

LEGAL PROTECTION REGULATIONS OF THE MIDWIFE PROFESSION IN DELEGATING OF AUTHORITY FOR MEDICAL ACTIONS

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Abstract

Medical actions performed by midwives that cause medical problems will potentially lead to lawsuits if the midwife does not carry out the transfer of authority in accordance with legislation. Midwives provide health services in accordance with professional standards, service standards, standard operating procedures, and applicable regulations. Midwives are responsible for providing maternal and child health services, midwifery services, and carrying out the transfer of authority for medical actions. Health services by midwives upon the transfer of authority by doctors can also lead to malpractice so that patients can sue both civil and criminal lawsuits. Therefore, legal responsibility for midwives and doctors if they do not perform in accordance with the standards, by looking at the elements of errors, negligence, and defaults based on medical records. This study concerns the issue of the form of legal protection for the midwife profession in relation to the transfer of authority in carrying out medical actions. This study aims to identify the form of legal protection for midwives. It used a normative juridical approach. The transfer of authority for medical treatment has been regulated in various regulations. In daily practice, some hospitals had not technically regulated the operation of the transfer of authority for medical actions, the mechanism for the transfer of authority, and the types of medical actions that can be transferred by delegation and mandate. Juridical consequences for the possibility of alleged abuse of authority can lead to civil or criminal lawsuits.

Keywords: Transfer of Authority, Midwife, Legal Protection, Medical Action

INTRODUCTION

Health development is directed at achieving awareness, willingness, and ability to have healthy life covering physical, mental, socio-cultural, and economic (Sentot Sudarwanto & Kharisma, 2020). Health is a human right that is recognized constitutionally in the 1945 Constitution of the Republic of Indonesia as a citizen's right and responsibility of the state (Kemetrian Kesehatan Republik Indonesia, 2018). Human rights in the health sector have to be realized through health development directed at improving the welfare of individuals, families, and communities by instilling a healthy lifestyle (Susila, 2015).

Midwives are professionals in the health sector (Damayanti et al., 2019). In conducting midwifery practice, midwives have to comply with standards. Midwives are the health workers who have an important and strategic position, especially in reducing the Maternal Mortality Rate (MMR) and the Infant Mortality Rate (IMR). Midwives provide continuous and comprehensive midwifery services, focusing on aspects of prevention and promotion based on

partnerships and community empowerment together with other health workers to always be ready to serve the one in need whenever and wherever (Surianto & Widayanti, 2018).

The authority to run government programs is a special authority for midwives who work for the government to succeed in government programs (Surianto & Widayanti, 2018). Meanwhile, the authority of midwives in certain areas that do not have doctors is a transfer of authority for midwives, but this authority will be revoked if there are doctors (Khusnul Huda Mokhamad Khoirul Huda, 2021). Midwives are required to have formal education, service system, code of ethics, and midwifery ethics in carrying out their duties and responsibilities professionally as stated in the Regulation of the Minister of Health No. 28 of 2017 concerning Permits and Implementation of Midwifery Practices as referred to in Article 18 paragraph (1) Decree of the Minister of Health of the Republic of Indonesia Number 369/MenKes/SK/III/2007 concerning Midwifery Professional Standards that midwifery services are an integral part of the Health Service system provided by registered midwives that can be performed independently, in collaboration or referral (Sumbung, 2021). The midwife's authority based on the Decree of the Minister of Health of the Republic of Indonesia Number 369/MenKes/SK/III/2007 concerning Midwifery Professional Standards in Article 22 is to provide services based on assignments from the government as needed; and/or transfer of authority to perform health service actions mandated by doctors (Rezky Fransilya Sumbung, 2021).

Mandatory health services are given by doctors in written form for midwives who have received training. A doctor with various tasks cannot complete all his tasks by himself so he needs the help of other health workers (Pardede et al., 2021). Thus, he can transfer the authority to other health workers, in this case, midwives or nurses, in accordance with the applicable laws and regulations. In all public aspects, human behaviour has been standardized so that the law covers all fields (Gunawan et al., 2019). The strong law penetration into society results in demands for changes and developments from the law itself and its relation to other social problems will also become increasingly intensive (Santoso & Wardani, 2020). Medical actions performed by midwives based on the verbal and written instructions in the patient's medical record can cause complaints from patients or their families, while midwives in carrying out midwifery services in hospitals must be in accordance with their authority as stated in the Clinical Appointment Letter (SPK-RKK) issued by the hospital director (Khusnul Huda Mokhamad Khoirul Huda, 2021).

This study focuses on the form of legal protection for the midwife profession concerning the transfer of authority in carrying out medical actions. This is reasonable considering the applicable legal provisions have to be considered by the parties involved in health services to build a good public health level.

METHOD

This study used normative juridical research. This research seeks solutions to the existing legal issues. It used both the statute approach and the conceptual approach. It emphasizes the study in the form of legislation products concerning the profession of midwives including Law Number 36 of 2009 concerning Health, Law Number 44 of 2009 concerning Hospitals, Law

Number 36 of 2014 concerning Labour Health, Decree of the Minister of Health Number 369/Menkes/SK/III/2007 concerning Midwifery Professional Standards, Regulation of the Minister of Health Number 49 of 2013 concerning Hospital Nursing Committees, Regulation of the Minister of Health Number 28 of 2017 concerning Permits and Implementation of Midwifery Practices, and Regulation of the Minister of Health Number 2052 of 2011 concerning Practice Permits and Implementation of Medical Practices.

RESULTS AND DISCUSSION

1) Regulation of Midwife's Authority in fulfilling Midwifery Service standards

Article 11 of Law Number 36 of 2014 concerning Health Workers emphasizes that the midwife is one of the health workers. In carrying out their authority, midwives have to comply with the applicable regulations in Indonesia. Law No. 36 of 2009 concerning Health Article 23 states that "Health workers are authorized to provide health services" and in this case, the authority of midwives is regulated in the Regulation of the Minister of Health Regulation No. 28 of 2017 concerning Permits and Implementation of Midwife Practices (Firmanto, 2019). The authority possessed by midwives in providing health services covers maternal health services, child health services, women's reproductive health services, and family planning. In implementing their authority, midwives have to comply with professional standards, have the skills and abilities to perform the actions taken, and prioritize the health of the mother and infant (Sumbung, 2021).

The authority listed in the Regulation of the Minister of Health No. 28 of 2017 concerning Permits and Implementation of Midwifery Practices covers providing health services for pregnant women, maternity mothers, postpartum mothers, and children under five from counselling to emergency handling and referrals (Rahmadhani, 2021).

2) Transfer of authority for midwifery actions in accordance with the professional standards in the health sector

Health workers have important roles to improve the quality of health services to the community so that the degree of welfare referred to in the preamble of the State Constitution can be realized (Griffith, 2015). The provision of health services should be according to the expertise and knowledge possessed, and each health worker must have a permit from the government. The midwife or professional nurse is one of the professional and independent health workers who have two authorities, namely the authority to carry out nursing care in accordance with the scientific field and the authority to take medical action (Wilson et al., 2019).

The authority to take medical action can only be carried out by a midwife or nurse with a transfer of authority from a doctor as stated in Article 32 of Law Number 38 of 2014 concerning Nursing that opportunities can be given for nurses to take medical action if they meet the provisions of the legislation. The Regulation of the Minister of health Number 2052/Menkes/per/X/2011 concerning Permits to practice and implement the medical practice in Article 23 paragraph (1) states that doctors or dentists can transfer a medical or dental action

to nurses, midwives, or certain other health workers in written form in carrying out the action (Armeilia, 2021).

The transfer of authority for midwives is regulated in the Regulation of the Minister of Health No. 28 of 2017 concerning Permits and Implementation of Midwifery Practices. The transfer of authority for health service actions by midwives is regulated in Article 22 point (b) namely the transfer of authority for midwives in carrying out health service actions given by a mandate from a doctor, health services that are mandated by doctors to midwives will be the responsibility of the doctors as mandate givers (Gibelli et al., 2022).

3) Midwife's Authority in Transfer of Authority

The authority of the midwife to carry out the transfer of authority from medical personnel is in accordance with the principle of legality (Iriani, 2017). The midwife as the "receiver" of authority and the doctor as the giver of authority, have to follow the regulations concerning the transfer of authority for medical actions (Sulistiorini, 2019). The profession of medical personnel, doctors, midwives, and nurses have to always refer to the professional standards that have been set considering that any possibility of negligence and error can result in legal and ethical consequences. The implementation of those professions must be truly professional. The transfer of authority from doctors (deletants) to midwives in carrying out medical services is a delegation of mandated authority as the authority giver (deletants) remains responsible for medical actions transferred to the receiver of authority (delegators). The relationship between the professional authority of doctors and midwives is regulated in the legislation (Hanifa Muslimah & Arrisman, 2022).

The authority of midwives in the implementation of midwifery practice is regulated in the Regulation of the Minister of Health of the Republic of Indonesia No. 28 of 2017 concerning Permits and Implementation of Midwifery Practices. The midwife's authority is the legal authority of health workers to carry out their work (Novita sari, 2019). This authority gives the midwife the right to work in accordance with her field. In this case, midwives in carrying out their midwifery practice in hospitals are bound by the regulations determined by the hospital director, the professional standards issued by the midwifery profession, and the applicable laws and regulations (Rezky Fransilya Sumbung, 2021). Regulations on the transfer of authority for medical action to the midwife profession in health services in hospitals are based on Law No. 36 of 2014 concerning Health Workers, Law No. 38 of 2014 concerning Nursing, and the Regulation of the Minister of Health of the Republic of Indonesia No. 2052/MENKES/PER/X/2011 concerning Permits to Practice and Implementation of Medical Practice, the Regulation of the Minister of Health of the Republic of Indonesia No. 28 of 2017 concerning Permit and Implementation of Midwifery Practice, and the Regulation of the Minister of Health of the Republic of Indonesia No. 49 of 2013 concerning the Nursing Committee (PUSPITASARI, 2019).

Legal certainty can be achieved if regulations are formulated clearly to avoid various interpretations and that existing regulations will be implemented consistently. This is intended to achieve legal objectives in the health sector so that a sense of justice in the community, legal

certainty, and the usefulness of established legal norms can be achieved properly. Thus, the regulations meet the formal requirements concerning the provisions of laws, and substantially, the regulated materials do not overlap and are not in conflict with other higher levels of relevant regulations (vertical synchronous) or not in conflict with other regulations that are parallel in level (horizontal synchronous) (Sumiati et al., 2018).

In accepting the transfer of authority for medical actions from doctors, when there is alleged abuse of authority and results in harm to the patient, both the midwives and the doctor are legally responsible. It can occur due to an error in the transfer of authority (Tangkas & Lutfiana, 2018). Therefore, it is necessary to examine the patient's medical record whether the midwife in carrying out the transfer of authority was in accordance with the standards in the hospital or not, or whether the mistake is in the doctor who did the transfer of authority. If it is proven that there has been an error, which has led to a criminal or civil lawsuit, it is because there is a legal relationship between the engagements. Besides civil liability, lawsuits against doctors and midwives can be sued or criminally prosecuted. Hospitals can be responsible for their position, namely health service providers who should be able to provide health services with a sense of security for patients, ensure the quality of service, do not discriminate against patients, and prioritize the interests of patient safety. Thus, if there is a violation of the transfer of authority from medical actions carried out by midwives or doctors, the legal position of the hospital must still be able to participate and be responsible for the transfer of authority (Kurniawan Ridha, 2018).

4) Legal Protection for Midwives Who Receives Delegate of Authority for Medical Action

Health is a human right and one of the elements of welfare to be realized in accordance with the goals of the Indonesian nation as referred to in the Pancasila and the Preamble to the 1945 Constitution of the Republic of Indonesia. Therefore, every activity and effort to improve the health status of the community is carried out based on the principles of non-discrimination, participation, protection, and sustainability for the formation of human resources, state resilience, competitiveness, and national development (Mujiwati, 2020).

Health workers are the main component of providing health services to the community to achieve health development goals in accordance with national goals as mandated by the constitution. As the main component of health service providers, the existence, roles, and responsibilities of health workers are important in health development activities and are protected both for health workers and for the public who receive health services (Darwance et al., 2021).

Normative determination of the presence or absence of negligence in the actions performed by doctors and midwives has to be reviewed carefully and thoroughly case-by-case (Surianto & Widayanti, 2018). The judge holds the key in determining in concreto whether the works have been done in accordance with professional standards and standard procedure of action or not (Kusumawardhana, 2018).

Therefore, the transfer of authority from doctors to midwives either in a delegated or mandated manner, in the event of malpractice, both the doctors themselves and the midwives share the

criminal liability (Pudjiastuti et al., 2020). In this case, it is necessary to open the medical record (Olufemi & Damilola, 2019). If the actions taken by the midwife are not in accordance with the standard procedure when receiving the mandated transfer of authority from the doctor, the midwife also participates in taking legal responsibility, but in this case, the doctor cannot release responsibilities when delegating the authority. Errors in delegating actions by doctors to midwives can also have fatal consequences for patients (Zirkel, 2018).

The delegation of authority mandated by doctors to midwives referring to Article 55 of the Criminal Code, namely as the person who ordered to do it, where in this crime, the perpetrators were at least two people, namely the person who ordered and was ordered to do so (Mulyana & Santiago, 2021). The person who orders can be punished as a person who commits a crime, while the person who is ordered cannot be punished as he cannot be held responsible by fulfilling some conditions, namely because he is crazy, forced, non-valid order, and cannot be blamed at all. Referring to Article 56 of the Criminal Code, the transfer of authority by mandate, as a category of assistant, midwives can be prosecuted if they do so (Wulandari & Sara, 2022). Civil liability for midwives due to the transfer of authority by doctors is different if it occurs in hospitals (Andriana et al., 2021). According to Article 46 of the Hospital Law, hospitals are responsible for negligence caused by health workers, but if negligence at the puskesmas is caused by medical personnel or health workers, it needs to be reviewed again as the rules regarding puskesmas do not contain provisions for the legal liability of puskesmas for the negligence of medical personnel and health workers (Damayanti et al., 2019).

CONCLUSION

Transfer of authority for midwifery action based on Law No. 4 of 2019 concerning Midwifery has not been explicitly regulated regarding what actions can be transferred. Currently, the legal basis for midwives who receive the transfer of authority for midwifery action is Law No. 36 of 2014 concerning Health Workers, especially Article 65 and Article 22 point b of the Regulation of the Minister of Health No. 28 of 2017 concerning Permits and the implementation of the practice of midwives. In carrying out their duties, midwives do not have clear legal protection yet even though they are entitled to legal protection as long as they carry out their duties in accordance with competence, and authority, and comply with codes of ethics, professional standards, professional service standards, and standard operating procedures. Transfer of authority for midwifery action based on Law No. 44 of 2009 concerning hospitals focuses on looking at whether the action performed is due to an element of error and negligence that made other people suffer, or the actions performed against the law or due to default.

Regulations on the transfer of authority for medical actions have been regulated in some laws and regulations as well as regulations of the minister of health. The implementation of the transfer of authority for medical actions to the midwife profession refers to the Regulation of the Minister of Health of the Republic of Indonesia No. 28 of 2017 concerning Permits and Implementation of Midwifery Practices. Hospitals have to technically regulate the mechanism of the transfer of authority for the medical action and the types of medical actions that can be transferred by delegation or mandate.

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