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Contaradiktif Doctor's Authority Regulated in Law No. 29 of 2009 concerning The Practice of Medicine and Government Authority In Law No. 30 of 2014 concerning Government Administration

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Abstract

The granting of authority in structural and functional positions if referring to the law in Indonesia, has been regulated in law number 30 of 2014 concerning government administration, where nomenclature has been formulated the forms of authority, namely: Attributed authority derived from the 1945 Constitution and law, delegation authority is a way of bestowing authority from top officials to subordinate officials or equivalent officials, where the responsibility is entirely on the recipient of the delegation, while the granting of mandate authority also delegates authority to lower officials, while the responsibility remains with the mandate giver. Because the organization of health workers is recognized and subsidiary, the granting of delegate authority and mandate at any time can be withdrawn by the provision of delegates and the provision of mandates. But the granting of delegation authority and mandate for health workers, especially doctors to nurses or midwives, cannot necessarily be treated by Law No. 30 of 2014, because health workers, especially doctors, are subject to Law No. 29 of 2009 on medical practice and law number 38 of 2014 on nursing.

The granting of delegate authority and mandate from doctor to nurse is the granting of authority that is subject to the special actions of government officials in the permit and licensing regime, i.e. starting from the prohibition norm, but in the case of concrete events, by doctors and nurses can negate the norms of the prohibition with the permissible norms. This permit regime then developed into a licensing regime so as to negate the prohibition norms, become allowed and have developed in practice into 3 (three) forms, namely: Permits, dispensations and concessions.

Keywords

Contradictive, Doctors, Practice of Medicine, Government authority.

Introduction

The implementation of health efforts must be thorough, characteristic, planned, integrated, sustainable, sustainable, tiered, professional and quality. As mentioned in the National Health System that the health effort subsystem consists of two main elements, namely Individual Health Efforts and Public Health Efforts. Public Health Efforts are mainly organized by the Government with active community and private participation, while Individual Health Efforts can be organized by the public, private and government. This is due to the limited amount of human resources both in terms of quantity and quality. In addition to Puskesmas, which is an important unit in health service efforts are hospitals, both private and government. Providing quality services in accordance with established standards and can reach all levels of society (Noah, 2004).

One stage of national development of general welfare is the improvement of health. As for what is understood by the development of health is an indication carried out by all components of the nation that lead to improve understanding, goals, or habits of effective spirit for one character will create degrees of public health in an equal manner. That any action or series of actions in doing integrated things, or the same action to maintain and advance the public health department in the format of health services disease examination, health development, treatment of complications, or health recovery by the government or the community is stated in health efforts during prevention (Kickbusch, 2003)-In one case, addressing the health sector certainly needs to be regulated by law, because health development is determined by 3 factors, namely the need for health care to be regulated by concrete action strategy measures by the government, the need for legal provisions in the health care system, the need for clarity that limits between health care and certain medical measures. "One of the main principles that are used as the basis in every implementation of government and statehood in each state of law is the principle of legality. The law will be used as an intermediary momentum so that it is the main core of the implementation of statehood and government (Pegram, 2015).

The parable of the interaction between the doctor and the patient himself is a unique relationship, where the patient is the consumer and the doctor is the

service provider. But consumers are lay people while doctors are experts and result in unbalanced responsibility, doctors are required to provide understanding first before providing the medical services requested by the patient.

With the paradigm of society that has progressed in the field of health services, now the field of medicine is starting to be touched by public criticism. This is the impact of doctors who perform medical actions that are not in accordance with the procedure so that the public feels enough with oral explanations. On the other hand, because of the limitations of society cannot distinguish between medical risks and malpractice. The tendency of the community is to see the results of treatment and treatment, even though the results of treatment and treatment cannot be predicted with certainty when in other countries there is an authority that binds health workers who are different from other administrative authorities (Bashshur et al., 2000).

To find out the difference between the authority stipulated in Law No. 30 of 2014 concerning government administration and the authority of doctors stipulated in Law No. 29 of 2004 on the practice of medicine, then first given a scheme of actions or governmental actions (administrative actions or administrative decisions or state administrative decisions) which in the legal literature are outlined as follows: (a) Legal acts (Public law and private law, (b) Real or rill or fact-based disputes, (c) Special deeds.

Legal Actions

Literature teaches the deeds of government (broad meaning), which are governed in the act of law, consisting of:

- a. Acts of public law and
- b. Private legal action (privacy)

Which is regulated in public law, has 2 (two) forms of side by side:

- a. 1 (one), and
- b. Bemused a lot

Public legal acts with the same as 1 (one), consisting of:

- a. Which is universally general, called regulation (*regeling*) and
- b. Which is special, called decision (*beshiking*)

If the special decision is individual, concrete and final, then according to Law No. 5 of 1986 which was amended last by Law No. 51 of 2009 concerning the State Administrative Court; it will be the object of disputed trial of TUN (State Administration).

Real or Real Deeds or Facts

In the implementation of government, officials or bodies or people, in addition to having to submit and comply with laws and regulations, the government is given the power to do real / real actions or facts, with the aim to solve problems quickly and precisely concretely, because the laws and regulations have not

regulated it, or the legal norms are vague (*vague norm*), causing various interpretations and interpretations.

The purpose of authorizing officials in the form of real / real actions and facts is expected and aims to complete real, real and concrete actions by not resulting in any law, whereas if the real / real deeds or facts that result in bad or illegitimate or not in accordance with their purpose, then it must be tested using (AUPB) General Principles of Good Government, Not by legislation (Shirky, 2011).

AUPB (General Principles of Good Government). Regulated in article 10 and Article 14 of Law No. 30 of 2014 concerning government administration formulated as follows: Article 1 number (17): General Principles of Good Government Hereinafter abbreviated as AUPB is a principle used as a reference for the use of Authority for Government Officials in issuing Decisions and / or actions in the implementation of government.

Then also contained in article 10 paragraph (1), which is meant by AUPB includes the principles:

- a. Legal certainty
- b. Expediency
- c. Impartiality
- d. Precision
- e. Not abusing authority
- f. Openness
- g. Public interest, and
- h. Good service.

Other general principles outside the AUPB as intended in paragraph (1) can be applied as long as it is used as the basis for the judge's judgment that is valid in a court decision with permanent legal force. So actually, the origin of the emergence of real deeds or facts, because many actions and actions that live and develop in society, so that not all of them can be formulated in law, then the government in the narrow sense (exclusive) is given discretionary authority or freedom to complete real deeds or facts in the hope of not causing legal consequences.

Special Deeds of the Government

Why should the government be given a special deed in administrative law, because the government is authorized to take care of and regulate the actions of the community, also given the authority to regulate and take care of actions that are prohibited or not allowed, but in certain circumstances, the prohibited actions are allowed with certain considerations, such as economic needs, economic growth and others that can be used to prosper the people, then the prohibited act is allowed by tune (State Administration) officials accompanied by certain conditions.

Actions whose norms are prohibited, in certain things are allowed, Then allow it, by Law No. 30 of 2014 on administration. The government is given 3 (three) forms of special legal acts, namely:

- a) Permissions
- b) Concessions, and
- c) Dispensation

According to article 1 number (19, 20, 21), the norm is formulated as follows:

- a) **Permission** is the decision of authorized government officials as a form of approval for the application of citizens in accordance with the provisions of laws and regulations
- b) **Concession** is the decision of authorized government officials as a form of approval of the agreement of government agencies and / or officials with other than agencies and / or government officials in the management of public facilities and / or natural resources and management, others in accordance with the provisions of laws and regulations.
- c) **Dispensation** is the decision of authorized government officials as a form of approval for the application of citizens of the community which is an exception to a prohibition or order in accordance with the strictness of the laws and regulations.

Methods

In legal research, there are 2 (two) that are often used by researchers, namely normative or doctrinal research and empirical research.

Research methods in legal science are more precise and have a broader meaning, the term "study of legal science" is used. The study of legal science recognizes two types of research, namely normative research and empirical research type. This type of research has its own field of study, depending on the problem being studied, how to formulate the law itself and which choice the method wants to be applied.

The study of legal science recognizes the existence of three layers of legal science, namely the dogmatic science of law, legal theory and philosophy of law. This research uses an approach to the three layers of legal science by adjusting the character of each object of study.

Each layer of legal science has a special character about the concept, explanatory and nature or nature or nature of science, namely:

1. The layer of dogmatic science of law concept is *technics juridisch begrippen*, the explanatory is technically juridical, normative scientific nature
2. The layer of legal theory of the concept is *algemene begrippen*, its analytical explanatory, normative and empirical scientific properties
3. The legal philosophy layer of the concept is *grond begrippen*, the explanatory is reflective, and the scientific nature is speculative.

Because what is discussed in this study revolves around the issue of the authority of TUN officials (State Administration) and the authority of doctors as professional personnel in the field of health services and medical services, this

research uses the study of dogmatic legal science, legal theory and the study of legal philosophy. Dogmatic study of law and legal theory, the research method is normative and empirical, while the study of legal philosophy, the research method is normative falsification.

The three layers of legal science studies are briefly operationalized as follows:

- a. Meuwissen provides limits on the understanding of dogmatic law as explaining, systematizing, analyzing and interpreting applicable laws or positive laws.
- b. Van Hoecke defines dogmatic law as a branch of legal science (broad meaning) that exposes and systematizes the positive law that prevails in a particular society and at a certain time from a normative point of view.

In this study, dogmatic legal scientists work from an internal perspective who wants as a partisan who speaks in juridical discussions to present his insights into administrative law and health law. It is thus concluded that the theory of truth that best corresponds to dogmatic law is pragmatic theory of truth, whereas the propositions found in dogmatic law, are not just informative or empiric, but are normative and evaluative.

Result and discussion

Understanding and meaning of sources of authority that are decisions of government administration with administrative actions of government according to law number 30 of 2014 concerning government administration. There are 2 (two) terms in article 1 number 7 and 8 of Law No. 30 of 2014 concerning government administration, namely: (a) Administrative decisions of the government and (b). Administrative actions of the government.

Government administrative decisions are included in the making of government laws that are regulated in public law and are general and universal, while administrative actions emphasize on concrete events to resolve concrete procedures as well, so as to enter the permit and licensing regime. So that the two regimes have an influence and different impact on the granting of authority as stipulated in Law No. 29 of 2004 and Law No. 30 of 2014.

Government administration decisions according to article 11 of Law no. 30 of 2014, the authority includes:

- a. Attribution
- b. Delegation, and/or
- c. Mandate

Attribution is the granting of authority to government bodies and/or officials by the Constitution of the Republic of Indonesia of 1945 or law. Government agencies and/or officials obtain authority through attribution if:

- a. Regulated in the constitution of the Republic of Indonesia in 1945 and/or the law
- b. Is a new authority or previously absent,
- c. Attribution is given to government bodies and/or officials

Government agencies authorities who are obtain authority through attribution, responsibility, authority concerned. Attribution authority cannot be delegated, unless regulated in the constitution of the Republic of Indonesia in 1945 and/or the law.

Delegation (article 13) is the transfer of authority from higher government bodies and/or officials to lower bodies and/or government officials with responsibilities and responsibilities transferred entirely to the recipient of the delegation. Delegation of authority is determined based on the provisions of laws and regulations. In article 13 of Law No. 30 of 2014, it is regulated as follows:

(1) Delegation of authority is determined based on the provisions of the laws and regulations.

(2) Government agencies and/or officials obtain authority through delegation if:

- a. Provided by government agencies/officials to other government agencies and/or officials,
- b. Stipulated in government regulations, presidential regulations, and/or local regulations, and
- c. Is the authority of devolution or has previously existed.

(3) Authority delegated to government bodies and/or officials cannot be further delegated, unless otherwise specified in the laws and regulations.

(4) In the provisions of the laws and regulations specifying others as intended in paragraph (3), the body and/or government officials who obtain authority through delegation as intended in paragraph (2) may delegate actions to other government bodies and/or officials with the following provisions:

- a. Outlined in the dredge of regulations before the authority is exercised
- b. Conducted in the linkage of the government itself, and
- c. Most given to bodies and/or government officials 1 (one) level below.

(5) Government agencies and/or officials who provide deagasi may use the authority that has been granted through the delegation, unless otherwise specified in the provisions of the laws and regulations.

(6) In case the implementation of authority based on delegation causes inactivity of the implementation of government, the body and/or government officials who provide delegation of authority may withdraw the delegated authority.

(7) Agencies and/or government officials who obtain authority through delegation, the responsibility of authority rests with the recipient of the deagacitation.

Mandate (article 14) is the transfer of authority from higher government bodies and/or officials to lower government bodies and/or officials with

responsibilities and responsibilities remaining with the mandate giver. Government agencies and/or officials obtain a mandate if:

- a. Assigned by the body and/or government officials above it, and
- b. Is the implementation of routine tasks.

Officials who carry out routine tasks as intended in letter (b) above, then the implementation consists of:

- 1) Daily implementation that carries out routine duties of officials who are temporarily absent, and
- 2) The implementation of duties that carry out the routine duties of definitive officials who are not permanently absent

Government agencies and/or officials may give mandates to other governing bodies and/or officials who are subordinates, unless otherwise specified in the provisions of the laws and regulations. The body and/or government official receiving the mandate must mention on behalf of the body and/or government official who gave the mandate. Government bodies and/or officials who provide mandates may use the authority that has been granted through the mandate, unless otherwise specified in the provisions of laws and regulations. In the event that exercising authority based on the mandate causes ineffectiveness of the administration, the body and / or government officials who provide the mandate can withdraw the authority that has been mandated.

Government agencies and/or officials who obtain authority through mandates are not authorized to take decisions and/or actions of a strategic nature that have an impact on changes in legal status in **aspects of organization, staffing, and budget allocation**. Government bodies and/or officials who obtain authority through a mandate of authority responsibility remain on the mandate giver. The granting of delegate authority and mandate, in principle, remains irrevocable, with different consequences of responsibility. The authority of the decriminalization, the responsibility remains on the recipient of the delegation, while the authority of the mandate, the responsibility remains on the mandate giver.

The question, whether the form of delegation authority and the granting of mandate authority, can be withdrawn as stipulated in Law No. 30 of 2014 on government administration is the same as the granting of delegate authority and the granting of mandate authority from doctors to nurses or to midwives, can be withdrawn, while in Law No. 29 of 2004 on the practice of medicine, Law No. 38 of 2014 on nursing, there is no and has not regulated how to withdraw the authority of the delegation and the mandate of the medical measures (e.g. the granting of injections) that the nurse has performed on the patient and how his responsibilities and responsibilities are sued.

The government's actions are more appropriately indicated in Law No. 29 of 2004 on medical practice and Law No. 38 of 2014 on nursing and health regulation No. 26 of 2019 concerning the implementation regulation of Law No. 38 of 2014 on nursing, in the permit and licensing regime, so that the regime grants delegation

authority and mandate from doctors to health workers, Especially nurses, can be in 3 (three) forms, namely:

- a. Permission
- b. Dispensation, and
- c. Concessions.

The delegation of delegate authority and mandate from doctors to other health workers in order to carry out the function of doctors as a profession (not a duty) as a functional position based on the place of education in the form of a series of activities (concrete events) for patient healing. Understanding the granting of delegation authority from doctors to nurses and midwives is the granting of doctor's authority in carrying out his duties as a profession, so that the responsibility remains on the doctor as the authorizer.

Related to the withdrawal of the doctor's authority from the nurse, it must first look at what is regulated and formulated in the health law. In Law No. 36 of 2009 calm health. What health care means are:

- a. Promotive
- b. Preventive
- c. Curative, and
- d. Rehabilitative

If you look at the 4 (four) health services, then we can sort them into items (3) and items (4), which are medical services or services that are in direct physical contact with patients, so they will not be able to be withdrawn. While items (1), and (2) are more administrative health services that can be withdrawn. Here it is explained that the health service is collected with medical services. Health services in hospitals related to health services are administrative in the distribution of authority in the form of delegations can be withdrawn, while services related to medical actions, should not be withdrawn if concrete events have and have occurred, so that responsibility and responsibility are at risk of the profession.

In the strategy of reality in line the nursing profession is still less increased compared to the profession that is closely adjacent and in line with the medical profession. A new paradigm in the provision of health or medical care that according to the role of nurses is more parallel in working with doctors. From the analysis is that the relationship between health workers can be done by upholding principles that can support the provisions of communication in the team, namely (Klevens et al., 2007)

1. Conflict with individuals against the team so that communication when conducting relationships is better and each individual with the team avoids disputes.
2. Explain their opinion of view to perform an action each individual is entitled to put forward.

Seeing health partners in communicating between health teams not only requires empathy and sympathy, but also requires a sense of responsibility entirely to themselves or others, as well as respect for other health. Every health worker is

required to have the ability to communicate effectively, namely by prioritizing empathy and sympathy to other health workers or to clients when carrying out tasks. Health partners not only need detailed communication, but also needed communication immediately and accurately to minimize bad events that occur approximately (Melvin, 2012).

As for the transfer of doctor's authority to nurses in the form of mandates, then every mandate can be withdrawn, and the responsibility and responsibility remains with doctors, both in the form of administrative-based health services and medical action services. A description of the scheme can be seen above (Hilty et al., 2017).

Authority of Recognition and Subsidiarity of Doctors in Structural Positions and Functional Positions, According to the author to see the authority of TUN officials with the authority of doctors with different regulatory sources, it must first look at the principles used to see the authority of health workers, especially medicine or doctors. The authority of medicine in practicing medicine regulated in Law No. 29 of 2004 concerning the practice of medicine, must be seen from 2 (two) principles, namely **the principle of recognition** and **the principle of subsidiarity**.

The principle of recognition is the principle of the recognized thing or circumstance, or recognition, or appreciation of one's ability or profession and there is no intervention from the structure of the state administrative office or other professional positions, while the **principle of subsidiarity** is the recognition of the determination of the authority of professional positions derived from professional higher education, that each person is responsible for himself in carrying out his duties and professional functions. That responsibility means that each person has the right to determine his own fate.

The principles used by Law No. 30 of 2014 are the principles of decentralization, decentralization and the principle of residually, so that the authority of bodies and / or government officials or TUN (State Administration) officials, categorized based on the source of authority and the remaining lowest authority, in the form of mandates. The authority of health workers who are based on the principle of recognition and the principle of subsidiarity, where the position of the doctor is defined as a cognate unity of expertise, science and technology that has a point of alludes or point of stringing together and is used to take care of and care for patients with the process of healing efforts, based on expertise initiatives and efforts to maintain care sourced from the conscience of humanity which is then facilitated by the state in form of legislation, as an instrument of legal protection for health workers.

So according to the author, the authority of health workers (there are 13 health workers, article 11 of Law No. 36 of 2014 concerning health workers). It is an interrelated authority in medical health services based on scientific initiatives obtained through higher education and the profession, as well as humanitarian

human rights in the realm of healing, nursing and nursing efforts, which include (Bonnenberger et al., 2014):

- a. Authority based on expertise obtained through higher education level
- b. Professional authority obtained based on educational disciplines with proof of competency certification with STR (Registration Certificate) and professional discipline with proof of professional certification with SIP (License of Practice).
- c. Authority derived from the demands of concrete events of the patient's helplessness to ask for healing, treatment and compliance assistance based on the right of human origin through the profession
- d. Authority assigned by the government based on laws and regulations.

So that the organization of health workers is a *hybrid* organization between the demands of the profession with healing and nurturing or nursing efforts, as well as the right of human origin, so that the organization of health workers in the form of a scientific-based professional organization and based on healing, treatment and community efforts with all its consequences. The organization of this profession is supervised by the constituent bodies of each profession. The Indonesian Medical Council (KKI) is an autonomous, independent, non-structural and independent body, responsible to the president. KKI (Indonesian Medical Council) has functions and duties, namely:

- a. Register a doctor and dentist
- b. Certifying the educational standards of the profession of doctors and dentists, and
- c. Conducting coaching on the implementation of medical practices carried out with related institutions in order to improve the quality of medical services.

In carrying out functions and duties, KKI has the authority, namely:

- a. Approve and reject the application for registration of doctors and dentists,
- b. Order and revoke the registration certificate,
- c. Certifying complicity standards
- d. Testing the registration requirements of doctors and dentists,
- e. Authorizing the application of branches of medical science and dentistry,
- f. Conduct joint coaching of doctors and dentists regarding the implementation of professional ethics established by professional organizations,
- g. Record keeping records of doctors and dentists who are sanctioned by professional organizations or their devices for violating the provisions of professional ethics.

KKI members consist of 17 (seventeen) representatives from:

- a. Association of Indonesian Teaching Hospitals: 2 people
- b. Indonesian medical collegium 1 person
- c. The general manager of the Indonesian doctors association 2 people
- d. Association of Indonesian dentistry education institutions 2 people
- e. Indonesian dental association 2 people
- f. Indonesian dental collegium 1 person

- g. Public figures 3 people, health department 2 people and,
- h. Department of national education 2 people.

Sources and Properties of Authority According to Law No. 30 of 2014 concerning Government Administration. The delegation of authority in the field of doctor's position, according to Mahesa Paranadipa Meikel, authority has two properties, namely:

- a. Authority that is attributed and,
- b. Non-attributed authority

Ad. a) Attributed authority is an inherent authority that is directly granted under the law, while the attribute authority attached to doctors is to practice medicine mentioned in law number 29 of 2004 concerning the practice of medicine.

While the attribute authority attached to nurses is to practice nursing care as mentioned in law number 38 of 2014 concerning nursing.

Ad. b) Non-attribute authority is the authority given by someone who has the above authority or competence to someone who has lower authority or competence. This authority is temporary. Non-attributed authority is divided into 2 types based on accountability, namely:

1) A mandate is an authority given by a doctor to a nurse without removing the legal responsibility of the doctor.

2) Delegation is the authority given by a doctor to a nurse accompanied by the devolution of legal responsibilities from the doctor. Non-attribute authority can also be given by professional nurses to vocational nurses in accordance with their trained abilities.

Based on law number 29 of 2004 concerning the practice of medicine article 35 paragraph (1), the authority possessed by doctors consists of:

- a. Interviewing patients
- b. Physically and mentally examining the patient
- c. Determine supporting checks
- d. Establishing the diagnosis
- e. Determining the management and treatment of patients
- f. Perform medical measures
- g. Writing prescription medications and medical devices
- h. Issuing a doctor's certificate
- i. Storing drugs in permissible quantities and types
- j. Mixing and handing over the drug to the patient, for those who practice in the detailed area; and there is no pharmacy.

In addition to the authority as intended in paragraph (1) other authorities are regulated by the regulation of the Indonesian medical council. The authority of the doctor above must be based on the standards of competence of the doctor.

Comparison of the Form of Authority of State Administrative Officials with The Form of Doctor's Authority. To parse and sort out, whether the authority of officials or administrative entities of the country is the same as the authority of doctors obtained through special education. To find out the difference, it must first

be seen from the character and principle used in looking at the two forms of authority.

In Law No. 30 of 2014 calm government administration, what is meant by government administration is governance is the procedure in decision making and / or actions by government bodies and / or officials. The function of government is a function in carrying out government administration which includes the functions of regulation, service, development, empowerment, and protection, while government agencies and / or officials are elements that carry out government functions, both in the government environment and other state administrations.

So that the authority of the ASN (State Civil Apparatus) position consisting of civil servants (Civil Servants) and PPPK (Employees with Work Agreements), so that the decisions of administrative officials are formulated differently from decisions made by health workers, especially doctors. What is meant by the decision of government administration according to article 1 point (7) of Law No. 30 of 2014 concerning government administration is called "State Administrative Decision or State Administration Decree". The next so-called decision is a written decree issued by the body and / or government officials in the administration of government.

Meanwhile, what is meant by administrative action according to article 1 number (8) of Law No. 30 of 2014, which is meant by government administration actions which are hereinafter called actions are the actions of government officials or other state organizers to do and / or not to do concrete actions in the framework of government organizers.

So, there is a difference in the formulation of the meaning of the meaning of the phrase "*Administrative decisions of government*" with the phrase "*Administrative actions of government*". Notable differences in general deeds on the phrase of the word "administrative decision of government" and concrete deeds on the phrase "Administrative actions of government".

When referring to the **opinions of Buys** and Vos, as well as Soehino, there are two indicators used to distinguish against these 2 (two) **understandings**, namely:

a) If the decision is taken not from concrete conduct, or taken from an act of request to perform an act of solicitation to perform a concrete act, then this falls into the sense of a decision of the administration of government, whereas if the decision is taken from concrete actions (the result of concrete events) to solve concrete problems accompanied by choices (free and / or bound choice), then this act requires permission, then this act is called "administrative action of government".

b) Government administration decisions, should be made based on individual applications, although not concrete and final. But by Law No. 5 of 1986 as amended a second time with Law No.51 of 2009 concerning state administrative justice or abbreviated as TUN, plus 2 conditions, which must be concrete and final.

So that the administrative action of the government is included in the permit and licensing regime, meaning that the permit is departing from the charcoal norm, where the act is the norm is prohibited, but against the concrete event of the prohibited act, it is allowed, but with certain conditions, then certain conditions, are the cause of the issuance of a permit, so that a permit, so that a permit must first be given the terms and conditions it may be allowed. Plus or reduced to concrete acts, depending on the circumstances and time for the official or giver of permission to judge.

Space increases and decreases the requirement that is called the space of freedom for licensing officials, or commonly referred to as discretion or *freles ermessen*. If referring to article 1 number (19) of Law No. 30 of 2014 concerning government administration, which is meant by permission, as follows: *Permission is the decision of authorized government officials as a form of approval for the application of citizens in accordance with the provisions of laws and regulations.*

Article 39 of Law No. 30 of 2014 on government administration explains as follows:

- a. Decisions of government bodies and/or officials in the form of permits if:
 - 1) Issued approval before the activity is carried out and,
 - 2) Activities that will be carried out are activities that require special attention and / or meet the provisions of laws and regulations.
- b. Decisions of bodies and/or government officials in the form of dispensation if:
 - 1) Issued approval before the activity is carried out, and
 - 2) The activity to be carried out is an exception to a prohibition or order
- c. Decisions of the governing body and/or government office in the form of concessions when:
 - 1) Issued approval before the activity is carried out
 - 2) Approval is obtained based on the agreement of government entities and/or officials with state-owned enterprises, regionally owned enterprises, and/or private sectors, and
 - 3) The activities that will be carried out are activities that require special attention.
- d. Permits, dispensations, or concessions recommended by the application shall be given approval or rejection by the body and/or government officials no later than 10 (ten) working days from the receipt of the application, unless otherwise specified in the provisions of the laws and regulations.
- e. Permits, dispensations, or concessions may not cause state losses.

Space to increase and reduce the requirement is called discretion, discretion is also regulated in article 23 of Law No. 30 of 2014; the discretion of government officials includes:

- a. Decision making and/or action based on the provisions of laws and regulations that provide a choice of decisions and/or actions,

- b. Decision making and/or actions due to laws and regulations do not regulate,
- c. Decision making and/or not because the laws and regulations are incomplete or unclear, and
- d. Decision making and/or action due to stagnation of government for the wider interests.

Concrete Events Of Delegation of Doctor's Authority to Other Health Workers, The main obligation of doctors or nurses is to conduct nursing care (ASKEP) to patients in accordance with the professional standards attached to him. The devolution of authority leads to a change in the responsibility of the doctor to the responsibility of the nurse when carrying out the task of mutual involvement or participating in carrying out. Looking at the list above, it can be analyzed that the communication of superiors and nurses while the help of presenting healing to clients forms a growing partnership kinship.

In the juridical side, the obligation to do for the superior for what the nurse does is a clue about his doctor or superior. Contains a series listed must be established a combination of obligations, positions, dependents of obligations or public forms. The communication of doctors or nurses continues to have a principle relationship, due to bestowing delegate-quality authority or a mandate given by doctors to the nursing profession must be in accordance with procedures or rules in the hospital. Here are some conditions that require a doctor to delegate authority, among others,

- a. Handling patients in large numbers, while the number of doctors is limited,
- b. The doctor leaves the health facility for a certain period of time.

Delegation in these conditions must be stated in the SOP (Standard Operating Procedure) in health facilities. Next should be issued a delegation letter that must be signed by the delegated doctor and the nurse who received the delegation. In conditions where the number of patients is very large, the number of doctors is limited, the authority that can be delegated include:

- a. Examination of vital signs
- b. Anamnesis of the main complaints
- c. Implementation of treatment measures

Enforcing the diagnosis and determining the management of medical is entirely the authority of the doctor. Delegation of authority from the doctor of the nurses should consider:

- a. Delegated nurse competence
- b. Evaluation of the implementation of delegated authority

In article 32 of Law No. 38 of 2014 concerning nursing, it is stated that the delegated authority to perform a medical action to nurses accompanied by the distribution of responsibilities Delegates can only be given to professional nurses or trained vocational nurses who have the necessary competencies. The problem of delegation here is in a situation where the doctor has to leave the health facility

for a certain period of time so that those who are in the facility are only nurses. To bestow the authority to establish the diagnosis and management here still raises questions:

- a. Are delegated nurses trained to establish the diagnosis of many medical diseases?
- b. Are delegated nurses trained to choose the type of treatment for many medical diseases?

This question must be answered by the nurse profession organization, namely PPNI (Indonesian National Nurses Association) to describe the competence of nurses in charge of health facilities. The elaboration of the concentration aims to protect nurses and the legal implications of taking actions that are not their competence (*lack of skills*). Based on Law No. 29 of 2004 on medical practice, all records regarding patients and medical actions given to patients must be recorded in the medical record. Medical records themselves are documents belonging to doctors, in the sense that must be recorded in medical records are doctors. Based on the medical record manual published by KKI (Indonesian Medical Council) in 2006, recording recorded medically in addition to doctors with delegation in writing.

Position of Position in the Government System According to Law No. 38 of 2014 concerning Government Administration, The position in Law No. 38 of 2014 concerning government administration, has not been mentioned in detail and decomposed, but what is regulated is the authority in the position, in the form of attribution authority, delegation and mandate. In the government bureaucracy known career positions, namely positions in bureaucratic links that can only be occupied by ASN (State Civil Apparatus) consisting of civil servants and PPPK (Law No. 5 of 2014 on State Civil Apparatus). Career positions can be divided into 2, namely:

- a. Structural positions, which are positions that are expressly in the organizational structure. The position of structural positions is multi-level from the lowest level (echelon IV / b) to the highest (echelon I / a). Examples of structural positions in central civil servants are: Secretary General, Director General, Bureau Chief, and Expert Staff. While examples of structural positions in regional civil servants are: Regional secretary, head of service / agency / office, head of section, head of field, head of section, head of section, Camat, secretary of Camat, lurah, and secretary of lurah.
- b. Functional positions, namely technical positions that are not listed in the organizational structure, but from the point of view of their functions are indispensable in the implementation of the main tasks of the organization, for example: auditors (JFA positions or Functional Positions of Auditors), teachers, lecturers, doctors, nurses, midwives, pharmacists, researchers, planners, computer institutions, statistics, educational laboratory institutions, and motor vehicle testers.

A functional position is a position that indicates the duties, responsibilities, authorities and a civil servant's rights in organizational units whose duties in the

performance of their duties is based on certain skills and / or skills and are independent. Functional positions are essentially technical positions that are not listed in the organizational structure, but are indispensable in the main tasks in government organizations (Kamdron, 2005). The functional positions of the Civil Servant consist of:

- a. Functional position of expertise and
- b. Functional position of skills

The legal products that require appointment in functional positions is PP (Government Regulation) No. 40 of 2010: changes to government regulation No. 16 of 1994 concerning the functional position of civil servants, PP No. 16 of 1994 and Presidential Decree No. 87 of 1999.

Position of Doctor's Position between Structural and Functional Positions, to clarify more clearly the position of health workers, especially doctors, it is necessary to re-establish differences in structural and functional positions (Berg et al., 2000), which are then formed like functional positions by the state. In the government bureaucracy is known career positions, namely positions in bureaucratic environments that can only be occupied by ASN (State Civil Apparatus) consisting of civil servants and PPPK. Career positions can be divided into 2 (two) namely: (1) Structural positions, which are positions that are expressly in the organizational structure. The position of structural positions is multi-level from the lowest level (echelon IV / b) to the highest (echelon I / a). Examples of structural positions in central civil servants are: Secretary General, Director General, Bureau Chief, and Expert Staff. While examples of structural positions in regional civil servants are: Regional secretary, head of service / agency / office, head of section, head of field, head of section, head of section, Camat, secretary of Camat, lurah, and secretary of lurah, (2) Functional positions, namely technical positions that are not listed in the organizational structure, but from the point of view of their functions are indispensable in the implementation of the main tasks of the organization, for example: auditors (JFA positions or Functional Positions of Auditors), teachers, lecturers, doctors, nurses, midwives, pharmacists, researchers, planners, computer institutions, statistics, educational laboratory institutions, and motor vehicle testers. A functional position is a position that indicates the duties, responsibilities, authorities and a civil servant's rights in organizational units whose duties in the performance of their duties is based on certain skills and / or skills and are independent. Functional positions are essentially technical positions that are not listed in the organizational structure, but are indispensable in the main tasks in government organizations. The functional position of the Civil Servant consists of the functional position of expertise and the functional position of skills. The legal products that require appointment in functional positions is PP (Government Regulation) No. 40 of 2010: changes to government regulation No. 16 of 1994 concerning the functional position of civil servants, PP No. 16 of 1994 and Presidential Decree No. 87 of 1999. (3) Functional Departments According to The Bureaucratic Reform Candy No. 15 of 2010 concerning Learning Facilities and Credit

Figures. A functional position is a position that indicates the duties, responsibilities, authorities and rights of a civil servant in organizations whose duties in the implementation of their duties is based on certain Skills and / or Skills and are independent. Functional positions are essentially technical positions that are not listed in the organizational structure but are indispensable in the main tasks in government organizations.

The Group of Health Workers Departments Of the Health Workers Group of health workers is a group of functional positions of civil servants whose duties are to carry out activities related to research, improvement or development of operational concepts, theories and methods, the application of knowledge science and the implementation of technical activities in the fields of health improvement, prevention of human diseases, treatment and rehabilitation, dental and oral health, pharmacy and the treatment of sick people and the birth of babies (Love et al., 1997).

Functional positions included in this group include all certain functional positions in the health ministry environment, such as: 1) Health Administrator 2) Pharmacist 3) Assistant Pharmacist 4) Assistant Anesthesiologist 5) Midwife 6) Doctor 7) Dentist 8) Clinical Educator Doctor 9) Health Epidemiology 10) Health Entomologist 11) Physiotherapist 12) Medical Physicist 13) Nutritionist 14) Occupational Therapist 15) Orthotic Prosthetics 16) Health Supervisor 17) Anesthesiologist 18) Extension Public Health 19) Nurse 20) Dental Nurse 21) Medical Recorder 22) Health Laboratory Institution 23) Clinical Psychologist 24) Radiographer 25) Refractory Optician 26) Sanitarian 27) Electro medical Technician 28) Dental Technician 29) Blood Transfusion Technician 30) Speech therapist (Weisberg, 1982).

Granting Midwife and Nurses Authority in Curative Action in the Form of Giving Injections to Patients 7.1 The Authority of Midwife Health Workers Will first be explained about health workers called midwives first, then will discuss about those related to other health workers. In law No. 36 of 2014 on health workers, midwifery personnel are one type of health workers. The kind of health workers in this midwifery group are midwives. (Article 11 paragraph (1) and (5) of Law No. 36 of 2014 concerning health workers. As one of the health workers, midwives in carrying out practices must be in accordance with their authority based on their competence (see article 62 paragraph (1) of Law No. 36 of 2014 on health workers).

According to the explanation of article 62 paragraph (1) c of Law No. 36 of 2014 concerning health workers, what is meant by "authority based on competence" is the authority to perform health services independently in accordance with the scope and level of competence, among others, for midwives is that he has the authority to perform maternal health services, child health services, and women's reproductive health services and family planning. If the midwife does not implement the provisions in article 62 (1) of the health workers Law, she is

subject to administrative sanctions. The provisions of this sanction are regulated in article 82 paragraph (1) of Law No. 36 of 2014 concerning health workers.

To answer the question of how to delegate the authority of doctors to midwives, first know that the sanctions known in Law no. 36 of 2014 on health workers are administrative sanctions, namely sanctions are imposed if the midwife concerned in carrying out their practices is not in accordance with their competence. In article 84 of Law No. 36 of 2014 concerning health workers if the midwife has given drugs or injections is not a competency that they have, and then the sanctions that apply to it are administrative sanctions not criminal sanctions. However, if it turns out that the administration of drugs or injections is a gross negligence that causes the recipient of the health service to suffer severe injuries, then the midwife concerned can be punished with a maximum imprisonment of 3 (three) years. Meanwhile, if gross negligence results in death, the midwife is sentenced to imprisonment for a maximum of 5 years.

In more specific regulations it is said that a midwife is a woman who graduated from midwife education who has been registered or must have a STR (Registration Certificate) in accordance with the provisions of laws and regulations. This is mentioned in article 1 number 1 of the Regulation of the Minister of Health of the Republic of Indonesia Number 1464 / Menkes / Per / X / 2010 of 2010 concerning the permit and implementation of midwife practices. Midwives can carry out independent practices and/or work in health service facilities (article 2 paragraph (1) Ministry of Health Regulation 1464/2010). In carrying out midwife practices, of course, the midwife concerned must have a permit, namely SIPB (Midwife Practice License) for midwives who carry out their practices independently (written evidence given to midwives who have met the requirements) or SIKB (Letter Izizn Work Midwife) for midwives working in the facility of health services (written evidence given to midwives who have met the requirements).

The understanding of both is contained in article 3 Jo. Article 1 number 4 and 5 Ministry of health Regulation 1464 of 2010, midwives in providing maternal health services are authorized to: a. Episiotomy b. 1st and II grade 1 and II c birth canal wound tailoring. Emergency handling, followed by persuasion d. Giving Fe tablets to pregnant women e. Administration of high doses of vitamin A in the mother of Post-Partum f. Facilitation / guidance of early breastfeeding initiation and promotion of exclusive breast milk g. Administration of utratonika in active management at three and postpartum h. Counseling and counseling i. Guidance on the group of pregnant women j. The certificate of death, and k. granting a certificate of maternity leave.

While in article 11 paragraph (2) Ministry of Health Regulation no. 1464 of 2010, midwives in providing child health services are authorized to: a. Carrying out normal newborn care including resuscitation, hypotension prevention, initiation of early breastfeeding, vitamin k1 injection, newborn care during the neonatal period (0-28 days0, and cord care b. Handling of hypothermic in newborns and immediately referring c. Emergency management, followed by referring d. Routine

immunization according to government program e. Monitoring of baby's flower body, toddler and pre-school child f. Counseling and counseling g. Granting a birth certificate, and h. Granting a death certificate.

In addition, article 13 paragraph (1) letter a Ministry of Health Regulation 1464 of 2010, midwives who continue government programs are authorized to perform health services including providing injection contraceptives, contraceptives in utero, and providing contraceptive services under the skin. Looking at the authority of the midwife above, there is an authority that allows midwives to perform injections to patients. Looking at the above provisions, in connection with the provision of injections by midwives, it can be seen that criminal sanctions will be given to the midwife if the actions he took to the patient constituted a gross negligence resulting in severe injury or death to the patient. Granting criminal sanctions according to article 85, article 86 of Law No. 36 of 2014 concerning health workers, midwives can be charged with criminal offenses if the midwife is caught practicing even though she does not have permission for it.

The authority of nurses given authority to health workers named nurses, as well as doctors can authorize nurses, which are similar to midwives, nurses are one type of health workers, namely known as nursing personnel (article 11 paragraph (1) c of Law No. 36 of 2014 concerning health workers. The types of health workers included in the nursing group consist of various types of nurses (article 11 paragraphs (4) of Law No. 36 of 2014 concerning health workers). According to the explanation of the article, there are several types of nurses, including: a. Public health nurse b. Child health nurse c. Maternity nurse d. surgical medical nurse e. Geriatric nurse, and f. mental health nurse

Nurses in carrying out their practices must be carried out in accordance with the authority based on their competence. As for the authority of nurses, we can see the explanation of article 62 paragraph (1) b of Law No. 36 of 2014 concerning health workers, namely conducting nursing care independently and comprehensively and the act of nursing collaboration with other health workers in accordance with their qualifications. As a follow-up to Law No. 36 of 2014 on health workers, a special law was also made for nurses with Law No. 38 of 2014, formulated the type of nurse, namely: a. Types of nurses consist of: 1) Professional nurses, and 2) Vocational nurses b. Professional nurses as intended in paragraph (1) a consist of: 1) Ners, and 2) Ners specialist c. Further provisions regarding the type of nurse as intended in paragraphs (1) and (2) shall be regulated by ministerial regulation.

So the birth of Ministry of Health Regulation no. 26 of 2019, concerning the implementation of Law No. 38 of 2014 on nursing. In more specific regulations mentioned that a nurse is someone who has passed the nurse education both at home and abroad in accordance with the laws and regulations. This is mentioned in article 1 number 1 of the Minister of Health Regulation No. 17 of 2013 concerning changes to the regulation of the Minister of Health number Hk.02.02 / Menkes / 148 / I / 2010 concerning the permit and implementation of nurse practices, and

then regulated more clearly in the regulation of the Minister of Health No. 26 of 2019.

Please note that it is also possible that health services carried out by midwives or nurses are carried out outside their authority because they get the distribution of authority this is mentioned in article 65 paragraph (1) of Law No. 36 of 2014 concerning health workers which reads: "In performing health services, health workers can receive the distribution of medical actions from medical personnel". As for what is meant by medical personnel in article 11 paragraph (2) of Law No. 36 of 2014, health workers are doctors, dentists, specialists, and specialist dentists. Then what is meant by health workers mentioned in the explanation of the article above, among others, are midwives and nurses.

That is, if indeed medical measures (curative and rehabilitative) in the form of drug administration or injections are beyond the authority of midwives or nurses but they are given the distribution, then it is not prohibited. But with the provisions (see article 65 paragraph (3) of Law No. 36 of 2014 concerning health workers): a. the devolved actions are included in the abilities and skills that have been possessed by the devolved receiver b. The implementation of the devolved actions remains under the supervision of the devolved giver. c. The granter of eat distribution is responsible for the actions delegated throughout the implementation of the action in accordance with the distribution given, and d. Devolved actions do not include decision making as the basis for the implementation of actions.

Regarding health workers (midwives and nurses) can provide services beyond their authority is also regulated in article 63 paragraph (1) of Law No. 36 of 2014 concerning health workers: "In certain circumstances health workers can provide services beyond their authority" In the explanation of article 63 paragraph (1) of the Health Workers Law it is said that what is meant by "certain circumstances" is a condition of the absence of health workers who have the authority to carry out health service actions that have the authority to carry out health service actions that are it is necessary and not possible to be referred ([Kennedy et al., 2018](#)).

Special delegation of authority to nurses, regulated in article 29 of Law No. 38 of 2014, namely: a. In the implementation of nursing practice, nurses serve as: 1) Nursing care providers 2) Counseling and counselors for clients 3) Managers of nursing services 4) Nursing researchers 5) Executors based on the distribution of authority, and 6) Implementation of duties in certain limited circumstances. b. The task as intended in paragraph (1) can be carried out jointly or individually c. The implementation of the duties of the nurse as intended in paragraph (1) shall be carried out responsibly and responsibly.

Then if we examine the vocabulary of the word "authorized" in article 30 of Law No. 38 of 2014, nurses in carrying out their duties as nursing caregivers in the field of individual health efforts, nurses are authorized: a. Conducting a holistic assessment of expertise b. Establish a nursing diagnosis c. Planning nursing actions d. Carrying out nursing actions e. Evaluate the results of nursing actions f. Make a

reference g. Provide action on emergency situations in accordance with the competence of h. Provide nursing consultations and collaborate with doctors i. Conduct health counseling and counseling, and j. Carrying out the management of drug administration to clients in accordance with the prescription of medical personnel or over-the-counter drugs and limited over-the-counter drugs.

In carrying out duties as a nursing care provider in the field of public health efforts, nurses are authorized: a. Conduct public health nursing assessment at the family level and community groups. b. Establishing public health nursing problems c. Assist in the discovery of cases of disease d. Plan public health nursing actions e. Carrying out public health nursing measures f. Refer to case g. Evaluating the results of public health nursing actions h. Empowering the community i. Advocating in public health care j. Establish partnerships in public health care k. Conducting health counseling and counseling l. Managing cases, and m. Conduct complementary and alternative nursing management.

So, if referring to the vocabulary of authority is not authority, it means, the granting of authority means one authority, not many authorities, because the authority connotes many (plural) authority, not one authority. This means that if the authority of the delegation or mandate, it must be explained which one is withdrawn that authority, so that its responsibilities and responsibilities can be parsed if it refers to the Article of the Criminal Code on the moment of participation.

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