal obligations of the perpetrator; or second, against the laws of the subjective rights of other people; or third, against the rules of moral values; or fourth is contrary to propriety, thoroughness and prudence that should be possessed by someone in association with the fellow citizens or against the property of other people.

One of the fundamental problems in acting against criminal law is the presence or absence of authority attached to the perpetrator in carrying out medical actions. Authority is the part of the obligation to carry out assignments based on their respective professional standards. Professional standards include three components, such as science and technology standards, ethical and moral behavior standards, and standards of relationship between health workers and patients [31]. Therefore, doctors-nurses in the delegation of medical authority are the subjects to these professional standards to ensure the quality of health services to the society.

The delegation of medical authority is interpreted as providing a portion of the authority of the doctor to the nurses. Because of the delegation, the nurses have the rights to carry out the delegated medical actions. The nurses who are originally not entitled and not authorized to take medical actions are authorized to do so through the delegation of authority. In other words, through the delegation of medical authority, the nurses have the authority over the related medical actions.

In particular, there is no offense related to the inappropriate delegation of medical authority to nurses. The delegation of medical authority is an administrative issue. If this issue

[26] *Ibid*.
[27] *Ibid*., 74.
[28] *Ibid*. 77.
[29] Muntaha, Hukum Pidana Malpraktik: Pertanggungjawaban dan Penghapus Pidana. Sinar Grafika, Jakarta, 2017, 136.
[30] Bambang Heryanto, Malpraktik Dokter dalam Perspektif Hukum. *Jurnal Dinamika Hukum*, 2010; 10 (2): 186.
[31] Muntaha, *Op.Cit*., 144.

becomes an unlawful action which by mistake and negligence causes harm both to disability and death to the patients, they can be the subjects to criminal charges (see Article 84 of *UU TK* and Article 359, Article 360 of the Criminal Code). In addition, the improper delegation of medical authority can be an action without authority. The unauthorized actions mean that the perpetrator is not entitled to the taken actions.

The delegation of authority signifies giving permission to carry out particular medical actions. Logically, the absence of the proper delegation results in the loss of authority which forms the basis of juridical legitimacy, especially for nurses who carry out medical actions. Therefore, nurses can reject the delegation of authority that is beyond the ability of the nurse profession on the basis of competency rationality and scientific standards as well as professional standards that a nurse has.

The existence of authority generally states in the ownership of *STR* and *SIP* of health workers. If it does not fulfill this requirement, nurses who have received the proper delegation can even be the subjects to criminal sanctions (see Article 85 and Article 86 of *UU TK*). Authority is one of the main requirements in carrying out particular medical actions. Therefore, if every health worker is involved in actions like distributing medicine without permission, lacking expertise and authority to carry out pharmaceutical practices, he can be the subject to criminal sanctions (see Article 198 of Law No. 36 of 2009 concerning Health).

It is important to emphasize that the proof of medical criminal malpractice focuses on the causes and not on the final consequences of an action as stated in general criminal. According to Nusye K. I. Jayanti [32]. regarding the existence of errors and negligence in the relation with the delegation of medical authority, these elements must be proved:

a. There is the presence or absence of negligence in carrying out professional duties by departing from the 4D Negligence principles, such as duty, dereliction of the duty, direct causation and damage;
b. There is the presence or absence of the basic professional standard that grows from health science;
c. There is the presence or absence of medical records and informed consent;
d. There is the presence or absence of the reasonable medical risk in accordance with health science; and
e. There is the presence or absence of the forgiveness reasons and or the legal justification reasons.

Based on those explanations, not every bad result of the practice of medical delegation can easily be stated as a criminal action. Therefore, the legal enforcement prudence is needed to determine whether the delegation of medical authority fulfills the elements of medical malpractice by considering other factors as explained above.

4. Conclusion

The regulation of the delegation of medical authority to nurses has actually been stipulated in the provisions of the rules and regulations. The delegation of medical authority occurs in the legal relations because of both the law and the agreement in which the parties bind themselves to the achievements in the form of medical services to be carried out. The delegation of medical authority is an important part of the study of health administration law as the basis of legal legitimacy for the taken medical action. The absence of legal delegation of authority has resulted in the loss of the legal authority of nurses in carrying out medical actions. If this administrative violation and the negligence and error cause loss or death for the patients, the potential nurses-doctors are held accountable for both civil and criminal law.

The researchers suggested to clearly regulate about the delegation of medical authority in the regulation of the health minister of the Republic of Indonesia as mandated by Article 65 paragraph (4) of *UU TK*. Thus, the job description and determination of the mechanism of the delegation to nurses by doctors can guarantee the legal certainty, be useful and fair for the doctors-nurses and the interests of the rights of the patients to obtain the quality health services.

5. Acknowledgments

We would like to thank Universitas Sebelas Maret, Surakarta, for providing the opportunity for the researchers to access the legal materials provided by the Central Library at Universitas Sebelas Maret. We also would like to thank the anonymous reviewers who had provided suggestions and critics for the perfection of this article.

6. References

1. Bittner NP, Gravlin G. Critical Thinking, Delegation, and Missed Care in Nursing Practice, JONA: The Journal of Nursing Administration. 2009; 39(3):142-146.
2. Budijanto D, Astuti WD. Tingkat Kecukupan Tenaga Kesehatan Strategis Puskesmas di Indonesia (Analisis Implementasi Permenkes No. 75 tahun 2014), Buletin Penelitian Sistem Kesehatan, 2015; 18(2):181.
3. Corazzini K N, Anderson R A, Mueller C, Thorpe J M, McConnell E S, RN Jurisdiction over Nursing Care Systems in Nursing Homes: Application of Latent Class Analysis, National Center for Biotechnology Information. 2012; 61(1):28-38.
4. Heryanto B, Malpraktik Dokter dalam Perspektif Hukum, Jurnal Dinamika Hukum. 2010; 10(2):179-186.
5. http://www.depkes.go.id/resources/download/pusdatin/infodatin/infodatin%20perawat%202017.pdf., on March 21, 2019
6. Iswandari HD. Aspek Hukum Penyelenggaraan Praktik Kedokteran: Suatu Tinjauan Berdasarkan Undang-Undang No. 29 Tahun 2004 tentang Praktik Kedokteran, Jurnal Manajemen Pelayanan Kesehatan. 2006; 09(2):52-57.
7. Liaschenko J, Peter E. Nursing Ethics and Conceptualizations of Nursing: Profession, Practice and Work, Journal of Advanced Nursing. 2004; 46(5):488-495.
8. Maddox C, Hallsall D, Hall J, Tully MP. Factors Influencing Nurse and Pharmacist Willingness to Take or Not Take Responsibility for Non-Medical Prescribing, Research in Social and Administrative Pharmacy. 2016; 12(1):41-55.
9. Marzuki PM. Penelitian Hukum-Edisi Revisi. Kencana, Jakarta, Indonesia, 2014.
10. Mertokusumo S. Mengenal Hukum Suatu Pengantar. Liberty, Yogyakarta, Indonesia, 2008.
11. Miles MB, Huberman AM, Saldana J. Qualitative Data Analysis: A Methods Sourcebook-Third Edition, SAGE

[32] *Ibid*., 206.

Publications, California, 2014.
12. Muntaha, Hukum Pidana Malpraktik: Pertanggungjawaban dan Penghapus Pidana, Sinar Grafika, Jakarta, Indonesia, 2017.
13. Novianto WT. Penafsiran Hukum dalam Menentukan Unsur-Unsur Kelalaian Malpraktek Medik (Medical Malpractice), Yustisia. 2015: 4(2):488-503.
14. Novianto WT, Sengketa Medik. Pergulatan Hukum dalam Menentukan Unsur Kelalaian Medik, UNS Press, Surakarta, Indonesia, 2017.
15. Pattypeilohy A, Sutarno, Adriano, Kekuatan Hukum Pelimpahan Wewenang dari Dokter kepada Ners Ditinjau dari Aspek Pidana dan Perdata, Legality. 2017; 25(2):172-184.
16. Pullon Competence S. Respect, and Trust: Key Features of Successful Inter-professionalism Nurse-Doctor Relationships, Journal of Inter-professionalism Care, 2008; 22(2):133-147.
17. Rahardjo S, Ilmu Hukum-Cetakan Ketujuh PT. Citra Aditya Bakti, Bandung, Indonesia, 2012.
18. Ridwan HR, Hukum Administrasi Negara-Edisi Revisi-Cet. 13, Rajawali Press, Jakarta, Indonesia, 2017.
19. Simek J, Specifics of Nursing Ethics, Kontakt. 2016; 16(6):e64-68.
20. Stein-Parbury J, Liaschenko J. Understanding Collaboration between Nurses and Physicians as Knowledge at Work, American Journal of Critical Care. 2007; 16(5):470-477.
21. Sudrajat T, Mardianto A. Hak atas Pelayanan dan Perlindungan Kesehatan Ibu dan Anak (Implementasi Kebijakan di Kabupaten Banyumas), Jurnal Dinamika Hukum. 2012; 12(2):261-269.