

Juridical Review of Medical Record as a Mean of Legal Protection for Nurse

Mulyana¹, Faisal Santiago²
Doctoral of Law Program, Universitas Borobudur Jakarta, Indonesia^{1,2}

{anaunborr@gmail.com¹, faisalsantiago@borobudur.ac.id²}

Abstract. Nurses as health workers in carrying out their duties and professions often face what appears to be malpractice, namely in the form of medical disputes. The dispute is filed with a criminal or civil suit which leads to the process of examining the case in court. In the case of examination, the evidence is required under legal provisions. One of the pieces of evidence is medical records as documentary evidence. The provision that medical records can be used as evidence is Permenkes No. 269 / MENKES / PER / III / 2008 concerning Medical Records. However, the medical record evidence does not necessarily have the power of proof in proving whether the nurse is wrong or not. In criminal law, to prove it adheres to the principle of proof of law negatively, which seeks material truth, not formal truth as medical record evidence so that the position of medical record evidence needs to be equipped with other evidence, and it must be with the conviction of a judge. Whereas civil law it is looking for formal truth, meaning that only sufficient evidence requires written evidence. Medical records can be used as evidence for both patients and doctors, nurses, and health service providers at court case examinations, because medical records contain who, when, how, the medical action took place. Medical records as a means of legal protection at least provide legal assurance and certainty to uphold law and justice. This study aims to examine juridically medical records as a means of legal protection for nurses. The approach used in this research is a statutory approach and a conceptual approach.

Keywords: medical records; legal protection; nurse

1 Preliminary

The aspiration to promote public welfare as one of the national goals as stated in the Preamble to the 1945 Constitution of the Republic of Indonesia needs to be carried out in health development aimed at improving the welfare of individuals, families, and communities by instilling healthy living habits. The implementation of health development is realized through the implementation of health services, including nursing services, which is a form of professional service that is an integral part of health services based on nursing knowledge and tips aimed at individuals, families, groups, or communities, both healthy and sick.[1]

Nurses are part of health workers, namely people who devote themselves to the health sector and have the knowledge and/or skills through education in the health sector which for certain types require the authority to make health efforts.[2]

Based on Law No. 36 of 2014 concerning Health Workers that health workers are grouped into medical personnel; clinical psychologist; nursing staff; midwifery staff; pharmaceutical personnel; public health workers; environmental health personnel; nutrition staff; physical neatness; medical technical personnel; biomedical engineering staff; traditional health workers; and other health workers.[3] Based on the above provisions, the nursing staff is one part of the health workforce.

Nurses have an important role in providing maximum health services to the community. Therefore, in their services, nurses must comply with nursing practice standards and competencies so that the community or patients get good nursing services.

Along with the emergence of public awareness of the importance of health, namely with the large number of people doing both self-examination, treatment, and healing at health service places, such as clinics, health centers, and hospitals. This of course will increase the demand for health services which makes health workers, such as doctors who need help from other health workers, especially nurses to carry out a diagnosis, therapy, and other medical actions. Of course, this makes the role of nurses very important in helping doctors work.

When nurses in a dependent or independent function perform nursing services, such as medical treatment, sometimes something unwanted happens in the healing effort. Whereas medical actions in nursing services have been carried out by nurses following service standards, professional standards, and standard operating procedures. However, patients perceive this as a form of malpractice that is suspected to be caused by medical negligence. Of course, this can be understood and understood because patients may not understand technical matters in service standards, professional standards, and standard nursing operational procedures in medical actions performed by nurses. For the losses suffered, the patient filed a lawsuit, either criminal or civil.

Based on this, the importance of legal protection for nurses in carrying out their duties and profession. Constitutionally, nurses have the right to be protected. State protection for its citizens is stated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that *"everyone has the right to recognition, guarantees, protection and legal certainty that is just and equal treatment before the law"*. Meanwhile, nurses as health workers are entitled to legal protection as regulated by Law no. 36 of 2009 concerning Health, which states that *"Health workers have the right to receive compensation and legal protection in carrying out their duties according to their profession"* [4] Then Law Number 36 of 2014 concerning Health Workers, also states that *"In carrying out their practice, Health Workers have the right to legal protection under the provisions of laws and regulations"*. [5]

In particular, nurses themselves obtain legal protection that is owned and has been stipulated in Law No. 38 of 2014 concerning Nursing which states that *"Nurses in carrying out nursing practice have the right to obtain legal protection as long as they carry out their duties under service standards, professional standards, standard operating procedures, and provisions of laws and regulations"*. [6] This rule is a guarantee given by the State to the primary nurse to carry out their duties according to predetermined standards. This means that nurses in carrying out their work must be guided and based on normative instruments that apply to them.

The regulation explains that if a nurse who does not perform her job under operational standards and standard medical procedure procedures means that she has committed an error or negligence, which in addition to being prosecuted under criminal law, can also be sued for

civil compensation if the patient suffers a loss. Criminal lawsuits can only be filed if the patient suffers from permanent disability or dies as a result of negligence, while civil lawsuits can be filed if the patient suffers a loss even if a minor error occurs

Lawsuits made by patients can be criminal or civil and lead to an examination of a court case. In the process of case examination, the role of evidence is very important as a tool that helps prove wrong or right according to law. One of the pieces of evidence presented in the examination at the court is a medical record.

The medical record is evidence of a strong position and is regulated by legislation. These provisions are regulated by the Minister of Health Regulation No. 269 / MENKES / PER / III / 2008 concerning Medical Records which states that *"the use of medical records can be used as evidence in the process of law enforcement in the disciplines of medicine and dentistry and ethical enforcement of medical and dental ethics"*. [7] This provision explains that medical records can be used as evidence in the process of law enforcement, namely in the process of examining cases in court.

A medical record is a file containing notes and documents about the identity of the patient, examiner, medication, actions, and services that have been provided to patients while undergoing a health service facility. The medical record contains patient clinical data during the process of diagnosis and treatment (treatment). Therefore, medical records can be used as a guide or binding legal protection.

Based on the description above, the juridical study of medical records as a means of legal protection for nurses is an important matter to be studied and discussed. This is important because in the examination of a court case it can be a means of evidence that can assist the judge's judgment in his decision in determining whether the accused (in criminal) / defendant (in civil) is true or false based on the information contained in the medical record. The problem of medical records as a means of legal protection, in this case as a means of evidence, is certainly very interesting to be examined more focused and deeply from the perspective of legal science in the form of juridical studies of medical records as a means of legal protection for nurses. Judging juridically how the juridical study of medical records as a means of legal protection for nurses based on a criminal and civil perspective.

2 Research Problem

Based on the background above, this research problem can be formulated as follows: How is the juridical review of medical records as a means of legal protection for nurses?

3 Literature Review

3.1 Medical Record

According to the Regulation of the Minister of Health of the Republic of Indonesia No. 269 / MENKES / PER / III / 2008 concerning Medical Records or Permenkes No. 269 of 2008, that what is meant by medical record is a file containing notes and documents regarding the patient's identity, examination, medication, actions and other services that have been provided to patients. [8]

In the explanation of Law no. 29 of 2004 concerning Medical Practice, what is meant by medical record is a file containing notes and documents regarding patient identity, examination, medication, actions, and other services that have been provided to patients.[9]

The Medical Practice Law states that doctors and dentists are required to make medical records in carrying out the medical practice. After providing medical practice services to patients, doctors and dentists immediately complete the medical record by filling in or writing down all the medical practice services they have performed. Every record in the medical record must be affixed with the name, time, and signature of the officer providing the service or action. If the recording of medical records uses electronic information technology, the obligation to sign a signature can be replaced by using a personal identification number (PIN).

Permenkes No. 269 of 2008 states that in principle the contents of the medical record belong to the patient, while the medical record file (physically) belongs to the hospital or health service facility. Medical records must be kept for at least five (5) years from the date the patient was last treated. The contents of the medical record are recorded in the form of a medical record summary.

In terms of its purpose and use, medical records have several aspects, including: [11]

- a. Administrative Aspects, a medical record file has administrative value because it involves actions based on authority and responsibility as medical and paramedical personnel in achieving health service goals.
- b. Medical Aspects, a medical record file has medical value because the record is used as a basis for planning treatment and care that must be given to a patient.
- c. Legal Aspects, a medical record file has legal value because it concerns the issue of legal certainty based on justice to enforce the law.

Medical Records regulated in Permenkes No. 269 of 2008 is very valuable, because: [12]

1. Medical records can be used by patients to monitor their present and future illnesses;
2. Medical records can protect hospitals and doctors from a legal perspective. If it is incorrect and incomplete, the medical record can harm the patient, the hospital, or the doctor himself;
3. Medical records can be used for medical or administrative research. Health workers or hospital staff can only use medical records by looking at the data provided, if the diagnosis is incorrect and incomplete, the disease code is not correct, so the disease index reflects deficiencies. This will result in difficulties.

3.2 Legal Protection

Laws according to the Dictionary of Laws are compulsory regulations that determine human behavior in the community, made by the competent official bodies, violations of these regulations result in the taking of action. [13]

According to Sudikno Martokusumo, that law is a collection of rules and regulations that are general and normative, the law is general because it applies to everyone, and is normative because it determines what should be done, what should not be done, or should be done and determine how to implement compliance on the rules.[14] According to Hans Kelsen, the law is an order of human action. Law is not, as it is sometimes said, a rule. Law is a set of rules that contain the kind of unity we understand through a system. [15] While the law in the sense of the ruler (laws, decisions, etc.) are the set of written rules made by the government, through the bodies that are authorized to form various written rules as successive: constitutions, laws, presidential decisions, government regulations, ministerial decisions, and regional regulations. Included in the form of law which is the provision of the ruler are the decisions of judges who

already have the power of law or jurisprudence as a source of written law which also has the power as law. [16]

According to Satjipto Raharjo, the function of law is to protect a person's interests by allocating some power to him to act in this interest. The allocation of power is carried out in a measured manner, in the sense that its breadth and depth are determined. Protecting is done through legal protection. Legal protection is an effort by the authorities to provide guarantees and conveniences in such a way so that every citizen or all citizens of the State can actualize their rights and obligations optimally in a calm and orderly manner. [18]

According to Philipus M. Hadjon, there are two forms of legal protection for the people, namely: [19]

- a. Preventive legal protection means that people are allowed to submit opinions before a government decision takes a definitive form aimed at preventing disputes.
- b. Regressive legal protection aimed at resolving disputes. Legal protection is a guarantee given by the State to all parties to be able to exercise their legal rights and interests in their capacity as legal subjects.

3.3 Nurse

The word nurse comes from Latin, "*nutrix*" which means "to care for" or "to take care". This word was first used by Ellis and Hartley when they explained the basic understanding, a nurse, that is, someone who plays a role in caring for and maintaining, helping, and protecting someone due to illness, injury, and the aging process. [20]

According to the International Council of Nursing, a nurse is someone who has completed a nursing education program, has the authority in the country concerned to provide services, and is responsible for improving health, disease prevention, and patient care. [21] Meanwhile, Law No. 38 of 2014 concerning Nursing, defines a nurse as someone who has passed higher education in Nursing, both at home and abroad who is recognized by the Government under the provisions of the Legislation. [22]

According to Sri Praptianingsih, the function of nurses consists of three, namely, independent functions, interdependent functions, and dependent functions, namely: [23]

- a. *Independent functions* are those activities that are considered to be within nursing's scope of diagnosis and treatment. In this function, the nurse's actions do not require a doctor's order. The nurse's actions are independent, based on nursing knowledge and tips. Therefore, the nurse is responsible for the consequences that arise from the actions taken. In the state administrative law, this independent function is an attributional authority in the sense that the nurse's authority to carry out a nursing action is based on the authority obtained from law or legislation. In this case, regulated in Permenkes No. HK.02.02 / Menkes / 148/2010 concerning Licensing and Implementation of Nursing Practices Article 8, Article 9, and Article 10.
- b. *Interdependent function* is carried out in conjunction with other health team members. The nurse's actions are based on collaboration with the care team or health team. In this function, the nurse is jointly responsible with other health workers for the failure of health services, especially in the nursing field. The authority that is owned in carrying out this function is referred to as the authority of delegation because there is a delegation of tasks from doctors to nurses.
- c. *Dependent functions* are the activities performed based on the physician's order. Here the nurse acts to assist the doctor in providing medical services, providing medical services, and special actions that the doctor's authority should take. Authority in this function is a

form of authority obtained because of the mandate. In the sense that the nurse performs a task because of the mandate from the doctor. Therefore, any failure of medical action is the responsibility of the doctor. Any act of a nurse based on the doctor's orders, respecting the patient's rights is not part of the nurse's responsibility.

4 Research Method

This research is legal research. This type of research is normative legal research (normative law research). This research approach uses a statute approach and a conceptual approach [24] related to the juridical study of medical records as legal protection.

5 Discussion

Based on the dependent function in nursing practice, nurses in carrying out their duties must always be under the supervision of a doctor, where the nurse acts to assist doctors in providing health services. In carrying out their duties, nurses must always be guided by service standards, professional standards, and standard operating procedures. Therefore, nurses are required to always be thorough, patient, and full of accuracy in serving patients, so as not to cause problems, which in this context occurs medical disputes.

According to law, the relationship between health workers (nurses) and patients is an agreement whose object is in the form of health services or healing efforts known as therapeutic transactions. Between health workers and patients, there are what are known to be mutually agreed to bind themselves in carrying out treatment or health services and what is called an engagement (*verbintenis*), which in the doctrine of legal science there are two types of engagement, namely an *inspanning verbintenis* and binding result (*verbintenis resultaat*). [25]

An engagement that arises from a therapeutic transaction is called *inspanning verbintenis*, which is an engagement that must be carried out carefully, and an engagement arising from the therapeutic transaction is called maximum effort (*met met zorgen inspanning*). [26] Since the achievement was an endeavor, the outcome was uncertain. As a result, if the effort fails, in the sense that the patient does not recover or even dies, it is a risk that must be borne by both the patient and health workers, such as nurses. However, patients often do not want to accept the risks that must be shared, resulting in medical disputes between doctors or nurses and patients who feel disadvantaged. This was the start of a continuing dispute. Feeling that his rights as a patient were harmed due to the medical failure, the patient filed a lawsuit against the law enforcement apparatus. A lawsuit can be in the form of a criminal or civil suit. Both types of lawsuits continue with the existence of case examinations in court to prove whether the respondent/defendant (doctor/nurse) or the plaintiff (patient) is right or wrong. Usually, in the case of examination, the parties submit evidence in the form of evidence to complement and strengthen their respective exceptions.

It is related to the theory of legal protection, as stated by Philipus M. Hadjon that legal protection for the people is a government action that is preventive and repressive. [27] Preventive legal protection aims to prevent disputes, which directs government actions to be careful in making decisions based on discretion and repressive protection aimed at preventing disputes, including their handling in the judiciary. [28] In this case, medical records can be

used to provide legal protection for doctors, nurses, and health service providers in the form of preventive or repressive protection.

Judging from the law of evidence, the medical record as evidence submitted by the parties to the trial will be evaluated, in which case the judge is authorized to conduct the assessment. In general, judges are free to judge the evidence. One example is documentary evidence which has binding evidentiary power for both the judge and the parties and vice versa.[29] Medical records can be stated as evidence because medical records are written evidence (letters/documents). The power of proof is equivalent to evidence of an authentic deed, because from the way medical records are made, the record file is a document signed by the competent official for the field (doctor and health worker), and the presentation must be with the patient's permission. This means that a medical record is a writing that is deliberately made and signed by authorized health personnel to produce it as legal evidence.

In criminal law, the truth sought is not only formal truth but also material truth. The procedure for seeking the truth is obliged to use certain evidence under the provisions of the law. Evidence in criminal procedural law at court case examination by Rusli Muhammad is said to be an attempt to obtain information through evidence and testimony to gain confidence as to whether or not the criminal act is accused and to find out whether or not the defendant is guilty [30]

As evidence in the form of a letter, in criminal law, a medical record has met the requirements to be referred to as a letter according to Article 187 of the Criminal Procedure Code, among which is made on an oath of office. Besides, it has met the provisions in Permenkes No. 269 of 2008, namely "*the use of medical records can be used as evidence in the process of law enforcement in the disciplines of medicine and dentistry and ethical enforcement of medical and dentistry ethics*" [31] According to the Criminal Procedure Code Article 184 paragraph (1), valid evidence is the testimony of witnesses, expert statements, letters, instructions, and statements of the accused. Based on the provisions of Article 184 paragraph (1), it can be seen that medical records have a dual function as evidence. Medical records can be considered as evidence of expert testimony as well as documentary evidence.

However, in criminal law, the effort to prove it adheres to the principle of proof negatively by the law, which seeks material truth, not formal truth. Here, medical records in their position as evidence (both as evidence for expert testimony and documentary evidence), have no binding power of proof. The judge is free to judge him and is not tied to him. Or in other words, medical records have a "*free*" power of evidence. This judge's conviction greatly influences the judgment in determining the verdict.

In contrast to criminal law, according to Ali Afandi, in civil law, there are three theories of proof of burden, namely the Theory of Subject-Right Law Theory, Objective Law Theory, and Reasoning Theory. [32] The theory of fairness is the combination of the theory between a positive legal proof system with a conviction-in-time proof system. This theory is most often used by judges because it is considered very flexible. In this theory, a judge must conduct a division of evidence-based justice, where a load of proof is given to the parties who are most likely to provide such evidence.

As it is known that in civil law it is the search for formal truth, it means that evidence that is sufficient only requires written evidence. The valid evidence instruments according to Article 1866 of the Civil Code are written evidence, evidence with witnesses, suspicions, confessions, and oaths. In contrast to criminal law, in civil law, the primary evidence is the written evidence (*letters*), and not the testimony.

Based on the evidence through this medical record proof tool, it will be possible to know whether or not malpractice has occurred, as claimed by the patient as a criminal or civil

plaintiff. It is not unlikely that the actual occurrence is not a result of malpractice, but is a medical risk that can be caused by several possibilities, namely: *First*, the result of a course of illness or disease complications that have nothing to do with medical action. *Second*, the result of an unavoidable risk, namely *Unforeseen* risk, such a risk is possible in medicine because of the nature of empirical science and the nature of the human body is very varied and vulnerable to external influences.

6 Conclusion and Suggestion

6.1 Conclusion

Medical records as a means of legal protection for nurses can be used as evidence in the process of case examination in court. This is under Permenkes No. 269 / MENKES / PER / III / 2008. In this Permenkes, medical records are recognized as valid evidence, with notes in the form of letters or in writing as well as in electronic form. The position of the evidence from the medical record is said to be the main evidence in case resolution because through this medical record it will be known whether health workers, such as nurses, have committed malpractice or not.

There are differences in the assessment of medical records as evidence according to criminal law and civil law. In criminal law, to prove it adheres to the principle of proof of law negatively, seeking material truth, not formal truth. The judge's conviction is very decisive in the consideration of the decision to be taken because medical records as evidence have no binding power of evidence. Whereas civil law it is looking for formal facts, indicating that only sufficient evidence requires written evidence. Therefore, medical records as written evidence has a restraining power of evidence.

6.2 Suggestion

Care is needed and more thorough in making/filling in medical records, and as complete as possible, so that medical records can accomplish their functions as regulated in Permenkes No. 269 of 2008. This is important because one day it will become a means of legal protection as documentary evidence in case examination in court, in the event of a legal problem, whether criminal or civil.

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