



Civil Liabilities of Nurses in Hospital According To Indonesian Nursing Law

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ABSTRACT: This research aimed to prove that the promulgation of Nursing Law in 2014 provides more certainty in determining legal liabilities arising out from nursing care activities in hospital. This research is a normative legal research with qualitative approach. It used secondary data, especially laws and regulations related to nursing care and professional liabilities. This research focused on nursing care activities in hospital, which can be derived from activities based on nursing competencies, autonomies and authorization or delegation when nurses worked in a hospital. The result proved that nurses shall be liable for any misconduct which violate standard of care, whether it was concluded with or without any purpose, which caused harm or injury to the patient. However no liability may be claimed against the nurses, who conduct nursing care based on delegation. Finally it recommended that nurses should understand their rights and obligations during nursing care.

Keywords: nursing care, nurses liabilities, hospital, nursing legal responsibilities

I. INTRODUCTION

Just about three months before the end of year 2014, Indonesia promulgated two laws regulating health workers. They were Law No.36 Year 2014 regarding Health Workers (Health Workers Law) (Indonesia, Law No.36 Year 2014, 2014) and Law No.38 Year 2014 regarding Nursing (Nursing Law) (Indonesia, Law No.38 Year 2014, 2014). Both laws were promulgated on 17 October 2014. Even though those two laws have become effective as of the date of its promulgation; both laws provided 2 years periods for the Government to enact all the required implementing regulation.

The making of Health Workers Law was based on the concept that health is one of basic human rights. Every person shall have the same opportunity to be healthy. If they are sick they have the same right to access the health providers, to obtain safe, qualified and affordable service in health care. It is the obligations of the government to ensure that those objectives can be achieved. The existence of the Health Workers Law is among many of them to provide health workers. Good health workers, in quality and quantity are therefore become a must. In order to provide good health care services, health workers need to have competencies. The Health Workers Law shall regulate what are the required competencies for health workers for them to perform their functions well.

One among many health workers as stipulated in Article 11 paragraph (1) of Health Workers Law is nurses. Nursing profession was then regulated further in Nursing Law. Nurses shall have their own competencies, which are different from other health workers. Different in competencies will in results arise different functions, different roles, different authorities, different responsibilities, different accountabilities and different liabilities. It is clearly mentioned in point c of the consideration of Nursing Law that nurses shall provide nursing care with high responsibilities, accountabilities, qualified, safe, and affordable, in accordance with their competencies, authorities, professional ethics and moral.

Under prevailing regulation in Indonesia, all nurses working in hospital are subject to Law No.13 Year 2003 regarding Workers (Indonesia, Law No.13 Year 2003, 2003) (Workers Law). There are employer – employee relations between the owner of the hospital, where nurses worked, and the nurses. As employees, nurses were required to follow the instructions as provided by their supervisor, which may be other nurses or other health care professionals. Nurses have to follow hospital by laws (and other regulations applicable in the hospital). There are no clear line, on how nurses can be held liable. With employer- employee relation, most of

nurses activities were mostly based on instructions. The research proved that the promulgation of Nursing Law made clear(civil) liabilities for nurses working in hospital during nursing care.

II. RESEARCH METHOD

This research was a qualitative research. It uses secondary data, especially laws and regulations as legal primary sources accompanied by legal secondary sources. As a normative legal research, this research tried to identify legal liability for nurses arising out from nursing care competencies regulated in Nursing Law, and other prevailing laws and regulations, especially for nurses who worked at hospital.

The primary legal sources used in this research are as follows.

1. Indonesian Civil Code (Subekti and Tjitrosoedibio, 1985);
2. Law No.16 Year 2001 regarding Foundation as amended by Law No.28 Year 2004 (Foundation Law)
3. Law No.13 Year 2003 regarding Workers (Workers Law);
4. Law No.40 Year 2007 regarding Corporation (Corporate Law);
5. Law No.40 Year 2009 regarding Hospital (Hospital Law);
6. Law No.36 Year 2014 regarding Health Workers(Health Workers Law);
7. Law No.38 Year 2014 regarding Nursing (Nursing Law).

III. THEORETICAL FRAMEWORK

In principle every people shall be *responsible and accountable* for his/ her own action. People may only be liable if he/ she has done something that may injure or cause loss to other people. These kinds of liabilities will exist because of faults or negligences. Nobody can be made liable together with other people for anything he/ she never did. However under certain circumstances, civil law recognised conditions where somebody shall be held liable for the conduct made by other people. This non-contractual liability is known as vicarious liability(van Apeldorn, 1986),(Subekti, 1989) (Muljadi and Widjaja, 2003a).

Under article 1365 and 1366 of Indonesian Civil Code, any person whose conduct caused loss or injured to any person shall be liable to pay the loss or recover the injury. The term “conduct” refers to any conduct that violates the laws and regulations, against people morality, public order, or wrong doing against other people rights. Some scholars referred it as tort. According to Indonesian Civil Code, the loss incurred shall be direct loss caused by or have direct relation with the conduct itself (Muljadi and Widjaja, 2003a).

Vicarious liability is regulated in article 1367 of Indonesian Civil Code. Based on the article, parents are responsible for the loss caused the conduct of the children. It also mentioned that employer shall be responsible for the loss caused by the conduct of its employee during the performance of the job according to the job descriptions given by the employer to the employee. To be able to hold the employer liable, the conduct of the employee must “*in-line with the job descriptions*”. It became the most important part in vicarious liability of the employer. The term conduct itself shall mean that it is not a wrong doing in part of the employee. It is enough to prove that the conduct of the employee followed the instruction given by the supervisor (employer). Under this circumstances, as long as the employee worked and conducted according to and in-line with its obligation as may be instructed by the employer from time to time, then the employer can and shall be held responsible and liable to the third party who suffered the loss or injury caused by the conduct by the employee (Subekti, 1989) (Muljadi and Widjaja, 2003b). With person working with legal entity such as foundation, association or corporation, the vicarious liability was extended to include the liability of the legal entity.

IV. FINDINGS AND DISCUSSION

Nursing Law does not provide any specific article regulating the nurses’ civil liabilities. However with the understanding that liabilities may occur at any time during the performance of a duty, there are several articles in Nursing Law that regulates nurses’ duties. Those are:

1. Article 18, 19 and 21 regulate the terms and conditions, and process of registration in order to obtain nursing’ Practice License before they can practice;
2. Article 28 paragraph (3) provides regulations on ethics, standard of care, professional standard, and standard on operation procedure for nurses;
3. Article 29 paragraph (1) regulates the duties of nurses as:
 - a. Care giver in nursing care;
 - b. Coach and counsellor for client (patients);
 - c. Manager in nursing care;
 - d. Researcher;
 - e. Doer based on delegation; and/or
 - f. Doer under certain limitation.
4. Article 30 paragraph (1) regulates authorities for nurses in personal health care, such as:

- a. Conducting wholistic nursing care examination;
 - b. Determining nursing diagnostic;
 - c. Planning nursing action;
 - d. Doing nursing care;
 - e. Evaluating result of nursing care;
 - f. Providing reference to nursing care activities;
 - g. Taking action in emergency events, according to their competencies;
 - h. Providing nursing consultancy and collaboration with physician;
 - i. Doing health coaching and counselling; and
 - j. Taking care of clients drugs consumptions based on prescription made by physician or over the counter drugs;
5. Article 30 paragraph (2) regulates authorities for nurses in public health care, such as:
- a. Conducting public health nursing care examination at family level and community level;
 - b. Determining public health nursing care problems;
 - c. Assisting in finding new disease case;
 - d. Planning public health nursing care;
 - e. Conducting public health nursing care;
 - f. Doing case reference;
 - g. Evaluating result from public health nursing care activities;
 - h. Empowering community;
 - i. Advocating public health nursing care;
 - j. Partnering in public health nursing care;
 - k. Conduct coaching on health and counselling;
 - l. Managing case;
 - m. Taking care of complementary and alternative nursing care;
6. Article 37 regulates nurses' obligations, such as:
- a. Completing the infrastructure and facilities in nursing care in accordance with nursing care standard and prevailing regulations;
 - b. Providing nursing care according to ethics, nursing care standards, professional standards, standards for operation and procedure, and prevailing regulations;
 - c. Referring clients which they are not able to handle, to other nurse or other more appropriate and competence health workers;
 - d. Documenting nursing care according to standards;
 - e. Providing complete, honest, true, clear and easily understood information with respect to the nursing care to clients and/or their families according to their authority;
 - f. Doing any delegation tasks as provided by other health workers which is equivalent with their competencies,
 - g. Conducting special assignments determined by the government.
7. Article 39 regulates that nurses shall not disclose any content of patient's medical record, unless it is done based on or because of:
- a. Client health interest;
 - b. Government officer's (such as police) order;
 - c. Client's approval;
 - d. Education and research purposes;
 - e. Requirements by Laws.

From above finding, it can be said that to become professional nurses, nurses shall have competencies. Such competencies can be proven from the registration and practice license obtained by the nurses. To obtain the registration and practice license, they must follow minimum education required and pass the examinations. By having the registration and practice license, nurses are considered competent. Nurses shall conduct nursing care based on their given competencies. They shall not do something beyond the given competencies, even though they might be able to do so, unless the action was required or imposed by the laws, such as saving life actions.

To act as professional, competent nurses shall understand that there are ethics, standard of care, professional standard, and standard on operation procedure to be complied by nurses in doing nursing care. Nurses are not supposed to act beyond, not in line or event against the ethics, standards of care,

professional standards, and standards of operation procedure for nurses. There are authorities or bodies that will supervise and make sure that nurses will not act beyond or to violate or conduct against or in the contrary to the Ethics, Standard of care, Professional standard, and standard on operation procedure for nurses. These authorities may be at the level of hospital, regional or national.

In the event that nurses are working in hospital, there exist labour relations between the nurses as the employees and the owner of the hospital as the employer. The hospital itself is an object or “some” thing which is owned. According to Hospital Law, owner of hospital could be Government, Local Government or “Private”. The term “Private” as the owner refers to Corporation established under the Law No.40 Year 2007 regarding Corporation (Indonesia, Law No.40 Year 2007, 2007) (the Corporate Law); Foundation established under the Law No.16 Year 2001 (Indonesia, Law No.16 Year 2001, 2001) as amended by Law No.28 Year 2004 (Indonesia, Law No.28 Year 2004, 2004) regarding Foundation; or Association as regulated in Article 1653 to Article 1665 of Indonesian Civil Code.

With respect to “hospital liabilities” Article 46 of Hospital Law stated that “Hospital is legally liable for all losses incurred caused by the negligence conducted by health worker in Hospital.” To understand the meaning of Article 46 of Hospital Law, it must be read along with Article 7 paragraph (2) and (4) of Hospital Law and Article 34 paragraph (3) of Hospital Law, as follows:

Article 7

- (2) Hospital can be built by Government, Local Government, or Private.
- (3)
- (4) Hospital built by private, as referred in paragraph (2), shall in the form of legal entity with its sole business is in hospital.

Article 34 paragraph (3) of Hospital Law states that the owner of hospital shall not at the same time manage the hospital.

Further, Article 20 and Article 21 of Hospital Law clearly separated ownership of hospital with the management of hospital as.

Article 20

- (1) Based on the management, hospital can be divided into public hospital and private hospital.
- (2) Public hospital as referred to in paragraph (1) can be managed by Government, Local Government and non-profit legal entity.

Based on the elucidation of this paragraph non-profit legal entity shall mean, among them are foundation, association or State Own Enterprises for public services (Perusahaan Umum).

- (3) Public hospital managed by Government and Local Government shall be conducted with the principle of managing General Public Body (BLU) or Local General Public Body (BLUD) according with prevailing regulations.
- (4) Public hospital managed by Government and Local Government as referred to in paragraph (2) cannot be changed to private hospital.

Article 21

Private hospital as referred to in Article 20 paragraph (1) managed by legal entity with profit oriented in form of Corporation or State Corporation (Persero).

Article 20 and Article 21 of Hospital Law clearly distinguish ownership from management of hospital. The name “public hospital” and “private hospital” are related to the management of hospital. The ownership of hospital even though may be “related” to the same legal entity that manage the hospital, it shall not be the same. If according to the Article 34 paragraph (3) of Hospital Law that the owner of hospital shall not at the same time manage the hospital, then who shall be liable for every conduct made by “hospital employee”, especially nurses in doing nursing care.

Indonesian Civil Code provides common guidance. According to the code, those who was appointed as the management shall not be liable for any losses incurred, unless the loss was due because of the fault or negligence or conflict of interest in the part of the management. Management was considered as a holder of power of attorney to act for and on behalf of the owner to do or act in accordance with the purpose of the attorney for what the appointment was given. In reference to the management of the hospital, board of management is appointed to run the hospital based on the hospital by laws (and other applicable regulations). The management of the hospital shall not be responsible for the loss incurred by third party when the management run the hospital. Hospital itself cannot be legally assumed to be liable and cannot be sued before the court or any arbitration, since hospital is not a legal entity. Then it is the owner of the hospital who shall be liable for any loss or injured suffered by patient. This principle is in line with Article 1367 paragraph (1) of Indonesian Civil Code as mentioned before. In case of nursing care conducted by nurses in hospital, the nursing

caresmade by nurses were considered as further delegation of management authorities. Therefore nurses who conduct nursing care cannot be held responsible for their action, except nurses behaved or conducted something beyond the delegation of authorities or competencies.

Based on the discussion above there are three things that nurses shall aware of while doing nursing care, they are as follows:

1. Nurses are only capable to do the nursing care based on their competencies. Nurses are not supposed to do anything beyond her competencies, and nurses shall not breach her duty in whatsoever form, nurses shall not neglect any of their work, instead they have duty to provide good caring to patients.
2. There are limitations of the capacity and capability for nurses to provide nursing care, these are:
 - a. the delegation that was instructed by the management of hospital or other health workers, including their superior. When nurses are worked based on delegation, they shall not do anything beyond the delegation, unless there are specific condition under certain circumstances as imposed by law, even under this condition, nurses may only do something based on her competencies;
 - b. the Ethics, Standard of care, Professional standard, and standard on operation procedure, which may be made from time to time. No matter what the nurses have to do, they should have followed the ethics, standards of care, professional standards, and standards of operation procedure.

Based on explanation on the ownership and management of the hospital and the concept of vicarious liability as stipulated wrongly in Article 46 of Hospital Law, the liability of nurses, who works in hospital could be categorised based on:

1. breach of the contractual relation with the management of the hospital, based on their working terms and conditions, including the ethics, Standard of care, Professional standard, and standard on operation procedure, and principles of delegation that may be regulated from time to time by the management of the hospital;
2. breach of their competencies or doing something beyond their competencies.

In both events, nurses are personally liable when nurses breach their competencies, being default to perform nursing care accordingly, or doing unlawful/ misconduct. In other event when nurses acted according to their working terms and conditions, including the ethics, standard of care, professional standard, and standard on operation procedure, and principles of delegation that may be regulated from time to time by the management of the hospital, it is the legal entity that owned the hospital shall be liable, and not the nurses.

V. CONCLUSION

The research proved that the promulgation of Nursing Law certainly made clear the civil liability of nurses while doing nursing care in hospital. In view of that, nurses shall know the “nots” as follows:

1. nurses shall not conduct nursing care without license and authorization;
2. nurses shall not conduct nursing care without complying with Ethics, Standard of care, Professional standard, and standard on operation procedure;
3. nurses shall not in breach of any of their duty;
4. nurses shall not become incapable on performing any of her authority, either in personal care or public care;
5. nurses shall not forget to do any of their obligation accordingly;
6. nurses shall not disclose clients (patients)’ medical record in any unlawfull way.

REFERENCES

- [1]. Indonesia, Republic of. Law No.36 Year 2014 regarding Health Workers. Indonesia: State Gazette No.298. Addition No.5607.
- [2]. Indonesia, Republic of. Law No.38 Year 2014 regarding Nursing. Indonesia: State Gazette No.307. Addition No.5612.
- [3]. Indonesia, Republic of. Law No.13 Year 2003 regarding Workers. State Gazette No.39 Addition No.4279.
- [4]. Subekti R and R Tjitrosoedibio. Kitab Undang-Undang Hukum Perdata. (Jakarta: Pradnya Paramita, 1985).
- [5]. Indonesia, Republic of. Law No.40 Year 2007 regarding Corporation. State Gazette No.106 Addition No.3913.
- [6]. Indonesia, Republic of. Law No.16 Year 2001 regarding Foundation. State Gazette No.112 Addition No.4132.
- [7]. Indonesia, Republic of. Law No.28 Year 2004 regarding Amendment to Law No.16 Year 2001 regarding Foundation. State Gazette No.115 Addition No.4430.
- [8]. Indonesia, Republic of. Law No.40 Year 2009 regarding Hospital. Indonesia: State Gazete No.153 Addition No.5072.
- [9]. van Apeldorn, LJ. Pengantar Ilmu Hukum. (Jakarta: Pradnya Paramita, 1986)
- [10]. Subekti, R. Pokok-Pokok Hukum Perdata. (Jakarta: Intermasa, 1989).
- [11]. Muljadi, Kartini dan Gunawan Widjaja. Seri Hukum Perikatan: Perikatan yang Lahir dari Undang-Undang. (Jakarta: Rajawali Pers, 2003).
- [12]. Muljadi, Kartini dan Gunawan Widjaja. Seri Hukum Perikatan: Perikatan Pada Umumnya. (Jakarta: Rajawali Pers, 2003).