

## MISCONCEPTION AND LEGAL PROBLEMS OF AUTHORITY TO PERFORM MEDICAL ACTIONS IN NURSING ADMINISTRATIVE LAW

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### ABSTRACT

According to Article 29 paragraph (1) of Law Number 38 of 2014, nurses have several duties, namely as providers of nursing care, counselors and client counselors, managers of nursing services, nursing researchers, and task performers based on delegated authority and/or tasks in specific limited circumstances. One of the nurse's tasks that receive focused attention is "as a task performer based on delegated authority." According to Article 32 paragraph (2) of Law Number 38 of 2014, the implementation of nurse tasks based on delegated authority regulated in Article 29 paragraph 4 letter e of Law Number 38 of 2014 is carried out by nurses in a "delegative and mandate" manner. The aim of this research is to identify and analyze misconceptions and legal problems in performing medical actions in nursing administrative law. The research method used is a normative juridical research method. The research results are as follows: First, the term "delegated authority" is not accurately used in the context of nurse task implementation for performing medical actions. Second, the more appropriate term is "cooperation." Suggestions that can be put forward are as follows: First, Law Number 38 of 2014 concerning Nursing needs to be amended. Second, the term "delegated authority" in the legal relationship between medical personnel and nurses regulated in Article 29 paragraph (1) letter 3 of Law Number 38 of 2014 needs to be changed and replaced with the term "cooperation."

**Keyword:** misperception, delegation of authority, medical action.

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### INTRODUCTION

The concept of delegation as a mode for the delegation (distribution) of authority is a concept that is commonly known in state administrative law (Is et al., 2021). As a mode of delegation of authority, delegation is always concerned with the delegation of authority from a government position to another government position (Dwi Andayani BS, 2022). In general, the delegation of authority based on the delegation mode is carried out by a higher government position to a lower one in an office environment. Delegation of authority sideways, namely from one government position to another outside the scope of a position, is not uncommon (Afandi, 2016). Moreover, the delegation of authority to carry out an action based on scientific expertise from one profession to another that is independent is something that is unknown and has never happened in state administrative law. The reason is that, in delegation, a government position delegates authority to another position with the aim that the recipient of authority takes action based on that authority and not on scientific expertise in a scientific discipline (Guna, 2022).

The delegation of authority with the aim of carrying out an action based on scientific expertise that is inappropriate or deviates from the meaning of delegation as a mode of delegation of authority for government positions actually occurs in reality. This phenomenon occurs in the context of the delegation of authority to perform medical actions from medical personnel (doctors and dentists) to nurses. The delegation of authority as referred to above occurs in nursing administration law, a branch of health administration law. Health administrative law is a branch of administrative law that has only developed in the last few decades. As a newly developing branch of state administrative law, health administration law is often misunderstood or understood from the wrong perspective. Erroneous understandings and assumptions about the characteristics of health administration law occur because of the linkage between health administration law and criminal law, civil law, and other branches of law. Health administrative law is indeed related to criminal law, civil law, and other branches of law, so it seems as if health administration law is covered in all branches of law. The interrelatedness of health administration law creates misunderstanding and confusion, so that health administration law is considered an autonomous and separate branch of law but related to all branches of law. Of course, this assumption is wrong and baseless.

Health administrative law is a branch of state administrative law relating to the service and implementation of national health (Arisandi, 2021). Health administration law has developed rapidly in the last few decades in line with the increasing attention and involvement of the government in the field of public health. Health administration law has several branches such as nursing administration law, hospital administration law, midwifery administration law, and others, including the state administrative law environment relating to aspects of criminal law, civil law, and other laws (Sihotang, 2014). Nursing administrative law is a branch of health administrative law. In addition to the legal branch of nursing administration, other branches of health administration law are medical administration law, midwifery administration law, hospital administration law, and others. These branches of health administration law are directly related to and affect human health.

The constitutional legal basis for health administration law is Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia (Isriawaty, 2015). The constitutional order is then spelled out in Law Number 36 of 2009 concerning Health. Law Number 36 of 2009 concerning Health can be seen as the main or "umbrella" of health administration law. One of the things regulated in Law Number 36 of 2009 concerning health is health workers. Health personnel include medical personnel, clinical psychology personnel, nursing, midwifery, public health personnel, and others. Health workers are regulated by Law Number 36 of 2014 concerning Health Workers. In addition to regulating health workers, the law on health workers also regulates legal relations between health workers. One type of law is the legal relationship between medical personnel and nurses based on the delegation of medical action or the delegation of authority to carry out medical action. However, the mode of delegating authority from medical staff to nurses to carry out these medical actions contains legal problems, as explained further. Since Law Number 38 of 2014 concerning nursing was promulgated, the paradigm of the legal position of nurses and medical personnel has entered a new era. In the new paradigm, the legal position of nurses is equal to that of medical personnel. The new paradigm is different from the old paradigm. The old paradigm considered nurses to be subordinate to medical personnel, and nurses were called paramedics. This old paradigm is obsolete and out of date. Of course, the new paradigm of the legal position of medical personnel and nurses has

consequences for various aspects of the medical and nursing professions as health workers. The new paradigm of the legal position of medical personnel and nurses has consequences for or also influences the duties, powers, responsibilities, rights, and obligations of medical personnel and nurses.

The new paradigm of the legal position of medical staff and nurses as equals also influences the nature of the legal relationship between nurses and medical personnel. However, the change in the new paradigm of the legal position of medical personnel and nurses, as stated above, is not immediately understood by the community. In general, people still think of nurses as paramedics. As paramedics, nurses serve as "subordinates" to doctors and/or dentists as medical personnel. The general public's opinion about the legal position of nurses being "lower" than medical personnel is solely based on the view of the legal position of nurses working in hospitals "under the orders" of medical personnel (doctors and dentists). Such a view is from the perspective of the old paradigm, which is still embedded in the minds of people. In fact, this change in the paradigm of the legal position of medical personnel and nurses still often causes misunderstandings among health workers, including medical personnel (doctors and dentists), and often has a negative impact, resulting in losses for nurses. One aspect of the profession of medical and nursing staff discussed in this paper is the legal relationship between medical personnel (doctors and dentists) and nurses based on the delegation of authority to perform medical procedures. The legal relationship is a legal relationship between two different types of professions. The legal relationship between medical personnel and nurses is not a superior-subordinate legal relationship in the context of work as an employee or hospital employee. In accordance with the characteristics of their respective professions, which are autonomous in nature, medical personnel and nurses as health workers have equal legal standing, so that the characteristic of the legal relationship is that of a legal relationship between partners and not subordinates (Fakih, 2013).

The legal relationship between medical personnel and nurses is also not a legal relationship between one government position and another. The legal relationship between medical personnel and nurses in the context of the delegation of medical action is a legal relationship based on different scientific expertise. The legal relationship between nurses and medical personnel is guided by Article 65, paragraph 1, of Law Number 36 of 2014 concerning Health Workers, which regulates as follows: "In carrying out health services, health workers can receive delegation of medical action from medical personnel." The elucidation of Article 65, paragraph 1, of Law Number 36 of 2014 concerning Health Workers provides information about subjects referred to as health workers as follows: "Health Workers in this provision include nurses, midwives, anesthesiologists, physical therapists, and medical technicians medical." The legal relationship regulated in Article 65, paragraph 1, of Law Number 36 of 2014 concerning Health Workers is a legal relationship involving several health workers, each of whom is an independent professional in accordance with the provisions of laws and regulations. The delegation of authority to carry out medical actions, as referred to in Article 65, paragraph 1, of Law Number 36 of 2014 concerning Health Workers, is the delegation to carry out "medical actions." In fact, medical action is an action that must be carried out based on "scientific" expertise and not an action carried out based on positional authority. That is, based on the provisions of Article 65, paragraph 1, of Law Number 36 of 2014 concerning Health Workers, legal relations

between health workers can occur in health services, such as the legal relationship between medical personnel and midwives, medical personnel and pharmacists, and medical personnel and nurses.

In particular, based on the provisions of Article 65, paragraph 1, of Law Number 36 of 2014 concerning Health Workers, the legal relationship between nurses and doctors based on the delegation of authority to carry out medical actions is further regulated in Law Number 38 of 2014 concerning Nursing (Sriwanto, 2020). Article 29 paragraph 1 letter (e) of Law Number 38 of 2014 regulates as follows: "In carrying out nursing practice, nurses serve as "tasks based on delegation of authority...." According to Article 29 paragraph 1 letter (e) of Law Number 38 of 2014, nurses who carry out nursing practice act as "tasks based on delegation of authority." That is, as executors of medical duties, the tasks performed by nurses in medical procedures are the duties and responsibilities of medical personnel, not nurses. In essence, in carrying out medical actions based on the delegation of authority, nurses are tasked with assisting medical personnel. The delegation of authority regulated in Article 29 paragraph (1) letter (e) of Law Number 38 of 2014 is further regulated in Article 32 paragraph (1) of Law Number 38 of 2014, namely as follows: "The implementation of tasks based on the delegation of authority as referred to in Article 29 paragraph (1) letter (e) can only be given in writing by medical personnel to nurses to carry out a medical action and evaluate its implementation." Article 32, paragraph 2, of Law Number 38 of 2014 regulates how to delegate authority as follows: "The delegation of authority as referred to in paragraph (1) can be carried out in a delegative or mandatory manner." Provisions regarding the implementation of medical actions by nurses based on the delegation of authority regulated in Article 32 of the Nursing Law, Paragraph 2 of Law Number 38 of 2014, contain interesting problems to study. In connection with the problem of delegating authority to nurses to carry out medical actions, several problems can be defined as research problems.

In practice, the delegation of authority to nurses to carry out medical actions often causes or results in problems due to various factors. Delegation of authority is carried out in an unwritten manner; doctors do not supervise and evaluate the results of actions; authority is delegated to nurses regardless of the level of clinical nurses. Other authors argue that the problems that arise in the delegation of authority are in the gray area (Sutarih, 2018). The event of unclear delegation of authority can have adverse consequences for patients, as reported by the Patient Safety Committee at Kardinak Hospital, Tegal City. Another writer, Pujo Sriwanto, commented on the delegation of authority to nurses as follows: "However, this regulation (meaning the regulation on the delegation of authority...) is general and does not regulate the delegation in detail. So that in its implementation in the field, it still raises obstacles and problems related to the delegation process, especially the problem of legal responsibility that arises as a result of the delegation of authority." The author puts forward further comments as follows: ". the legal relationship between doctors and nurses is unclear so that it will result in legal liability if there is a loss for the patient, which results in a lawsuit." (Sriwanto, 2020).

In accordance with or based on the explanation of the arguments mentioned above, the author can define this research problem as follows: first, Can the mode of delegation of authority (delegation of authority) be applied in the context of delegating authority from medical personnel to nurses to carry out medical actions as stipulated in Law Number 38 of 2014? Second, What is the



appropriate mode (term) used in the context of the transfer of medical action tasks from medical personnel to nurses as a legal relationship between nurses and medical personnel?

#### METHOD

The type of research used is juridical-normative research, which is research that examines library materials as documented material. The library materials studied are called legal materials. Legal materials consist of primary legal materials, namely laws, regulations, and judge's decisions. Secondary legal material is in the form of legal publications that are not official documents. Tertiary legal materials are legal materials that provide instructions and explanations for primary and secondary legal materials. Tertiary legal materials consist of legal dictionaries and legal encyclopedias. The approach methods used in this research are the statutory approach, the conceptual approach, and the case approach.

#### RESULTS AND DISCUSSION

##### **Misconceptions in the Delegation of Authority Mode (Delegation of Authority) in the Context of Delegating Authority to Perform Medical Actions as Stipulated in Law Number 38 of 2014 Concerning Nursing**

The term delegation is a legal concept commonly known in State Administrative Law (Arisandi, 2021). The term delegation is given a meaning parallel to the phrase "delegation of authority." In general, the term delegation of authority is a term used in the delegation of governmental authority (Retnowati, 2013). Of course, the process of delegation of authority takes place within government offices. The delegation of authority is carried out from one government position to another government position. In general, the delegation of authority occurs when a government official holding the attribution delegated authority to another government official. The delegation of governmental authority takes place in an environment of government positions (executive power), such as from the President to the Minister, from the Minister to the Director General, or from the Minister to the Head of a Law Firm.

Delegation of governmental authority that is sideways, that is, from an environment of government offices to an environment of governmental positions outside the office environment, is one that delegates authority very rarely or almost never occurs in practice. Of course, the delegation of government authority as referred to above has consequences for various aspects, such as the procedure for delegating authority and the scope of authority and responsibilities of the government officials who delegate authority and those who receive authority. From the procedural aspect, the delegation of authority with the delegation mode must be carried out in writing. The procedure for delegating authority in writing contains the intent and purpose so that the momentum of the transfer of authority from one position to another can be made known to the public.

As a consequence, the public can find out which government official is authorized and responsible for all legal risks in the exercise of that authority from the moment the authority is transferred. If the delegation of authority is carried out verbally, the public will not know the momentum of the transfer of authority between positions. As a result, the public cannot know which official is authorized and who is responsible for legal risks as a consequence of exercising that authority. Of course, the verbal delegation of authority has legal consequences for the validity of the

transfer of authority, namely that it is null and void. The delegation of authority in the delegation mode is also related to the aspect of accountability for legal risks that arise as a consequence of exercising that authority. That is, if there is a delegation of authority from one government official to another, responsibility for any legal consequences, legal risks, and losses arising as a consequence of exercising that authority also shifts to the official receiving the authority. The delegation of authority is also an act of transferring responsibility for legal risks and losses arising as a result of exercising that authority. The delegation of authority that must be carried out in writing finds its relevance and urgency in the context of the transfer of legal responsibilities and risks. In general, the delegation of authority is carried out in the context of implementing or carrying out the duties and responsibilities of the government in the context of general welfare (national welfare).

The delegation of authority from one person to another outside the context of a government position or that is not related to governmental authority is also known in civil law with a different term (*modus*). However, in civil law, the term used is not delegation. Civil law does not recognize the term "delegation" in the event that someone wants to "hand over" rights ("authority") to another person. In civil law, there are legal technical terms that can specifically describe the transfer of rights, which are equivalent in meaning to the term "delegation of authority" in state administrative law. In civil law, a term whose meaning is parallel to that of delegation of authority is the term "granting power." The granting of a power of attorney is carried out by a person to another person for the sole purpose of taking care of the interests of the person giving the power of attorney. The characteristic of "authorization" differs from the characteristic of "delegation of authority" in all its aspects.

In practice, legislators use the legal concept of "delegation of authority" or "delegation of power" to government positions in contexts outside the scope of state administrative law. This action deviates from the literal meaning of delegation, as described in the discussion above. As a consequence, the actions of the legislators gave birth to legal norms with biased or unclear meanings (vague norms). The wrong use of legal concepts in the formation of legal norms (*rechtsvorming*) creates legal problems and legal burdens or risks for certain parties. The incorrect use or application of the legal concept of delegation by legislators, as stated above, reflects a wrong understanding (misunderstanding) regarding the meaning and nature of delegation of authority. The application of the concept of delegation of authority, which is wrong and deviates from its literal meaning and outside the context of government authority (outside state administrative law), is found in Law Number 38 of 2014 concerning nursing.

Article 29 paragraph 1 letter e of Law Number 38 of 2014 regulates as follows: "In carrying out nursing practice, nurses serve as "tasks based on delegation of authority..." The delegation of authority to nurses to carry out medical actions regulated in Article 29 paragraph (1) letter (e) of Law Number 38 of 2014 is further regulated in another article. Article 32, paragraph 1, of Law Number 38 of 2014 stipulates the requirements for the delegation of authority as follows: "The implementation of tasks based on the delegation of authority as referred to in Article 29 paragraph (1) letter (e) can only be given in writing by medical staff to nurses to take action medicine and evaluate its implementation. The mode of transition (delegation) of authority from medical staff to nurses to carry out medical actions can be done in two ways. Article 32, paragraph 2, of Law Number 34 of 2014 regulates as follows: "The delegation of authority as referred to in paragraph (1) can be carried out in a delegative or mandated manner." Delegation mode and mandate are legal concepts

of state administration that have essential differences in all aspects, such as differences in their literal meaning, juridical consequences for those who delegate authority and those who receive authority, and so on.

Can the term "delegation of authority" be used, or is it appropriate to describe the transfer of duties and responsibilities of medical personnel to nurses to carry out medical actions as stipulated in Article 32 of Law Number 38 of 2014? Of course, the answer that can be put forward is as follows: The term "delegation of authority" cannot or is not properly used as a mode of transferring the duties and responsibilities of medical personnel to nurses to carry out medical procedures. The author can put forward two reasons that support the answers stated above, namely as follows: In the context of the delegation of authority to carry out medical actions, the legislators of Law Number 38 of 2014 concerning nursing made two kinds of mistakes, namely as follows: First, legislators use or apply the concept of delegation or delegation of authority in the context of civil law relations between nurses and medical personnel. Second, legislators use or apply the concept of delegation or delegation of authority for an action outside the context of a government legal action based on the authority of a government position, namely a medical action based on expertise in the field of medical science. Of course, the erroneous use of the term delegation as stated above needs to be clarified (purified). The first starting point for efforts to clarify understanding and gain insight regarding "delegation of authority" to nurses to carry out medical actions can be a discussion regarding the characteristics of the legal standing of medical personnel and nurses. What is the legal position of medical and nursing personnel according to the health law? The legal basis governing the legal status of medical and nursing personnel is Law Number 36 of 2014 concerning Health.

In accordance with the health law, the legal status of medical staff and nurses is equal. Nurses have equal legal standing with medical personnel. Medical personnel are not superiors to nurses. Medical and nursing staff are autonomous professions in accordance with the provisions of the law. Does this equal legal position affect the duties and responsibilities of nurses and medical personnel? The legal position of nurses and equivalent medical personnel influences their respective duties and responsibilities in the context of health services. In the context of health services, medical personnel and nurses have their respective scopes of duties and responsibilities in accordance with statutory provisions. Of course, the duties and responsibilities of each that are autonomous in accordance with the provisions of the law have consequences for the nature of the legal relationship between medical personnel and nurses in the context of health services. The same principle also applies in the context of medical action. In particular, the duties and responsibilities of each that are autonomous affect the nature of the legal relationship between the two parties in the context of medical action.

The legal relationship between medical staff and nurses in the context of carrying out medical procedures is not a legal relationship based on the authority of government positions regulated in public law (state administrative law). However, cooperative civil law relations between medical personnel and nurses are based on their respective duties and responsibilities based on scientific expertise. The legal relationship between the two health workers is a civil law relationship that is cooperative even though the terminology used to describe the legal relationship is incorrect or wrong, namely the term delegation of authority. The legal relationship between the two health workers is subject to the civil law regime and not state administrative law. As a consequence, in the



context of medical action, the legal relationship between nurses and medical personnel is not a superior-subordinate legal relationship. However, collegial legal relations that are cooperative are based on the agreement of the parties. As a consequence, the term delegation of authority used as a diction to describe the legal relationship between nurses and medical personnel in the context of medical action is a wrong diction. The misunderstanding regarding the legal relationship between medical personnel and nurses in the context of medical actions that use the diction of delegation of authority results in a misunderstanding of the parties who are responsible and obliged to bear the burden of legal risks, legal consequences, and losses arising as a result of carrying out these medical actions.

The second reason relates to the misunderstanding of the meaning of the term delegation as a mode of delegation of authority to carry out an action based on the authority of a government position. The term delegation is not a term that aims to carry out an action based on scientific expertise. Can the term "delegation of authority" be used to describe the legal relationship between nurses and medical personnel in the context of medical action? Of course, medical action is not based on the authority of a government position. However, the action is based on scientific expertise. However, if one examines the provisions of the nursing law, the understanding and insight of the legislators in Law Number 38 of 2014 regarding medical treatment are wrong. As a result, the term used to describe the legal relationship between nurses and medical personnel in the context of medical action is not in accordance with the literal meaning of delegation in state administrative law. The line of thought and understanding of the legislators in Law Number 38 of 2014 concerning the nature of delegation applied in medical treatment is wrong and deviates from the literal meaning of delegation (misconception). The use of the legal term "delegation of authority" as a state administrative law term for the medical field contains a fatal misunderstanding. That is, a misunderstanding occurs regarding the nature and meaning of "delegation of authority. As a result, the concept of delegation is applied to the relationship and context of medical action as an action based on scientific expertise and not an action based on the authority of a government position.

#### **Relevant Terminology To Describe The Legal Relations Of Nurses With Medical Personnel In The Context Of Implementing Medical Actions**

Medical action is an action performed in the medical field based on scientific expertise. Medical action is action based on science that is outside the scope of action of government positions. As a consequence, the term "delegation of authority" in the context of medical action as a scientific action is wrong. However, the legislators of Law Number 38 of 2014 misunderstood the meaning of medical action as if it were a government action. As a result, the duties and obligations to carry out medical actions are considered to be delegated to nurses with a delegation mode such as the delegation of governmental authority. A misunderstanding resulted in a mistake in regulating the party responsible for and obliged to bear the legal risks of medical action, namely nurses. In fact, medical actions performed by nurses are not the duties and responsibilities of nurses because nurses aim to help medical personnel. The designation of nurses as the party responsible for and obliged to bear the legal risk of medical action once again reflects the misunderstanding of legislators regarding delegation. The misunderstanding of "delegation" in medical action in Article 32 of Law Number 38 of 2014 creates burdens, losses, and legal risks for nurses (Setiani, 2018).



The law opens up the possibility for nurses to take medical action for reasons and considerations of very urgent conditions or a shortage of medical personnel. Nurses can perform medical procedures only at the request of medical personnel. As a consequence, the duties and responsibilities of medical action are the duties and responsibilities of medical personnel. However, the diction used by law in the context of a request to perform medical action on a nurse is the wrong one, namely, delegation of authority. Delegation implies the delegation of authority to government positions, which at the same time transfers legal responsibilities and risks. In practice, the transfer of duties and responsibilities for carrying out medical actions from medical personnel to nurses is not always carried out in writing in accordance with the provisions of the law but verbally and suddenly due to emergencies or very urgent conditions.

In accordance with Law Number 36 of 2014 and statutory regulations, those who are responsible and obliged to bear the burden and legal risks of medical actions carried out by nurses are medical personnel and not nurses (Koswara, 2018). However, Law Number 38 of 2014 violates the provisions of Law Number 36 of 2014 because it transfers the burden and legal risks of medical action to nurses. The transfer of legal burdens and risks of medical action regulated in Law Number 38 of 2014 is also wrong from the perspective of legal studies. In essence, in the context of medical action, nurses are parties who are asked to provide assistance to carry out medical actions for various reasons and considerations. Requests for medical personnel to take medical action are actions that aim and intend to place a "burden of responsibility and legal risk on the shoulders of nurses" through the mode of delegation of authority. The responsibility and legal risk of carrying out these medical actions are the responsibility and burden of the nurse. In this case, from the perspective of equal legal standing and the nature of the legal relationship between nurses and medical personnel as a civil law relationship, the party that is more appropriate to bear the burden of responsibility for legal risks and patient losses in carrying out medical actions carried out by nurses is medical personnel. 31 The nature of the civil relationship and the legal position of nurses as equal medical personnel should be the starting point for legislators to regulate and determine who is responsible for the implementation of medical actions by nurses. Nurses are not properly positioned as a party that bears responsibility, legal risks, and patient losses when carrying out medical procedures at the request of medical personnel. In the context of medical action, nurses aim to support the duties and responsibilities of medical personnel as parties who are obliged and responsible for carrying out medical actions. However, Law Number 38 of 2014 actually transfers and places the burden of responsibility and legal risks of implementing these medical procedures on nurses. The mindset of the legislators of Law Number 38 of 2014 regarding the responsibilities and legal risks of carrying out medical procedures transferred to nurses is truly irrational because they should be the burden of medical personnel. If examined further, the formation of Law Number 38 of 2014 has several weaknesses and mistakes. First, it is a mistake to understand the new paradigm of the relationship between nurses and medical personnel, namely the paradigm of equal legal status in accordance with the provisions of the law on health workers. Second, it is a mistake to understand the conceptual meaning of delegation of authority so that it is used in the wrong way in the context of the civil law relationship between nurses and medical personnel. Third, this mistake resulted in a conflict of norms between Article 65 of Law Number 36 of 2014 and Article 29 paragraph (1) letter e and Article 32 of Law Number 38 of 2014, especially with regard to the issue of the use of the term

delegation of authority in the context of medical action and the party responsible for medical treatment. The weakness of Law Number 38 of 2014 is also the reason for putting forward suggestions for changes so that the arrangements regarding the delegation of authority to nurses and their legal responsibilities are guided by Indonesian legal principles.

Law Number 38 of 2014 needs to be revised immediately so that the burden of responsibility and legal risks for carrying out medical actions carried out by nurses do not become the burden and responsibility of nurses. From the perspective of the legal position of nurses, who are equal to medical personnel, and the actions of nurses when carrying out medical actions to help medical personnel carry out their duties and obligations, collaboration is the appropriate word to use. The suggestion to use collaborative diction in the legal relationship between nurses and medical personnel in the context of medical action is based on the following rationale: First, in the new paradigm, nurses and medical staff are independent legal subjects who carry out different professions and are independent (autonomous) since Law Number 36 of 2014 was promulgated. In the new paradigm, the position of nurses is equal to that of medical personnel. Medical personnel are not superiors to nurses in carrying out health services. However, in the old paradigm, medical personnel viewed nurses or other health workers as under the legal status of medical personnel. Nurses and other health workers receive and carry out orders from medical personnel. Of course, in a vertical legal position, the position of medical staff is seen as higher than that of nurses and other health workers. Medical personnel are considered superiors because they give orders to nurses or other health workers. The duties or orders of medical personnel contain obligations that must be carried out by other nurses (health workers). Until now, the old paradigm of the legal position of nurses (health workers) and medical staff, which is vertical (top-down) or at different degrees, is still being practiced. In fact, until now, the view that starts from the perspective of the old paradigm is still practiced, especially in the context of the relationship between medical personnel and nurses (health workers) who work in hospitals.

In the new paradigm, the legal position of nurses being equal to medical personnel creates a legal relationship between nurses and medical personnel as equal legal relations, which are contractual in nature. If the medical staff enters into a legal relationship with the nurse, the legal relationship must be based on the agreement of both parties and not on orders from the medical staff to the nurse. In the new paradigm, the legal relationship between nurses and medical personnel in medical procedures can only occur if nurses accept requests from medical personnel to help carry out medical actions with legal responsibility resting on the "shoulders" of medical personnel and not nurses (Retnowati, 2013). This contractual legal relationship is a legal consequence of the law's recognition of nurses as autonomous (independent) professionals based on their autonomous scientific expertise. Of course, the insight above starts from a legal perspective, even though in reality there are still parties who disagree or do not agree with this insight.

Another reason that can be put forward is the conflict between the norms of Law Number 38 of 2014 and Law Number 36 of 2014. The conflict of norms occurs due to a misunderstanding of the meaning of "delegation of medical action." Article 65, paragraph 1, of Law Number 36 of 2014 concerning Health Workers regulates as follows: "In providing health services, health workers can receive delegation of medical treatment from medical personnel." Although Law Number 36 of 2014 does not provide an explanation regarding the meaning of "delegation of medical action," the phrase

"delegation of medical action" does not have the same meaning as "delegation of authority or mandate to carry out medical action" (Huda & Huda, 2021). According to Article 65, paragraph 1, of Law Number 36 of 2014, the nurse's position is as the recipient of the delegation of "medical action" and not as the recipient of "delegation of authority." The two terms have different meanings and legal consequences. The phrase medical action implies an action carried out based on medical scientific expertise and not government authority. Medical action is an area of scientific expertise that can be carried out only by medical personnel.

The norm of Article 65, paragraph 1, of Law Number 36 of 2014 is translated in a way that deviates from or contradicts the meaning of "delegation of medical action" in Law Number 38 of 2014. Law Number 38 of 2014 does not use the term "receiving medical action," but delegation (delegation of authority) as stipulated in Article 29 paragraph 1 letter e of Law Number 38 of 2014. Article 32 of Law Number 38 of 2014, which regulates nurses as parties who are obliged to bear legal responsibility and patient loss in medical procedures, further reinforces the deviation of the meaning of "medical action" in Law Number 36 of 2014. Errors and errors in Law Number 38 of 2014 in understanding the meaning of "delegation of medical action" in Article 65 paragraph (1) of Law Number 36 of 2014 resulted in a misunderstanding and arrangement of the party who bears the responsibility of "delegation of authority to carry out medical action ". In the context of legal accountability, Article 65, paragraph (3), letter d, of Law Number 36 of 2014 stipulates that the delegation giver remains responsible for the actions delegated as long as the implementation is in accordance with the delegation of authority. That is, the responsibility for medical action based on the delegation of authority does not shift to the nurse. However, Law Number 38 of 2014 actually deviates from Article 65, paragraph 3, letter d, of Law Number 36 of 2014 concerning health workers. In other words, Law Number 38 of 2014 violates the provisions of Law Number 36 of 2014, which serves as a "legal umbrella" for Law Number 38 of 2014 concerning nursing. According to the author, these deviations and conflicts have created conflicts in legal norms that need to be straightened out immediately by amending Law Number 38 of 2014.

## CONCLUSION

In accordance with the description and arguments put forward in the previous chapters, the writer can draw several conclusions. First, the term delegation of authority in the context of the delegation of duties and responsibilities of medical personnel to nurses to carry out medical actions is a wrong term (misconception). Second, the term that is appropriate to use in the context of transferring the duties of medical personnel to nurses to carry out medical actions is collaboration. The term collaboration is more appropriate for use on the grounds of equal legal standing between nurses and medical personnel. In the context of collaboration, nurses can refuse or accept the transfer of duties and responsibilities for carrying out medical actions, which are the duties and responsibilities of medical personnel.

In connection with the conclusions above, the author can put forward the following suggestions: First, Law Number 38 of 2014, especially Article 29 paragraph (1) letter 2, and Article 32 of the Law, need to be amended. Amendments need to be made so that arrangements for the transfer of duties and responsibilities of medical personnel to nurses to carry out medical actions are guided by the legal position and interests of nurses. Second, in accordance with the first

suggestion, the authors put forward suggestions for amendments to Law Number 38 of 2014, namely as follows: According to the author, the term delegation referred to in Article 29 paragraph (1) letter e and Article 32 of Law Number 38 of 2014 needs to be replaced with the term "collaboration."

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