

# LEGAL RESPONSIBILITIES OF NURSES IN PROVIDING HEALTH SERVICES (FIELD STUDY AT CILANDAK MARINES HOSPITAL)

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## **Abstract**

*The abstract contains a brief description of the problem and the purpose of service, the method of implementation used, and the results of service. The emphasis of abstract writing is mainly on the results of devotion. Abstract written in Indonesian and English. Abstract typing is done with a single space with margins that are narrower than the right and left margins of the main text. Keywords need to be included to describe the realm of the problem under study and the basic terms that underlie the implementation of service. Key words can be single words or compound words. Abstract written with time new romance 10. The number of key words 3-5 words. These key words are needed for computerization. Searching for research titles and abstracts is made easy with these key words.*

**Keywords:** *Community Awareness, Management, Household Waste.*

## **Abstrak**

The abstract contains a brief description of the research problem and objectives, implementation methods used, and research results . The pressure for writing abstracts is mainly on research results . Abstracts are written in Indonesian and English. Abstract typing is done single-spaced with narrower margins than the right and left margins of the main text. Key words need to be included to describe the problem domain being researched and the main terms that underlie the implementation of the research . Key words can be single words or combinations of words. Abstract written with time new roman 10. Number of key words 3-5 words. These keywords are necessary for computerization. Searching for research titles and abstracts is made easier with these keywords.

**Keywords :** Community Awareness, Management, Household Waste.

## **INTRODUCTION**

Health is a human right inherent in every citizen, and the state has an obligation to guarantee the protection of this human right. Protection in this case is regulated in Article 28 Paragraph H (1) of the 1945 Constitution of the Republic of Indonesia which states: "every person lives in physical and spiritual prosperity, has a place to live, and has a good and healthy living environment and has the right to receive health services ."

Professional and competent health workers in their field must provide the best health services to the community. They must adhere to professional standards and respect patients while carrying out their duties. Professional standards regulate how health workers must treat patients in accordance with the needs, conditions and requirements of patients and health service facilities. <sup>1</sup>The health workers referred to in this thesis are nursing staff. Because, according to Law Number 36 of 2014 concerning Health Personnel, nursing personnel are part of the health personnel who provide health services to the community.

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<sup>1</sup>Sri Praptaningsih. The Legal Position of Nurses in Health Service Efforts in Hospitals. (Jakarta: PT. RajaGrafindo Pustaka, 2006). p 9.

The authority that is still mixed with the authority of doctors has blurred the meaning and boundaries of legal responsibility. This results in losses for the patient, both physically, psychologically and materially. Patients do not know the goals and objectives of their lawsuit if a medical action occurs that is detrimental to the patient. This error will ultimately negate the arguments of the lawsuit or lawsuit being filed. In the end, the community as recipients of health services do not receive legal certainty and protection.

To ensure legal certainty regarding the professional responsibilities of nurses as part of the health workforce, they must refer to the applicable laws. On August 8 2023, the President of the Republic of Indonesia signed Law Number 17 of 2023 concerning Health which was ratified at the DPR Plenary Session on July 11 2023. The new Health Law which was implemented this year has become a hot issue in the world of health . This law provides new direction in regulating the health system in Indonesia. The new Health Law is a regulation that regulates various aspects of the health system in Indonesia. This law covers things such as promotive, preventive, curative and rehabilitative efforts. The aim is to improve the quality of health services, protect the community, and regulate the authority and responsibilities of health workers, including nursing staff.

For ensure certainty law in matter not quite enough answer profession nurse as part from power health , must refers to applicable laws . On August 8 , 2023, President The Republic of Indonesia signed Constitution Number 17 of 2023 concerning Health which has been confirmed in Meeting DPR Plenary on 11 July 2023. New Health Law implemented in the year This has become hot issue in the world of health . Constitution This give instruction new In settings system health in Indonesia. New Health Law is governing regulations various aspect in system health in Indonesia. Constitution This covers things like effort promotive , preventive , curative and rehabilitative . The goal is For increase quality service health , protection for society , and regulate authority as well as not quite enough answer power health including power nursing .

## RESEARCH METHODS

The research method used is a normative legal research method (normative juridical research) or often referred to as doctrinal research *or* can also be referred to as library legal research by conducting legal studies by examining library materials. The legal research approaches *used* in this research are the statutory approach *and* the conceptual *approach* . The type of data used in this research is secondary data obtained from legal material sources. This research uses the concept of law, law is positive norms in the national legal system or law as a regulatory system, therefore the legal logic used is based on deductive syllogism or deductive logic, to build a positive legal system. Processing legal materials through logical, systemic and coherent legal *reasoning*

## RESULTS AND DISCUSSION

- A. **Regulation of Nurses' Legal Responsibility if they commit Negligence based on Law Number 17 of 2023 concerning health**
  1. **Nursing Responsibilities**

The Indonesian dictionary <sup>2</sup>defines "responsibility" as the state of having to bear everything (if something happens, someone can be sued, blamed, sued, etc.), and can also be interpreted as the function of accepting a burden because of the attitude of someone or another party. Responsibility shows responsibility. where someone is responsible for providing services or completing tasks in a manner appropriate to their job. Nursing responsibilities are obligations that must be fulfilled by a nurse to achieve the expected results in providing nursing care to patients or clients and to measure the quality of the nurse's work. Nurses' responsibilities must be known and measured according to applicable standards.

In carrying out their duties, a nurse must fulfill their ethical responsibilities by considering their moral principles or behavioral attitudes in providing nursing care in accordance with their commitment and role and function. Nursing responsibility means a trusted and trustworthy place where professional nurses must always be polite, honest, careful and thorough when working. However, accountability means that nurses are responsible for the outcomes of their profession's care and for bringing practitioners themselves there. The head of the room is responsible for all decisions, including selecting or selecting staff, and supervising the implementation of his staff's duties. Nurses who provide nursing care have the authority and autonomy to decide how to care for patients in accordance with their job description and professionalism in accordance with their level of education. In contrast, team nurses understand responsibility for achieving the goals of nursing care provided to the patients they manage. Because a nurse has a relationship with his family, delegation, obligations, and the credibility of his profession, sensitivity and care are needed in every outcome of the action he takes.

Based on article 274 of law number 17 of 2023, the nursing profession which is one part of the health workforce in carrying out practice is obliged to do the following things:

- a) Providing health services in accordance with professional standards, professional service standards, standard operational procedures, and professional ethics and patient needs
- b) Obtain consent from the patient or family for the actions to be given
- c) Maintain patient health secrets
- d) Create and maintain records and/or documents regarding examinations, care and actions taken; And
- e) Refer patients to medical personnel or other health personnel who have appropriate competence and authority.

Meanwhile, according to article 275 of law number 27 of 2023, medical personnel and health workers who practice in health service facilities are obliged to provide first aid to patients in emergencies and/or disasters. Medical personnel and

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<sup>2</sup>KBBI (Big Indonesian Dictionary). Online version of the dictionary (Online). Accessed on December 10, 2020. <https://kbbi.web.id/didik>

health workers who provide health services in the context of life-saving measures or preventing someone's disability in emergencies and/or disasters are excluded from claims for compensation.

## 2. Types of Nursing Responsibilities

### a) The Main Responsibility of Nurses towards God Almighty

From a normative ethical perspective, the most important responsibility of a nurse is responsibility before God. This includes, but is not limited to, whether the nurse goes to her place of duty sincerely because of HIS God; did the nurse pray for the patient during treatment and ask God for his recovery; does the nurse teach the client about the benefits of illness and the benefits of prayer for recovery; and whether the nurse helps clients share their own experiences with others.<sup>3</sup>

### b) Responsibility to clients and society

Responsibility is the most important component of nursing ethics, which means that a person must be prepared to face the worst, accept rewards, and provide information about what one does when performing tasks. Nurses' responsibilities are closely related to their main duties, such as providing care and delegating to other nurses. Giving injections and drugs are examples. Although sometimes the delegating partner is responsible for the error, the nurse is still responsible. In addition, nursing ethics encourages nurses to be responsible, especially considering that humans are perfect and unique creatures.

### c) Responsibility towards colleagues and superiors

One such responsibility is to thoroughly record (document) when actions are taken; provide warnings when colleagues make mistakes or violate standards;

### d) Responsibility to the profession

These responsibilities are as follows: nurses are responsible for improving their own or a group's professional capabilities by acquiring knowledge, skills, and experience; nurses are responsible for upholding the reputation of the nursing profession by behaving and acting well; and nurses are jointly responsible for building and maintaining the quality of nursing professional organizations as a means of serving patients.<sup>4</sup>

### e) Responsibility to the country

Nurses have many responsibilities, including complying with government regulations regarding health and nursing and participating in government efforts to improve public health and nursing services.

### f) Responsibility for tasks

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<sup>3</sup>Maryam. (2016). Nurses' Legal Responsibility for Patient Losses is Linked to Law Number 8 of 1999 concerning Consumer Protection. *Cataloging Journal*, 4(10), 191-201. <https://media.neliti.com/media/publications/149771-IDrespons-respons-Hukum-perawat-terhadapke.pdf>

<sup>4</sup>Asmawati, A. (2011). *Book of Professional Ethics and Health Law*

The nurse's responsibilities are as follows: maintaining high quality nursing services accompanied by professional honesty in applying nursing knowledge and skills according to the needs of individuals, families and society; nurses are obliged to keep confidential the information they know about nurses will not use their nursing knowledge and skills for purposes that are contrary to humanitarian norms; nurses will not use their nursing knowledge and skills for purposes that are contrary to applicable laws; nurses always try to carry out their duties and obligations with full awareness; and nurses always try to remain conscious people.<sup>5</sup>

Based on Article 279 of Law Number 17 of 2023, medical personnel and health workers are morally responsible for:

- a) Devote yourself according to your scientific field
- b) Behave and behave in accordance with professional ethics
- c) Prioritize the interests of patients and society above personal or group interests, and
- d) Increase knowledge and follow developments in science and technology

In carrying out practice, medical personnel and health workers who provide health services to patients must make the best efforts. The best efforts in question are carried out in accordance with norms, service standards and professional standards as well as patient needs. The practices of medical personnel and health workers are carried out based on an agreement between medical personnel or health workers and patients based on the principles of equality and transparency.

Article 283 of Law Number 17 of 2023 also regulates that regarding the administrative responsibilities of nurses as health workers who carry out individual practice, they are required to provide clear identity including the number of the Practice Permit (SIP) and Registration Certificate (STR) at their individual practice place.

### **3. Nurse's Liability**

Nurses have responsibilities towards clients, directors, and workers or employees. As professionals, nurses have responsibilities towards professional ties, and as members of the health team, nurses have responsibilities towards doctors, team leaders. A nurse, for example, gives an injection to a client. This is an example of collaboration with a doctor, where the nurse makes a list of costs for the procedures and treatment provided. These actions have consequences for clients, physicians, hospitals, and the profession. Nurses are responsible for all professional duties, from changing linens, administering medication, to preparing clients to go home. The results can be measured and observed. By comparing nurses' work with the standards listed in input, process, or output, the nurses' association (PPNI) or nurses' association or hospital association has created standards. For example, do

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<sup>5</sup>Nuraliyah, P., Firdaus, & Hasanah, U. (2020). Responsibilities of Nurses in Carrying Out Medical Procedures (Vitamin C Injections) Outside Working Hours in Siak Dri Indrapura Regency. JOM Faculty of Law, University of Riau, VII(1), 1–23

nurses wash their hands using the standard five stages, namely washing their nails, soles, back, and using soap with running water three times, and so on.

The new term is “liability,” which means holding someone responsible because their negligence caused harm to another party. In the field of health services, liability issues arise as a result of the relationships regulated in agreements between health workers (such as doctors, nurses, midwives and other health workers) and service users (also called clients). Accountability can be defined as the nurse's involvement in the decision-making process and understanding of the decision and its consequences. Nurses must have accountability, that is, if a party sues, they must state that they are ready and brave to face the lawsuit. Nurses must be able to explain what they do, especially as it relates to their work. There are different types of liability:

a) Contractual Liabilities

This liability comes from broken promises, namely failure to fulfill an obligation (achievement) or the rights of another party that arise from a contractual relationship. Efforts to fulfill obligations are what the health care provider must undertake in relation to this relationship, not the outcome. Therefore, health workers (nurses, doctors and other health workers) are only responsible for medical procedures that do not meet standards, or in other words, medical procedures that can be considered a violation of civil law.

b) Liability in Tort

This liability is a liability that is not based on contractual obligations, but on actions that violate the law. The definition of unlawfulness is not only limited to actions that are contrary to the law, one's own legal obligations, or the legal obligations of others, but also actions that are contrary to good morality and ethics when interacting with other people or their objects.

c) Strict Liabilities

Remembering that a person must be responsible even if they have not made any mistakes (liability without fault), whether intentional, recklessness or negligence. This type of liability is often referred to as no-fault liability. This type of liability usually applies to purchased goods or commercial goods, where the manufacturer is obliged to pay compensation if a disaster occurs due to the product they make, unless the manufacturer has provided prior warning about the possible risk.

d) Vicarious Liability

This type of liability arises because of mistakes made by subordinates. In the context of medical services, hospitals (as employers) can be held liable for mistakes made by medical personnel who work in sub-ordinate positions. Article 305 paragraph (1) of Law Number 17 of 2023 states that patients or their families whose interests are harmed by the actions of medical personnel or health workers in providing health services can complain to the professional disciplinary council. This shows that the nursing profession as

part of the health workforce has responsibility, meaning that every nurse is willing and able to be sued if in the implementation of health services there is negligence that can result in harm to patients.

#### **4. Principles of Liability in Health Legal Aspects**

Some of the principles of liability used in health law are as follows: 1. The principle of liability based on fault. Requires the plaintiff, or injured party, to prove that he is at fault. 2. The principle of liability based on presumption of guilt. Requires the plaintiff to prove his innocence. 3. The principle of transferred liability. Requires the plaintiff to be responsible for certain actions. An employer-employee relationship is not necessarily necessary for this accountability; it can be a relationship that represents corporate interests. 4. The principle of absolute liability or absolute liability: The defendant, or party who caused the loss, is always liable without considering whether there was a mistake or who was at fault.<sup>6</sup>

According to general legal theory, legal responsibility consists of criminal responsibility, civil responsibility and administrative responsibility. The concept of legal responsibility, or accountability, is a concept related to the concept of legal obligation. that a person is legally responsible for certain actions or that if his actions conflict, he will be subject to sanctions. A person is responsible for his or her own actions if the sanction is directed at the direct perpetrator. The subject of legal responsibility and the subject of legal obligation are the same in this case. Nurses' legal liability is absolute if they provide care to patients without being recorded in the medical record. so that nurses are responsible without seeing errors. This concept of absolute responsibility considers the nurse's error in not recording nursing actions in the medical record. Although standard operating procedures are irrelevant for debate, because the nurse's actions do not harm the patient directly. According to the concept of absolute responsibility, there is a causal relationship between the people who are truly responsible and the loss, because medical record documentation and standard operational procedures are administration that must be carried out during nursing practice, so they cannot be categorized as a loss to the patient. Therefore, nurses are responsible for the administration of completing documentation of nursing actions in medical records that do not yet exist and the heaviest consequence that can be imposed is revocation of the practice permit.<sup>7</sup>

#### **5. Rights and Obligations of Nurses in Hospitals**

A professional nurse often experiences conflicts related to the scope of their duties and responsibilities when they work. To protect nurses from responsibilities related to decision making and implementation of nursing, as stated in Law No. 23 of 1992 concerning health in article 53 paragraph 1, it is very important to have

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<sup>6</sup>Anwar, A. (2018). Risk Liability in Health Legal Aspects. *Sasi*, 23(2), 149. <https://doi.org/10.47268/sasi.v23i2.105>

<sup>7</sup>Aris Prio Agus Santoso Ady Irawan, Ama. *GSLSK* (2022). Legal Liability of Nurses In Nursing Actions Viewed from Sociological Jurisprudence Concepts. *Ejournal.Mandalanursa.Org*, 6(4), 2598–9944. <https://doi.org/10.36312/jisip.v6i4.3870/http>

<sup>8</sup>strong legal protection . Rights are demands for something that is given or owned by someone in an effort to fulfill their needs based on the principles of justice and morality. Everyone has the right to do anything, express their opinion, give or receive something from certain institutions or individuals. In cases where someone demands his rights, moral responsibility is very important because it is the basis of the social contract relationship, both written and unwritten.<sup>9</sup>

a. Nurses' Rights

There are several types of human rights based on what they do, including:<sup>10</sup>

- 1) *Personal Rights*, also known as personal rights, include the freedom to express opinions them, determine their beliefs, and move.
- 2) *Property Rights* (The right to own something)  
Everyone has the right to own something without government interference, including the right to enter into agreements freely.
- 3) *Rights of Legal Equality* (Legal Equality Rights)  
Everyone has the same opportunities and legal treatment. Political rights, also known as political human rights, are the rights that every person has to be involved in government administration, such as running for president, governor, etc., as well as taking part in election activities.
- 4) *Social and Cultural Rights* (social and cultural human rights),  
The right a person has to determine their education, as well as to buy and sell the goods they own with the aim of developing the culture they desire.
- 5) *Procedural Rights*  
Procedural rights are the rights a person has to receive the same treatment when tried.

According to the Regulation of the Minister of Health of the Republic of Indonesia No. 26 of 2019 concerning Implementing Regulations of Law No. 38 of 2014 concerning Nursing, especially article 35, it is stated as follows:<sup>11</sup>

In carrying out nursing practice, nurses have the following rights:

- 1) Obtain legal protection as long as carrying out their duties in accordance with professional standards, service standards, standard operational procedures, and statutory provisions;

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<sup>8</sup>Reni Asmara Ariga. (2021). Concepts of Ethics, Morals, Values, Nursing Code of Ethics; Book Series Teach; Basic Concepts of Nursing (SZ Nasution (ed.)). CV BUDI Utama.

<sup>9</sup>Azis Mangara. (2020). Nursing Ethics: A Practical Book for Becoming a Professional Nurse (Kodri (ed.)). CV. Adanu Abimata

<sup>10</sup>Ibid

<sup>11</sup>Ministry of Health. (2019). Regulation of the Minister of Health of the Republic of Indonesia Number 26 of 2019 Nursing. Indonesian Ministry of Health [Internet]. 2019;(912):1–159

- 2) Obtain correct, clear and honest information from Clients and/or their families;
  - 3) Carrying out tasks in accordance with competence and authority;
  - 4) Receive service compensation for nursing services provided;
  - 5) Reject the wishes of clients or other parties that conflict with statutory regulations, codes of ethics, service standards, professional standards, or standard operational procedures;
  - 6) Obtain work facilities that comply with standards;
  - 7) Receive occupational safety and health protection, as well as treatment that is in accordance with morals, decency, human dignity and religious values.
  - 8) Have the opportunity to develop in his career; And
  - 9) Obtain additional rights in accordance with statutory regulations.
- Nurses are also entitled to compensation for the health services they provide, in addition to receiving compensation for services as intended in paragraph (1) letter d.

According to Claire Fagi (1975), the rights of nurses include<sup>12</sup>

- a) The right of a nurse to express himself through self-improvement and development in accordance with his educational background; And
- b) The right of a nurse to receive appreciation and compensation for services from the surrounding environment regarding his involvement in practice in accordance with his profession.
- c) The right to have a safe and secure workplace, free from physical and emotional stress.
- d) The right to obtain legal protection when carrying out professional practices in accordance with professional standards.
- e) The right to establish quality standards in nursing practice.
- f) The right to participate in the formulation of policies affecting the nursing profession.
- g) The right to participate in social and political organizations that can enable nurses to participate in improving the quality of care. Additionally, nurses have the right to privacy. This means they have the right to sue if patients or other people defame them with words or actions that are detrimental to their profession.

b. Nurse's Obligations

An obligation is something that must be done .<sup>13</sup>Regulation of the Minister of Health of the Republic of Indonesia No. 26 of 2019 concerning Implementing Regulations of Law No. 38 of 2014 concerning Nursing,

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<sup>12</sup>Wahyu Asnuriyati, TM (2021). Textbook of Nursing Ethics (1st ed.). CV. Archipelago Literacy Eternal.

<sup>13</sup>Masruroh Hasyim. (2019). Handbook of Nursing Ethics. Indonesian Library Village

specifically Article 36 states that nurses have the following obligations in nursing practice:

- 1) Maintain and protect client secrets regarding their health status;
- 2) Obtain information about the care the client needs;
- 3) Provide information about the care the client needs.  
Providing independent care to nurses according to nursing service standards and statutory provisions;
- 4) Providing nursing services in accordance with the code of ethics, nursing service standards, professional standards, standard operational procedures, and statutory provisions;
- 5) Providing referrals to clients who cannot be treated to nurses or other health workers who are more appropriate according to their scope and level of competence; And
- 6) Documents nursing care according to standards; and maintain nursing records in accordance with standards.
- 7) Provide complete, honest, correct, clear and easy to understand information about nursing actions to clients and/or their families in accordance with the limits of their authority;
- 8) Delegating authority to other health workers in accordance with the nurse's competency; And
- 9) Carry out special assignments set by the government. Nurses who work in nursing practice must consistently improve the quality of services they provide by meeting the standards set by the government

A nurse has several additional obligations:

- 1) Comply with all relevant institutional regulations;
- 2) Appreciate and respect all patient rights.
- 3) Nurses are obliged to provide patients and clients with time and opportunities to connect with those closest to them, as long as this does not conflict with regulations or professional standards. They must also provide opportunities for patients to worship according to their religion and beliefs.
- 4) A nurse must consider responsibilities stemming from the nursing needs of individuals, families and society when carrying out their service.
- 5) They must also protect the environment by respecting cultural values, customs and religious survival when carrying out nursing activities.
- 6) They must also carry out nursing activities in a manner that is sincere and in accordance with the dignity and noble traditions of nursing.
- 7) A nurse must avoid goals that conflict with religious norms and professional ethics.
- 8) A nurse must not differentiate between patients based on race, ethnicity, religion, political beliefs and social position.

- 9) A nurse must maintain and protect the safety and security of patients while they work.
- 10) Creating good working relationships between nurses and other health workers to achieve health service goals.
- 11) Maintain the good name of the profession by showing good characteristics and behavior.
- 12) Always maintain, develop and maintain the quality of nursing organizations as a means of service.
- 13) Nurses must participate actively in encouraging the government and other institutions to improve health and nursing services.
- 14) In certain situations, nurses must carry out humanitarian work within the limits of their authority.

## 6. Nursing Negligence in Health Services

Negligence is *an* attitude that is not careful, that is, not doing what someone who is careful would do naturally or conversely doing what someone who is careful would not do in that situation. Negligence is more likely to be unintentional, lack of thoroughness, carelessness, and indifference to the interests of others, but its purpose is not to produce bad results. If negligence does not cause loss or injury to another person and that person can accept it, negligence is not a violation of law or a crime. However, if the negligence causes material loss, accidents, or even the lives of other people, then the negligence is considered gross (*culpa lata*), serious, or criminal.<sup>14</sup>

Mistakes made by nurses and health workers include poor service or not meeting professional standards. Just as the medical field is familiar with medical errors and medical negligence, nurses, as ordinary people, also often make mistakes and negligence. All nurses make mistakes. However, if this error occurs repeatedly, it is called negligence. Mistakes are natural, and eliminating errors is impossible because the patient's healing is not always as perfect as desired. However, making repeated mistakes is a sign of carelessness or trivialization.<sup>15</sup>

One type of nursing practice violation is negligence, where nurses do not carry out practical activities that should be carried out at their level. In addition, nurses are considered negligent if they do things they should do based on their expertise but do not do so or perform actions below predetermined standards. In nursing practice, negligence is when a nurse does not utilize the nursing skills and knowledge necessary to care for a patient or injured patient in the same setting.<sup>16</sup>

Malpractice is different from negligence; nurses who do things they should not do at their level are considered malpractice. ethical violations or forms of legal

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<sup>14</sup>Gunawan, D. (2022) Negligence – Malpractice in Nursing Care, Ministry of Health Directorate General of Health Services.

<sup>15</sup>Sciences, H. (2016) 'Theories of Nursing Authority', 4(1), pp. 1–23.

<sup>16</sup>Ni Ketut Mendri, ASP (2011) Professional Ethics and Health Law. Yogyakarta: Pustaka Baru Press.

violations, according to how the issue of negligence may arise.<sup>17</sup>In criminal law there are four elements that form the benchmark for error, or negligence:

- a. Contrary to the law ( *wederrechtelijkheid* )
- b. The consequences can be imagined ( *voorzienbaarheid* )
- c. The consequences can be avoided ( *vermijdbaarheid* )
- d. So that his actions can be blamed on him ( *verijtbaarheid* )

*Commission* is a term used to describe negligence committed by nurses. Failure to do something that should be done is negligence. The three types of negligence are as follows:

- a. Malfeasance is when nursing performs actions that are unlawful or inappropriate or appropriate, such as carrying out nursing actions without appropriate, adequate or appropriate indications;
- b. Misfeasance is when care performs appropriate nursing actions but is carried out incorrectly, such as carrying out nursing interventions that violate procedures.
- c. Nonfeasance: this situation occurs when the nurse does not carry out the required nursing actions. For example, the nurse should have secured the patient's bed restraint, but did not.

According to article 190 of Law Number 36 of 2009 concerning health, leaders of health service facilities and/or health workers who practice or work at health service facilities who deliberately do not provide first aid to the patient's partner must immediately resolve this negligence through mediation. Heads of health facilities and/or health workers who commit negligence that results in death or disability can be punished with imprisonment for a maximum of 10 years and a fine of a maximum of 1 (one) billion rupiah if they do not provide first aid to patients who are in an emergency situation.

In dealing with negligence, nurses must pay attention to the following things:

- a. If a nurse does something carelessly or does not do what should be done prudently, the nurse can be considered negligent in certain situations shown by evidence.
- b. Negligence can be prosecuted without a person being a health professional. For example, a person can be sued for negligence if they cause injury to another person while driving a car.
- c. If a nurse injures a patient while on duty, they can be sued for negligence. This is often referred to as nursing malpractice because the nurse is considered to have done something that caused injury to the patient.
- d. Patients can claim compensation for injuries caused by the nurse's malpractice actions, only if the nurse fully agrees that the malpractice actions

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<sup>17</sup>Nurhayani et al. (2021) 'Criminal Health Workers Against Malpractice and Negligence in Circumcision', Proceedings Call For Paper Thalamus Faculty of Medicine Muhammadiyah University Surakarta December 2021,

caused the injuries. There are no lawsuits if all parties agree about the cause of the injury and the damage it causes. Lawsuits are simply a way to resolve differences of opinion based on facts.

The plaintiff needs other elements to prove it. This means that the plaintiff must be responsible for proving that the allegations are true according to the claims claimed. The plaintiff must show proof of negligence<sup>18</sup> as follows:

- a. Shows that the nurse has a responsibility towards the plaintiff
- b. Showing that there is liability, and the plaintiff must determine the appropriate standard of care
- c. The plaintiff must be able to prove that the nurse violated the standard of care after the standard of care has been determined;
- d. If there was a violation, the plaintiff must show proof of the violation that caused the injury;
- e. The plaintiff must be able to prove that there was a violation; once they can prove that there was a breach that caused the injury, the plaintiff must be able to prove that there was harm caused by the breach;

A nurse may be accused as a defendant in one of the civil suits relating to medical malpractice, resulting from the nurse's negligence. One or more plaintiffs have the authority to bring a lawsuit. Plaintiffs in medical malpractice cases are usually patients and their family members, such as their spouses and children. To initiate a civil lawsuit, the plaintiff must make a client statement. This statement must explain the defendant's alleged negligence. The defendant is the person who allegedly damaged the patient. Doctors, nurses, midwives, and health institutions such as hospitals and other health institutions can be charged.<sup>19</sup>

One or more of the following defenses may be used by a nurse to face allegations of negligence:<sup>20</sup>

- a. The nurse took reasonable and prudent actions under the circumstances
- b. Judgment in error. If the evidence shows that the incident was an error in judgment rather than a failure to act reasonably and prudently, a court may not find there was no negligence.
- c. Other actions of the defendant. Every defendant is given the opportunity to have the right to provide evidence in his own defense. It is important to note that health care delivery is multidisciplinary, defendants or witnesses may testify about how they testified they interacted with fellow health

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<sup>18</sup> Rokayah, S. and Widjaja, G. (2022) 'Negligence and Medical Malpractice', Cross-border, 5(1), pp. 463–473. Available at: <https://news.detik.com>

<sup>19</sup> Widodo Tresno Novianto (2015) 'Legal Interpretation in Determining the Elements of Medical Malpractice', Yustisia Jurnal Hukum, 92(2), pp. 488– 503. doi: 10.20961/yustisia.v92i0.3832

<sup>20</sup> Ni Ketut Mendri, ASP (2011) Professional Ethics and Health Law. Yogyakarta: Pustaka Baru Press

professionals during the incident that gave rise to the lawsuit. The court must then determine the proportion of negligence, if any, on the part of each defendant.

- d. Time limits The plaintiff must file a lawsuit within the time period determined by statutory regulations. Plaintiffs generally cannot sue after this period is over; however, there are exceptions for minors and people who lack mental capacity.

Examples of cases of nurse negligence which are suspected of being criminal acts are as follows:<sup>21</sup>

- a. A nurse has been charged with negligence regarding a baby's death. Nurse Mrs. McKenley graduated from nursing school in 1976. The nurse was blamed for connecting an IV catheter installed in the arm of an 11-month-old child to an oxygen cylinder. As a result, within 3-6 seconds, the baby dies and explodes like a balloon. This action stated that there was an alleged negligence that could be classified as gross negligence so that the criminal defendant could be held responsible for the death of the baby. The baby was admitted to hospital for observation because he was suffering from respiratory problems. The public prosecutor did not provide further evidence, because the health worker's witness stated that the tube was connected during resuscitation, namely after Mrs. Mckenley left the child's bed. Mckenley initially told police that he did not connect the intravenous tube to the oxygen line. The defendant was declared not guilty because the evidence was inconclusive.
- b. The case in Jakarta around the end of 2003, occurred due to nurse negligence and the maternity hospital's ignorance about LISTER verban scissors. Lister verban scissors are not available in hospitals so to cut the verban, non-LISTER type scissors are used as a result, part of the baby's tissue is cut off, including the nails.

## **B. Nurses' Legal Responsibility for Negligence in Carrying Out Health Services**

The legal responsibility of nurses in providing health services includes 3 things including: Criminal law responsibility, civil law responsibility and Administrative Law Responsibility.

### **1. Criminal Law Responsibility**

In the Criminal Code, acts that cause another person serious injury or death which are carried out accidentally are regulated in articles 359 and article 360 of the Criminal Code, namely:

- a. There is an element of negligence ( *culpa* )
- b. Existence of Certain Actions
- c. The result is serious injury or death of another person

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<sup>21</sup> Guwandi (2010) Medical Law. 4th edn. Jakarta: FK-UI Jakarta.

- d. There is a causal relationship between the action and the result of the injury.<sup>22</sup>

If these four elements are compared with the elements of murder in Article 338 of the Criminal Code, then it is clear that the elements in points b), c), and d) of Article 359 are the same as the elements of murder in Article 338, except for the element of error, namely in Article 359 error caused by carelessness ( *culpa* ), whereas in Article 338 murder is caused by intention ( *dolus* ).<sup>23</sup>

In the same way, if we compare medical risks with medical malpractice. In terms of medical risks and medical malpractice, elements b), c), and d), Article 359 states that: Nurses carry out certain actions against patients which can cause serious injury or death to other people with a cause-and-effect relationship. However, medical risk does not have an element of negligence, whereas medical malpractice does. In addition, negligence, especially in the health sector, is also associated with services that do not meet professional standards, which must also be used in practice to distinguish between medical risk and malpractice.

If a patient undergoes a procedure that is in accordance with medical service standards, but the patient ends up experiencing serious injuries or dies, that is called a medical risk. On the other hand, if a nurse performs a procedure that is not in accordance with nursing service standards, it is called malpractice.<sup>24</sup> Nurses must provide clear and complete information to patients in language that is easy to understand so that patients do not misunderstand the dangers that may occur. This is where the importance of the health interview is for the patient to be willing to give consent to the treatment that will be given by the nurse to cure the disease through a therapeutic transaction. This shows that the negligence factor is very important in the decision whether a nurse will be punished or not. In addition, because one of the elements of Article 359 and Article 360 of the Criminal Code is not met by medical risks, neither Article 359 nor Article 360 of the Criminal Code can be applied to the actions of nurses who face medical risks.

As stated in articles 50 and 51 paragraph 1 of the Criminal Code, nurses' actions towards patients also have justification. However, in criminal law, liability for wrongdoing must meet three conditions:<sup>25</sup>

- a. The ability to be responsible for the perpetrator means that the mental condition of the perpetrator must be normal

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<sup>22</sup> Legal Responsibilities of Doctors in Providing Health Services to Patients, Dhimas Panji Chondro Asmoro, Maksigama Journal, Vol 13 Number 2 November 2019 period. 125-137.

<sup>23</sup> Isfandarie, Anny. Medical Malpractice and Risk. Semarang: Library Achievement. Jakarta.2005

<sup>24</sup> *Ibid*

<sup>25</sup> *Ibid*

- b. There is an inner relationship between the perpetrator and his actions which can be intentional ( *dolus* ) or negligence ( *culpa* ).
- c. There is no excuse for forgiveness.

Therefore, so that nursing actions do not violate the law, these actions must be <sup>26</sup>carried out in accordance with nursing professional standards or carried out in a *lege artis* manner which is reflected in the presence of medical indications that are in accordance with the specific treatment goals. Please be aware that, despite nurses' best efforts, medical procedures sometimes produce undesirable outcomes for patients and caregivers. Because almost all medical procedures are basically abuse that is justified by law, it is very difficult to avoid the risk of injury or death, especially in cases of anesthesia and surgery. As explained above the principle of "no crime without fault" is the basis of criminal law, as mentioned previously. Furthermore, article 2 of the Criminal Code states that "criminal provisions in Indonesian legislation apply to every person who commits a mistake", which means that every person can be held criminally responsible for the actions they commit. Based on this provision, the nursing profession is not affected by this article. What's more, a nurse is always involved in actions regulated in the Criminal Code in her daily work.<sup>27</sup>

Criminal law requires justificatory and forgiving reasons in jurisprudence to eliminate criminal acts in health services. However, this reason does not necessarily eliminate criminal acts. Actions carried out by health workers as legal subjects in society can be distinguished from everyday actions that are not related to their profession. In the same way, the legal responsibilities of health workers can be differentiated between responsibilities related to their work and responsibilities related to professional rules, such as the Indonesian nursing code of ethics, and responsibilities to rules from the fields of administration, criminal law, and civil law. .<sup>28</sup>

In criminal law, sanctions are basically punishment in the form of torture or restriction of freedom of individuals who commit criminal acts. In the hope that the criminal process will deter the perpetrator or deter others. Everyone in Indonesia has the full right to obtain justice, which can be achieved by submitting requests, complaints and lawsuits. Both civil and criminal cases must go through a free and impartial judicial process by referring to

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<sup>26</sup> *Ibid*

<sup>27</sup> Nasution, Bahder Johan. 2005. Law on Health Care and Responsibilities of Doctors. Jakarta: Rineka Cipta.

<sup>28</sup> Adami, Chazami. 2007. Medical Malpractice. Malang: Pt Bayumedia Publishing

procedural law which guarantees an honest and fair examination by an honest judge.<sup>29</sup>

Based on Article 308 paragraph (1) of Law Number 17 of 2023, medical personnel or health workers must first request a recommendation from the professional disciplinary council before they can be subject to criminal sanctions. Recommendations from the panel are given after a written request is submitted by a civil servant investigator or Indonesian state police investigator . This recommendation will help determine whether the professional practices carried out by medical personnel or health workers are in accordance with professional standards, services and operational procedures. Recommendations are provided within a maximum of fourteen working days from receipt of the application.

## 2. Civil Law Liability

### a. Legal Liability Due to Default

If someone does not fulfill the responsibilities stipulated in an agreement or contract, it is called default. Basically, the purpose of civil liability is to pay for errors or violations committed by health workers, including patients,<sup>30</sup> which cause them to suffer losses. In civil law, if they do not do what they are promised to do, do what they do but are late, or carry out what was promised but not as promised, it can be called a default.

In connection with this issue, the inability of a health worker to fulfill the conditions stated in the agreement that has been entered into with the patient is a breach of contract which is referred to in the civil responsibility of a health worker. If there is an agreement between the health worker and the patient, which can be considered as an agreement to do something, then a lawsuit based on the agreement or agreement that occurred cannot be made. The patient contacts or visits a healthcare provider and the provider fulfills the patient's request for treatment. This is now known as a treaty. The patient has to pay a certain amount in this case. Meanwhile, health workers actually have to do a good job to cure patients of their illnesses. However, a healthcare professional is only responsible for providing assistance to the best of their ability as healing is not always possible.<sup>31</sup> The health worker must be able to prove in a lawsuit for breach of contract that he or she has actually entered into an agreement and then committed a breach of contract. Therefore, patients must have sufficient evidence to show that they

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<sup>29</sup> Prinst, Darwan. 2001. Socialization and Dissemination of Human Rights Enforcement. Bandung: Citra Aditya Bhakti.

<sup>30</sup> Aziz, Noor M. 2010. Legal Research Report on the Relationship between Mdik Staff, Hospitals and Patients. Jakarta: Ministry of Law and Human Rights

<sup>31</sup> Ibid

suffered losses as a result of not fulfilling the obligations of health workers in accordance with the medical professional standards that apply in the therapeutic contract.<sup>32</sup>

b. Legal Responsibility for Unlawful Actions

Classical civil liability is liability due to fault. Based on the three principles set out in articles 1365, 1366, and 1367 of the Civil Law Code, article 1365 states that "Every unlawful act that brings loss to another person, requires the person whose fault he caused the mistake to compensate for the loss." The law does not limit unlawful acts at all which must be interpreted by the judiciary. In the case of therapeutic transactions between health workers and patients, if the health worker does not provide services in accordance with established medical service standards and causes the patient to lose healing from their illness, injury or death, then the health worker is violating the law.

According to Articles 1366 and 1367 of the Constitution, "Every person is responsible not only for losses caused by their own actions but also for losses caused by their negligence or carelessness", and Article 1367 of the Constitution, "Every person is responsible not only for losses caused by his own actions but also for losses caused by the actions of other people under his supervision. A doctor must also be responsible for what nurses, midwives and others do in this case.

Based on article 308 paragraph (2) of Law Number 17 of 2023, medical personnel and health workers who are held accountable for actions/deeds related to the implementation of health services that cause civil harm to patients must request a recommendation from the professional disciplinary council. Recommendations from the panel are given after medical personnel or people authorized by medical personnel submit a written request regarding a lawsuit filed by the patient, the patient's family, or the patient's family. These recommendations may include recommendations about whether or not medical personnel or health workers carry out their professional practices in accordance with professional standards, services and operational procedures.

3. Administrative Legal Responsibility

Some laws that are sectoral include the health services administration law. In Law Number 36 of 2009 concerning Health, article 23 paragraph (3) states that health workers must have permission from the government to provide health services. In addition, article 34 paragraph (2) of the same law states that health service facility operators are prohibited from employing health workers who do not have qualifications and permits to carry out

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<sup>32</sup> Ibid

professional work. As stated in Article 60 Paragraph (1) of Law No. 36 of 2009 concerning Health, this permit also applies to traditional health services.

Medical personnel and health service facilities may be subject to administrative sanctions if they are deemed to have violated Law Number 36 of 2009 concerning Health. According to article 188 paragraph (3), administrative sanctions can take the form of written warnings, revocation of temporary permits and/or permanent permits. For corporations, apart from revoking business permits, their legal entity status will also be revoked in accordance with article 201 paragraph (2) of law number 36 of 2009. Article 36 of Law No. 29 of 2004 concerning Medical Practice covers related aspects of administrative law with medical practice.

According to Article 11, every doctor and dentist who practices medicine in Indonesia must have a practice permit. A practice permit is written proof given by the government to doctors and dentists who will practice medicine after fulfilling the requirements. Apart from medicine, nursing also has administrative law. Article 19 of the Nursing Law No. 38 of 2014 states that nurses who practice nursing must have a permit. A nursing practice license, also known as a SIPP, is a form of permission granted. The administrative sanctions regulated in Law Number 38 of 2014 concerning Nursing are also the same, which include verbal warnings, written warnings, administrative fines, and/or license revocation. Article 13 paragraph (1) of Law No. 44 of 2009 concerning Hospitals stipulates that medical personnel who practice medicine in hospitals must have a Practice License. Article 25 of Law No. 44 of 2009 concerning Hospitals stipulates that every hospital operator must have a hospital permit. If hospital permits: a. expired; b. No longer meets requirements and standards; c. Proven to have violated statutory regulations; or d. Revoked by court order as a law enforcement action.

Based on Article 260 and Article 261 of law number 17 of 2023, it is stated that every medical worker and health worker who will carry out practice is required to have an STR issued by the Council on behalf of the minister after fulfilling certain requirements, namely at least:

- a. Have an educational diploma in the health sector and/or professional certificate
- b. Having an STR competency certificate as referred to above is valid for life, but the STR is not valid if:
  - 1) The person concerned died
  - 2) Deactivated or revoked by the council on behalf of the minister, or
  - 3) Revoked based on a court decision which has permanent legal force.

This shows that one of the administrative responsibilities of nurses is to fulfill the qualifications in accordance with the administrative requirements set by law.

Apart from that, Articles 263-267 in the same law stipulate that certain types of medical personnel and health workers are required to have a permit in the form of a SIP when carrying out their professional practices. The SIP is issued by the Regency/City regional government where medical personnel or health workers practice. In order to issue the SIP, the central government involves district/city regional governments in determining quotas for all types of medical personnel and health workers by paying attention to the following criteria:

- a. Availability and distribution of medical personnel and health workers in the area
- b. The ratio of population to medical personnel and active health personnel determined by the minister, and the workload of medical personnel and health personnel

Based on Article 306 of Law Number 17 of 2023, disciplinary violations of Medical Personnel and Health Personnel can be given disciplinary sanctions in the form of:

- a. Written warning
- b. Obligation to attend education or training at an education provider in the health sector or the nearest teaching hospital that has the competence to conduct such training
- c. Temporary deactivation of STR and/or
- d. Recommendations for welcoming SIP

Apart from that, Article 313 of Law No. 17 of 2023 also emphasizes that every medical worker or health worker who practices without having a STR and/or SIP will be subject to administrative sanctions in the form of an administrative fine. Provisions regarding procedures for imposing administrative sanctions are regulated by government regulations.

### **C. Dispute resolution if negligence occurs by nurses in providing health services in hospitals**

Medical disputes can be resolved through professional and non-professional councils. Non-professional disputes can be resolved outside the court (non-litigation) and in court (litigation).

1. Professional Council: Ethics Violations (MKEK) and Discipline (MKDKI)

In providing nursing services, nurses do not consider the client's nationality, ethnicity, skin color, age, gender, political and religious beliefs, or social status. Nurses respect the dignity of every person. The Nursing

Ethics Honorary Council (MKEK), founded by the Indonesian National Nurses Association (PPNI), exists within the nursing profession. One of the main goals of MKEK is to encourage members to understand and apply the nursing code of ethics. MKEK also creates guidelines for implementing ethics in providing nursing services and guidelines for resolving ethical disputes in nursing services.

a. MKEK Authority

The special authority of MKEK PPNI according to its level is as follows:

- 1) report verbally or in writing considerations for implementing nursing ethics and recommendations to the PPNI Management Board according to its level; And
- 2) carry out internal coordination with the PPNI Management Board according to its level for each nursing ethical issue.
- 3) collaborate with the PPNI Management Board in terms of cooperation or building relationships with other similar professional organizations at home and abroad according to their levels which are deemed to have an impact on the implementation and enforcement of nursing ethics.
- 4) resolve nursing ethical conflicts related to differences in health service interests between the PPNI Management Board, but not limited to the PPNI Management Board according to its level, but also in the PPNI Complementary Body (Association & Association; Nursing Collegium), and other bodies; especially by investigating, examining, hearing, and deciding cases that may give rise to nursing conflicts.
- 5) to maintain the nobility of the profession and reduce the possibility of ethical conflicts between nurses and clients; nursing and practice; nurses and the community; nurses and colleagues; and nurses and the profession, MKEK makes fatwas, ethical implementation guidelines, and other institutional regulations regarding professional service.
- 6) MKEK coordinates the handling of ethical dispute cases with clients according to their level and in accordance with applicable regulations.
- 7) at the request of the Provincial DPW PPNI, the Central MKEK issued a Decree.
- 8) The Central MKEK collects all data and information about ethical complaints, ethical conflicts and nurse disputes which are collected and resolved by the PPNI DPP and Provincial MKEK, while the Provincial MKEK does the same for regions and Provincial DPW PPNI data.

- 9) The Central MKEK forms an ethics team and MKEK administrative arrangements according to the MKEK level.
- 10) The Central MKEK determines the arrangements, groupings and procedures for MKEK court hearings in accordance with
- 11) provides additional authority for fostering nursing ethics, which is then determined by the PPNI DPP and Central MKEK.

MKEK has the authority to handle nursing ethical disputes such as the following:

- 1) assess the legality and validity of complaints, determine trials, examine and assess evidence, summon and examine witnesses, try cases where nurses are considered accused or complained about due to alleged attitudes, actions, behavior, or mistakes and violations of nursing practice, determine whether there are ethical violations or not, and then impose ethical sanctions on the nurses involved
- 2) examine cases of ethical conflicts and/or nurse disputes that have been examined, tried, and given ethical sanctions by the nurse ethics institute; between nurses and members of the PPNI Management Board; and between nurses and other patients.
- 3) examine the validity of complaints, examine, assess evidence, summon and examine witnesses, and determine decisions on alleged ethical conflicts between nurses and members of the PPNI Management Board.
- 4) examine cases of ethical conflicts and/or nurse disputes that have been examined, tried, and sanctioned by the nurse ethics institute; between nurses and members of the PPNI Management Board; and between nurses and other health care providers.
- 5) carry out examinations, trials, imposition of sanctions, and assessment of appeals in cases of ethical conflicts and/or nurse disputes that have been examined, heard, and sanctioned by the nurse ethics institute. Assessing the validity of complaints, examining, evaluating evidence, summoning and examining witnesses, hear, determine decisions on alleged ethical conflicts between nurses; between fellow officers and the ranks of the PPNI Management Board; as well as between nurses and other health care providers.
- 6) carry out examinations, trials, imposition of sanctions, and assessment of appeals in cases of ethical conflicts and nurse disputes that have been examined, heard, and given ethical sanctions by the ethics or disciplinary institution of the PPNI Management Board according to their level, if both parties are not satisfied.

- 7) adjudicate ethical cases sent by MKEK or other health worker disciplinary institutions in accordance with applicable regulations.
  - 8) send cases of nursing disputes that show violations of nursing discipline to the Indonesian Nursing Ethics Honorary Council according to its level, if it has functioned in accordance with applicable regulations.
  - 9) restore the professional rights of nurses who have served ethical penalties or have not been proven to have committed ethical violations.
  - 10) carry out examinations and trials together with the ethics panel from other related professional organizations.
- b. Examination of Nursing Ethics Disputes
- Nursing Ethics Dispute Handling Examination:
- 1) The Chairman of the Central MKEK and the Chairman of the Provincial MKEK have the right to appoint in writing one of the MKEK members or chairman as chief examiner in trials at their respective levels during the implementation of the trial court.
  - 2) The chief examiner mentioned in number (1) can come from a qualified nurse with the same interest or specialization.
  - 3) If the chief examiner does not have the same specialty or interest as the participating nurse, one of the examiner members must have the same specialty or interest as the participating nurse or closest to it.
  - 4) There should be 3 (three) examiners or more with odd records
  - 5) If necessary, the membership of MKEK examiners can be increased by 2 (two) non-permanent members who can come from the PPNI Management Board according to their level who are appointed on the basis of certain expertise related to the case of the registered nurse being handled.
  - 6) Non-permanent members have the same rights and obligations as other MKEK administrators while handling the case.
  - 7) The management of non-permanent members ends immediately after the decision cell.
  - 8) Non-permanent examiner members can be appointed in emergency situations from members of the Central MKEK, Provincial MKEK, or the PPNI Management Board according to their level (appointed by the General Chair of the PPNI DPP/Chair of the Provincial PPNI DPW) who are experienced, have integrity, and really care about nursing ethics.
  - 9) In case number (5) above, the appointment of non-permanent members of the nurse examiner must obtain written approval

from the General Chair of the PPNI DPP or the Chair of the PPNI DPW.

- 10) The Chair of the MKEK, according to his level and jurisdiction, can establish special procedures for examining and resolving ethical conflicts between nurses.
- 11) In terms of resolving ethical conflicts between institutions, devices and staff at PPNI, the Chair of the Central MKEK can determine the structure and procedures of the examiners themselves.
- 12) The Chair of the MKEK determines the examiner in cases of appeals from parties in accordance with applicable regulations.
- 13) Technically, provision number (11) above can be implemented by the local Provincial MKEK Chair.

c. MKEK Conference

After the review process is complete, a trial for MKEK examiners to handle nursing ethical disputes is carried out, with the following provisions:

- 1) The examiner's hearing can be considered a court hearing after it is specifically stated and recorded for that purpose.
- 2) The trial as mentioned in number (1) is chaired by the Head of the MKEK Division.
- 3) An examiner's meeting is considered valid if it is attended by more than half the number of members or all MKEK examiners appointed in writing by the Chair of the MKEK.
- 4) MKEK trials are closed, unless stated otherwise.
- 5) The Chair of the MKEK or Chief Examiner can determine whether the trial is closed or not.
- 6) The Chair of the MKEK has the right to appoint witnesses, experts, evidence or other evidence to be presented.
- 7) If the MKEK Secretary is absent, the Deputy Secretary or another MKEK member appointed by the Chief Examiner as chairman of the trial will be responsible for recording and reporting the minutes of the trial, including evidence or instructions submitted by the parties.
- 8) The decision of the MKEK Examiner trial was taken based on deliberation and consensus.
- 9) If deliberation and consensus cannot be reached, a decision is taken based on the highest number of votes from the examining panel, while still recording the number and reasons for different opinions (dissenting opinions).

- 10) Each MKEK examiner member has the right to speak and vote during the trial of the case, while examiner members outside the MKEK only have the right to speak.
- 11) During the hearing, the chairman of the PPNI management board according to his level (or his representative), as well as the head of the PPNI apparatus or organization at the same level (or his representative) must be present on the schedule determined by the chief examiner.
- 12) The Chair has the right to invite witnesses such as the Chair of the Hospital Nursing Committee, the Hospital Ethics Committee, or other nurses as witnesses.
- 13) The decision of the Central MKEK/DPP PPNI regarding the trial procedures and who can attend will be determined further.

d. MKEK Examiner's Decision

The decisions made by the MKEK Examiner in handling nursing ethical disputes are as follows:

- 1) The verdict is the final decision indicating whether the accused nurse has violated the Indonesian Nursing Code of Ethics or not.
- 2) The guilty verdict is followed by sanctions which include the method, characteristics and length of training of the offending nurse regarding the results of the review and trial of alleged violations of nursing ethics.
- 3) The decision of the MKEK examiner session is made based on deliberation and consensus.
- 4) If deliberation and consensus cannot be reached, a decision or ruling is taken based on the majority vote of the examiners, while maintaining existing dissenting opinions.
- 5) The decision of the MKEK examiner's hearing is confidential, unless stated otherwise.
- 6) The decision made by the Provincial MKEK can be compared to the Central MKEK no later than 2 (two) weeks after it is determined.
- 7) A decision that is not compared or a Central MKEK decision is a final, binding and immediately effective decision, unless decided otherwise by the PPNI National Conference specifically for that purpose.
- 8) Errors in the way decisions are made or the application of the rules of the Indonesian Nursing Code of Ethics to cases heard by examiners against accused nurses can be reviewed or clarified by the local MKEK Chair for a re-formulation hearing.

- 9) Further provisions regarding errors, review or clarification as referred to in number (8) above are further regulated by the Decree of the Chairman of the Central MKEK.
- 10) The decision as referred to in number (7) which has permanent ethical force by the examiner is sent to the MKEK to determine the implementation of the sanctions, with or without prior coordination with the PPNI Management Board at the same level.
- 11) If there are differences in how to implement sanctions or how to provide guidance to nurses who violate ethics as referred to in number (10) above, they will be consulted with and determined by the Chair of the MKEK at the level according to their jurisdiction.
- 12) Decisions regarding the errors of nurses who violate ethics are divided into minor errors, moderate errors and serious errors
- 13) Determination of the severity category of the error is based on the following criteria:
  - a) The consequences for patient safety
  - b) The consequences for the honor of the profession
  - c) The consequences for the public interest
  - d) The defendant's good faith in participating in resolving the case
  - e) The motivation underlying the emergence of the case
  - f) Environmental situations that influence cases
- 14) The time limit required for the trial or retrial process after the postponement of the trial until the decision is made is a maximum of 3 (three) months.
- 15) The Chair of the MKEK sends the decision to the Chair of the PPNI at the same level and to the violator/nurse concerned.
- 16) The decision can be conveyed to the complaining client orally, with written evidence stored at MKEK.
- 17) A copy of the Provincial MKEK Decision accompanied by a brief history of the case, identity, problem and category or qualification of the decision must be submitted no later than 2 (two) months after it is determined or cumulatively every 3 months to the Central MKEK for compilation.
- 18) Sending a copy of the MKEK decision as referred to in number (17) can be addressed to the Chairman of PPNI at the same level.
- 19) The MKEK decision after it is proven that there is a disciplinary violation can be sent to the Provincial MKEK according to its jurisdiction or to the official institution responsible for accreditation, licensing and registration of nurses in accordance with applicable regulations.

- 20) A copy of the MKEK decision may not be given to the investigating party for any reason.
  - 21) Further provisions on the procedures for sending decisions as referred to in number (18) above are regulated by the Decree of the Chair of the Central MKEK/ DPP PPNI
- e. Sanctions for Handling Nursing Ethics Disputes
- Sanctions for Handling Nursing Ethics Disputes are as follows:
- 1) The MKEK examination panel determines and develops sanctions against nurses who violate ethics.
  - 2) MKEK is responsible for and on behalf of the PPNI management at the same level for the implementation of sanction number (1).
  - 3) The sanctions given depend on how serious the mistake the accused nurse is.
  - 4) Sanctions as referred to in numbers (1) and (2) above can be in the form of:
    - a) Advisory
    - b) Verbal warning
    - c) Written warning
    - d) Behavior coaching
    - e) *Reschooling* (education/retraining)
    - f) After temporary dismissal as a PPNI member, written advice must be submitted to the Head of the Regency/City Health Service to revoke the health worker's practice permit with a maximum time limit of three months for minor violations, six months for moderate violations, and twelve months for serious violations. violations in accordance with procedures or policies for revoking health workers' practice permits.
    - g) Exit member In the MKEK trial, a verbal warning or advisory is given to nurses who violate ethics.
  - 5) If a nurse who violates ethics receives sanctions as mentioned in number (4) three (three) times, but his or her behavioral attitude does not change, a written warning and/or behavioral guidance is given.
  - 6) If the warning as mentioned in number (5) has been given three (three) times, but the behavior remains unchanged, temporary dismissal is given as a threat.
  - 7) In cases where temporary dismissal as a PPNI member and revocation of a temporary practice permit does not result in improvement, the Head of the District or City Health Service is advised to request permanent dismissal as a PPNI member or revocation of PPNI membership according to his jurisdiction. For

12 months, the practice permit must be revoked, either with or without a proposal to be revoked by MTKI or the Indonesian Nursing Council.

- 8) Sanctions such as dismissal of membership do not constitute guidance.
- 9) Minutes involving members who violate ethics are prepared and a copy is sent to the PPNI Management Board for appropriate action. If temporary dismissal as a member of the PPNI and temporary revocation of the practice permit have been carried out but there is still no improvement, it is carried out with a proposal for permanent dismissal as a member or revocation of membership to the PPNI in accordance with its jurisdiction and a suggestion to the Head of the Regency/City Health Service to revoke the practice permit for 12 months with or without a proposal to revoke the Registration Certificate by MTKI/Indonesian Nursing Council.
- 10) The Provincial PPNI DPW decides on temporary or permanent dismissal as a PPNI member by sending a special letter to the PPNI DPP, Central MKEK and a copy to the District/City PPNI DPD, PPNI DPK, PPNI DPLN, and Provincial MKEK.
- 11) The decision regarding the revocation of a nurse's practice permit is followed up by the Provincial DPW PPNI, Regency/City DPD PPNI, and Provincial DPW PPNI.
- 12) Decisions concerning specialist nurses must be followed up by the respective Associations/Associations and Collegiums.
- 13) Matters that have not been regulated regarding the implementation and assessment of sanctions will be determined by the Decree of the Chair of the Central MKEK/ DPP PPNI.

## 2. Non-Litigation: Family/Consensus

### a. Arbitrage.

According to Article 1 of Law no. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, arbitration is a method of resolving civil disputes outside the general court which is based on an arbitration agreement made in writing by the parties to the dispute.<sup>33</sup>The advantages of arbitration institutions include maintaining the confidentiality of disputes; avoid delays due to administrative and procedural issues; the parties can choose the appropriate arbitrator; the parties can determine the choice of law, as well as the process and

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<sup>33</sup> Article 1 Number 1 Law of the Republic of Indonesia Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (Arbitration and Alternative Dispute Resolution Law)

venue; and the arbitrator's decision is a decision that is binding on the parties and is implemented through a simple and direct procedure.

b. Alternative Dispute Resolution Alternatives

Dispute Resolution is an institution that helps resolve disputes or differences of opinion through a process agreed upon by both parties, namely settlement outside of court through consultation, negotiation, mediation, conciliation, or expert assessment:<sup>34</sup>

1) Consultation

Consultation is a personal relationship between one party called the client and one party called the consultant, who provides opinions to the client to meet their needs.

2) Mediation

Mediation is a dispute resolution process in which the parties work together with the help of a mediator to reach an agreement. The most commonly used type of mediation (Article 1 number 1 PerMA No. 1 of 2016 concerning Mediation Procedures in Court). Unless otherwise determined based on these Supreme Court Regulations (Article 4 (1) Perma No. 1 of 2016 concerning Mediation Procedures in Court), every civil dispute submitted to Court must be preceded by efforts to resolve it through Mediation. Mediation is permitted in Article 29 of Law Number 36 of 2009 concerning Health to resolve cases.

In the settlement process through mediation, a Mediator is used. The goal is to find a solution that benefits all parties. Because what you want to resolve is medicolegal, the mediator must have medical and legal expertise. This means combining elements from legal science and medical science or medicine. Being a good mediator means you master all stages well; You must be able to combine the wishes of all parties because you function as a mediator; You must be able to find the common ground or middle; You must be able to formulate it in concise and simple sentences so that both parties can understand it; You must be able to apply the strict principles of applicable law by explaining the legal basis so that both parties can understand it; and you have to get the job done

The advantages of resolving disputes through mediation, which makes it highly recommended and recommended, are as follows: dispute resolution that is appropriate, effective, and can make it easier for the parties to reach a satisfactory and fair resolution; as a tool to increase public access to justice while

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<sup>34</sup> Article 1 Number 10 of the Arbitration and Alternative Dispute Resolution Law.

realizing the principles of administering justice that is simple, fast and cheap; and confidential.

3) Conciliation

Conciliation is a method of resolving disputes with the intervention of a third party called a conciliator. The conciliator plays a more active role in compiling and formulating settlement steps, which are then submitted and proposed to the two parties to the dispute. The conciliator does not have the authority to make decisions, but can only make recommendations, which are implemented based on the good intentions of both parties.

4) Expert Assessment

Experts' opinions about a technical problem in their field of expertise can be understood and accepted by both parties. Article 310 of Law Number 17 of 2023 concerning health states that if medical personnel or health workers are suspected of making mistakes in carrying out their profession which causes harm to patients, the dispute will first be resolved through alternative dispute resolution outside of court.

3. Litigation: Civil Lawsuits and Criminal Lawsuits (General Court)

A dispute resolution process carried out by a court is known as dispute resolution through the litigation process.

a. Through the Civil Court Route in the General Court

Legal sources used by civil courts include Article 32 letter q of Law no. 44 of 2009 concerning Hospitals; Article 66 Law no. 29 of 2004 concerning Medical Practice; and Articles 1238-1239, 1365, and 1366 of the Civil Code. lawsuits for wrongdoing or unlawful actions. The plaintiff is burdened with the responsibility to prove that the arguments put forward in the lawsuit are correct. On the other hand, the defendant has the right to reject the arguments put forward by the plaintiff. All parties actively seek to obtain the necessary evidence. Medical records, confidentiality, and informed consent are very important in this regard. Further, things like malpractice, standards, negligence, liability, etc., are very important. The process of resolving disputes in general courts through civil courts is described as follows:



Figure 4.1 Handling of Civil Litigation Cases

b. Criminal Settlement of Health Disputes through the General Courts

The patient reported that a criminal act had occurred against him, relating to criminal acts in the health sector, both those regulated in the Criminal Code and outside the Criminal Code. Several articles in the Criminal Code relating to the issue of criminal responsibility are as follows: Article 322 of the Criminal Code concerning Violations of the Obligation to Keep Secrets; Article 344 of the Criminal Code concerning Euthanasia; Articles 346–349 of the Criminal Code concerning Provocatus Abortion; Article 351 of the Criminal Code concerning abuse; and Articles 359–361 of the Criminal Code concerning negligence resulting in death or serious injury. In resolving a criminal case, the following stages are carried out: Report or complaint regarding a criminal act; Clarification; Investigation process; Summons of parties; Preparation of clarification minutes; Summoning witnesses; If it is decided there is

alleged criminal act, investigation process (at the Police); Prosecution (at the Prosecutor's Office); and Trial (in Court). At the trial stage, the indictment was read; Exceptions (if any);

c. Settlement of Health Disputes Administratively/State Administration through Administrative/State Administrative Courts

In principle it is the same as civil court, but there is a "Termination Process". The judge carrying out this process will assess the dispute between the two parties and determine whether the dispute is appropriate to be brought to the State Administrative Court. Judges are more actively involved in investigating cases. Based on Law no. 5 of 1986 concerning State Administrative Courts, as amended by Law no. 9 of 2004, and last amended by Law no. 51 of 2009, State Administration Disputes: In the field of state administration, there are disputes between individuals or civil legal entities and state administration bodies or officials, both at the central and regional levels. In this dispute process, state administrative decisions, including personnel disputes, are issued, based on applicable laws and regulations. State administrative decisions are written decisions issued by state administrative bodies or officials.

Based on article 424 of Law Number 17 of 2023, criminal investigation procedures are also regulated. Based on the Criminal Procedure Code, Indonesian Republic Police investigators have the authority and responsibility to investigate criminal acts in the health sector. According to the provisions of statutory regulations regarding criminal procedural law, certain civil servant officials within the government who carry out government affairs in the health sector are also given special authority as investigators, together with investigators from the Republic of Indonesia State Police.

d. Criminal provisions based on Law Number 17 of 2023 concerning Health

Article 438 of Law Number 17 of 2023 states that leaders of health facilities, medical personnel and/or health workers who do not provide first aid to patients who are in emergency situations at health service facilities will be punished by imprisonment for a maximum of 2 (two) years or a fine. maximum Rp. 200,000,000.00 (two hundred million rupiah). In the event of an act that results in disability or death, the head of the health service facility will be punished with a maximum imprisonment of 10 (ten) years or a maximum fine of Rp. 2,000,000,000.00 (two billion rupiah).

Meanwhile, article 440 of Law Number 17 of 2023 stipulates a maximum prison sentence of 3 (three) years or a maximum fine of Rp. 250,000,000.00 (two hundred and fifty million rupiah) for each medical worker or healthcare worker who makes a mistake which results in a patient being seriously injured. If the negligence causes death, the medical worker or health worker will be punished with imprisonment for a maximum of 5 (five) years or a fine of a maximum of 5 (five) years or a fine of a maximum of IDR. 500,000,000.00 (five hundred million rupiah).

Apart from imprisonment and fines for management who have a functional position, giver of orders, control holders and/or beneficial owners of corporations, corporations can be subject to maximum fines as follows:

- 1) Rp. 2,000,000,000.00 (two billion rupiah) for criminal offenses which are punishable by imprisonment for under 7 (seven) years;
  - 2) Rp. 5,000,000,000.00 (five billion rupiah) for crimes committed under 7 (seven) years.
  - 3) If a person commits a criminal offense that is punishable by the death penalty, life imprisonment, or a maximum prison sentence of twenty years, the amount required is fifty billion rupiah.
- e. Restorative Justice Mechanism for Resolving Medical Disputes

The 2023 Health Law states that law enforcement officials (police, prosecutors, judges, lawyers) must prioritize restorative justice mechanisms when handling medical disputes, in accordance with Article 322(4) of Law Number 17 of 2023 which has been clearly stipulated. The restorative justice mechanism is a method of resolving external disputes and disputes through mediation efforts. The affirmation of resolving medical disputes through a restorative justice system in the 2023 Health Law provides legal certainty and is binding on disputing parties and law enforcement officials that no medical dispute case can be tried before mediation efforts are carried out by competent or authorized parties. The restorative justice mechanism is a case resolution mechanism that involves the perpetrator (doctor), victim (patient), family of the victim/perpetrator, and other related parties to jointly seek a fair resolution by prioritizing restoration back to its original state, not retaliation or retribution for mistakes made by health workers. Likewise, patients who experience losses due to negligence will be prioritized for protection.

## CONCLUSION

Based on the results of the discussion in writing this thesis, several things can be concluded, including:

1. There are 3 (three) regulations on nurses' legal responsibility for negligence in providing health services based on Law Number 17 of 2023 concerning Health, including:
  - a) Criminal Law Responsibility  
Based on Article 308 paragraph (1) of Law Number 17 of 2023, medical personnel or health workers who are suspected of committing unlawful acts in the implementation of health services which may be subject to criminal sanctions, must first seek a recommendation from the professional disciplinary council.
  - b) Civil Law Liability  
Based on article 308 paragraph (2) of Law Number 17 of 2023, medical personnel and health workers who are held accountable for actions/deeds related to the implementation of health services that cause civil harm to patients must request a recommendation from the professional disciplinary council.
  - c) Administrative Legal Responsibility

In Law number 17 of 2023, it is regulated in articles 260, 261, 263 to 267, and article 313. Several of these articles emphasize the importance of administrative requirements for nursing staff, both STR and SIP. And if you commit a violation, there is a high possibility that your STR and SIP will be revoked as an administrative sanction.

Based on the description of the regulation of nurses' legal responsibilities above, it can be concluded that nurses as health workers as regulated in Law number 17 of 2023 concerning health, have criminal, civil and administrative legal responsibilities. And based on article 309 of Law Number 17 of 2023, further provisions regarding enforcement of professional discipline for Medical Personnel and Health Personnel are regulated by Government Regulation. However, until now there has been no government regulation that has been established. The draft Government Regulation is currently in the process of being prepared according to information from informants obtained by the author from the law firm of the Ministry of Health.

2. Settlement of disputes if negligence occurs by nurses while providing health services in hospitals

Dispute resolution if there is negligence by the nurse in taking several legal remedies including:

a) Professional Justice for handling cases involving ethical and disciplinary violations

Professional justice will be carried out by the Nursing Ethics Honorary Council (MKEK) which was formed by the Indonesian National Nurses Association (PPNI). The main task is to provide ethical guidance to avoid violations. However, if a nursing staff is negligent, the MKEK will carry out inspection procedures and impose sanctions if found guilty in the form of revocation of the Registration Certificate (STR) and Practice Permit (SIP).

b) Non Litigation (outside court)

Based on article 310 of Law Number 17 of 2023 concerning health, it is stated that in the event that a medical worker or health worker is suspected of making a mistake in carrying out their profession which causes harm to the patient, the dispute that arises as a result of the mistake is resolved first through alternative dispute resolution outside of court. Alternative dispute resolution in question can take the form of consultation, mediation, conciliation and expert assessment.

c) Litigation (through general courts)

Based on article 424 of Law Number 17 of 2023, investigation procedures related to criminal acts have also been regulated. The investigating officers of the Indonesian National Police have the authority and responsibility to carry out investigations of criminal acts in the health sector based on the Criminal Procedure Code. Dispute resolution through general court will be

resorted to if civil lawsuits and criminal charges cannot be resolved amicably (non-litigation).

## **SUGGESTION**

1. In Law number 17 of 2023 has arranged regarding not quite enough answer law nurse as power health Good in a way law criminal , civil nor administration . However description in Constitution the still very simple . Therefore That writer suggest that it should regulation government as derivative of Law Number 17 of 2023 must quick approved and published so that workers health understand related details with not quite enough answer laws , sanctions and procedures solution dispute . So that as power nurse especially and energy health generally can operate task in accordance with standard procedure operations and applicable laws . And so on regulation the Not yet There is so should We must consider regulation government our previous one use as guidelines to avoid it from violation ethics , discipline and law .
2. Completion dispute on the case negligence committed by personnel health specifically nurse , of course need deep understanding specifically to practitioners in the field law health . Steps handling in a non- litigation manner should come first so that problem violation ethics , discipline and law can resolved in a way wise . Therefore it's on occasion This writer suggest that understanding related with Justice profession need improved specifically to practitioners in the field committee nursing , committee Hospital ethics and law as well practitioner in the field law health .

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