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Submission date: 05-Jan-2023 02:30PM (UTC+0700)

Submission ID: 1988767366

File name: Students_in_Implementing_Clinical_Practices_at_the_Hospital.pdf (285.48K)

Word count: 5284

Character count: 29554



Legal Protection of Nursing Students in Implementing Clinical Practices at the Hospital

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Submitted: September 29 2020, Accepted Oct 16 2020, Published November 30 2020

Abstract

The procurement of health personnel is carried out through higher education in the health sector which is directed at producing quality health personnel in accordance with professional service standards. The Field Learning Practice stage is also known as the clinical learning process which is fully implemented in the practical field, namely the hospital under the supervision of the clinical supervisor. In carrying out student clinical practice errors or omissions may occur. The purpose of this study is to determine the responsibility of nursing students who make mistakes that result in harm to patients and to find out legal protection for nursing students who make mistakes that cause harm to patients. The research described is normative research using primary, secondary and tertiary legal materials, analytical descriptive research characteristics, legal material collection is done by document study techniques, data are analyzed qualitatively. The results show that the management of nursing student responsibilities who make mistakes can be seen from the civil aspects of the criminal and administrative aspects while the legal protection is regulated in Law Number 36 of 2009 concerning Health, Law Number 4 of 2009 concerning Hospitals, Law RI Law No. 38 of 2014 concerning Nursing, Law No. 36 of 2014 concerning Health Workers, and Regulation of the Minister of Health No. 148 of 2010 concerning Licensing and Implementation of Nursing Practices while the Cooperation Agreement between Educational Institutions and Health Institutions already contains 4 elements, namely consent of the will, authority, specific (achievement) objects and objectives of the agreement.

Keyword: Hospital; Legal Protection, Nursing Students

INTRODUCTION

Health is the right of everyone in accordance with the 1945 Constitution article 28h that "everyone has the right to live in physical and mental well-being, to have a place to live, and to have a good and healthy living environment and the right to obtain health services" (Alexander, 2015). The Sustainable Development Goals set by the United Nations consist of 17 goals for the year 2030 where the third goal is Good Health and Well-Being, to turn this goal into real action, the implementation of health efforts needs to pay attention to general policies one of which is an increase in health resources. The Law No. 36 of

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2014 regulated that the improvement of health personnel must support all health development efforts and be directed to create skilled and skilled health personnel in accordance with the development of science and technology, have faith and devotion to God Almighty, and hold fast to the service of the nation and the State and professional ethics.

The development of health personnel is aimed at increasing the empowerment or effectiveness of personnel and the provision of the number and quality of health personnel from the community and government who are capable of carrying out health development. The Law No. 36 of 2014 stated the procurement of health personnel is carried out through higher education in the health sector which is directed to produce quality health personnel in accordance with professional service standards. Nurses as part of health workers who also play an important role in realizing the Sustainable Development Goals must take education to be able to serve the community as described in the Law No. 36 of 2009, Article 1 paragraph (6): "A health worker is any person who devotes himself to the health sector and has knowledge and / or skills through health education which for certain types requires the authority to carry out health efforts". The Law No 12 of 2012 stated that health education meant can be implemented in university that organize nursing education programs that will produce vocational nursing personnel, the Higher Education Law explains that higher education is the level of education after secondary education which includes diploma programs, undergraduate programs, master programs, doctoral programs and professional programs, as well as specialist programs, which are organized by universities based on Indonesian culture.

Nursing higher education, one of which is vocational nursing education, is pursued at the lowest through the Nursing diploma program in taking vocational education in addition to studying the theory of educational participants as well as doing practicum which hereinafter is often referred to as Clinical Learning Practice. This term appears related to (KK Blais, 2012) its implementation which is fully implemented in practice areas such as hospitals, health centers, maternity clinics, health care institutions and others, families and communities or communities. The clinical environment facilitates students to learn to apply acquired theories to real clinical problems. Nursing actions that must be taken by students in achieving the target of action when carrying out Clinical Learning Practices in the hospital are directly carrying out Nursing Care to patients in which there are nursing actions that students must take, such as infusion, catheter placement, NGT (Naso Gastric Tube) injection procedures and others, where all these actions have a high risk and error if not directly accompanied by a Clinical Instructor. In carrying out the health profession, the health sector is not only responsible for the health of the patient (professional responsibility), but is also responsible in the legal field (legal responsibility) for the service provided (Octarina et al, 2018).

According to Florence Nightingale, cited (Blais et. al, 2012) nursing education must include both theory and practice, nursing has evolved to include these two dimensions. Nursing education disciplines are divided into academic disciplines and professional disciplines, professional disciplines are directed

towards clinical practice goals by using descriptive and prescriptive theories and adding clinical research in line with basic and applied research. Professional discipline in nursing education is called 'Ners' professional education, namely (bachelor + Ners), which graduates are called Ners or Ns.

In carrying out the health profession, the health practitioner is not only responsible for the health of the patient (professional responsibility), but is also responsible in the field of law (legal responsibility) for the services provided (Octarina et. al, 2018). To find out the rights and obligations of students when practicing, there should be a policy that contains the responsibilities of nursing students in practice. So that students, patients, service and educational institutions feel protected by law and know what to do to avoid negligence (Priharjo, 2018). Furthermore, at the XI AIPNI Member's Annual Budget Meeting in Surabaya, it was explained that practice facilities such as hospitals did not yet have administrative and management standards so that the relationship was not supported by a Cooperation Agreement (PKS) which guaranteed the quality nursing education process. The absence of job descriptions, responsibilities, authorities, and terms of service has been determined with the hospital and educational institutions (Sutoto, 2012).

Ners and nursing education programs are also known as clinical learning processes. This term appears related to the implementation of professional education which is fully implemented in practical fields such as hospitals (type A, type B and type C hospitals), namely:

1. Hospital type A is a type of hospital that is able to provide a wide range of specialist and sub-specialist medical services. The type A hospital is designated as the service place for the highest referral hospital (Hot Referral Hospital) or central hospital for BPJS participants and other patients.
2. Type B hospital is a type of hospital that has a wide range of specialist medical services to more limited sub-specialists. Usually a type B hospital is established in each provincial capital city that accommodates referral services from district hospitals.
3. Hospital type C is a type of hospital which is usually called a second level health facility (faskes). This hospital provides health services from sub-specialist medicine but is more limited. For example: A type C hospital only provides sub-specialist services for pediatric health, obstetrics and gynecology, internal medicine and surgery only. Usually the type C hospital is a reference for health facilities at the health center level.

Public health centers, maternity clinics, where homes, families and communities or communities where students learn to apply theory of action to real clinical problems. In carrying out clinical practice students are guided by clinical supervisors who are often called clinical instructors or preceptors provided by health institutions and assisted by clinical supervisors from education who act as designers and developers of learning models (TIM KBK AIPNI, 2010).

Researchers found that the success of clinical learning was influenced by several factors such as the clinical learning environment, the mismatch between theory and practice, and the ability of students to deal with pressure in the

practice place. This can potentially lead to errors in carrying out basic service procedures (Purwandari, 2012).

Based on cases that occur in the field, negligence can also occur because the field supervisor or senior nurse who is in charge is less focused in guiding, as was the case in one of the General Hospitals in Sidoarjo. One of the cases that occurred in carrying out field practice activities, one of the students experienced an error when taking action during the time of administering the drug to the patient, then the student experienced an injection needle in his hand after injecting the drug into the patient. With this incident, the student nurse reported to the senior nurse about what happened to him. The senior nurse gave advice to clean wounds with water and alcohol only and made sure to students that the patient was safe and did not have a history of infectious diseases so there was no need to take other medical measures. The next day this student had a fever and had cold sweats. Students report the incident to the academic supervisor for the incident so that the academic supervisor comes to the Hospital because there is no further action after the incident, for example, such as a lab check to ensure there are no further effects. After that, students were summoned to face the hospital supervisor and the results were not carried out for examinations, just continue to ask for the chronology of cases that occurred (Ners, 2019).

If the above case can cause fatal losses to practical students, can it be brought to the realm of law and how is the protection for these students? who should be sued, if the hospital or the field supervisor considers the incident to be purely the fault of nursing students who are practicing. In the Health Law Article 27 Paragraph (1) it is explained that health workers are entitled to receive legal compensation and protection in carrying out their duties according to their profession.

In the Health Law Article 27 Paragraph (1) it is explained that health workers have the right to receive compensation and legal protection in carrying out their duties according to their profession, provide legal guarantees for health workers, but do not apply to nursing professional students because they are still in the education stage to obtain certificate of competence to obtain a nurse diploma and the requirements for obtaining a Registration Certificate (STR). After having STR, a nurse can have the authority to carry out nursing practice. To find out the rights and obligations of students when practicing, there should be a policy containing the responsibilities of nursing students in practice so that students, patients, service and educational institutions feel legally protected and know what must be done to avoid negligence (Priharjo, 2018).

The Law of the Republic of Indonesia Number 38 of 2014 concerning Nursing has not accommodated the legal protection of nursing students from nursing education programs in implementing practices in health institutions. Based on the above problems: How is the implementation of legal protection and legislation regulating the implementation of clinical practice for nursing students in the Nursing Education Program in carrying out clinical practice in health institutions?

RESEARCH METHOD

This study uses a normative juridical approach. Normative juridical research is legal research carried out by examining data or library materials which are secondary data in the form of primary legal materials, secondary legal materials and tertiary legal materials. This study uses a normative juridical approach because this study aims to determine the laws and regulations governing clinical learning practices of nursing students in hospitals and to determine the legal protection of nursing students in carrying out clinical learning practices if an error or negligence occurs, so the approach used is a juridical normative approach. This is because the normative juridical approach is legal research which is carried out by examining data or library materials which are secondary data in the form of primary materials, secondary legal materials and tertiary legal materials (Soerjono Soekanto & Mamudji, 2014).

FINDING AND DISCUSSION

Nursing students are citizens who, in this case, are in a position to their right to education and knowledge, so that wherever they are, they have the right to legal protection as stated in the 1945 Constitution Article 28D Paragraph (1). Nursing students who do PBL at the hospital are indirectly part of the health workers in the hospital even though they have some limitations on actions that are not the same as health workers who are employees of the hospital.

From the cases of errors made by nursing students, we can analyze that the responsibility of nursing students who make mistakes when doing PBL in the hospital can involve civil, administrative and criminal aspects. Legal protection for nursing students who make mistakes that result in harm to patients and losses which will happen to nursing students who are practicing at the hospital. In this study, important issues are discussed, namely: laws and regulations that provide protection for nursing students who implement PBL and cooperation agreements between educational institutions and health institutions.

The purpose of nursing education is in accordance with the Decree of the Minister of National Education Number 232 of 2000 concerning Guidelines for Higher Education Curriculum Development and Assessment of Student Learning Outcomes, Article 2 Paragraph (2) explains that professional education aims to prepare students to become members of society who have professional abilities in implementing, developing and disseminating technology and / or arts and endeavoring to use them to improve people's lives and enrich national culture.

Decree of the Minister of National Education of the Republic of Indonesia Number 045 of 2002 concerning the core curriculum of higher education. The professional stage curriculum consists of 60% of the core curriculum (22 credits) and 40% of the curriculum that characterizes the institution (14 credits). In the Nursing Law Chapter III, Articles 5 to 16, it is

explained about higher education in nursing and health service facilities as a vehicle for education (a place as a practice area). Along with the population growth and more complex health problems, the need for health personnel will increase, thus triggering the opening of many nursing schools. The growth of nursing schools is not matched by the increase in health service facilities so that in one hospital it is used by many nursing institutions as a practice area. This will affect the quality of the nurse graduates produced. The author feels the need for regulations to regulate the number of nursing education institutions practicing in one hospital or according to the type of hospital.

Nursing education or the Nursing profession is similar to medical professional education. The nursing education system is an internship (internship- intern / presptee) and the guidance system is known as a preceptorship (preceptor). Medical Education has a medical education law which functions as legal protection for students of the Faculty of Medicine and Dentistry in the teaching and learning process at college and at Teaching Hospitals and Medical Education Forum which explain⁸ the rights and obligations of general medical and dentistry students stated in the Law of the Republic of Indonesia No. 20 of 2013 concerning² Medical Education.

Seeing the results of field observations, there is no Nursing Teaching Hospital (RSP) and the Government Regulation which regulates the protection of nursing students, including the rights and obligations of nursing students, does not yet exist. Currently there are Medical Education Hospitals, advanced medical education. The definition of a hospital as¹⁶ institution that is given rights and obligations in health services according to Wolper and Pena (Azwar, 2016¹⁶ that a hospital is a place where sick people seek and receive medical services, clinical education for medical students, nurses and various other health professional personnel. RSP Nursing is a place to develop an understanding of clinical learning experiences and socialization of professionalism of nurses as well as a place for growth and development of professional abilities and attitudes. Therefore, RSP Nursing is absolute. The PPNI organization needs efforts to have a government regulation (PP) for the Nursing Hospital.

In the Nursing Law Article 14 which reads to explain the³¹ criteria for a lecturer or supervisor in the field of nursing practice. Furthermore, Government Regulation Number 19 of 2005 concerning National Education Standards, the criteria for a clinical supervisor / preceptor are as follows:

1. a Minimum one registered nurse (has STR and has a license (SIK / SIP) with at least 5 years clinical experience
2. b Have a competency certificate according to expertise in the field.
3. Has experienced at least two (2) consecutive years in four of them working in the unit where the nurse is a preceptor / mentor so that they can guide students well.
4. Is a role model for nurses who are good and worthy of being emulated because of their above average attitudes, behaviors, professional abilities.
5. Has attended clinical educator training
6. Can support students, in achieving goals, planning, activities and ways of evaluating.

Looking at the results of field observations, the ratio of the preceptor to students is not appropriate because not all nurses who work in health institutions can become a preceptor because currently there are not many nurses who meet the preceptor criteria. It is usually preferred to senior nurses who work in service settings and are appointed as preceptors by the director of the health institution. Nursing educational institutions that do not have health facilities as a vehicle for education will make cooperation agreements with health institutions that meet the required criteria. The existence of a cooperation agreement causes a legal relationship between health institutions and educational institutions. This research was conducted for 6 days, the cooperative relationship that was established was often no *Bakordik* between educational institutions and health institutions. There are hospitals that do not have written descriptions of students' duties and policies that regulate the limits of authority that students can do. There are educational institutions that do not explain the competencies they have and the competencies expected during the educational process, so this condition can trigger mistakes from students who are practicing.

Laws and regulations that provide protection for nursing students in carrying out clinical practice.

1. Law Number 36 Year 2009 concerning Health. Juridically, legal protection at the highest level operationally after the 1945 Constitution is Law No. 36 of 2009 concerning Health. Article 27 Paragraph (1) Health workers are entitled to receive legal compensation and protection in carrying out their duties according to their profession. According to the author, there is a need for regulations that can provide protection for the education of nursing students and other health workers who are carrying out hospital practices.
2. Law Number 44 of 2009 concerning Hospitals. Protection in the Hospital Law for the nursing profession is in Article 3 point (b) and point (d) the function of the hospital to provide protection and legal certainty to patients, the community, the hospital environment and its resources. human power in the hospital. Explanation of Article 3 in letter (d) what is meant by resources in the hospital are all personnel who work in the hospital, both health workers, including nurses and non-health workers, and including nursing students who are carrying out hospital practices.

Soerjono Soekanto and Herkutanto explained in more detail the function of the hospital in carrying out medical and paramedical education and training efforts (Soerjono Soekanto & Herkutanto, 1987). Paramedics in question are vocational and professional nurses. Hospitals should be able to provide preventive legal protection for students of the nurse profession program in carrying out clinical practice by being responsible for mistakes made by their subordinates (subordinates) known as Vicarious Liability.

The doctrine of vicarious liability is in line with Article 1367 of the Civil Code which explains that a person is not only responsible for losses caused by his own actions, but also for losses caused by the actions of those who are dependent on him, or caused by goods under his control.

Hospitals and educational institutions are bound by the existence of a cooperation agreement, therefore, if there is an error or negligence, a health

institution such as a hospital or health service facility can provide legal protection in a preventive and repressive manner to students of nurse profession in carrying out clinical practice. The hospital can be a place for students to practice and can be sued to bear the consequences (Priharjo, 2018).

3. Law R I No. 38 of 2014 concerning Nursing The Nursing Act regarding legal protection for nurses is contained in Chapter VII of Part (17) Rights and Obligations of Nurses, in Article 36 point (a) states that in carrying out nursing practice nurses are entitled to legal protection as long as they carry out their duties in accordance with service standards, professional standards, standard operating procedures, and provisions of laws and regulations.

In implementing the clinical practice of the nursing profession program, the Nursing Law needs to add regulations that can protect students in carrying out clinical practice, including student rights and obligations such as medical education.

4. Law No. 36 of 2014 About Medicals provisions contained in Law No. 36 of 2014 relating to the legal protection of medical personnel is in Chapter X Protection of health workers and health care recipients contained in article 75, which reads, In practice, health workers have the right to legal protection in accordance with the provisions of laws and regulations.

The law on health workers does not provide legal protection for students of the nurse profession program because they do not have STR so that they (12) not considered health workers.

5. Regulation of the Minister of Health No. 148/2010 concerning Licensing and Implementation of Nursing Practices In Article 11 it is emphasized that, in carrying out practice nurses have rights; obtain legal protection in implementing standardized nursing practice, obtain guaranteed protection against work risks associated with their duties. Nurse professional prog (12) students do not have STR so they have not received protection from the Minister of Health Regulation No. 148/2010 concerning Licensing and Implementation of Nursing Practices.

Cooperation Agreement between Educational Institutions and Health Institutions

Cooperation agreements between educational institutions and health institutions are said to be valid and binding if they meet the elements (4) and requirements as stipulated by law. Abdukadir Muhammad describes the provisions of Article 1320 of the Civil Code, that each agreement always has the following four elements:

1. The agreement on the will of the cooperation agreement between the health university and the Sidoarjo General Hospital, East Java Province, has an element of consent, because both parties have met the requirements, not because of necessity, fraud or error.
2. Authority (Skills) in this case the author sees that both parties are adults, do

not experience psychological disturbances so that they already have an element of authority.

3. Certain objects (Achievements) to carry out education / research and community service by following the applicable provisions in the East Java Provincial Hospital and educational institutions as long as they are bound by the agreement, the second party has the obligation to pay an institutional fee for the facilities used and the guidance provided by the first party (health institutions) as agreed.
4. The purpose of the agreement to be achieved by the parties must be lawful. Article 1367 of the Civil Code states as follows: A person must provide responsibility not only for the losses incurred and his own actions, but also for the losses arising from the actions of other people under his control. There are times when a person in social life according to the law is under the supervision of another person, just as a curandus in the case of a curatele is under the supervision of a curator, a school student under the supervision of a teacher in a given lesson environment. In this case a supervisor is deemed to have a duty to guard, lest a person being supervised commits an act against the law (Muhammad, 2014).

Clinical supervisors have the responsibility of supervising nursing students, and failure to carry out this responsibility is the basis for negligence, as in the case of Hospital S, students should receive protection from health institutions but what happens is only the responsibility of the second party (educational institutions). Because in the cooperation agreement it is assigned that, the second party is responsible for all losses incurred, and bears all costs for accidents against students which are due to educational / research activities and community service.

According to the author, the purpose of the agreement is not balanced because it is burdensome to the second party. It needs restructuring in making a cooperation agreement so that students as the object of the agreement get protection from both parties, such as:

1. Toward the government

To optimize the nursing professional education so that various government regulations, affirmed in several laws and government regulations, are absolute for the formation of teaching hospitals.

2. Toward educational institutions

In order to prepare students optimally, theoretically and practically in the laboratory so as to minimize errors.

3. Toward the health institution

In order to include the implementation of clinical practice of nursing students in Hospital By Law or Clinic By Law, it is hoped that the ability to develop field supervisors (preceptors) is in accordance with standards (Purwandari, 2012).

CONCLUSION

One of the professional nursing student practices is the independent action of Nursing Students (S1 Nursing), Ners, Specialist Ners, and Consultant Ners through collaborative collaboration with clients and other health professionals in providing nursing care according to their scope of responsibility and authority. Nursing as a profession must have a clear legal foundation and protection. Nurses must have various legal concepts related to nursing practice because nurses have responsibility for professional decision¹⁰ and actions taken. The responsibility of nursing students who make mistakes can be seen from the aspects of criminal law, civil law and administrative aspects.

Nursing students who carry out PBL who commit negligent actions are the responsibility of the teacher or lecturer at the college where the student is demanding knowledge, but the problem that arises here is whether the student is really the responsibility of the education party. What about the hospital where the student carries out PBL considering that a supervisor is considered to have a duty to guard, do not a person being supervised commits negligence or acts against the law. Given that students in this case have not been able to get STR or SIPP so they are vulnerable to violations if seen in terms of administrative law. Legal protection for nursing students is unclear, because the negligence and losses committed by nursing students are fully borne by students and educational institutions. Cooperation agreements between educational institutions and health institutions do not provide protection to nursing students in carrying out clinical practice.

Nursing education³⁶ has not received legal protection in carrying out clinical practice because there are no clear rules about the rights and obligations of nursing students in carrying out clinical practice in health institutions, so educational institutions are expected to develop the ability of field supervisors (preceptors) according to the determined standards by sending them to participate in preceptorship training organized by professional and government organizations. In addition, the rapid growth of nursing schools in Indonesia requires an increase in the number of clinical supervisors (preceptors) in practical fields such as hospitals, therefore it is hoped that educational institutions will increase the number of clinical supervisors according to the number of students

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“Endangering human life
for profit should be a
universal crime.”

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