

## LEGAL RESPONSIBILITY OF MIDWIVES FOR DELIVERY ASSISTANCE IN THE EFFORTS OF MATERIAL AND CHILD HEALTH

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DOI: <http://dx.doi.org/10.33603/hermeneutika.v3i2>

Diterima: January 20, 2025; Direvisi: January 30, 2025; Dipublikasikan: February 28, 2025

**Abstract:** The unlawful aspect of medical negligence is determined by the violation of obligations set out in professional standards. Midwives as health workers must involve attention to standard operating procedures (SOP) and clinical guidelines to minimize the risk of medical errors. In the event of medical negligence, patients have the right to demand accountability from midwives through both civil and criminal law, such as in cases that result in maternal and infant death. The research method used in this study is normative juridical. Where in its discussion, this study prioritizes the study of the application of positive legal norms or legal principles applied in Indonesia and the approach through related laws and regulations. The results of the analysis show that the legal responsibility of midwives in cases of medical negligence reviewed from a legal perspective involves several important aspects, such as the existence of a midwife-patient relationship and negligence in the medical care provided. In conclusion, this legal analysis provides an understanding of the legal responsibility of midwives for alleged negligence in medical actions, and also provides insight into the resolution of allegations in cases of medical negligence. The implications of this study are expected to be a guideline for midwives, legal practitioners, and other related parties in understanding and handling cases of medical negligence more effectively and fairly.

**Keywords:** Legal Responsibility, Midwife, Alleged Negligence, Standard Procedure

## **I. INTRODUCTION**

Until recently, the presence of midwives in Indonesia remains crucial to improving the welfare of mothers and fetuses. Midwifery services must be available in various places and times, considering that mothers and fetuses as patients must be viewed as subjects who have a major influence on the results of services, not just objects. It is important for patient rights to be fulfilled, because their satisfaction is one indicator of service quality, while dissatisfaction may lead to lawsuits. Law is generally understood as a series of written rules or norms that regulate a community as a social structure. It includes behavioral guidelines that are applied in community life, which can be enforced through sanctions if violated. The main purpose of law is to create an orderly and prosperous social order, maintaining balance in social interactions. With order in society, it is hoped that individual interests can be protected (Soeparto & Pitono, 2009). Midwives as one of the health workers must know and respect the norms that live in society, which include religious norms, legal norms and ethical norms, namely in the form of politeness, customs and others, not violating legal provisions and doing things that are contrary to the code of ethics of midwifery. A midwife, in accordance with her profession and function in providing services, establishes a very close relationship with patients and their families. Therefore, this relationship must be maintained and developed as well as possible, so that the relationship between midwives and the community that requires midwife services can be good continuously (Nasution, 2005). In today's global era, the medical profession, especially midwives, attracts public attention because of its very complex dedication to the community. Lately, the performance of medical personnel, including midwives, has received a lot of attention, both directly conveyed to the Indonesian Midwives Association (IBI) as the parent organization of midwives. These various factors can cause medical efforts, even though they are carried out as well as possible, to often face challenges. This emphasizes that the results of each medical intervention are often filled with uncertainty and difficult to measure mathematically (Crisdiono, 2004).

## **II. RESEARCH METHOD**

This research form is normative juridical, this normative research is a research on legal systematics, namely research whose main purpose is to identify the concepts or bases in law. Using normative juridical because the approach is carried out by examining the approach of theories, concepts, and reviewing the laws and regulations related to the research.

## **III. RESULT AND DISCUSSION**

### **A. Legal Responsibilities of Midwives in Childbirth Services Resulting in Maternal and Infant Death**

In the event of negligence or medical error, the patient has the right to demand accountability from the midwife through either civil or criminal law, in accordance with applicable legal provisions. Legal liability for negligence by health workers is regulated in various laws and regulations designed to protect patient rights and ensure high standards of health services carried out in accordance with applicable medical practice guidelines and health protocols (Rachmad Abduh, 2020). In practice, midwives are also bound by ethical principles, such as the principle of non-maleficence (doing no harm), beneficence (beneficial), and respect for autonomy (respecting the patient's right to make decisions). Violation of these principles, whether intentionally or not, can result in legal liability for medical personnel. In this context, the implementation of health services must involve attention to standard operating procedures (SOPs) and clinical guidelines to minimize the risk of medical errors. Where compliance with professional standards and SOPs is an element that

eliminates the element of unlawful nature of an act that is suspected in a medical case. In the event of negligence or medical error, the patient has the right to demand accountability from the midwife through either civil or criminal law, in accordance with applicable legal provisions. Therefore, negligence as an unlawful nature is stated to occur if medical personnel/health workers do not carry out or ignore the appropriate standard of care, resulting in prohibited consequences (Kadir, 2022).

## **B. Settlement of Alleged Malpractice by Midwives in Childbirth Services Resulting in Maternal and Infant Deaths**

### **1. Criminal Settlement**

This responsibility applies if in carrying out the practice it results in harm to the patient due to an error or negligence that has fatal consequences for the patient, for example: disability, even death. Negligence that results in the threat to a person's life can be threatened with criminal sanctions as referred to in Article 474 paragraph (3) of the Criminal Code (KUHP) which reads:

- a. Any person who due to his mistake (negligence) causes another person to die, is threatened with a maximum imprisonment of 5 years
- b. Or a maximum fine of category V, which is Rp. 500 million

The relationship between the Midwife and the patient is a legal relationship, because each is a legal subject and has rights and obligations under the law and equal legal standing for everyone (Tjandra, 2008).

In the case of midwife desi, it has been seen that 6 hours of labor not progressing can result in fatal complications, even resulting in death. Mistakes in carrying out the profession will form criminal or civil legal liability (depending on the nature of the losses incurred) containing 3 (three) main aspects as an inseparable whole, namely: 1. Treatment that is not in accordance with norms; 2. Done with negligence (culpa), and 3. Contains legal consequences. Where Malpractice Actions Must Meet (Asyhadie, 2018):

- a. There is no negligence if there is an obligation to treat, there is a legal relationship, then the attitude of the doctor/midwife must be in accordance with professional standards (duty to use due care).
- b. If there is an agreement, there is an obligation, must act according to professional standards, if a deviation occurs, it can be legally blamed. (Dereliction/breach of duty).
- c. If there is a result of negligence, the patient experiences injury, injury, loss or severe mental disorder, then it can be legally blamed (Damage)
- d. To legally blame there must be a reasonable causal relationship. (Direct Causation/Proximate Causes)

Legal Elements of Malpractice Actions, namely:

- a. There is an action in the sense of doing or not doing, depending on the performance that is categorized as a breach of contract.
- b. The action is carried out by medical personnel/health workers or people under their supervision not in accordance with procedures.
- c. The action is in the form of medical, diagnostic, therapeutic, or health management actions that are not in accordance with the provisions: Violating the law, propriety, morality, professional principles.
- d. Carried out intentionally or carelessly/negligently/carelessly, which often occurs due to negligence.
- e. The action results in harm to the patient

Then in Article 11 paragraph 7 of PP no. 28 of 2024 it states that: Mothers and babies with risk factors, complications, and emergencies during pregnancy, childbirth, and

postpartum are referred to Health Service Facilities in a timely manner in accordance with the referral system mechanism.

This means that Midwives must assess the patient's condition comprehensively and objectively, and consider the patient's needs and desires. In addition, midwives must also provide clear and complete information to patients, and ensure that patients have received services appropriate to their needs before being referred (emergency treatment).

## **2. Mediation Settlement**

The final result of the dispute resolution stage in court is a verdict. However, in reality, court decisions are still felt to not solve the problem, tending to create new problems, including dissatisfaction from the losing party, then taking legal action that requires additional energy, thought, cost, and time. This settlement process has led to the emergence of alternative dispute resolution outside the court, including mediation (Mulyana, 2019).

Medical disputes are disputes that arise between health service providers and recipients of health services. Health service providers can be health workers (midwives) or medical personnel, as regulated in Health Law no. 17 of 2023. Article 310 of Law no. 17 of 2023 concerning Health states that; In the event that Health Workers are suspected of negligence in carrying out their profession which causes harm to the recipient of health services, disputes arising from such negligence must first be resolved through dispute resolution outside the courts. The explanation of the Article states that, "Mediation is carried out if a dispute arises between health workers providing health services and patients as recipients of health services. Mediation is carried out with the aim of resolving disputes outside the courts by a mediator agreed upon by the parties." The provisions contained in Article 310 of the Health Law are mandatory. The essence of the requirement is legal certainty. Legal certainty is the existence of clarity of behavior that is general and binding on all citizens including its legal consequences. Legal certainty can also mean something that can be determined by law in concrete matters (Apeldoorn, 2002). Legal certainty is a guarantee that the law is implemented, that those who are legally entitled can obtain their rights and that decisions can be implemented. Legal certainty is protection against arbitrary actions which means that someone will be able to obtain something that is expected in certain circumstances. The law is tasked with creating legal certainty because it aims to create order in society. Legal certainty is a characteristic that cannot be separated from law, especially for written legal norms. Law without the value of legal certainty will lose its meaning because it can no longer be used as a guideline for behavior for everyone (Wantu, 2007).

## **IV. CONCLUSION**

Negligent acts in medical services have different qualifications compared to negligence in the context of general criminal acts. As a form of action that has certain qualifications, medical negligence is guided by the principles of health law. The unlawful aspect of medical negligence is determined by the violation of obligations set out in professional standards. For midwives who practice in health care facilities, this obligation includes fulfilling professional standards, standard operating procedures (SOPs), and other service norms set by the facility in carrying out medical actions on patients.

The implementation of health services must involve attention to standard operating procedures (SOPs) and clinical guidelines to minimize the risk of medical errors. Where fulfilling professional standards and SOPs is an element that eliminates the unlawful nature of an act that is suspected in a medical case. Therefore, negligence as an unlawful nature is stated to occur if medical personnel/health workers do not carry out or ignore the standard of care that should be. The impact of the risk borne by the patient requires awareness from the

patient himself in making decisions before medical actions are carried out in the form of medical consent/refusal of medical actions (informed consent/informed refusal). Therefore, midwives should understand, implement, every medical action, especially high-risk medical actions based on standard operating procedures (SOP), both those set by professional organizations, and by health care facilities as a reference in carrying out their profession, midwives understand the limitations of professional authority according to the competencies they have, always add to their knowledge in relation to the midwifery profession, both in the form of seminars, and training. And because communication with patients is very important, it would be good if there is mutual understanding of the rights and obligations between midwives and patients. Also, health care facilities should be more effective in resolving medical disputes through mediation, so that calculating compensation due to negligence by health workers can be resolved in a win-win solution.

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