

LEGAL PROTECTION FOR MIDWIVES IN IMPLEMENTING MIDWIFERY PRACTICE SERVICES

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Abstract

Legal protection for midwives in providing midwifery services has been regulated in the law. As health workers, midwives have the right to obtain legal protection in carrying out their duties in accordance with their authority. Based on the Regulation of the Minister of Health of the Republic of Indonesia Number 28 of 2017 concerning Permits and Implementation of Midwifery Practices, midwives have the authority to provide services for maternal health, child health and reproductive health, and family planning. This study aims to determine the legal protection for midwives in providing midwifery services and to determine the authority of midwives in providing services. This qualitative study used juridical and normative approaches. The results of this study showed that legal protection for midwives in providing health services was a right granted by law as long as midwives carry out their duties in accordance with professional standards, standard operating procedures, and their authority as stipulated in Law of the Republic of Indonesia No. 4 of 2019 concerning Midwifery, Law Number 36 of 2009 concerning Health and Regulation of the Minister of Health of the Republic of Indonesia Number 28 of 2017 concerning Permits and Implementation of Midwifery Practices. Legal protection is given to midwives who receive the delegation of authority from doctors to hospitals as regulated in article 46 of the Law of the Republic of Indonesia Number 44 of 2009 concerning Hospitals.

Keywords: Legal Protection, Midwives, Service Delivery

INTRODUCTION

The midwifery profession is one of the health workers who are always in touch with the community, especially women or mothers (UNDP, 2015). Thus, the midwifery profession is strategic in the context of health services in Indonesia. Midwives are needed by the community, especially for the welfare of mothers and their babies as one of the objectives in the third point of the Sustainable Development Goals (SDGs), namely healthy and prosperous life as targeted by 2030 to ensure universal access to sexual and reproductive health services including family planning services, provision of information and education integrated into national strategies and programs (Badan Pusat Statistik, 2016).

Currently, the government prioritizes reducing maternal mortality as stated in the 2014-2019 National Medium-Term Development Plan (UNICEF, 2021). To achieve this target, health development policies are directed at increasing the quality and quantity of health workers expecting that health service facilities will be closer and more accessible to the public (WHO, 2022). So does the coverage and quality of reproductive health services (Ministry of Health, 2014: 26). In providing more extensive, equitable, and high-quality health services to every member of the community, it is necessary to have sustainable management of health facilities, equipment, and human resources at the puskesmas level, the regional general hospital level,

and provincial general hospital level(World Health Organization, 2019).

In Indonesia, midwives have been recognized as a health worker profession as regulated in Law Number 36 of 2014 concerning Health Workers, hereinafter referred to as (Health Personnel Law)(Kemenkes, 2020). Thus, midwives have to understand the extent of their roles and functions as health workers (Mughtar, 2015:32-33). Based on the Regulation of the Minister of Health Number 1464/Menkes/Per/X of 2010 concerning Permits and Midwifery Practices, hereinafter referred to as Regulation of the Minister of Health on Midwifery Permit and License. In providing midwifery services, midwives are authorized to provide services for maternal health, child health, reproductive health, and family planning. Indonesian Midwives Association (IBI) makes efforts to maintain the quality of professionalism in order to protect the community as service recipients and midwives as service providers. Besides, IBI also assesses the compliance of each midwife to the professional code of ethics and the ability to provide independent midwifery services(Riskesdas, 2018).

Providing health services outside of authority does not rule out the possibility of having a negative impact on patient health and can cause health problems(Khusnul Huda Mokhamad Khoiril Huda, 2021). Law Number 36 of 2009 concerning Health Article 5 states that everyone has the right to obtain safe, quality, and affordable health services(Sulistiyorini & Hanifah, 2020). In practice, some midwives provide health services that are not under the authority of midwives, for example, midwives who deliberately provide general medical services or based on patient requests and midwives who provide general medical services in regions/villages because there are no other health workers or other health service facilities. The level of public trust in midwives is still quite high, especially in rural areas which can be seen by the large number of people who come to ask for general services at independent midwifery service clinics. General treatment here covers medication for children, accidents, and injections based on the advice of a doctor who is not a team or network of the clinic(Andriana et al., 2021).

As health workers, midwives also have the right to recognition, guarantees, protection, and equal and fair legal certainty before the law(Damayanti et al., 2019). Legal protection originates from the concept of recognizing and protecting human rights and the rule of law principle. Recognition and protection of human rights are given priority and can be linked to the goals of a rule of law. Therefore, midwives must receive legal protection in carrying out their duties.

This study focuses on the legal protection for midwives concerning the provision of midwifery practice services by midwives and how midwives have authority in providing public services.

METHODS

This study used a qualitative approach, namely research that produces findings that cannot be achieved using statistical procedures or other quantification methods. The qualitative study aims to gain understanding, develop a theory and describe it in a complex way. It used the normative juridical method, namely legal research that examines written law from various aspects such as theory, history, philosophy, comparison, structure and composition, scope and

material, consistency, general explanation and article by article, formality and binding force of a Laws, as well as the legal language used, but does not examine the applied or implementation aspects (Peter Mahmud Marzuki, 2011:87). This study used the statutory approach and the conceptual approach.

RESULTS AND DISCUSSION

Legal Protection for Midwives in Carrying out Midwifery Practice Services

Midwifery practice is the application of midwifery science through midwifery services/care to patients with a midwifery approach. The midwifery practice environment includes independent/autonomous care for girls, young women, and adult women before, during, and after pregnancy. This means that midwives carry out supervision, and provide necessary care and advice to women during pregnancy, childbirth, and the postpartum period (Tangkas & Lutfiana, 2018). Midwifery practice is carried out in a community-oriented healthcare system, with doctors, nurses, and specialists in referral centers. Midwives can practice in a variety of service settings, such as in the home, community, hospital, clinic, or other health units. Midwives who wish to practice independently and/or work in health care facilities must have a minimum education of Diploma III (DIII) in midwifery as regulated in Article 2 paragraph (2) of the Minister of Health concerning Permits and Implementation of Midwifery Practices. After completing this education, midwives have to apply for registration to have a Midwifery Practice Permit (SIPB) to open practice independently as stipulated in the Minister of Health for Permits and Implementation of Midwifery Practices (Rezky Fransilya Sumbung, 2021).

Legal protection is an effort to guarantee legal certainty in order to provide legal protection to the parties concerned or those who take legal action. Philips M. Hadjon defines legal protection can be divided into two, namely:

1. Preventive Legal Protection

The protection provided by the government aims to prevent violations. This is contained in laws and regulations to prevent a violation and provide signs or limitations in carrying out obligations.

2. Repressive Legal Protection

Repressive legal protection is the final protection in the form of sanctions such as fines, imprisonment and additional penalties given when a dispute has occurred or a violation has been committed.

Legal protection for midwives is a right that must be received by a midwife as stated in Article 60 of the Law of the Republic of Indonesia No. 4 of 2019 concerning Midwifery in which in carrying out Midwifery Practices have the right to:

- a. Obtain legal protection in carrying out duties in accordance with compensation and authority, and complying with the code of ethics, professional standards, professional service standards and standard operating procedures

- b. Obtain correct, clear, honest and complete information from clients and/or their families
- c. Refuse the wishes of clients or other parties that conflict with the code of ethics, professional standards, service standards, standard operating procedures and statutory provisions.
- d. Receive compensation for midwifery services that have been provided
- e. Obtain work facilities according to standards
- f. Obtain the opportunity to develop the profession.

Based on point a, midwives have the right to obtain legal protection as long as they carry out their duties in accordance with their competence, and authority and comply with the code of ethics, professional standards, professional service standards and standard operating procedures 3 (Santoso & Wardani, 2020).

SatjiptoRaharjo explains that "the law protects a person's interests by placing a power that is carried out in a measured manner to act within the framework of that interest" (SatjiptoRahardjo, 1991:53). Besides, Salmond states that "legal protection aims to integrate and coordinating various interests in society because in the flow of interests, the protection of certain interests can only be done by limiting the interests of other parties." As health workers, midwives including independent practice midwives have the right to obtain legal protection in carrying out their duties and responsibilities in midwifery services. Based on Law No. 36 of 2014 concerning Health Personnel, hereinafter referred to as (Health Personnel Law), Articles 57 states that "staff in carrying out practices have the right to obtain legal protection as long as carrying out their duties in accordance with professional standards, professional service standards, and standard procedures operational," while article 75 states "health workers in practicing have the right to receive legal protection in accordance with statutory provisions." In accordance with the Regulation of the Minister of Health, Article 19 of the Permit and Midwifery Practices states that "midwives have the right to obtain legal protection in carrying out practice/work as long as it is in accordance with the standards. "The Midwifery Draft Law includes protection for midwives and patients, but this Draft Law cannot be used. Many regulations regarding the protection of health workers have not been able to provide certainty and legal protection for Independent Practice Midwives in carrying out their duties and responsibilities. It is because some articles in the Criminal Code and can burden midwives in dealing with problems with patients, for example, the provisions of Article 1365 BW stipulate that any unlawful act that causes harm to other people obliges the perpetrator to compensate the loss. Besides, Article 77 of the Law on Health Workers stipulates that every recipient of health services who is harmed due to the mistakes or negligence of health workers can ask for compensation in accordance with statutory provisions. Article 85 paragraph (1) of the Law on Health Personnel states that every health worker who commits negligence causing serious injury to the recipient of health services is subject to imprisonment for a maximum of 3 years. Paragraph (2) states that if serious negligence as stated in paragraph (1) results in death, every health worker shall be punished

with imprisonment for a maximum of 5 years (Irawati et al., 2020).

The Authority of Midwives in Organizing Midwifery Practice Services

Health is the main human capital in carrying out daily activities (SafitriHariyan, 2005: 1). One of the successes of health efforts depends on the availability of health resources, namely health workers (SafitriHariyan, 2005: 1). Article 1 paragraph (6) of Law No. 36 of 2009 concerning Health, hereinafter referred to as (Health Law), stipulates that Health Workers are any people who have knowledge and/or skills through education in the health sector which for certain types requires the authority to carry out health efforts and devote themselves to the health sector.

Authority is the right to carry out something so literally, authority is the basis of rights or the basis of power (SafitriHariyan, 2005:1). Besides, SoerjonoSoekanto and R. Otje Salman (1996:16) also state that “authority is the right to carry out something so literally, authority is the basis of rights or the basis of power.” The duties and authority of midwives are regulated in article 46 and article 47 of Law of the Republic of Indonesia No. 4 of 2019 concerning Midwifery in which in carrying out Midwifery Practices, midwives have to provide: a. Maternal health services; b. Child health services; c. Women's reproductive health services and family planning; d. Implementation of tasks based on the delegation of authority; and/or e. Implementation of tasks in certain limited circumstances (Mujiwati, 2020).

Article 49 of the Law of the Republic of Indonesia No. 4 of 2019 concerning Midwifery states that the provision of maternal health services includes:

- a. Provide midwifery care before pregnancy
- b. Provide midwifery care during normal pregnancy
- c. Provide midwifery care during childbirth and assist normal childbirth process
- d. Provide midwifery care during the post-partum
- e. Perform first aid for pregnant women, childbirth, postpartum and referrals
- f. Conduct early detection of risk cases and complications during pregnancy, childbirth, postpartum, and post-miscarriage care and referrals.

The provision of wider authority to midwives is intended to bring emergency obstetric and neonatal services closer to every pregnant woman, postpartum woman, and newborn so that early treatment before a referral can be carried out quickly and on time.

- a. Midwives have the authority to provide information and counseling
- b. Midwives carry out guidance and development of other health workers who also work in midwifery services
- c. Midwives serve pregnancy surveillance cases
- d. Midwives serve babies and preschoolers
- e. Midwives have the authority to provide medicines

Midwives are one of the health professions related to health services for the community. In carrying out their profession, they must comply with relevant legal norms, namely existing laws and regulations in Indonesia which regulate the practice of midwives (Kurniawan Ridha, 2018). The role of Midwifery Advisory Council (MPEB) is vital as this institution determines or assesses whether there is a violation of the Indonesian Midwife Code of Ethics or not. The role of the MPEB is almost the same as the Medical Ethics Honorary Council (MKEK) for the medical profession. Sanctions for violations of the midwife's code of ethics are carried out by the midwifery professional organization in Indonesia, namely IBI. Sanctions for violating the code of ethics can be in the form of a verbal or written warning or by not providing the recommendations required by midwives to obtain licenses to practice (Tuchman, 2005).

CONCLUSION

In carrying out its practice, midwives' authority is regulated in the Decree of the Minister of Health of the Republic of Indonesia No.900/Menkes/SK/VII/2002. The role of midwives is divided into four, namely executors, administrators, educators, and researchers. The legal relationship between the midwife and the patient creates rights and obligations between the midwife and the patient. As service practitioners, midwives have to maintain practice developments based on evidence-based so that various ethical dimensions and how they are related to ethics are important to explore and understand. To comply with ethical code standards, midwives have to pay attention to the norms and rules that apply in carrying out their profession.

Midwives have to realize that every action or service provided to a patient is legally binding. Thus, they should know the limits of their authority according to competence so that they can avoid mistakes, negligence, or acts against the law. Besides, midwives have to know what actions can be taken in the delegation of authority. Therefore, they should be supported by adequate laws and regulations in which midwifery law should be reformulated to achieve justice, legal certainty, and benefits.

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