

## ASPECTS OF LEGAL PROTECTION AGAINST MIDWIFE PROFESSION IN INDONESIA

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### ABSTRACT

*The midwife profession in carrying out its practice there are several that are in accordance with their authority, but they always prioritizes the rights of the patient as a form of legal protection in the event of negligence or loss to the patient. The application of Health Seeking Behavior in the relationship between patients as service recipients and midwives as health service providers. Role theory is also included in research on the role of the Health Service and the Indonesian Midwives Association (IMA) as the organizer of government affairs and professional organizations engaged in health, overseeing the implementation carried out by midwives and protecting the midwife profession with a permanent form of legal protection for midwives who make mistakes or loss to the patient, as well as providing legal protection to the patient. Medical actions taken by midwives will be legally enforceable, if the midwife does not carry out the delegation of authority in accordance with statutory regulations. The problem is what is the form of legal protection for the midwife profession in relation to the delegation of authority in carrying out medical actions. this is to examine the form of legal protection, with a normative juridical approach. The delegation of authority for medical action has been regulated in various regulations. The fact is that in daily practice, there are still houses that have not been technically operationally regulated regarding the delegation of authority for medical actions, the mechanism for the delegation of authority, as well as what types of medical actions can be delegated by delegation or mandate states juridically if there is an allegation that the competent authority can file a civil or criminal lawsuit.*

**Keywords:** Legal protection, midwife, medical action

## INTRODUCTION

Health is a human right to live a life that is constitutionally recognized in the UUD 1945, citizen are the responsibility of the state to meet the needs of a healthy life for every citizen. These human rights in the health sector are realized through health development which is directed at improving the welfare of individuals, families, and communities by inculcating healthy living habits. The government must strive for every citizen to get comprehensive health services to remote parts of the country. In some remote areas, it is still difficult to handle childbirth, not a few of them choose to give birth independently which can be said to be still far from standard. The high maternal mortality rate is due to independent deliveries that are not in accordance with legal health procedures due to the lack of medical personnel present in remote areas. This must be the responsibility of the government, because in providing services it is not enough only for residents who live in the city, the government must be aware that the implementation of healthy living is an obligation that must be felt on every citizen (endang, 2019).

Midwives are part of medical personnel who have a very important role in society, especially in reducing the Maternal Mortality Rate (MMR), Illness Rate and Infant Mortality Rate (IMR). A midwife is someone who has completed a recognized midwifery education and is licensed to practice midwifery (Heny Azhar, 2005). The legal aspects and legal basis for midwifery practice are contained in Permenkes 1464/Menkes/Per/X/2010 concerning Permits and Implementation of Midwifery Practices. Midwives can practice independently and/or work in health care facilities. Midwives who work

in health care facilities are required to have a Midwife Work Permit, hereinafter abbreviated as SIKB is written evidence given to midwives who have met the requirements to work in health care facilities, while midwives who practice independently are required to have a Midwife Practice License hereinafter abbreviated as SIPB is written evidence given to midwives who have met the requirements to practice independent midwives.

Midwives provide continuous medical personnel, focusing on several aspects such as: prevention aspects and aspects based on partnerships and community empowerment together with other health workers. To always be ready to serve anyone who needs him whenever and wherever he is. Midwives are recognized as professional and accountable personnel who work as women's partners to provide support, care and advice, during pregnancy, childbirth, and the postpartum period, lead deliveries on their own responsibility, and provide care for babies, even newborns. Midwife care consists of: care for prevention efforts, normal delivery care, care for the detection of complications in mother and child, as well as access to medical assistance and other assistance in accordance with UU no 36 of 2014 Chapter III Article 11.

Midwives have been recognized as a health worker profession in Indonesia which is regulated in UU Number 36 of 2014 concerning Health Workers, hereinafter referred to as the Health Personnel Act a health worker (muchtar,2015). Based on the Regulation of the Minister of Health Number 1464/Menkes/Per/X of 2010 concerning Midwife Permits and Practices, hereinafter referred to as (Permenkes Permits and Practices of Midwives), in carrying out the

practice, midwives are authorized to provide services for maternal health, child health, women's reproductive health and family planning. IBI makes efforts to maintain and maintain the quality of professionalism in order to provide protection for the community as service recipients and midwives themselves as service providers. In addition, IBI also assesses the compliance of each midwife with the professional code of ethics and the ability to practice independently (mustika, 2005).

### **PROBLEM FORMULATION**

Midwives as a profession that carries out the mandate for maternal and child health, have a position of professional quality in improving health services. However, the roles and functions of midwifery professional organizations have not been able to properly control the practice of midwifery services. In practice, independent practice midwives have not complied with applicable regulations, thus requiring supervision by the midwife professional organization (IBI) to be optimized. Based on the description above, the authors are interested in conducting further research by taking the title "ASPECTS OF LEGAL PROTECTION OF THE MIDWIFE PROFESSION IN INDONESIA". The following is a study of the problems in this paper.

1. Legal Aspects in the Implementation of Midwives' Authority
2. The principle of the midwife's authority in providing care to patients
3. Legal Regulatory Efforts in the Fair Application of the Midwife Profession law from various aspects, namely aspects of theory, history, philosophy, comparison, structure and composition, scope and material, consistency, general

explanations and article by article, formality and binding force of an organization Law, as well as the legal language used, but does not examine the applied or implementation aspects (marzuki,2011). In this study, the author will use the legal approach (statute approach) and conceptual approach (conceptual approach).

### **DISCUSSION**

#### **A. Legal Aspects in the Implementation of Midwives' Authority**

The success of the Government's efforts in fulfilling public health depends on the availability of health resources in the form of health workers. Article 1 paragraph (6) of UU Number 36 of 2009 concerning Health, hereinafter referred to as the Health Law, stipulates that what is meant by Health Workers is every person who devotes himself to the health sector and has knowledge and/or skills through education in the health sector which for certain types require the authority to carry out health efforts (andika, 2021). The basic word for authority is authority or authority. "Authority is the right to carry out something, meaning that literally authority is the basis of rights or the basis of power".(sarjono soekanto,1996)

The implementation of midwifery practice has a legal umbrella, namely based on UU number. 36 of 2009 concerning Health. In this regulation, midwives are a professional field that must carry out health services in accordance with their authority. based on Article 23 paragraph (1) of UU Number. 36 of 2009 concerning Health regulates

"Health personnel are authorized to provide health services. Permission to provide health services is regulated in Article 23 paragraph (3) "In providing health services, health workers are required to have a permit from the government". In accordance with the regulation, Article 23 Paragraph (5), "The provisions regarding licensing as referred to in paragraph (3) are regulated in a ministerial regulation.

The implementation of the midwife practice license is regulated in the Regulation of the Minister of Health of the Republic of Indonesia Number 28 of 2017 concerning the License and Implementation of Midwife Practice. 2) UU Number 36 of 2014 concerning Health Workers Law Number 36 of 2014 concerning Health Workers aims that health workers in carrying out their duties must be responsible, have high ethics and morals, expertise and authority that are continuously improved. Health workers in carrying out their practice are based on authority as stated in Article 62 paragraph (1) of the Law on Health Workers, namely "Health workers in carrying out their practice must be carried out in accordance with their authority based on their competence".

The authority referred to based on competence is explained as the authority to perform services independently in accordance with their expertise and competence. 3) Regulation of the Minister of Health Number 28 of 2017 concerning Permits and Operations Midwife Practice. The delegation of authority for midwives is regulated in the Regulation of the Minister of Health Number 28 of 2017

concerning Permits and Implementation of Health Services closer to every pregnant woman/maternity, postpartum and newborn so that early treatment or first aid before referral can be done quickly and on time.

1. Midwives have the authority to provide information and counseling.
2. Midwives carry out guidance and development of other health workers who also work in midwifery services.
3. Midwives serve maternal cases for pregnancy surveillance.
4. Midwives serve infants and pre-school children. Midwives also have the authority to give medicines. (safitri, 2005).

## **B. Principles of Midwifery in Service to Patients**

The relationship between the patient and the midwife is a close and complex relationship, the closeness of the relationship between the patient because it requires mutual trust and openness. From a legal perspective, patients and midwives each have rights and obligations. The therapeutic relationship between the patient and the midwife, the legal principles/principles that apply in the contractual relationship are:

- Consensual Principle  
In contract law there is a principle called the 'principle of consensualism'. The word 'consensualism' comes from the

Latin, 'consensus', which means 'to agree'. The principle of consensualism is the agreement of the parties to enter into an agreement. In other words, an agreement is considered valid and binding on both parties after an agreement has been reached, without any formalities. In general, an agreement made in the community is 'consensual', in the sense that the agreement is considered valid and binding if an agreement is reached on the main things of the agreement that was agreed upon. (abdul rasyid,2005)

- Good Faith Principle
- Principle Freedom Of Contract
- Principle Pacta Sunt Servanda

The presence of these new medical ethical principles is the result of extraordinary changes in many aspects of human life around the world after the Second World War ended in 1945. Major changes occurred in the political and constitutional, social, cultural, economic, educational, and political fields. science, technology, information technology, human rights, lifestyle, etc. These changes have given birth to the principles of contemporary medical ethics (present) as follows.

1. The Principle of Respect for Patient Autonomy. Autonomy in general is the right to decide for yourself in matters concerning oneself. The patient's right to autonomy is the patient's right to make decisions and

determine for himself about his health, life, and even in the extreme about his death. This is in contrast to the traditional Hippocratic culture, where it is generally the doctor who decides what he thinks is best for the patient.

Professional Ethics and Health Law in Indonesia, since the 1997 national crisis there has been a reform movement that demands democratization and the implementation of human rights in everyday life, including human rights as patients. In the development of health sciences in the last few decades, the therapeutic relationship has begun to re-emerge, the relationship between health workers and patients is balanced or parallel, namely the paternalistic relationship.

there is no superior and inferior because without the patient or the patient cannot work together a doctor or nurse cannot maximize the their services.(kemenkes, 2017)

2. The principle of justice. Justice is one of the main pillars in democratic life. The principle of justice is born from human rights; Everyone has the right to get fair health services, because health is an equal right for every citizen. This right is guaranteed in the amendments to the 1945 Constitution.
3. The principle of truth telling

(Truth Telling, Veracity) One of the characteristics of the relationship between health workers/paramedics and patients is a relationship of trust. Health workers must always tell the truth about the patient's condition as well as the patient. One of the rights of the patient is to provide information about his condition correctly. Do not let the argument keep the patient's condition a secret because to keep feelings or fear something unwanted will happen about the patient's condition.

### C. Legal Regulatory Efforts in the Fair Application of the Midwifery Profession

Midwives in carrying out their professionalism in independent practice are regulated by laws and regulations. Regulations related to midwifery are UU No. 36 of 2009 on Health, UU Number 36 of 2014 concerning Health Workers, UU Number 4 of 2019 concerning Midwifery, Decree of the Minister of Health Number 369/MENKES/SK/III/2007 concerning Midwifery Professional Standards and Decree of the Minister of Health Number 938/MENKES/SK/VIII/2007 concerning Standards of Midwifery Care. Basically the legislation at the lower level is a further elaboration of the legislation at the upper level. Thus, what is regulated in the Decree of the Minister of Health Number 369 of 2007, and the

Decree of the Minister of Health Number 938 of 2007 is an elaboration of Law (UU) Number 36 of 2009, UU Number 36 of 2014

and UU Number 4 of 2019. Regulation is indispensable for the practice of midwives (Coxon & Mackintosh, 2017)

Because it aims to:

- Maintain and improve the quality of midwifery services
- Protecting the community for the actions taken
- Setting standards for midwifery services
- Assess whether or not the practice
- Assessing errors and omissions

Every effort is made to realize the existence of regulations that can favor midwives. However, until now there has not been a fair regulation for midwives. The need for a standard and good midwifery legislation in Indonesia is still a hope in the future. However, there are several efforts that can support the creation of a midwifery regulatory system, namely (WRHA, 2010):

- i. Establishing the lowest educational basis to obtain recognition as a nurse, so that the personnel who are required to be responsible and accountable are midwives who actually from the educational aspect have understood about professional midwifery services and have understood the impact of punishment if this service does not meet the standards.
- ii. Provide basic training on laws and regulations for all

midwives with the aim of increasing understanding of the legal impact that can occur if the midwifery services provided do not meet the standards.

- iii. Accelerate the realization of professional midwifery practice at various levels of health services. This is the basis for the implementation of a professional form of midwifery service that not only meets the requirements and professional standards, but also meets the legal requirements of midwifery.
- iv. To socialize various activities for the implementation of the midwifery legislation system. This activity aims to avoid misunderstandings, misperceptions, misinterpretations or miscommunication about midwifery regulations
- v. Agree on the development of the advanced midwifery education system in Indonesia, so that based on the agreement of all midwives in Indonesia, it will not allow other parties to form other midwifery levels that can carry out the professional values contained in the legislative system.

The rapid progress of science and technology in the field of midwifery must be balanced with law so that it can provide

comprehensive protection to midwifery workers as service providers and in the community as recipients of health services. In making changes or in forming a law that is expected to be in accordance with the legal needs of the community. This is consistent with comprehensive midwifery research: the role of the midwife in practice, education, and health research is that midwifery care is based on five main principles of continuity of care, informed choice, community based, choice of birth control and practice based on evidence.

Midwives are not only concerned with concrete clinical outcomes related to mortality and morbidity, but also health and well-being, safe care between mother and baby, and family integrity. Educated, skilled midwives, who work in effective health services with adequate resources, are essential in humane care. (Campbell, 2016) Satjipto Raharjo stated that "the law protects a person's interests by placing a measurable (certain and deep) power to act in the context of that interest." Likewise, Salmond said that "legal protection aims to integrate and coordinate various interests in society.

Protection of certain interests can only be done by limiting the interests of the other party." As a midwife is a health worker, it is appropriate that midwives, including independent practice midwives, are entitled to legal protection in carrying out their

duties and responsibilities in midwifery services. In UU no. 36 years 2014 concerning Health Workers, hereinafter referred to as (Health Personnel Law) Pasal 57 and 75 have been explained, in Pasal 57 which reads: "Employees in carrying out practice are entitled to legal protection as long as they carry out their duties in accordance with professional standards, professional service standards, and standard procedures. operational." And Pasal 5 which reads: "Health workers in carrying out their practice are entitled to legal protection in accordance with the provisions of the legislation."

Likewise in the Permenkes Permenkes Permenkes and Practices of Midwives Article 19 also states that "in carrying out practice/work, midwives have the right to obtain legal protection in carrying out practice/work as long as it complies with standards." The draft law on midwifery also includes the protection of midwives and patients, but unfortunately the bill cannot be used. Although there are already several regulations regarding the protection of health workers, they have not been able to provide legal certainty and protection for Independent Practice Midwives in carrying out their duties and responsibilities.

Because several articles in the KUHP and BW can still burden midwives in dealing with problems with patients, such as the provisions of Article 1365 BW it is stipulated that every unlawful act that causes harm to other people, obliges the

person who because of his mistake caused the loss to compensate for the loss.(andika&budi,2021) Furthermore, Article 77 of the Health Personnel Law stipulates that any recipient of health services who are harmed due to the error or negligence of a health worker can request compensation in accordance with the provisions of the legislation. And also Article 85 paragraph (1) of the Health Personnel Law, that any health worker who commits negligence which results in the recipient of health services being seriously injured will be punished with imprisonment for a maximum of 3 years. In paragraph (2) it is also stated that if the serious negligence as stated in paragraph (1) results in death, every health worker shall be punished with imprisonment for a maximum of 5 years.

## CONCLUSION

The legal aspect of the midwife's authority in carrying out her practice is regulated in Law No. 36 of 2009 concerning Health, Article 23 Paragraph 1 that health workers are authorized to provide health services and Article 23 Paragraph (5) providing health services must obtain permission from the government. Law Number 36 of 2014 concerning Health Workers 62 paragraph (1) in carrying out practice must be in accordance with their authority and competence and Article 65 paragraph (1) in providing health services, health workers can receive delegation from other medical personnel. Minister of Health Regulation Number 28 of 2017 concerning Permits and Implementation of Midwifery Practices Article 18, midwives have the authority to



provide maternal health services, child health services and reproductive health & family planning services. Regulation of the Minister of Health Number 1464/Menkes/Per/X/2010 concerning Permits and Implementation of Bindan Practices.

The form of midwifery services must be guided by midwifery service standards issued by the government through the Decree of the Minister of Health of the Republic of Indonesia No. 369/Menkes/SK/III/2007 concerning Midwifery Professional Standards. With regard to health, the general explanation of Law no. 36 of 2009 concerning Health, states that health development as one part of national development is directed at achieving awareness, willingness, and ability to live a healthy life for every population in order to realize optimal health degrees. The rapid progress of science and technology in the field of midwifery must be balanced with the law so that it can provide comprehensive protection to midwifery workers as service providers and in the community as recipients of health services. In making changes or in forming a law that is expected to be in accordance with the legal needs of the community.

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