

Oral and Health Therapist Transfer of Authority: A Concept of Medical Dispute Solution Through Mediation

Sukini, Puji Lestari, Krismono Irwanto

Faculty of Law University August 17, 1945 Semarang
Email: sukiyaki6707@yahoo.com

Abstract--The main purpose of writing this article is to analyze how legal problems might arise in handling patients, by dental therapists / dental nurses in carrying out abundant tasks, and analyzing about how to resolve disputes medical treatment by dental therapists through mediation channels. The writing of this article uses sociological juridical research methods, where the data used are primary data (data taken directly from the field) and secondary data (data taken from literature studies). The results of the study showed that the arrangement regarding the abundant duties of the dentist to the nurse / dental therapist had been regulated in Permenkes Number 512 / Menkes / Per / IV / 2007, however, in handling patients based on such abundant tasks, in the event of a medical dispute, would cause legal issues, the problem is because, there is still no understanding of the overflow task, whether it is the responsibility of the dental nurse or the doctor who is giving the overflow task. So it is necessary to make a concept of medical dispute resolution which is done by mediation in order to solve the problem of medical disputes between nurses / dental therapists who get abundant assignments from dentists and patients who feel disadvantaged.

Keywords: dentist, patient, dentist, medical disputes

I. INTRODUCTION

The 1945 Constitution of the Republic of Indonesia as the highest law in Indonesia has stated that "Every person has the right to receive health services". The right to get health services, as stated / mandated in the Indonesian constitution at this time is often interpreted as the right to health, even though both have different meanings, health services have a meaning that is far less than the right to be healthy, this is because the meaning is healthy not only means "cured of disease" but encompasses far more extensive matters. Many factors play a role in one's health, including education, protection against infectious diseases, the availability of a healthy environment (both physical and social), safe water, balanced nutritious food, and healthy shelter. (Kartono,2003:151)

Everyone who, because of his ability to provide health services to the public, is obliged to provide health services with a professional attitude, with a height of morals and nobility that gives the highest happiness and can be felt by the service provider or recipient of health services.(Jusuf & Amri,1997:38-39) There is one thing that doctors are rarely aware of in carrying out health or medicine, namely that when accepting patients to overcome health problems in the curative, promotive, preventive and rehabilitative

fields there have actually been transactions or agreements/agreements between the two parties in the health sector. (handayani,2009:105)

In positive Indonesian law, the provisions regarding contracts / agreements are regulated in Book III of the Civil Code on Engagement (Van Verbintenissen), which places rights and obligations to the parties in mutual terms. The doctor is obliged to provide medical services in accordance with professional standards and operational procedure standards in accordance with the code of medical ethics, keep everything he knows about patients, even after the patient dies, and increase knowledge and follow the development of medical science.(Handayani Ibid) Therefore basically, a doctor in providing medical services to patients is always required to prioritize patient satisfaction (patient satisfaction) that is responsibly working for the patient's recovery. One of the principles in medical ethics is 'primum non nocere' which means that it is well-intentioned and does not want to be detrimental.

The thing that needs to be understood about health services performed by health workers is that health services performed are an attempt to cure and improve health status, which has the possibility of success but can also fail. Medical accidents can occur due to medical malpractice or a medical risk. Malpractice occurs because of errors or negligence of health workers in carrying out certain actions because they do not carry out their profession in accordance with established service standards. At the risk of this service, dental therapists have performed services according to standards but there are risks to their implementation, such as the side effects of a drug or the existence of a hypersensitive reaction to a particular drug. This situation can lead to conflicts or disputes between dental therapists and patients.

One example of a medical dispute over a dental therapist / dental nurse is a case of suspected malpractice by a dental nurse who befall an Al-Moestafa Kindergarten teacher in Jambi City, Nurjanah (39) who reportedly will report a dental care clinic named Asio to the authorities after experiencing heavy bleeding after pulling teeth at the practice allegedly named the Asio dentist. Nurjanah was accompanied by a lawyer from LBH Citra Keadilan. The complaint letter was sent to the Jambi Regional Police number 09 / III / 2017 / Ditreskrimsus on March 20, 2017. And the search warrant for investigation number Sp.Lidik / 25 / IV / 2017 / Ditreskrimsus. (Post.Com,2015) This case regarding a crime in the health sector was handled by

the Subdit IV of the Typhoon of the Jambi Regional Police. After several summons in the Court, the case was settled peacefully through mediation between the victim Nurjanah and the alleged dentist Asio.

The case above is an example of alleged malpractice that ended peacefully through mediation settlement. There are not many cases of suspected malpractice done by dental nurses or now referred to as dental and mouth therapists, the figure is far below other health workers such as midwives and general nurses. This could be due to the number of dental and mouth therapists who are indeed far less than midwives and nurses. But the Nurjanah case is only one of the alleged cases of malpractice that can be known to the public via the internet. Other cases are not exposed to the media but are far more common. Then how do they solve the problems between them, namely dental therapists as service providers and patients as consumers receiving dental health services? Is everything done by itself or through other people who act as mediators? Then how are the steps taken by a mediator in dealing with these problems? How big is the success that there are so few problems with alleged malpractice by dental and mouth therapists reaching the court? While dental therapists themselves commit many disciplinary and ethical violations. In the example above, a dental nurse violates discipline, which is an independent practice that exceeds authority, and ethical violations, namely claiming to be a dentist in practicing, or acting behaving as if it were a dentist.

Based on this, it is necessary to have a paper that discusses the problem law arising in medical disputes carried out by dental nurses / therapists who receive abundant assignments from dentists, with the aim that if there are medical disputes that result in harm to patients by the treatment / dental therapist actions can be done or resolved through mediation.

II. RESEARCH METHOD

The research method used in writing this article is a sociological juridical research method (social-legal approach), this sociological juridical method is a research method that uses an approach analysis method that emphasizes juridical aspects, while discussing the social aspects surrounding legal phenomena certain. Where in the context of writing this article will discuss legal issues arising from the implementation of the authority of dental nurses in conducting medical actions according to the Regulation of the Minister of Health of the Republic of Indonesia Number 20 of 2016 concerning License and Implementation of Dental and Oral Therapist Practices after the enactment of Law Number 29 of 2004 About Medical Practice, with the hope that the creation of the concept of medical dispute resolution based on mediation when malpractice problems occur by dental therapists who receive abundant assignments.

The type of data used in writing this article is primary data that is data obtained by researchers from research directly in the field, where the primary data is obtained by making observations, interviews and a list of questions to

respondents in the puskesmas, the Department of Health professional organizations PDGI for dentists or PTGMI for dental nurses. In addition to the primary data writing this article also uses secondary data that is data obtained from literature studies and data that support research. And the last data used is tertiary data, which is data that provides instructions and explanations for primary and secondary legal materials, for example dictionary and encyclopedia.

III. FINDINGS AND DISCUSSION

1. *Legal issues arise in the handling of patients by dental therapists / dental nurses in carrying out abundant tasks.*

Dental nurses in addition to having the authority also in providing nursing services must be in accordance with the competencies obtained during education, according to the Decree of the Indonesian Medical Council (KKI) No. 23 of 2006 concerning Ratification of Dentist Competency Standards, what is meant by competency is a set of professional abilities which includes mastery in carrying out his professional duties. Based on the level of education available, the ability, science and professional attitude also varies. The burden of duties and authority also varies so that not all dental nurses are able to accept delegated authority from the dentist in carrying out limited medical measures. Until this research, knowledge, skills and values (knowledge, skills and attitude), in the absence of legislation that accommodates differences in levels of education in dental nursing and not all dental nurses have the same ability, even though their educational ability is not same.

Based on the notion of competence above the elements of science, skills and values obtained during education. The authority of dental nurses, it appears that competencies obtained during education have not been mentioned limited medical measures in the field of dentistry so that it can be said that the competencies obtained by dental nurses do not match the attribution authority seen in Minister of Health Decree Number 378 of 2007 concerning Professional Standards Dental Nurses and in accordance with the legal provisions, namely the Regulation of the Minister of Health of the Republic of Indonesia Number 20 of 2016. To address this, the education curriculum provided must refer to the Decree of the Minister of Health Number 378 of 2007 concerning Dental Nurses Professional Standards required so that it is in accordance with the authority of dental nurses.

Dental nurses have the authority to perform health services if they already have a permit from the government.(Supriadi,2001:52) This is in accordance with Law Number 36 Year 2009 Concerning Health Article 23 paragraph (3) which reads, in providing health services, health workers are required to have a permit. Legal responsibilities arising in connection with the implementation of the health workforce profession are legal responsibilities that must be fulfilled physician

which basically covers 3 (three) first forms of accountability for administrative law contained in Act Number 29 of 2004 concerning Medical Practices, Act Number 36 of 2009 concerning Health, Decree of the Minister of Health Number 1392 of 2001 Concerning Registration and Dental Nurse Permit. The second criminal law, consisting of; Criminal Law, Law Number 36 of 2009 concerning Health, Law Number 29 of 2004 concerning Medical Practices. The third civil law, consisting of; BW III Book on Law of Engagement.

Based on state administrative law in the authority of the delegation, responsibility and accountability are transferred to those who have been delegated or delegated to delegates. (Ridwan,2010:109) The delegation of authority carried out by dentists gives delegation of authority to dental nurses in accordance with the educational abilities, competencies and professional standards possessed by dental nurses. This is in accordance with the Regulation of the Minister of Health of the Republic of Indonesia Number 512 / Menkes / Per / IV / 2007 Regarding the Practice License and the Implementation of Medical Practices, in Article 15 which reads as follows: a) Doctors and dentists can provide the delegation of a medical or dental action to the nurse , midwives or certain other health workers in writing in carrying out medical or dentistry actions. b) Medical or dental actions as referred to in paragraph (1) must be in accordance with the capabilities and competencies possessed and carried out in accordance with statutory provisions. Article 15 paragraph (2) states that if a dentist deliberately delegates part of his authority by delegation that is not in accordance with the authority limits of dental nurses, he will receive disciplinary, administrative, civil and criminal sanctions for violating the statutory regulations.

Application of Decree of the Minister of Health No. 1392 Concerning Registration and Work Permit of a Dental Nurse a dental nurse can perform dental and oral nursing care as well as limited medical measures in the field of dentistry based on the delegation from the dentist. The independent authority is exercised by dental nurses without any delegation from the dentist, because the dental nurse legally has attribution authority to carry out these actions. The independent authority of dental nurses is the act of nursing in dentistry and in certain circumstances where there is no dentist and nurses are needed so the limited medical action in the field of dentistry becomes the authority of the dental nurse. In performing actions that are the independent authority of the dental nurse the responsibility lies with the dental nurse and accountability can be carried out jointly and jointly.

Abundant assignments given by dentists to dental nurses must be done in writing and this delegation has been carried out in accordance with the educational abilities and professional standards of dental nurses so if there are lawsuits in the criminal field then the responsible ones are dental nurses who carry out these actions. Based

on criminal law, whoever does so is responsible, so delegation of authority is delegated, responsibility and accountability are transferred to delegated authority or delegation. So if there is malpractice suspected in conducting health services, then the responsibility for mistakes made is transferred to the dental nurse.

Delegation of part of the dentist's authority to the dental nurse in the event of an error in the delegation process, the person responsible and accountable is the one who gives the delegation. This error can occur, for example, if the delegation is done unwritten, not according to ability, education and professional standards of the dental nurse. The reality is in the field of delegation in writing from the dentist to the dental nurse but the dental nurse performs limited medical procedures in the field of dentistry.

The implementation of Regulation of the Minister of Health of the Republic of Indonesia Number 20 Year 2016 regarding Licensing and Implementation of Dental and Oral Therapist Practice, has not been able to be implemented properly and there are still many problems, among others, a dental nurse feels that with the Decree of the Minister of Health they can take medical action freely On the other hand, dentists also feel that all dental nurses can be given a part of their authority to carry out limited medical measures in the field of dentistry. In more severe circumstances, a senior dentist trusts more senior dental nurses than a fresh graduate in terms of performing medical procedures at a health care facility.

Every person who is given the authority must be responsible. Responsible for risks that may arise that result in losses to other parties. Responsibility as well as risk is something that is latent. If the risks arise and demands occur, then the issue of responsibility and authority will also surface.

Understanding of the abundant tasks between dentists and dental nurses is not in accordance with applicable laws and regulations. There are some dentists who understand this abundant task is the authority of dental nurses, there are others who understand that this abundant task is the authority of dentists so that dental nurses to do this authority must be licensed to the dentist. Likewise, dental nurses in understanding this abundant task also vary, there are those who understand this abundant task to be the authority of dental nurses so that they may take limited medical actions in the field of dentistry without having written permission from the dentist, there are also some who do not know what performed whether nursing or medical measures are limited in the field of dentistry.

The difference in understanding between dentists and dental nurses regarding limited medical action in the field of dentistry is also in terms of who is responsible in the event of a dental nurse's error in performing this limited medical action. There are those who understand that the one who is responsible is the dental nurse because he is the one who performs this action. Based on the

explanation above, it is necessary to have a more in-depth study of the authority of dental nurses in conducting limited medical actions according to the Regulation of the Minister of Health of the Republic of Indonesia Number 20 of 2016 concerning Permits and Implementation of Dental and Oral Therapist Practices.

Associated with a diverse understanding of the abundant tasks dental and mouth therapists have the potential to take an action that triggers the occurrence of malpractice as an example of the case above. Because the dental therapist performs an abundant duty of dentists so as if he is practicing like a dentist so as to lead the public opinion that he works as a dentist. The impact of the act of performing the competency of the dentist, when there are problems such as malpractice, dental therapists must account for their actions as those who receive abundant tasks, not those that provide delegation so it is necessary to think of a solution through mediation methods.

2. The concept of resolving medical disputes by dental therapists through mediation.

The concept of resolving medical disputes by dental therapists / nurses who get abundant assignments can be done by means of mediation, mediation itself there are 2 types, namely in the court and outside the court. Out-of-court mediation is handled by private mediators, individuals, as well as an independent alternative dispute resolution institution known as the National Mediation Center (PMN). The Indonesian Supreme Court has issued PERMA No. 2 of 2003 concerning Mediation Procedures in the Court, as a refinement of Circular Letter (SEMA) No.1 of 2002 concerning the empowerment of the First Level Court to apply the Peace Institution (Ex Article 130 HIR / 154 RBg). After evaluating the implementation of the Mediation Procedure in the Court based on the Supreme Court Regulation No. 2 of 2003 found several problems, so that the Supreme Court Regulation No. 2 of 2003 was revised with Supreme Court Regulation No. 1 of 2008 concerning Mediation Procedures at the Court, for the purpose of making greater use of mediation related to the process of dispute resolution at the Court.¹⁰ Disputes outside the court or also referred to as Alternative Dispute Resolution (ADR) are carried out by means of negotiation, mediation, conciliation and expert determination. A mediator helps parties who are willing to form agreements and look ahead and meet needs according to their own honesty standards. Benefits of medical dispute resolution through mediation, namely:

- (1) Simpler than settlement through a civil procedural law process;
- (2) Efficient;
- (3) Short time;
- (4) Maintain good relations between the parties;
- (5) The mediation result is an agreement;
- (6) Legally binding.

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However, even though medical dispute resolution through mediation has many benefits, in practice it is inseparable from the obstacles, namely the absence of rules that specifically regulate it, there are still enforcement officers who have the paradigm of thinking that malpractice cases are favorable cases so it is often used as a tool to make legal compromises that rule out the law, as well as the low level of public knowledge about law and medical science, which is always used to protect themselves in resolving disputes. Health service efforts undertaken by the government and / or community which originally focused on curative efforts of patients gradually develop towards integration between promotive, preventive, curative and rehabilitative (Soewono,2005:1617) Health workers provide health services in accordance with medical professional standards, service standards and in accordance with their authority If a health worker performs work that is not in accordance with his / her authority, the health worker violates one of the health professional profession standards, because in the professional standard there is the authority of eachworker health.

IV. CONCLUSION

1. Conclusions

conclusions obtained from the discussion above show that legal problems that arise in the handling of patients by dental therapists / dental nurses in carrying out the abundant tasks given by dentists are, understanding of the abundant duties of dentists who still have two different perspectives. On one hand, the delegation of duties given by the dentist to the dental therapist / nurse is the full responsibility of the party given the task, but on the other hand there is also a perspective that considers that the responsibility lies with those who give the task in the event of a medical dispute caused by negligence. abundant assignment, which in this case is a dental therapist / nurse.

Besides that, it is related to the unclear legal liability as explained above, so if there is a medic dispute caused by nurses / dental therapists who receive abundant assignments, then the dispute resolution can be done by mediation, this is in accordance with Article 29 of Law No. 36 of 2009 concerning Health, clearly mandates a 'necessity' to go through the mediation process when negligence occurs. Likewise with other provisions which state that the patient has the right to claim compensation. It is the element of compensation that begins with the mediation process which reinforces the fact that malpractice is also included in the 'civil' domain. In this case the role of the mediator who is handling the mediation process is very important. Mediator in the field of health

2. Suggestion

Suggestions that the author can give relating to the writing of this article are: a) There needs to be legal regulations that reinforce the legal responsibilities related to medical disputes carried out by dental therapists / nurses who perform abundant tasks, these rules need to regulate the affirmation of who who need to be responsible, whether the party giving the abundant task or the recipient of the abundant task. b) There needs to be clear legal rules, which state that medical disputes need to be carried out by mediating with clearly defined stages and mechanisms, so that the medical settlement that occurs can be done in a manner that is beneficial and fair to all parties involved in the

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