



Reconstruction Accountability Criminal Prosecution of Midwives in Emergency Cases Midwifery Based *Lex Specialis* Principles of Health Law

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| ABSTRACT

Obstetric emergency services often place midwives in ethical-legal dilemmas with risks of criminal prosecution. The dualism between Law No. 1/2023 (Criminal Code) as *lex generalis* and Law No. 17/2023 (Health Law) as *lex specialis* creates legal uncertainty in professional fault assessment. **Objective:** This study aims to analyze the inconsistencies of general criminal law in emergency cases and reconstruct a model for midwife criminal liability based on the *lex specialis* principle. **Method:** This normative legal research employs statutory, conceptual, and philosophical approaches. **Discussion:** The results indicate that the Criminal Code tends to overlook medical necessity (*noodtoestand*) and professional standards. The Health Law provides legal immunity through Article 275 for emergency actions following standards. **Conclusion:** Midwife criminal liability must be reconstructed hierarchically. Criminal sanctions should only be applied to gross negligence (*culpa lata*), while minor negligence (*culpa levis*) in emergencies should be resolved via disciplinary or civil mechanisms. Fault assessment must refer to Professional Standards and Emergency SOPs as the primary benchmarks.

| KEYWORDS

Criminal Liability, Midwife, Emergency, *Lex Specialis*, *Culpa Lata*.

I. INTRODUCTION

Health development in Indonesia is an integral part of fulfilling human rights as mandated by the constitution. Based on Article 28H paragraph (1) and Article 34 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the state bears the responsibility to provide adequate health care facilities and public services to ensure that every citizen can live in physical and mental well-being and achieve an optimal level of health. [1]

In this ecosystem, the midwife profession plays a crucial role as a provider of health services that focuses on women's reproductive health, pregnancy, childbirth, postpartum, and newborn health. The most crucial area in efforts to save the lives of mothers and children is emergency obstetric care. Midwives, as the frontline providers of maternal and child health services, especially at the primary healthcare level, play a vital role in handling these cases. [2]

A medical emergency is a clinical condition of a patient that requires immediate medical or psychological intervention to save life and prevent disability. [3] In emergency situations, every second can be the difference between life and death. Midwives are required to make rapid and high-risk clinical decisions based on their best professional judgment. These situations often arise suddenly and unexpectedly, requiring midwives to make high-stakes clinical decisions under extreme time pressure. [4]

The dynamics of midwifery services, particularly in emergency medical situations, often drag midwives into complex legal disputes. A medical emergency is legally defined as a patient's clinical condition requiring immediate medical and/or psychological intervention to save life and prevent disability. [2] In these conditions, midwives are required to

make quick decisions under extreme time pressure, where delays in treatment can significantly increase the risk of death or permanent disability.

This complexity is further complicated by the transition of national law through the enactment of Law No. 1 of 2023 concerning the Criminal Code (KUHP) and Law No. 17 of 2023 concerning Health. These two regulations convey a different spirit of transformation in viewing the criminal liability of healthcare workers, requiring in-depth reconstruction through the lens of the *lex specialis* principle and the role of the judicial filter by the Professional Disciplinary Council (MDP).[5]

An ethical-legal dilemma arises when the obligation to save lives clashes with the limitations of administrative authority. Although Article 275 Paragraph (1) of the Health Law requires medical personnel/health workers to provide first aid in emergencies even outside their routine clinical authority, the risk of criminalization remains a looming one due to the failure of the legal system to distinguish between unavoidable medical risks and malpractice based on negligence.

The dualism of regulation between Law No. 1 of 2023 concerning the Criminal Code (New Criminal Code) as *lex generalis* and Law No. 17 of 2023 concerning Health (Health Law) as *lex specialis* is the core of the urgency of this criminal responsibility reconstruction.[6] This creates a contradiction between the demand for legal protection for the midwifery profession and the need for fair law enforcement to ensure accountability for the losses incurred.

Legal issues become increasingly apparent when criminal liability for healthcare workers is often determined by general criminal law, specifically articles related to negligence or omission (*culpa*) resulting in death or serious injury. Rigid application of general criminal law articles can ignore the specific context of medical procedures in emergency situations, where the inherent risks have been professionally accepted and there is insufficient time to obtain patient/family consent.

Therefore, in-depth research is needed to analyze the weaknesses in the application of general criminal law to obstetric emergencies and to reconstruct the model of midwifery criminal liability based on the principle of *lex specialis* in health law. This reconstruction aims to create legal certainty and achieve substantive justice for both midwives and patients, in order to optimally support lifesaving efforts.

II. METHODOLOGY

This research employs doctrinal legal research. Normative legal research focuses on the study and analysis of existing laws and regulations, legal principles, legal doctrine, and legal systematization to address the normative research problem, namely the current regulation of criminal liability and how such liability should be reconstructed to achieve justice.

The research approach to analyzing multidimensional problem formulation utilizes legislative, conceptual, and philosophical analytical approaches. The purpose of this approach is to identify harmonization, discrepancies, or potential conflicts of norms among these regulations. Legal sources were obtained through a literature review of primary, secondary, and tertiary legal materials. The legal analysis technique employed descriptive analysis and systematic and teleological legal interpretation. The results of the analysis are prescriptive legal arguments to formulate an ideal model of criminal liability for midwives based on the *lex specialis* of health law.

III. RESULTS AND DISCUSSION

Results

Dualism Regulations and Basis for Implementing Law

Normative analysis shows dualism and overlapping norms between general criminal law and specific health law. Law No. 1 of 2023 concerning the Criminal Code is a *lex generalis*, stating that criminal acts committed due to negligence are only punishable if expressly stipulated in statutory regulations. The new Criminal Code regulates criminal liability based on intent or negligence in Article 36 paragraph (1). Article 474 regulates general criminal provisions for negligence resulting in serious injury or death with a prison sentence of 3 to 5 years. The standard of *culpa* in this article is universal and insensitive to the complexity of medical procedures, thus potentially ensnaring minor negligence (*culpa levis*). [7]

Law No. 17 of 2023 concerning Health serves as a *lex specialis* (special law) that specifically regulates the rights, obligations, and legal protections for healthcare workers. Article 440 of Law No. 17 of 2023 concerning Health specifically stipulates specific criminal sanctions for negligence/omissions committed by medical or healthcare personnel in the provision of healthcare services. [3] This criminal sanction is much more specific than the general provisions of the New Criminal Code because it explicitly targets medical personnel/health workers. The existence of high financial sanctions reflects the legislative trend to use fines as a significant deterrent mechanism in addition to imprisonment.

The determining factor that Law No. 17 of 2023 is *lex specialis* lies not only in the more specific sanctions but, more fundamentally, in the standard of negligence used. Article 440 requires negligence to be a violation of specific professional standards. Article 275 of the Health Law explicitly provides legal protection and immunity to healthcare workers who act in emergencies without approval, provided they comply with standards. In this case, the use of *lex generalis* ignores the principle of *lex specialis derogat legi generali*.

The Health Law should be the primary reference because it contains exceptional norms that provide special protection for health service providers who face "therapeutic risks" in order to achieve a "therapeutic miracle." [8] The application of general standards to the profession violates the principle of *Lex Specialis* and is the root of injustice, because the negligence of midwives must be measured by the standards of their profession, not the standards of lay people.

Weaknesses and Erosion of Principles *Ultimate Remedium*

Current law enforcement tends to neglect the role of criminal law as a last resort. One important innovation in the New Criminal Code is the systematic formulation of two grounds for expungement, which exempt perpetrators from punishment. The fundamental difference between the two lies in the focus of the expungement.

Justifying grounds (*rechtvaardigingsgronden*) eliminate the unlawful nature of an act (*actus reus*). Justifying grounds, stipulated in Articles 31 to 35 of the New Criminal Code, justify actions that formally meet the definition of a criminal offense because they were committed within a legally valid framework. One key justification provision, stated in Article 33, is a state of emergency (*Noodtoestand*), which is an act committed during a compelling emergency. Article 35 explicitly links justifying grounds to the absence of unlawful nature.

Reasons for forgiveness (*schulditsluitingsgronden*) eliminate the element of guilt or blame on the perpetrator (*mens rea*). The act committed is still considered unlawful, but due to factors within the perpetrator, it is forgiven and not subject to criminal punishment. Reasons for forgiveness, systematically regulated in Articles 40 to 44 of the New Criminal Code, focus on the perpetrator's mental condition or moral capacity (*verwijtbaarheid*), which reduces or eliminates the perpetrator's ability to be blamed. One of the main provisions of the reasons for forgiveness stated in Article 44 is that the perpetrator is not punished if he carries out an order in his position, and in good faith believes that the order was given with his authority and implementation, including within the scope of his work. [7]

In the context of midwifery services, Article 42 of the New Criminal Code must be read and interpreted specifically in conjunction with Article 275 of Law No. 17 of 2023 concerning Health. Article 275 Paragraph (2) of Law No. 17 of 2023 states that in an emergency, medical personnel and/or health workers may perform actions without consent after seeking consent and obtaining legal protection. Article 275 serves as a special provision that strengthens and outlines the application of the medical *noodtoestand* principle for midwives. This article emphasizes that midwives' actions in an emergency that meet standards are justified or at least excusable, thus preventing criminal prosecution for violations of formal procedures that occur in the interests of a higher good.

The New Criminal Code has not been fully interpreted harmoniously with justification and excuse reasons in medical emergencies (*Noodtoestand*) where the legal interest of saving lives must be prioritized over administrative procedures. [9] Public prosecutors often use articles of the Criminal Code to directly conduct investigations, thus bypassing the role of the Professional Disciplinary Council (MDP) which should function as a mandatory gatekeeper based on Article 308 of the Health Law. [5]

The New Criminal Code also explicitly integrates sentencing guidelines into the law. Article 54 stipulates that in sentencing, judges must consider factors related to the perpetrator's culpability. This provision in Article 54 supports the modern paradigm of sentencing, which is utilitarian and preventive. By rationalizing decisions based on the quality of *mens rea* (mental attitude and form of culpability), judicial accountability is enhanced.

The criminalization of individual midwives for patient deaths often ignores systemic failures, such as limited infrastructure at primary health facilities or delays in referral due to geographic constraints. A crucial weakness lies in the erosion of the principle of *ultimum remedium*. This is because general criminal law is substantively insensitive to emergencies and the principle of distributive justice. Furthermore procedurally, there is a loophole where public prosecutors can ignore the professional judgment of the MDP by directly using the Criminal Code, even though the criminal process should be a last resort (*ultimum remedium*). This can open the door to instant criminalization and trigger the phenomenon of defensive medicine.

Discussion

Law Number 1 of 2023 concerning the Criminal Code is expected to bring fundamental reforms to the concepts of fault (*schuld*) and criminal liability. Doctrinally, the New Criminal Code has successfully codified the principle of *geen straf*

zonder schuld through the adoption of a dualistic theory, clearly separating criminal acts and criminal liability. The key transformation lies in the regulation of fault and negligence. The limitation of the crime of culpa in Article 36 paragraph (2) acts as a legislative filter by requiring the crime of negligence to be formulated explicitly. The clear separation between justification and excuse and the implementation of Article 54 require judges to consider the form of fault (*dolus* or *culpa*) in the sentencing process, ensuring proportionality of appropriate sanctions. These provisions indicate a shift towards a more humanistic, adaptive, and highly cautious criminal law system in applying criminal liability, especially for acts based on negligence.

In cases of obstetric emergencies, criminal law reconstruction should focus on the element of gross negligence, which substantially violates the standards of emergency obstetric care. Only violations of standards with the criteria of gross negligence should be prosecuted under Article 440 of the Health Law.

The reconstruction of midwives' criminal liability following the enactment of Law No. 1 of 2023 concerning the Criminal Code and Law No. 17 of 2023 concerning Health must be based on synchronized regulations and affirmed procedural processes that ensure a balance between midwife protection and patient rights. The development of a new legal model must address the urgent need for legal certainty for midwives, enabling them to work autonomously and confidently, especially in high-pressure situations such as emergencies, without the shadow of unfounded fear of criminalization. At the same time, this model must firmly guarantee patients' rights to obtain safe services and to seek justice in the event of a gross violation of standards. The legal reconstruction model for emergency obstetric care is outlined as follows:

Restrictions Substantive

Substantive reconstruction demands clear boundaries regarding acts that can be punished. The criminal liability of midwives in a professional context must refer exclusively to Article 440 of the Health Law, not the general negligence article in the Criminal Code. [10] Criminal penalties may only be applied to gross negligence (*grove schuld*) or gross negligence (*culpa lata*). The benchmark is the failure to use common sense or total disregard for mandatory critical procedures, such as ignoring life-threatening vital signs or administering strong drugs without clear authority and indications. [11] Minor errors or inaccuracies that are still within the limits of professional decency must be resolved through professional disciplinary mechanisms or civil law, not criminal law [12] This reconstruction can be a substantive filter that ensures that criminal law only touches on the most fatal errors, not minor negligence that can still be corrected through disciplinary or civil law.

Procedural and Defense

Procedural reconstruction strengthens legal protection for midwives through a judicial filter. A MDP decision alleging gross negligence must be established as a prerequisite for prosecution. Under Article 308 of the Health Law, investigators are required to request a MDP recommendation before initiating an investigation into alleged criminal acts in healthcare. [5] MDP evaluates actions based on three standards, namely professionalism, operational (SOP), and legal. [13] To ensure the *ultimum remedium* is enforced, the MDP decision must be an absolute formal prerequisite before prosecutors can proceed with criminal proceedings. Without professional validation, legal proceedings are considered premature. The doctrine of *overmacht* in Article 42 of the New Criminal Code and the state of emergency in Article 33 of the New Criminal Code must be recognized as excuses or justifications when midwives are forced to act beyond their authority due to conflicting obligations or the lack of adequate medical facilities.

The application of *lex specialis* reaches its peak in the issue of obstetric emergencies. The Health Law provides specific provisions that directly impact criminal liability as stipulated in the Criminal Code. Article 275 of the Health Law is a very strong norm of specialization that functions as *lex specialis*, explicitly granting midwives legal protection or immunity. This article serves a crucial dual function as an exception to the consent rule and legal immunity. The exception to the consent rule provides legal legitimacy for midwives to act immediately, even without written consent from the patient/family, after efforts to obtain consent have been made but are not possible. This resolves the legal conflict between the obligation to save lives and the obligation to obtain consent. Meanwhile, legal immunity explicitly promises legal protection for health workers acting in emergencies. This legal protection is interpreted as strengthening the justification/excuse (*noodtoestand medis*) in criminal law, as stipulated in Article 42 of the New Criminal Code. The implication is that midwives' actions cannot be punished simply for violating formal procedures or for poor outcomes, as long as they comply with professional standards.

Article 275 of the Health Law provides explicit protection that health workers who carry out life-saving or disability-preventing actions in emergency situations are exempt from claims for compensation.. [14] This article also encourages the use of the doctrine of coercive power (*overmacht*) as a legal shield when negligence occurs because the midwife is forced to act amidst limited means, in accordance with the principle of distributive justice.

Implementation Justice Restorative

The Health Law has regulated the use of restorative justice mechanisms by firmly directing the resolution of medical disputes through mediation and restorative justice. [15] This mechanism aims to "restore" the relationship between midwife and patient through deliberation and consensus, making imprisonment truly the *ultimum remedium* for acts without malicious intent (*mens rea*). [16] Article 306 paragraph (3) of the Health Law states that medical personnel or health workers who have carried out disciplinary sanctions and there is an allegation of a criminal act, law enforcement officers prioritize dispute resolution through restorative justice mechanisms. This emphasis on restorative justice is supported by experts, who view dispute resolution through restorative justice or alternative dispute resolution as more appropriate for cases of negligence that are not accompanied by malicious intent, so that formal criminal law processes (litigation) can be avoided.

Challenges Reconstruction

Although Law No. 17 of 2023 concerning Health, as a *lex specialis*, embodies the spirit of protection and specificity, its implementation faces several challenges. In court proceedings, public prosecutors may choose to invoke the general provisions of the New Criminal Code (*lex generalis*) in negligence offenses and argue that they are not bound by the MDP requirements. If this occurs, the intended procedural protections may be eroded.

Another challenge lies in the medical dispute resolution process, which is often described as "not working well." The establishment of a specialized medical dispute resolution institution with competent law enforcement officers and expertise in health law could ensure the effective application of *lex specialis* and the principle of *ultimum remedium*. Furthermore, the lack of adequate and detailed medical documentation to prove negligence/omissions often presents a significant obstacle in determining whether the actions of midwives or other healthcare workers deviate from established standards.

IV. CONCLUSION

The criminal liability provisions for midwives adhere to a dual system: the General Criminal Code (New Criminal Code No. 1 of 2023) and the Special Criminal Code for Health Professions (Health Law No. 17 of 2023, Article 440). The New Criminal Code adheres to the general negligence standard (*culpa levis*) without considering the specifics of the profession, while the Health Law provides specific criminal provisions for healthcare workers, which should be *lex specialis*.

The weaknesses and inconsistencies in the application of general criminal law (*lex generalis*) to obstetric emergency cases lie in the evidentiary and procedural standards. The New Criminal Code is prone to criminalizing medical risks by applying the *culpa levis* standard, ignoring *noodtoestand* (emergency conditions). While the application of *lex generalis* has the potential to erode the principle of *ultimum remedium* by ignoring the Professional Disciplinary Council (MDP), which acts as a gatekeeper for validating gross negligence. The reconstruction of the criminal responsibility of midwives based on the principle of *lex specialis* to achieve justice must be based on three main pillars:

1. Substantive limitations: Criminal penalties may only be imposed under Article 440 of the Health Law and only upon proof of gross negligence (*culpa lata*), not *culpa levis* or unavoidable complications.
2. The MDP's decision declaring gross negligence must be established as an absolute formal prerequisite (*voorwaarde tot vervolging*) before the case can be processed by the public prosecutor.
3. Allowing for coercive power (*overmacht*) as an excuse or justification when midwives act in emergency situations due to conflicting obligations (saving lives) or limited resources.

REFERENCES

- [1] Y. Siti Nur Asyah Jamillah Ahmad, Sutarno, "Pertanggungjawaban Hukum Bidan Akibat Pelimpahan Wewenang Oleh Dokter Dalam Pelayanan Kesehatan Di Puskesmas," *Justitia J. Huk.*, vol. 2, no. 1, 2018, doi: <https://doi.org/10.30651/justitia.v2i1.1714>.
- [2] M. Afiful Jauhani, Y. Wahyu Pratiwi, and S. Supianto, "Perlindungan Hukum Tenaga Medis dan Pasien Pada Tindakan Gawat Darurat," *J. Rechtsens*, vol. 11, no. 2, pp. 257–278, 2022, doi: 10.56013/rechtsens.v11i2.1790.
- [3] *Undang-Undang Republik Indonesia Nomor 17 Tahun 2023 tentang Kesehatan*. 2023. [Online]. Available: <https://peraturan.bpk.go.id/details/258028/uu-no-17-tahun-2023>
- [4] B. H. R. Ho, C. J. . Waha, and V. Y. Gosal, "Tanggung Jawab Rumah Sakit Terkait Penolakan Pasien Gawat Darurat Berdasarkan Asas Salus Aegroti Suprema Lex," *J. Fak. Huk. UNSRAT Lex Adm.*, vol. 12, no. 3, 2024, [Online]. Available: <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/55643>
- [5] J. O. H. Nadeak, "Penerapan Disiplin Profesi Sebagai Instrumen Penegakan Hukum Pidana Kesehatan Berbasis

- Keadilan Prosedural," *Law Prespective*, vol. 07, no. 1, pp. 184–195, 2024, [Online]. Available: <https://rumah-jurnal.com/index.php/pmhki/article/view/205>
- [6] B. Sari Angraeni, "Perlindungan Hukum Bidan Yang Memberikan Pelayanan Kesehatan Darurat di Luar dari Kewenangan," Universitas Hasanuddin Makassar, 2023. [Online]. Available: <https://repository.unhas.ac.id/id/eprint/37486/>
- [7] *Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 tentang KUHP*. 2023. [Online]. Available: <https://peraturan.bpk.go.id/Details/234935/uu-no-1-tahun-2023>
- [8] A. D. Soge, "Analisis Penanganan Kesalahan Profesi Medis dan Kesehatan Dalam UU Nomor 17 Tahun 2023 Tentang Kesehatan Menurut Perspektif Hukum Kesehatan," *J. Huk. Caraka Justitia*, vol. 3, no. 2, pp. 146–164, 2023, doi: <https://doi.org/10.30588/jhcj.v5i2>.
- [9] R. Wailisahalong, W. A. Hidayat, and S. Marthin, "Studi Komparasi Antara Overmacht dengan Noodweer Perpektif," *Judge J. Huk.*, vol. 05, no. 03, pp. 21–34, 2024, doi: <https://doi.org/10.54209/judge.v6i01.835>.
- [10] H. Jayantara, I. M. D., Hidayattullah, & Arief, "Analisis Pertanggungjawaban Pidana dan Penyelesaian Terhadap Tenaga Medis yang Melakukan Malpraktik Medis Ditinjau dari Perspektif Undang-Undang Nomor 17 Tahun 2023 Tentang Kesehatan," *Rewang Rencang J. Huk. Lex Gen.*, vol. 5, no. 7, pp. 1–20, 2024, [Online]. Available: <https://ojs.rewangrencang.com/index.php/JHLG/article/view/706>
- [11] E. Lolita, E. Pakpahan, M. D. Pradasela, R. Gresella, B. Malau, and S. B. Surbakti, "Tinjauan Yuridis Tindak Pidana Malpraktek Melahirkan Yang Dilakukan Oleh Bidan (Berdasarkan Tinjauan Kasus Putusan 963/Pid.Sus/2013/Pn.Rta)," vol. 5, no. 1, pp. 146–154, 2021, doi: <https://doi.org/10.56301/juris.v5i1.201>.
- [12] B. Langkai, T. H. W. Lumunon, and Victor D. D. Kasenda, "Malpraktik Medis Dalam Perkara Pidana," *J. Fak. Huk. Unsrat Lex Adm.*, vol. 11, no. 5, 2023, [Online]. Available: <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/50926>
- [13] Y. F. Edwin, "Analisis Rekomendasi Majelis Terkait Adanya Dugaan Tindak Pidana Yang Dilakukan Tenaga Kesehatan Atau Medis Berdasarkan Undang- Undang Nomor 17 Tahun 2023," *Sumbang 12 Law J.*, vol. 04, no. 01, pp. 188–195, 2025, [Online]. Available: <https://jurnal.umsb.ac.id/index.php/smb12lj/article/view/6889>
- [14] H. I. Helena Octora Hz, Erdianto, "Perlindungan Hukum Pidana Terhadap Pasien Gawat Darurat Akibat Kecelakaan Lalu Lintas Yang Diharuskan Membayar Uang Muka Sebelum Perawatan Dan Tindakan Operasi Di Rumah Sakit Swasta," *J. Huk. Pembang. Masy.*, vol. 15, no. 4, pp. 91–113, 2024, [Online]. Available: <https://jurnalhost.com/index.php/jhpm/article/view/926>
- [15] Nurhasanah and H. Yusuf, "Penyelesaian Sengketa Medik Melalui Restorative Justice Untuk Memberikan Keadilan Bagi Pasien Dan Dokter," *JICN J. Intelek dan Cendikiawan Nusant.*, vol. 1, no. 36, pp. 8157–8172, 2024, [Online]. Available: <https://jicnusantara.com/index.php/jicn/index>
- [16] U. J. Soedirman, "Keadilan Restoratif (Restorative Justice) Sebagai Upaya Penyelesaian Sengketa Medis Berdasarkan Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan," *JIHHPJurnal Ilmu Hukum, Hum. Dan Polit.*, vol. 5, no. 3, pp. 2556–2566, 2025, doi: <https://doi.org/10.38035/jihhp.v5i3.4451>.