



# Legal Liability Due to Negligence by Nurses in Health Services to Patients

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**Abstract.** Based on Article 46 of Law no. 44 of 2009 concerning Hospital, which mentions that house sick responsible answer by law to all losses incurred on negligence power health at home sick, provisions chapter this Becomes base juridical for somebody for ask not quite enough answer party hospital if occur negligence power health that causes loss. Constitution Hospital made with destination for make it easy access Public for get service health, can give protection to safety patient, community, environment house pain and source power at hospital, and can increase quality, maintain standard service hospital, as well give certainty law to patients, community, resources man hospital and party hospital.

**Keywords:** Negligence · Nurses · Health Service

## 1 Introduction

Health is right basic human and one element welfare that must realized in accordance with ambition the Indonesian nation as meant in Pancasila and the Preamble the 1945 Constitution of the Republic of Indonesia, therefore that, every activities and efforts for increase degrees health the highest society held based on principle non- discriminatory, participatory, protective and sustainable are very important it means for formation source power Indonesian people, increase endurance and power competitive nation, as well as development national [1].

Hospital as a institution service health have very important role in help maintain and improve health society. Right on health this is right constitutional like set in Article 28A of the 1945 Constitution which states: “Everyone has the right for life as well as entitled maintain his life”. Likewise in laws Protection Right basic Human rights on live and defend life this is right protected human rights as set in Article 9 paragraph (1) of Law No: 39 of 1999. Every citizens get protection in the form of right for live and earn maintenance health for his life [2].

In operate duties, doctors, nurses and staff other health is protected by law. Article 27 of the Law Number 36 of 2009 concerning Health states that: that (1) Health workers entitled get reward and protection law in doing Duty in accordance with his profession. (2) Health workers in doing his job obliged develop and improve knowledge and skills possessed. (3) Terms about rights and obligations power health as referred to in

paragraphs (1) and (2) shall be regulated in Regulation Government. Accountability in service health involve two parties, namely house sick as the place maintenance activity service health and energy health.

Every occur actions that are not pleasant to patient or when occur negligence on the part of power health naturally in Thing this is a big loss is patient. As has been described by Bander (2005:63), in get service neither is health close possibility occur mistakes and omissions from power health [3].

Not forever service medical staff provided health at home it hurts, can give results as expected all party. There are times in service the occur negligence power health that causes catastrophe; like disabled, paralyzed or even died. Like That's what happened to Shanti Marina residents Housing area Beautiful Coral Earth, Lebak Bulus Subdistrict Cilandak, South Jakarta who suffers disability, i.e. his voice Becomes nasal/bindeng after undergo operation tonsils performed by dr. Wardhani Sp.ENT at Home Cinere Castle Pain. Whereas before operation voice patient in situation good/normal. In the lawsuit ask accountability on deed oppose the law carried out dr. Wardhani Sp.THT and Puri Cinere Hospital, Cibinomg. District Court judge grant demands part demands change make a loss with breakdown of 70% liability Defendant 1 is doctor and 30% obligation Defendant 2, namely Puri Cinere Hospital. The judge's decision rejected by the party defendant with method submit appeal. Application distance cassation with delivery memory cassation that passed deadline 14 days' time as required in Constitution Number 5 of 2004, causing right submit cassation fall toilet panel of judges [4].

Sometimes service the occur negligence power health that causes catastrophe; like for example disabled, paralyzed or even died, if patient no quick for help, there is denial patient, neglect in handle related with the trouble get service health than it should be, As for example in Thing this is what is reported on the internet media which is a negligence house pain and energy health in handle patient bad emergency, death Ripa Nanda Damanik together the baby when labor at home Medan hospital with the initials BMK Hospital, Sunday, May 16, 2021 at 5 pm, because patients who have experience bleeding great and family ask quick conducted action operation, however power health there ignore and busy with cellular alias crazy playing cellphone, after conducted operation the baby die followed tomorrow his mother who breathed breath last. Top incident this family disappointed heavy with negligence power health and parties house sick in take actions that can cause Dead mother and baby [5].

Or the case that went viral in 2021 was related to a video on social media after uploaded by's Facebook account Amridaeng Daeng. In the post he disappointed and angry with officer health at home Sick Pranged, Medan, North Sumatra. In the video, yes say that his biological mother is the middle undergo home care sick sudden died after given tube oxygen empty by a nurse.

Based on Article 46 of Law no. 44 of 2009 concerning House Pain, that decides that house sick responsible answer by law to all losses incurred on negligence power health at home sick, provisions chapter this Becomes base juridical for somebody for ask not quite enough answer party house sick if occur negligence power health that causes loss. Constitution House Sick made with destination for make it easy access Public for get service health, can give protection to safety patient, community, environment house pain and source power at home sick, and can increase quality, maintain standard service

house sick, as well give certainty law to patients, community, resources man house sick and party house sick [5].

### 1.1 Definition Negligence in Health Services

Negligence within context law medical terms and cases of “omission” can be said Ful-fill part big scorching library its jurisprudence. Sometimes by general worn the term “malpractice” “medical” or negligence medical. “Malpractice” is term real general not only can happening in the medical world course. Profession else, like law or accountant or pharmacist can too sued based on malpractice his profession. So that if speak about problems related to field medical, preferably also added with frill medical so that Becomes malpractice medical (medical malpractice).

Negligence medical is one form from malpractice medical, at once is form mal-practice most frequent medical happen. Basically negligence occur if somebody to do something that should be no conducted or no to do something that should be done by other people who have the same qualifications on a the same circumstances and situations. Negligence could occur in 3 forms, malfeasance, misfeasance and non-feasance, namely:

1. Malfeasance means to do violating action law or no right/proper (unlawful or improper), for example to do action medical without adequate indication (option action medical the already improper).
2. Misfeasance means to do choice action proper medical but held with no appropriate (improper performance), namely for example to do action medical with violate procedure.
3. Nonfeasance is no to do action medical which is obligation for him [6].

Definition term negligence medical namely; “medical malpractice involves the physician’s failure to conform to the standard of care for treatment of the patient’s condition, or lack of skill, or Negligence in providing care to the patient, which is the direct cause of an injury to the patient”. More far in the World Medical Association stated that no all failure medical is consequence malpractice medical, because something incident bad that’s not could suspected previously (unforeseeable) that happened moment conducted action suitable medical standard but result in injury to patients ‘. An injury occurring in the course of medical treatment which could not be foreseen and was not the result of the lack or knowledge on the part of the treating physician is untoward result, for which the physician should not bear any liability”.

## 2 Legal Responsibilities of Nurses

Article 57 (a) of Law no. 36 of 2014 concerning Health Workers states, Health Workers in operate practice entitled get protection law along doing Duty in accordance with Standard Profession, Standard Service Profession, and Standard Procedure Operational.

Whereas provision related with responsibility of health workers in service health there is in Article 65 (1) of the Act Number 36 of 2014 concerning Health Workers “In To do service health, health workers can accept handover action medical from power

medical". So accountability the most important health worker law according to writer is related with handover authority from power medical for to do action medical.

As one of the Health Workers, related with not quite enough answer Nurse in service health has set in Law Number 38 of 2014 concerning Nursing, article 32 paragraph (1) namely Implementation Duty based on handover authority as meant in Article 29 paragraph (1) letter e only could given by written by power medical to Nurse for To do something action medical and do evaluation its implementation. Paragraph (2) states handover authority as referred to in paragraph (1) may conducted by delegate or mandate. Paragraph (3) states Delegation authority by delegate for to do something action medical given by power medical to Nurse with accompanied handover not quite enough answer. Then paragraph (4) states that handover authority by delegate as referred to in paragraph (3) only could given to Nurse profession or Nurse vocation trained who have the necessary competencies. Paragraph (5) states Delegation authority by mandate given by power medical to Nurse for to do something action medical below supervision. Paragraph (6) i.e. not quite enough answer on action medical on delegation authority mandate as referred to in paragraph (5) is with the giver handover authority.

Accountability answer the then clarified in Regulation of the Minister of Health Number 26 of 2019 concerning Regulation Implementation of Law no. 38 of 2014 concerning Nursing, Article 28 paragraph (1) Delegation authority for To do action medical from doctor as meant in Article 27 letter a can in the form of handover authority delegate or mandate. paragraph (2) Delegation authority for To do action medical as referred to in paragraph (1) must conducted by written, paragraph (3) Delegation authority by mandate as referred to in paragraph (1) is given by medical to Nurse for To do something action medical below supervision power the best medical authority, paragraph (4) Delegation authority by delegate for To do something action medical as referred to in paragraph (1) is given by medical to Nurse with accompanied handover not quite enough answer. Then in paragraph (7) type action medical in handover authority by mandate covers action, give therapy parenteral, sewing wounds and actions medical other in accordance with competence Nurse, paragraph (8) Type action medical in handover authority by delegate covers action: install infusion, injection, immunization base; and, action medical more to do in accordance with competence Nurse.

With So, nurse responsible only if the nurse who received gift handover by mandate the has negligent in doing handover authority mandate power medical, however if implementation authority mandate power medical already conducted according to the SOP then the one who is responsible keep on energy the medical. Nurse could also responsible for implementation authority delegate power medical. Nurse in run duties and authorities permanent hold on stick to code ethics nurse [7].

### **3 Hospital Legal Liability Due to Nurse Negligence**

House sick is organization organizer service public who have not quite enough answer public on every service service public health that it organizes. Not quite enough answer public House Sick that is organize service affordable and quality health based on principle safe, comprehensive, non- discriminatory, participatory and provide protection for Public as user service service health too organizer service health for realize degrees highest health [8].

Maintenance management health at home it hurts, there is related management with three the thing that is not quite enough answer House Sick by general. Three Thing they are: [9]

1. Management House Associated pain with personality
2. Management House related illness with implementation Duty
3. Management House Associated pain with duty of care

Provision about accountability law house sick set in Constitution Number 44 of 2009 concerning House sick. Article 46 of the Law Number 44 of 2009 concerning House Sick states “Home “Sick responsible answer by law to all losses incurred on negligence committed by health at home it hurts”. With existence provision this, which governs that house sick will responsible answer by law to negligence power health, then according to very reasonable writer if occur negligence will Becomes not quite enough answer party house sick, and not Becomes not quite enough answer power health.

House sick as a legal entity (corporation) can prosecuted and accountable on action negligence power health at home harmful pain patient, based on teachings teachings or doctrine Justification Corporation burdened accountability as following:

1. Doctrine of vicarious liability

Teachings this taken from law civil in context accountability oppose the law applied to law criminal. Teachings this also known as teachings accountability substitute. An employer responsible answer on mistakes made by his subordinates along Thing that occur in skeleton her job. This thing give possibility to aggrieved party because deeds oppose law from they that sue employer to pay change loss.

2. Doctrine superior responder

Inside doctrine this contain meaning that employer responsible on action action the services that become not quite enough answer, including actions that cause loss for others. With existence doctrine superior responder, is guarantee that change make a loss given/paid to patient suffering loss consequence negligence power health. Besides that with doctrine this, by law and justice, wills will attitude caution from the power health [10].

Accountability law house sick consequence negligence nurse as subject law in service health to patient at home sick moment this if seen from accountability by law civil will comes from action oppose law or default. Accountability can direct or Becomes not quite enough sue together Nurse/doctor/home sick, depending on the type action taken. Temporary accountability by law criminal will sourced to requirements for could requested accountability law, namely:

- (1) Existence action/not do based on rule written
- (2) Existence ability responsible answer
- (3) Existence something error, ok on purpose nor negligent

- (4) And not there is element forgiving and element justification. Form accountability is independent and direct in accordance with function penalty criminal that later that is make deterrent the culprit [11]

Home Legal Liability Sick to negligence Nurses can also linked with Article 1367 paragraph (1) of the Civil Code, a person no just responsible answer for loss caused his deed alone, but also for loss caused the actions of those who become the responsibility or caused by items that are under supervision, that means Nurse working at home sick is subordinate from leader House It hurts, then leader house sick could requested the responsibility by law.

## 4 Conclusion

Accountability law House Sick consequence negligence committed nurse in service health to patient is in the form of accountability by law civil, appropriate with Article 46 of Law no. 44 of 2009 About House Sickness and article 1367 paragraph (1) of the Civil Code.

### Suggestion

1. Preferably Nurse as power health more be careful in Act especially concerning service to patient. Nurse expected could give appropriate service with hope patient that is give service health in accordance with Standard Profession, Standard Service Profession, Standard Procedure Operations, and ethics profession.
2. Party house sick should also give supervision more to action power health so as not occur negligence. Because if occur negligence so party house sick will also responsible answer

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