

## Clinical Privilege for Nurse Anesthetist Viewed from a Legal Aspect

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### ABSTRACT

Nurse Anesthetist has the authority to provide anesthesia services in preanesthesia, intraanesthesia, and postanesthesia. In terms of legal regulations, nurse anesthetist have clear regulations as a reference in carrying out their professional practice. However, in its implementation there are still health workers who work in anesthesia services who do not meet the statutory requirements based on competency, certification, registration and licensing as a nurse anesthetist which must be proven by having a nurse anesthetist Registration Certificate and a nurse anesthetist practices License. The aim of this research is to find out how Clinical Privilege for nurse anesthetist is viewed from a legal aspect. The research method uses a qualitative approach with a combined method of literature study and field study with Qualitative Descriptive Analysis Techniques.

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## **INTRODUCTION**

Anesthesia services are high-risk medical procedures that require special expertise, skills and vigilance in order to facilitate operations and ensure patient safety, security and comfort. Anesthesia procedures are carried out by a team of anesthesia service providers led by an anesthetist specialist doctor and collaborating with nurse anesthetist. The provision of anesthesia services is governed by two legal products: Minister of Health Regulation Number 519 of 2011, concerning Guidelines for the Implementation of Nurse Anesthetist and Intensive Therapy Services in Hospitals, and Minister of Health Regulation Number 31 of 2013, concerning the Implementation the work of nurse anesthetist. In the two Minister of Health Regulations, it is stipulated that anesthesia procedures are under the authority and responsibility of Anesthetist specialist doctors who have the expertise and authority for this matter, while nurse anesthetist are responsible for delivering anesthetic care services in preanesthesia, intraanesthesia, and postanesthesia.

Anesthesia services are medical procedures that must be conducted by health workers, such as specialized Anesthetist doctors, with the assistance of other health workers, such as nurse anesthetist. In carrying out their professional practice, nurse anesthetist must have a letter nurse anesthetist registration certificate and a letter nurse anesthetist practice license. a letter nurse anesthetist registration certificate is written evidence given by the government to nurse anesthetist who have a competency certificate In conformity with statutory restrictions, while a letter nurse anesthetist practice license is written evidence of the authority to carry out professional practices of anesthesia practitioners in health service facilities, as an effort to provide optimal anesthesia services.

Nurse Anesthetist have the authority to provide services under the supervision of a designated delegation of authority anesthetist specialist doctor or other doctor. The intended delegation of authority can only be carried out by a nurse anesthetist who has received accredited training in accordance with statutory regulations where a nurse anesthetist must be competent in providing anesthesia services. In an emergency to save a life, the nurse anesthetist can carry out anesthesia services outside of his authority in the context of first aid to reduce pain and stabilize the patient's condition.

Anesthesia services in Indonesia, especially in districts and remote areas, are mostly provided by nurse anesthetist, where there are no anesthetist specialist doctor in these areas. This is regulated in the Republic of Indonesia Minister of Health Regulation Number 18 of 2016 addressing the licensing and implementation of nurse anesthetist practices, which explains that nurse anesthetist who are competent and accredited in accordance with statutory regulations are permitted to carry out anesthesia procedures independently based on delegation of authority on government assignments due to the absence of Anesthetist specialist doctors in the area. a region and the delegation of authority can only be carried out in health service facilities belonging to the Government and/or regional governments. This profession has been proven to make a significant contribution to health services, especially anesthesia services.

Referring to the Republic of Indonesia Minister of Health Regulation Number 519 of 2011 concerning Guidelines for Nurse Anesthetist Services and Intensive Therapy, anesthesia services are carried out as a team between anesthetist specialist doctors and assisted by nurse anesthetist. In its development, in 2016 the Minister of Health issued Regulation of the Minister of Health of the Republic of Indonesia Number 18 of 2016 which in the closing paragraph stated explicitly the change in nomenclature for nurse anesthetists to be read and interpreted as Nurse Anesthetist. According to regulations, hospital accreditation activities are also explained as being included in the anesthesia and surgical services working group in accordance with the parameters which state that anesthesia and sedation services are carried out or carried out by personnel or professional care providers who are competent in their fields, one of which in the field of anesthesia is the anesthetist specialist doctor and nurse anesthetist.

The implementation of changes in regulations regarding the profession of Nurse Anesthetist in the field has not gone well, considering that several health institutions have not implemented these regulations thoroughly, including that there are still hospitals in Indonesia that employ health workers in anesthesia services who do not meet the qualifications as a nurse anesthetist based on competency, certification, registration and licensing as evidenced by the existence of a letter Nurse Anesthetist Registration Certificate and a letter Nurse Anesthetist Practices License.

This research aims to analyze the legal regulations for nurse anesthetist and how the Clinical Privilege for nurse anesthetist is viewed from a legal aspect. It is hoped that this research can make a significant contribution to understanding how the legal regulations governing the clinical authority of nurse anesthetist in carrying out their professional practice can be applied in life.

## **LITERATURE REVIEW**

### **Legal Regulations for Anesthetists**

Regulations according to Rosenbloom (2009) The Handbook of Administrative Law defines it as a process area involving three state institutions, namely the executive, legislative, and judicial branches, in the context of public administration, covering three critical aspects: regulation writing, implementation or enforcement, and adjudication. During the regulatory procedure, these three state institutions are responsible for developing, implementing, and enforcing regulations to ensure compliance and consistency in their execution.

According to E. Utrecht, law is a set of living instructions (commands or prohibitions) that regulate order in a community and must be obeyed by members of that society, and if violated can result in action from the government or society. So, the legal regulations for anesthetists are rules made by state institutions to serve as guidelines for anesthetists in terms of what they can do and what are the limitations or prohibitions in carrying out their

professional practice and who has the right to do so accordingly. with applicable regulations.

The Nurse Anesthetist profession was originally called the Anesthesia Academy Alumni Association in 1980, where its members consisted of graduates of the anesthesia management school which at that time was established by the Ministry of Health with the aim of meeting the need for human resources in providing health services in the field of anesthesia management. Then Anesthesia Academy Alumni Association changed its name to the Indonesian Anesthesia Nurses Association, which is now known as the Indonesian Nurse Anesthetist Association.

Nurse Anesthetist is any person who has passed nurse anesthesia education in accordance with statutory provisions who has a Nurse Anesthesia Registration Certificate and has a Nurse Anesthetist Practice License as proof of legality under the auspices of the Indonesian professional association of anesthesia practitioners. Legally, anesthetists are protected in their professional practices as long as they adhere to service standards, professional standards, and standard operating procedures. According to Article 11 paragraph (11) of Law Number 36 of 2014 governing Health Personnel, anesthesia practitioners are a category of Health Personnel classified as Medical Technician Personnel.

First and foremost, the practice of nurse anesthetists is regulated in the Republic of Indonesia by Minister of Health Regulation Number 519/Menkes/Per/III/2011 concerning Guidelines for the Implementation of Nurse Anesthetist and Intensive Therapy Services in Hospitals, and Minister of Health Regulation Number 31 of 2013 concerning the Implementation of Nurse Anesthetist Works. Along with developments in legal dynamics and the needs of the community as recipients of services, nurse anesthetist as health service providers are required to continue to improve the quality of their services to improve the level of public health. According to Law Number 36 of 2014 concerning Health Workers, article 46 paragraph (7) states that every health worker who practices in the field of health services is required to have a permit. Minister of Health Regulation Number 18 of 2016 concerning Permits and Implementation of Nurse Anesthetist Practitioners has been stipulated to clarify and provide a solid foundation for nurse anesthetist in carrying out their professional practice.

In Minister of Health Regulation Number 18 of 2016 concerning Licensing and Implementation of the Nurse Anesthetist Practices it emphasizes the issue of the nomenclature of nurse anesthetists as stated in the Republic of Indonesia Minister of Health Regulation Number 519/Menkes/Per/III/2011 concerning Guidelines for the Implementation of Anesthesiology Services and Intensive Therapy in Hospitals which must be read and interpreted as Nurse Anesthetist and Minister of Health Regulation Number 31 of 2013 concerning the implementation of Nurse Anesthetist work are revoked and declared invalid.

In 2020, based on Law Number 36 of 2014 concerning Health Workers, Article 66 paragraph (2) states that every health worker in practice is required to meet professional standards, professional service standards, and standard

operational procedures that must be approved by the Minister. Based on this, the Minister of Health issued Decree HK.01.07/MENKES/722/2020 on Professional Standards for Nurse Anesthetist. This competency standard is intended as a guideline for nurse anesthetist in providing measurable, standardized and quality anesthesia management care in health service facilities as well as improving the quality of nurse anesthetist in accordance with competency standards and professional ethics in carrying out anesthesia management care as well as for curriculum preparation and educational development.

Furthermore, in 2023 the Republic of Indonesia Minister of Health Decree Number HK.01.07/MENKES/1416/2023 concerning Work Competency Standards in the Field of Anesthesia Management was issued. This is related to Law Number 36 of 2014 concerning Health Workers Article 21 paragraph (4) which explains that work competency standards must be prepared by the Professional Organization and the council of each health worker and determined by the Minister. The competency in question is that every student in the health sector at the end of the vocational and professional education period must take a national competency test to meet work competency standards.

By having clear legal regulations, it can provide legal certainty for nurse anesthetist as a guide in carrying out their professional practice legally in the eyes of the law. As stated in the Theory of Legal Certainty, Radbruch defines legal certainty as a circumstance in which the law can act as a rule that must be followed. Law is responsible for establishing legal certainty in order to bring about social order. Then Fence M. Wantu also said that Without the value of legal certainty, law loses purpose because it can no longer be utilized as a guide for everyone's behavior. Whereas legal certainty can be defined as the clarity of rules that can be used as recommendations for those subject to the regulation. This might be construed to suggest that there is clarity and firmness in the application of law in society, resulting in fewer interpretations. This legal basis is important because it can provide legal protection for nurse anesthetist as health service providers and can be a reference regarding qualification standards as a nurse anesthetist in the eyes of the law.

### **Clinical Privilege For Nurse Anesthetist, Viewed From a Legal Aspect**

Clinical Privilege is the result of a process in a health service facility, giving authority to a health professional, in this case medical personnel, to provide health services within the limits set in the health facility which is carried out based on Clinical Appointment. It is an obligation for hospitals to establish Clinical Privilege as regulated in article 29 paragraph 1 letter (r) of Law of the Republic of Indonesia Number 44 of 2009 concerning Hospitals, that every hospital has the obligation to prepare and implement internal Hospital by Laws which are hospital Corporate by Laws and Hospital Medical Staff by Laws which are prepared in order to implement Good Corporate Governance and Good Clinical Governance which function as a reference for resolving conflicts in hospitals between the owner, hospital director and medical staff and as a

means of legal protection for all parties related to the hospital, which regulates that every health worker gets Clinical Privilege according to his/her diploma, in accordance with the organization's certification or recommendation profession, Recommendations for Clinical Privilege in a hospital are proposed by a committee to the director, the Director accepts, rejects or revokes the Clinical Privilege of a health worker, and all of this must be stated in a Director's Decree.

Hospital bylaws are a legal product of a higher-level organ than the hospital director. Therefore, Hospital by Laws must be adapted to the conditions and needs of each hospital as long as they do not conflict with applicable legal regulations and are guided by the Guidelines for Preparing Hospital by Laws, among others, as regulated in the Decree of the Minister of Health of the Republic of Indonesia Number 772/Menkes/SK/ VI/2002 concerning Guidelines for Internal Hospital Regulations (Hospital by laws), Decree of the Minister of Health No. 631/Menkes/SK/IV.

Clinical Privilege in a Hospital is the result of the credentialing process carried out by the Medical Committee through sub-credentials committee. The Credentialing Process is an evaluation process by a hospital of a person to determine whether the person concerned is worthy of being given Clinical Privilege to carry out certain medical procedures within the hospital environment for a certain period. Responding to this problem requires a guideline for credentialing and clinical authority in hospitals which is expected to be used as a basic reference in credentialing activities by hospitals in Indonesia. This guideline is needed by hospitals in implementing the credentials of medical personnel properly and for the protection of their patients. The guidelines were prepared by the Team for Compiling Guidelines for Doctor Credentialing Mechanisms in Hospitals based on PERSI Central Management Decree No. 41/SK/PP.PERSI/II/2008 with reference to the prevalence of good hospital practices in developed countries, including JCAHO (Joint Commission on Accreditation of Health Organization). This guideline is intended to be a guide for hospitals in Indonesia to credential medical personnel properly, correctly and responsibly.

Clinical Privilege for Nurse Anesthetists is governed by Minister of Health Regulation 18 of 2016: Licensing and Implementation of Nurse Anesthetist Works. Article (10) specifies that nurse anesthetists are authorized to perform anesthesia care services in preanesthesia, intraanesthesia, and postanesthesia.

The pre-anesthesia services referred to in article 10 are stated in article 11 paragraph (1), namely carrying out a review of pre-anesthesia management which includes:

1. Prepare for patient administration.
2. Check vital signs.
3. Perform additional examinations based on the patient's needs, such as inspection, palpation, and auscultation.
4. Examine and appraise the patient's physical condition.
5. Analyze evaluation results and identify patient concerns.

6. Evaluate pre-anesthesia service management initiatives both independently and collectively.
7. Documenting history and assessment findings.
8. Ensure the anesthesia machine and monitor are in proper working order before usage.
9. Managing daily drug and fluid supply to ensure compliance with hospital standards, including anesthetic and emergency medications. and
10. Ensure anesthesia infrastructure is available according to schedule, time, and operation type.

Then, clinical authority for intraanesthesia is stated in article 11 paragraph (2), where intraanesthesia management services consist of:

1. Adhere to anesthesia technique planning when monitoring equipment and drugs.
2. Properly monitor the patient's condition.
3. Document all acts conducted accurately.

Article 11 paragraph (3) explains that post-anesthesia management care services include:

1. Planning management actions after anesthesia procedures,
2. Management of pain according to the instructions of an Nurse Anesthetist,
3. Monitoring the patient's condition after installing an epidural catheter,
4. Monitoring the patient's condition after administration of regional anesthetic drugs,
5. Monitoring the patient's condition after administration of general anesthetic drugs,
6. Evaluation of the results of the patient's condition after installing an epidural catheter,
7. Evaluation of the results of epidural catheter placement and regional anesthesia treatment,
8. Evaluation of the results of epidural catheter placement and general anesthesia treatment,
9. Implementation of actions to deal with emergency conditions,
10. Documentation of the use of medicines and medical devices used, and
11. Maintaining equipment so that it is ready for use in the next anesthesia procedure.

Article 12 states that, in addition to the authority outlined in articles 10 and 11, nurse anesthetist may provide services under the supervision of delegated authority by mandate from an anesthetist specialist doctor or other doctor, and/or in response to government assignments as needed. Delegation of authority by mandate from an anesthetist specialist doctor or other doctors as regulated in article 12 letter (a) in order to assist anesthesia services, which include carrying out anesthesia in accordance with the instructions of an anesthetist specialist doctor, installing non-invasive monitoring equipment,

installing invasive monitoring equipment, administering anesthetic drugs, overcoming complications that arise, maintaining the airway, installing.

Then, if there are no Anesthetist specialist doctors in an area, authority based on government assignments is exercised as intended in article 12 letter (b), which can only be carried out by Nurse Anesthetist who have received training, are competent, and have been accredited according to statutory regulations, and can only be carried out in government and/or regional government health care facilities.

In an emergency to save a life, the nurse anesthetist can carry out anesthesia services outside of his authority in the context of first aid to reduce pain and stabilize the patient's condition. Then, the nurse anesthetist is obliged to refer the patient to competent health personnel after providing first aid. In carrying out their professional practice, nurse anesthetists are required to take part in continuous education and training provided by Anesthetist Specialist Doctor in collaboration with professional organizations, namely the Indonesian Association of Nurse Anesthetists.

## **METHODOLOGY**

This research uses a qualitative approach with a combined method of literature study and field study. The aim is to gain an in-depth understanding of Clinical Privilege for Nurse Anesthetist from a Legal Aspect which is then presented in the form of Qualitative Descriptive Analysis, namely analyzing, describing and summarizing various conditions and situations from various data collected from interviews or observations about the problem being researched.

## **RESEARCH RESULT**

The results of this research confirm that nurse anesthetist have clear legal rules in carrying out their professional practices, all of which are regulated in several rules, including:

1. Indonesian Minister of Health Regulation No. 519/Menkes/Per/III/2011 establishes guidelines for providing nurse anesthetist and intensive therapy services in hospitals.
2. Minister of Health Regulation Number 31 of 2013 concerning Implementation of Nurse Anesthetist Works.
3. Minister of Health Regulation Number 18 of 2016 concerning Licensing and Implementation of Nurse Anesthetist Practices. Where this Minister of Health emphasizes the issue of nomenclature for anesthesia nurses as stated in the Republic of Indonesia Minister of Health Regulation Number 519/Menkes/Per/III/2011 concerning Guidelines for the Implementation of Nurse Anesthetist and Intensive Therapy Services in Hospitals which must be read and interpreted as Nurse Anesthetist as well as Minister of Health Regulation Number 31 of 2013 concerning Implementation The job of Nurse Anesthetist is revoked and declared invalid.



Then, based on the results of interviews conducted by researchers randomly in one of the Government hospitals in the Province in Indonesia with seven health workers who work in anesthesia services, three of them do not meet the qualifications as a nurse anesthetist because they do not have an Nurse Anesthetist Registration Certificate and Nurse Anesthetist Practice License. They work using a Nurse Registration Certificate and a Nurse Practice License. The other four are qualified a Nurses Anesthetist. They work using the Nurse Anesthetist Registration Certificate and Nurse Anesthetist Practice License. Based on the results of this interview, we can conclude that there are still hospitals that employ health workers who do not meet the qualifications as nurse anesthetist as evidenced by the existence of a nurse anesthetist Registration Certificate and a Nurse anesthetist practice lisenec in anesthesia services. According to Minister of Health Regulation Number 18 of 2016 concerning Licensing and Implementation of Nurse Anesthetist Practice, it explains that nurse anesthetist in carrying out their professional practice have authority in preanesthesia, intraanesthesia, and postanesthesia. A nurse anesthetist must have a letter nurse anesthetist Registration Certificate and a letter nurse anesthetist Practice license. A letter nurse anesthetist Registration Certificate is written evidence provided by the government to nurse anesthetist who has a certificate of competence in accordance with the provisions of laws and regulations, while a letter nurse anesthetist Practice license is written evidence of the authority to carry out the professional practice of nurse anesthetist in health care facilities, as an effort to provide optimal anesthesia services.

## DISCUSSION

A nurse anesthetist is any person who has passed nurse anesthesia education in accordance with statutory provisions who has a Nurse Anesthesia Registration Certificate and has a nurse anesthetist Practice Licenses proof of legality under the auspices of the Indonesian professional association of nurse anesthetist. Nurse Anesthetist have the authority to carry out services under the supervision of a mandated delegation of authority from a anesthetist specialist doctor or other doctor. The intended delegation of authority can only be carried out by a nurse anesthetist who has received accredited training in accordance with statutory regulations where a nurse anesthetist must be competent in providing anesthesia services. In an emergency to save a life, the nurse anesthetist can carry out anesthesia services outside of his authority in the context of first aid to reduce pain and stabilize the patient's condition. All of this is stated in the Republic of Indonesia Minister of Health Regulation Number 18 of 2016 concerning Licensing and Implementation of Nurse Anesthetist Practices.

Hospitals have a legal product, namely Hospital by Laws (internal hospital regulations) in determining Clinical Privilege for health workers who work in hospital services. The determination of Clinical Privilege must be in accordance with the health worker's diploma, certification or recommendation from the professional organization of each health worker which is proposed by

the committee to the director which is then stated in the Director's Decree. Before making a decision, a credentialing process must go through to evaluate and determine the suitability of a health worker in providing health services for a certain period in accordance with the authority regulated in the statutory regulations for each type of health worker profession in the form of a Clinical Appointment. The Director has the right to accept, reject and revoke the Clinical Privilege of a health worker if it does not comply with the qualifications and is in conflict with applicable legal regulations. This is regulated in Republic of Indonesia Law Number 44 of 2009 concerning Hospitals.

## **CONCLUSIONS AND RECOMMENDATIONS**

The practice of nurse anesthesia is regulated in Minister of Health Regulation Number 519/Menkes/Per/III/2011 concerning Guidelines for the Implementation of Nurse Anesthetist Services and Intensive Therapy in Hospitals and Minister of Health Regulation Number 31 of 2013 concerning the Implementation of Anesthesia Nurse Work, the legality of the nomenclature of nurse anesthetists is increasingly blurred with the issuance of Minister of Health Regulation Number 18 2016 concerning Licensing and Implementation of nurse anesthetist, which emphasizes that the nomenclature for anesthesia nurses must be read and interpreted as nurse anesthetist and regulates the clinical authority for nurse anesthetist in carrying out professional practices that are valid in the eyes of the law.

In terms of legal regulations, nurse anesthetist have clear regulations as a reference in carrying out their professional practice. However, in its implementation there are still health workers working in anesthesia services who do not meet the statutory requirements based on competency, certification, registration and licensing as a nurse anesthetist. Therefore, it is hoped that the hospital can be more firm and serious in responding to this matter in order to create justice and legitimate legal protection in accordance with statutory regulations because the Hospital has the right to accept, reject and revoke Clinical Privilege. from a health worker if it does not comply with the qualifications and is contrary to applicable legal regulations.

The regulations already tell how hospitals as an extension of the Minister, provincial regional governments and district/city regional governments should act in responding to this and providing sanctions. So it is hoped that the stakeholder organization of the nurse anesthetist profession, namely the Indonesian Nurse Anesthetist Association, can take a stance and take action to socialize existing regulations so that they can be implemented in all hospitals in Indonesia, so that all health workers can get legal protection because they provide services under a legal umbrella that is legal in legislation.

## **ADVANCED RESEARCH**

Researchers realize that this research still has many limitations, one of which is a lack of analysis from the perspective of Law Number 36 of 2014 concerning Health Workers and Law Number 17 of 2023 concerning Health. The researcher suggests that future researchers continue to analyze the laws and regulations governing anesthesia in depth and examine them more closely

in relation to Law Number 36 of 2014 concerning Health Personnel and Law Number 17 of 2023 concerning Health.

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