



Legal Accountability Aspects of Medical Actions Performed by Nurses Based on Delegated Authority in The Perspective of The Principle of Legal Equality as an Element of The Rule of Law



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Abstract

According to Article 290 of Law Number 17 of 2023 concerning Health, medical personnel can delegate authority to nurses to perform actions. The delegation of authority is accompanied by the delegation of responsibility and legal risks for the implementation of the medical action. The principle of delegation and responsibility for the implementation of medical actions carried out by nurses based on the delegation of authority gives rise to the following problems. First, is the principle of legal accountability for medical actions carried out by nurses based on delegation as a way of delegating authority from medical personnel to nurses, regulated in laws and regulations, following the principle of equality before the law as an element of the rule of law? Second, how is the legal construction of the principle of legal accountability for medical actions carried out by nurses based on delegation, following the principle of equality before the law as an element of the rule of law? The legal research method used in the study is the juridical-normative research method. The results of the study obtained that First, the principle of legal accountability for medical actions carried out by nurses based on the delegation of authority from medical personnel, as regulated in laws and regulations, does not follow or contradict the principle of equality before the law as an element of the rule of law. Second, the principle of legal accountability for medical actions carried out by nurses based on the delegation of authority from medical personnel must be agreed upon in advance between medical personnel and nurses before the medical action is carried out. The suggestions that can be put forward are, first, the wording of Article 290 of Law Number 17 of 2023 concerning health needs to be amended, and one paragraph or article added. The formulation of Article 290 of Law Number 17 of 2023 that is put forward is as follows: "The legal responsibility and risk of implementing medical actions must be mutually agreed upon between medical personnel and nurses before the medical action is carried out."

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1 Introduction

In the Indonesian Constitution, the right to health as a human right is enshrined in Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The provisions of Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia contain fundamental principles as a source of inspiration (ideas or concepts) for the formulation of health laws. The ideas or concepts in Article 28H(1) of the 1945 Constitution serve a dual purpose in the formulation of health laws: (1) as the foundation (basis) for the formulation of health laws and (2) as guidelines providing direction and guidance for the regulation of health services as part of human rights, (Attamimi, 1990) while also imposing a responsibility on the state (government) to regulate and provide health services equitably and affordably for all citizens and all segments of society.

The principles or fundamental ideas of health service delivery contained in Article 28 H(1) of the 1945 Constitution are further regulated in Law No. 17 of 2023 on Health. Law No. 17 of 2023 on Health establishes the legal principles for the delivery of health services. According to Law No. 17 of 2023 on Health, the provision of health services is carried out by health human resources, which consist of (1) medical personnel, (2) health workers, and (3) supporting or auxiliary health personnel. Medical personnel, nurses (health workers), and supporting personnel have distinct boundaries of duties and responsibilities. The duties and responsibilities of medical personnel differ from those of nurses (health workers) and support staff. These differences stem from the distinct characteristics and scientific nature of Nursing Science and Medical Science (or each respective profession). The differences in duties and responsibilities between medical personnel and nurses are clearly outlined in the matrix below.

No.	Duties and Authorities of Nurses (Based on Ministry of Health Regulation No. 26 of 2019) Duties and Authorities of Medical Personnel (Based on Ministry of Health Regulation No. 2052/MENKES/PER/X/2011)	Duties and Authorities of Medical Personnel (Based on Minister of Health Regulation No. 2052/MENKES/PER/X/2011)
01	Nursing Care Provider	Interviewing patients
02	Extension workers and counsellors for clients	Checking the Physical and Mental Condition of Patients
03	Nursing Service Manager	Determining supporting examinations
04	Acting Officer Based on Delegation of Authority	Establishing a diagnosis
05	Acting Officer in Certain Limited Circumstances	Determining patient management and treatment
06		Performing medical or dental procedures
07		Writing prescriptions for medicines and medical equipment
087		Issuing a medical certificate from a doctor or dentist
09		Store and administer medicines in quantities and types that meet standards and
10		Preparing and dispensing medicine to patients, for those practising in remote areas where there are no pharmacies

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The matrix above clearly describes the differences in the scope of duties and responsibilities of nurses (health workers) and medical personnel by the characteristics and nature of Nursing Science and Medical Science. Based on the differences in the characteristics and nature of Nursing Science and Medical Science, the law regulates and establishes the scope of duties and responsibilities of nurses differently from those of medical personnel. However, according to the law, medical personnel and nurses (healthcare workers) may engage in a working relationship (functional relationship) to perform medical procedures together. Nevertheless, medical procedures are not included in the duties and responsibilities of nurses (health workers) but are the duties and responsibilities of medical personnel. This possibility may arise based on the delegation of authority from medical personnel to nurses to perform medical procedures. The delegation of authority through delegation is a form of transferring duties and responsibilities from medical personnel to nurses to perform medical procedures related to the shortage of medical personnel in Indonesia up to the present (Unruh & Pratt, 2007).

The working relationship (functional relationship) between medical personnel and nurses or healthcare workers is regulated in Article 290 of Law No. 17 of 2023 on Health as follows: 'Medical personnel and healthcare workers may receive the delegation of authority to provide healthcare services.' Article 290(2) of Law No. 17 of 2023 on Health further stipulates as follows: 'The delegation of authority referred to in paragraph (1) consists of delegation by mandate and delegation by delegation.' Delegation of authority by mandate and delegation have differences, including their legal consequences. The differences in the legal consequences of mandate delegation and delegation apply to the party delegating the mandate (mandator) or delegating authority based on delegation (delegator) as well as the party receiving the mandate (mandatary) or the party receiving delegated authority (delegate) (Rubio-Navarro et al., 2019).

The delegation of authority through delegation creates a legal relationship between the party delegating authority (delegans) and the recipient of the delegation of authority (delegetaris). The parties forming a legal relationship based on the transfer of authority are regulated in Article 290(3) of Law No. 17 of 2023 on Health as follows: 'The transfer of authority as referred to in paragraph (1) is carried out from Medical Personnel to Health Personnel, between Medical Personnel, and between Health Personnel.' The provisions of Article 290(3) of Law No. 17 of 2023 on Health open the possibility of three (3) functional relationships (working relationships), namely: (1) between Medical Personnel and Medical Personnel, (2) between Medical Personnel and Health Personnel, and (3) between Health Personnel and other Health Personnel.

Based on the explanations and arguments presented above, this study aims to clarify the regulations and implementation of legal accountability for medical actions performed by nurses and the regulations on legal accountability for medical actions performed by nurses following the principle of equality before the law.

2 Materials and Methods

The legal research method used in writing this dissertation is the normative legal research method (Soekanto, 2016). The normative legal research method is a legal research method that examines positive legal rules such as the 1945 Constitution of the Republic of Indonesia, Law No. 17 of 2023 on Health, Government Regulation No. 28 of 2024, and other laws and regulations as the object (target) of the research. These positive legal rules are documented legal materials. As a consequence, this research can be said to be research on documented legal materials. However, in addition to examining positive legal rules as documented legal materials, the researcher also conducted interviews with several informants. The interviews with informants are intended to produce empirical data on the practice of delegating authority according to the informants' views on the delegation or transfer of authority from medical personnel to nurses (health workers) to perform medical actions. The research methodology employed in this study consists of three methods: (1) legal approach, (2) conceptual approach, and (3) case study (Ibrahim, 2005).

3 Results and Discussions

As mentioned in the previous section, medical procedures are aspects of healthcare that fall outside the duties and responsibilities of nurses (healthcare workers). Medical procedures are the duties and responsibilities of

medical personnel (doctors or dentists) (Sylvana et al., 2021). The primary duties and responsibilities of nurses are to provide nursing care to patients in accordance with their competencies (Askep) (Vitriarningsih & Budiarsih, 2019). The essence of the duties and responsibilities of nurses, namely nursing care (Askep), differs from the duties and responsibilities of medical personnel, namely medical procedures. Therefore, medical procedures are not the field of expertise (specialisation) of nurses. The shortage of medical personnel is addressed by the state (government) not by increasing the number of medical personnel, but by utilising laws and regulations as legal instruments (legal tools) to address the shortage of medical personnel. The state (government) has adopted measures to address the shortage of medical personnel by allowing nurses or healthcare workers to perform medical procedures. The opportunity for nurses to perform medical procedures, as mentioned above, is regulated by laws and regulations. The state (government) has opened opportunities and possibilities for nurses (health workers) to perform medical procedures in accordance with the procedures and requirements stipulated and established in laws and regulations.

Laws and regulations permit healthcare human resources to engage in functional relationships that are cross-sectoral, namely between medical personnel (doctors or dentists) and nurses (healthcare workers) (Pramudito & Widjaja, 2022). Functional relationships (working relationships) that are cross-sectoral between medical personnel and nurses (health workers) open up the possibility for nurses (health workers) to perform medical procedures even though medical procedures are not the duties and responsibilities of nurses. The authority of nurses to perform medical actions that are not included in the duties and responsibilities of nurses, as mentioned above, is derived from or based on the delegation of authority from medical personnel (Sriwanto & Anwary, 2020). The delegation of authority from medical personnel to nurses to perform medical actions is regulated by laws and regulations. The delegation of authority from medical personnel to nurses to perform medical procedures simultaneously constitutes the delegation of responsibility from medical personnel to nurses (Sriwanto & Anwary, 2020).

From a normative legal perspective, the delegation of authority from medical personnel to nurses to perform medical procedures due to a shortage of medical personnel is regulated in Article 290 of Law Number 17 of 2023 concerning Health as follows: 'Medical personnel and health workers may receive delegated authority to provide health services.' Medical procedures are part of health services. The method of delegating authority from medical personnel to nurses (health workers) to perform medical procedures can be carried out in two ways. First, delegation of authority based on mandate (Andayani & Sally, 2022). Second, delegation of authority based on delegation (Andayani & Sally, 2022). Both methods of delegation of authority have different legal consequences for both the party delegating (transferring) authority by mandate or delegation and the party receiving authority.

Specifically, the delegation of authority discussed in the dissertation is the delegation of authority from medical personnel to nurses to perform medical actions based on delegation. According to the law, the delegation of authority from medical personnel to nurses (health workers) based on delegation can occur between (1) medical personnel and medical personnel, (2) medical personnel and health workers, and (3) between health workers. This delegation of authority is regulated in Article 290(3) of Law No. 17 of 2023 on Health as follows: 'The delegation of authority referred to in paragraph (1) is carried out from medical personnel to healthcare workers, between medical personnel, and between healthcare workers.' This delegation of authority is further regulated in Article 745(3) of Government Regulation No. 28 of 2024, which states: 'The delegation of authority as referred to in paragraph (1)(b) is a delegation of tasks with responsibility resting with the recipient of the authority.' The regulation of the delegation of tasks and responsibilities of medical personnel to nurses to perform medical procedures based on delegation in Article 290 of Law No. 17 of 2023 on Health and further regulated in Article 745 paragraph (3) of Government Regulation No. 24 of 2024 as implementing regulations of the law contains legal issues from both the regulatory and implementation aspects (Shore et al., 2022).

In practice, the delegation of authority from medical personnel to nurses (health workers) to perform medical procedures deviates from the provisions of the law. Various forms of deviation frequently occur in the practice of delegating authority from medical personnel to nurses to perform medical procedures (British Journal of Nursing, 2022). These deviations include violations of the procedures for delegating authority and the requirements for delegating authority. For example, delegating authority verbally constitutes a procedural violation. Failure to monitor and evaluate the implementation of medical procedures is a violation of the requirements for delegating authority. Another form of deviation (violation) is the delegation of authority to

all nurses without considering their competence (Huda & Huda, 2021). Khusnul & Khoiril describe the forms of violations in the practice of delegating authority from medical personnel to nurses to perform medical procedures as follows:

" In reality, the delegation of medical authority . . . is not in accordance with the laws and regulations, for example, doctors delegate (authority . . . pen.) not in writing, do not supervise and evaluate the results of the actions, delegate to all nurses without regard to the level of clinical nursing.." (Huda & Huda, 2021)

In the context of the delegation of medical authority to nurses to perform medical procedures that violate procedures and requirements as mentioned above, nurses cannot refuse the delegation of authority. The reason is that, under the old paradigm, doctors were considered superior (holding a higher position than nurses), so doctors issued orders and nurses simply followed and carried out those orders without needing to question them (Huda & Huda, 2021). However, the risk of performing medical procedures based on delegated authority that violates procedures and requirements is borne by or constitutes the legal responsibility and risk that nurses must assume (Satria & Yusuf, 2024). If harm occurs to the patient, such as severe disability or death, during the implementation of medical procedures, the party responsible for bearing the legal responsibility and risk is the nurse (healthcare worker) and not the medical professional (Sriwanto & Anwary, 2020). However, the tasks and responsibilities performed by nurses in the context of implementing medical procedures are the tasks and responsibilities of medical professionals. The situation and conditions described above reflect an unfair situation and conditions that are disadvantageous or create burdens and legal problems for nurses.

Of course, the situation and conditions of nurses in the implementation of medical procedures based on the delegation of authority as described above reflect an unfair situation for nurses. However, the role of nurses is precisely to assist in performing medical procedures as part of the duties and responsibilities of medical personnel. This means that in situations of insufficient medical personnel, nurses are burdened with expanded duties and responsibilities to perform medical procedures following legal regulations (Nadeak, 2024). However, due to errors in the formulation of laws and regulations, nurses are always in the position of victims who are obligated to bear legal responsibility and risks as well as suffering in the context of the delegation of authority to perform medical procedures. This situation arises because nurses do not receive legal protection from the state (government) under the law when performing medical procedures based on the delegation of authority from medical personnel, who are the tasks and responsibilities of medical personnel (Indriyono & Widiyanti, 2024). In other words, nurses always become victims who bear the suffering, responsibility, and legal risks when assisting in the duties and responsibilities of medical personnel. In the situation and conditions described above, the injustice towards nurses is evident.

The delegation of medical authority to nurses (health workers) to perform medical procedures involves two interrelated aspects that cannot be separated. On one hand, the delegation of authority from medical personnel to nurses (health workers) constitutes an addition and expansion of the duties and responsibilities of nurses (health workers) (Indriyono & Widiyanti, 2024). On the other hand, the delegation of authority from medical personnel to nurses simultaneously involves the transfer of legal responsibility and risk to nurses (Sriwanto & Anwary, 2020). The legal provisions governing the delegation of authority from medical personnel to nurses, which also involves the transfer of legal responsibility for medical actions to nurses, raise legal issues (Medicopublication, 2021). The legal issues in the regulation of the delegation of authority, which also involves the delegation of responsibility and legal risk to nurses, actually result in losses for nurses. In fact, in the implementation of medical actions, nurses assist in the tasks and responsibilities of medical personnel (Sylvana et al., 2021).

According to the author, the legal issues in the regulation of the delegation of authority from medical personnel to nurses (health workers) stem from errors made by the drafters of laws and regulations. The drafters of laws and regulations mistakenly interpreted the delegation of authority from medical personnel to nurses as a legal event within the realm of public law, specifically administrative law. As a result, the drafters used the term 'delegation' as a public law term in the context of the delegation of authority from medical personnel to nurses. However, delegation is a public legal event concerning the transfer of authority between higher government bodies or positions to lower government bodies and/or positions (Andayani & Sally, 2022). The transfer of authority from medical personnel to nurses is a legal event that takes place (occurs) in the field of civil law. The transfer of authority from medical personnel to nurses, as regulated in Article 290 of

Law No. 17 of 2023 on Health and Government Regulation No. 28 of 2024, is a legal event between individuals, namely medical personnel and nurses (health workers), in an interprofessional context.

Based on the brief explanation above, the use of the term 'delegation' in the context of the transfer of tasks and responsibilities from medical personnel to nurses (health workers) contains several inaccuracies. The positive legal norms governing the transfer of tasks and responsibilities from medical personnel to nurses, as regulated in legislation, contain legal issues. The characteristics of the legal issues in the regulation of the delegation of authority from medical personnel to nurses are referred to as the vagueness of legal norms (vague norm). Several arguments (reasons) can be presented to demonstrate or prove the legal issues of legal ambiguity (vague norm) in Article 290 of Law No. 17 of 2023 on Health. The description of the legal issues referred to as legal ambiguity (vague norm) as mentioned above can be presented in the following discussion regarding the following matters: 1) Misuse of the term 'delegation' in the context of the transfer of authority from medical personnel to nurses to perform medical procedures, 2) Misunderstanding of the legal subjects and legal status of medical personnel and nurses in the transfer of authority from medical personnel to nurses to perform medical procedures, 3) Misunderstanding the nature, essence, and characteristics of the legal relationship between medical personnel and nurses in the performance of medical procedures, 4) Misunderstanding the regulation of aspects and principles of legal accountability for medical procedures performed by nurses based on the delegation of authority from medical personnel.

According to the author, the principle of legal accountability for actions based on the delegation of authority in administrative law cannot be applied to the delegation of duties and responsibilities (authority) from medical personnel to nurses (health workers). The principle of legal accountability for medical actions performed by nurses based on the delegation of duties and responsibilities, as regulated in legislation, adopts the principle of legal accountability for the delegation of authority (delegation) in administrative law. According to the author, the legislator erred in regulating the principle of legal accountability for medical actions performed by nurses based on the delegation of authority from medical personnel. The principle of legal accountability for the delegation of authority by government bodies and/or positions is inappropriate (incorrect) when applied in the context of legal accountability for medical actions performed by nurses based on the delegation of authority by medical personnel. The legal event of the delegation of authority between doctors (*medical personnel . . . pen.*) and nurses is a delegation of authority in the context of partnership (Pramudio & Widjaja, 2022).

If the principle of legal accountability for the actions of government bodies and/or positions based on delegation were applied in the context of the delegation of tasks and responsibilities from medical personnel to nurses (health workers), nurses would be positioned as victims. In the context of legal accountability for the delegation of tasks and responsibilities from medical personnel to nurses (health workers), nurses are obligated to bear the legal responsibility and risk of performing medical actions. However, these medical actions are the tasks and responsibilities of medical personnel. If nurses are obligated to bear the burden of legal responsibility and risk for the implementation of medical actions based on the delegation of tasks and responsibilities of medical personnel, the principle of accountability based on the concept of delegation clearly results in injustice for nurses (health workers).

The reason is that nurses are merely tasked with assisting in the performance of the duties and responsibilities of medical personnel, but it is the nurses who are required to bear the responsibility and legal risk of performing medical procedures that should be carried out by medical personnel. Furthermore, in accordance with the principle of equality, medical personnel must be regarded as having the same status and rank as nurses (health workers) in the context of health services.

More specifically, medical professionals, i.e., medical personnel, hold the same status and are equal to nurses (healthcare workers) in the context of performing medical procedures based on the delegation of authority from medical personnel.

In addition to the principle of equality before the law, medical professionals have equal standing before the law based on the academic autonomy of Nursing Science and Medical Science, which are distinct disciplines. As one of the professional healthcare workers, nurses perform their duties and responsibilities based on nursing knowledge and theory that can be accounted for (Setiani, 2018). The principle mentioned above also applies to medical personnel who carry out and perform their duties and responsibilities as medical personnel based on knowledge and Medicine that can be accounted for. This means that both the nursing profession and the medical profession carry out and perform their respective duties and responsibilities following or based

on their respective knowledge and experience in accordance with their profession. Based on the principle of scientific autonomy between Nursing Science and Medical Science, there is no reason to assert that medical personnel hold a higher position than nurses (health workers). Based on the same principle of academic autonomy, the author can also state that there is no reason to reject the idea of equality before the law between medical personnel and nurses (health workers) in the context of performing medical procedures.

As a consequence, medical personnel are colleagues of nurses (health workers) in the implementation of medical procedures and not their superiors. As a consequence, the delegation of medical personnel's duties to nurses to perform medical procedures is inappropriate or incorrect if viewed as delegation from the perspective and understanding of state administrative law. The reasons, objections, and simultaneous rejection of the use of the term 'delegation' in the context of the transfer of tasks from medical personnel to nurses (health workers) to perform medical procedures have been explained in the preceding section. According to the author, the appropriate term to describe the delegation of medical tasks to nurses (health workers) to perform medical procedures is collaboration. On one hand, collaboration is a term that describes an equal and parallel relationship between the parties involved. On the other hand, the term collaboration is a term that describes a form of cooperation between various parties based on an agreement between the collaborating parties. In addition to the above, collaboration has other aspects that need attention. The term collaboration has legal consequences for the accountability of legal actions taken in the context of collaboration.

Following the legal equality of medical personnel with nurses and the principle of scientific autonomy of each medical and nursing professional, medical personnel have the same legal status and equality with nurses (health workers). The equality of status between medical personnel and nurses (health workers) in the performance of medical actions has logical consequences for the term 'delegation.' The term "delegation" is inappropriate (incorrect) when used in the context of transferring tasks from medical personnel to nurses to perform medical actions. The appropriate term, consistent with the principle of equality before the law and the principle of professional autonomy, is 'collaboration.' The term 'collaboration' has implications for the legal liability of medical procedures performed by nurses (medical personnel). As a consequence, the legal liability for medical procedures performed by nurses (healthcare workers) is the legal responsibility of medical personnel and not the responsibility of nurses (healthcare workers).

4 Conclusion

Based on the reasons and arguments presented above, the author concludes as follows:

First, the regulation and implementation of the delegation of authority is based on scientific/competence delegation and not on actions in the context of a position, because medical personnel are professionals. Thus, the use of the term delegation of authority to nurses or health workers to perform medical actions is a misuse of the term.

The delegation of authority from medical personnel to nurses based on expertise in science is an incorrect and misplaced term and usage. The incorrect use of the term 'delegation of authority' and the practice of performing medical actions based on delegation in the context of expertise or competence in science results in legal liability for the performance of medical actions based on such delegation from a legal (juridical) perspective.

Second, nurses are not responsible for medical actions performed by nurses based on the delegation of authority from medical personnel to nurses. Responsibility remains with medical personnel based on their expertise/competence in their field. The delegation of tasks or authority to perform actions in the context of expertise in health science is not appropriately referred to as delegation. Medical personnel and nurses have equal standing or the same legal status in efforts to maintain or restore patient health. The delegation of authority to perform medical actions is not a delegation of authority in the performance of governmental duties or responsibilities. Medical personnel and nursing staff (healthcare personnel) may collaborate to perform medical actions together based on an agreement between medical personnel and nurses.

In the context of the conclusions presented above, the author can point out a novelty (new element) in the functional relationship between medical personnel and nurses and health workers in performing medical procedures, namely that the more appropriate term to use is collaboration. The term 'collaboration' aligns

with the principles of equality between medical personnel and nurses, the principle of academic autonomy, the principle of protection and safety, and additionally, the principle of respect for the rights and obligations of each party as legal principles in health law.

Based on the conclusions stated above, the author proposes to amend the wording of Article 290 of Law No. 17 of 2023 as follows: 1) Medical personnel may delegate tasks and responsibilities to nurses or healthcare workers to perform medical procedures based on an agreement between medical personnel and nurses to provide healthcare services. 2) Medical personnel and nurses or healthcare workers may perform medical procedures based on a collaboration agreed upon by medical personnel and nurses or healthcare workers. 3) The legal responsibility and risk for the delegation of duties and responsibilities from medical personnel to nurses or healthcare workers to perform medical procedures shall be the legal responsibility and risk of the medical personnel. 4) Further regulations regarding the delegation of tasks and responsibilities for performing medical procedures from medical personnel to nurses or healthcare workers are governed by Government Regulations.

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