

LEGAL PROTECTION FOR MIDWIVES PERFORMING MEDICAL PROCEDURES (CASE STUDY OF BANDUNG KEBONJATI HOSPITAL)

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ABSTRACT

Legal protection can be the right of every individual, incl midwife. Moment this, Still A little which discuss about Midwife legal protection at Kebonjati Hospital Bandung. This study aims to discuss more deeply the legal protection for midwives who carry out medical procedures at Kebonjati Hospital in Bandung. Which method used to achieve this goal, namely legal research normative, using primary and legal material sources secondary. Results study show midwife own authority in carry out his job in House Sick. This authority is evaluated by professional organizations so that it does not take action beyond the authority that results on consequence law. Protection law to midwife conducted by the Indonesian Midwives Association (IBI). If happen violation which resulted midwives under to the realm court, then a review is carried out by IBI through MPA IBI and MPEB IBI. If the midwife concerned runs the standard profession, service standards and standard operating procedures, then Legal assistance will be provided by IBI in facing demands or lawsuits in court.

Keywords: *Protection Law, Action Medical, Hospital*

1. INTRODUCTION

Health is an important aspect of human rights. Indonesia through Article 28H Paragraph (1) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution) explains that "everyone has the right to obtain health services". Furthermore, Article 34 paragraph (3) of the 1945 Constitution explains that "the state is responsible for providing proper public service facilities". One of the implementations of these laws and regulations is carried out by providing health services in hospitals (Basuki, 2020).

Kebonjati Bandung Hospital is a hospital located in Bandung, Kebumen with facilities available at this Hospital including Pharmacy, Ambulance, Outpatient Installation, Emergency Unit, Home Care, and so on. Hospitals have complex human resource needs in providing health services. The function of the hospital is contained in Article 5 of Law Number 4 of 2009 concerning Hospitals (RS Law), which explains that hospitals have the function of providing health services in accordance with hospital service standards, as well as maintaining and improving individual health through

plenary health services. second and third levels according to medical needs. In general, hospitals have a vital role in handling individuals who need action, to take action, one of which is a midwife (Suhelianah et al., 2022).

Midwives are health workers who have a vital role in improving the quality of health services by providing responsible, quality, safe, accountable and affordable midwifery services.(Nuryuniarti & Nurmahmudah, 2019). Based on Minister of Health Regulation Number 28 of 2017 concerning Licensing and Implementation of Midwife Practices (Permenkes Licensing and Implementation of Midwife Practices), it is explained that midwives have authority in the scope of maternal and child health services, as well as women's reproductive health services and family planning. Authority is a formal power, which originates from a statutory or legislative basis from executive or administrative power. Midwives also have the authority to provide services based on assignments from the government and perform medical procedures based on doctor's orders(Turingsih, 2017).

The phenomenon that occurs is that midwives practice outside their proper authority. Midwives intentionally open practices for public services, on the basis that in an area there are no easily

accessible health services or because of encouragement from patients to open practices in that area. The practice of midwives has the potential for errors that can be detrimental to the patient's condition(DM et al., 2022). Patients in this case can make complaints in accordance with Article 58 of Law Number 36 of 2009 concerning Health (Health Law), which explains that everyone has the right to claim compensation against a person, health worker, and/or health provider who causes losses due to errors or negligence in the health services they receive. The legal provisions above intend to protect patients, but sometimes there are many cases of errors that are exaggerated due to the influence of social media, so that midwives experience anxiety(Juariah, 2022).

The absence of clarity regarding the legal protection of midwives in carrying out their duties creates a dilemma. So far, previous research and commonly used regulations related to patient protection, but very little has explained about protection for midwives. Legal protection for midwives is not to protect if something goes wrong, but to clarify the boundaries of what can and cannot be done carried out by the field to carry out its duties. Thus, giving confidence and freedom according to their profession to provide services to the community.

Based on the background that was disclosed, it is necessary to conduct a special study to obtain a legal formulation regarding midwives who serve in hospitals, especially the Kebonjati Bandung Hospital. Midwives in carrying out medical procedures have the right to state the reasons for the decisions taken. However, the public's view that when there is news tends to focus on the mistakes of midwives makes them worry and makes them unable to carry out their duties. As explained, the authors wrote an article to discuss "legal protection for midwives who perform medical procedures in hospitals".

2. RESEARCH METHODS

Normative legal research is used as a research method to find out more about legal protection for midwives who perform medical procedures in hospitals. The focus of Sociological Normative research is finding rules, principles, and doctrines related to the research topic taken and studying the influence of society on law (Marzuki, 2008). The source of the data obtained in this normative research is the primary source of legal material related to statutory regulations that have binding rules, both of which are generally adapted in the Regulation of the Minister of Health of the Republic of Indonesia Number 28 of 2017 concerning Licensing and

Implementation of Midwife Practice. Secondary material sources are also used to support research such as books, research journals, and papers in the health sector.

3. RESULTS AND DISCUSSION

3.1 Authority of midwives who carry out medical procedures in hospitals

Hospitals as health service providers have fields in which midwives are assigned. Midwives are health workers assigned to provide services to the community according to their authority and competence (Roihanah, 2019). At the hospital, the midwife's duties are included in an integrated section that focuses on women's health services when experiencing the reproductive cycle, childbirth, newborns and toddlers with the aim of increasing quality human resources in the future through family health services (Virahayu et al., 2019). Recognition of midwives as a profession is contained in Government Regulation Number 32 of 1996 concerning Health Personnel (PP Health Workers), which explains that in order to be considered a professional, midwives must be able to understand the extent of their roles and functions as midwives.

Midwives in carrying out their duties in hospitals are protected by their authority as medical personnel. Authority or

authority is the right to do something, where literally authority is the basis of rights and power. In the context of midwives, the authority is explained as providing emergency obstetric and neonatal services for pregnant or postpartum women, newborns, so that early treatment can be carried out before making referrals quickly and as well as possible. Midwives have the authority described as follows (Ahmad et al., 2018):

- a. The authority of midwives to provide information and counseling. Information and counseling are given as a midwife's duty to patients to maintain health, especially for pregnant women, mothers with newborns, and mothers with preschool children.
- b. The authority of midwives to provide guidance and development of personnel other health services that have the duty to provide midwifery services. The midwife's duties are not carried out alone, there is a role for other health workers who support the midwife's duties, in this case the midwife provides training and guidance for cadres (successor midwives). This authority is supported by developing training work plans, and implementing them.
- c. The authority of midwives is to handle cases and supervise mothers who are in the process of pregnancy. This authority includes providing care by providing consultations to patients and referrals to cases. Carrying out normal deliveries, giving referrals to deliveries with certain difficulties involving patients and their families.
- d. The authority of midwives in providing services to infants and preschool children. This authority includes providing care for normal newborns and with certain abnormalities, providing emergency services that require referrals by involving the family.
- e. The authority of midwives to provide medicines.
- f. Midwives have the authority to carry out assignments from the government based on the needs of midwives in an area.

The authority obtained by midwives as a profession needs to be evaluated periodically. Evaluation is carried out with the aim of midwives taking actions that are in accordance with their authority, and must avoid those that are not within the midwife's authority. If there is an action taken outside the authority as a midwife that can cause harm, then it can enter the

realm of law. This is because midwives are part of legal subjects who have legal responsibilities known as absolute responsibilities (Sumbung, 2021). The authority of midwives is also stated in Article 18 of the Minister of Health Regulation on Licensing and Implementation of Midwife Practices, that midwives are given the authority to provide maternal health services, child health services and women's reproductive services and family planning. In general, midwives have the task of giving, administrators, extension workers and counselors. Educator, women empowerment, and as researcher. In addition to general duties and authorities, midwives also have specific duties and powers, including controlling pregnancies, assisting in deliveries, providing postpartum assistance, and medical emergency assistance.

Criminal responsibility for malpractice acts committed by midwives also in exercising their authority needs to pay attention to the midwife's code of ethics, which consists of six aspects, namely: midwives' obligations to patients and society, obligations to colleagues and other health workers, midwives' obligations to their profession, midwives' obligations to themselves, the obligation of midwives to the government. The code of ethics should be fulfilled in carrying out the authority of

midwives in carrying out their duties. This is so that, in addition to following the rules, midwives also have accountability to their profession. The midwife's responsibility consists of four principles, namely guaranteeing the confidentiality of patient information, and if necessary using the information done wisely. Midwives must be responsible for the decisions and actions taken. Essential health for the mother. Midwives understand the dire consequences of ethical and human rights violations for the health of mothers and children, and avoid these violations. Midwives participate in the development and implementation of health that promotes the health of mothers and families who care for children.

3.2 Legal Protection for Midwives Performing Medical Procedures in Hospitals

Legal protection has the goal of integrating and coordinating various interests in society. In line with that, legal protection is also explained as a right to provide protection for human rights that are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law.(Soekanto, 2019). Based on this explanation, the law in this case functions to realize protection for legal subjects. These safeguards are useful not only as

adaptive and flexible, but for their predictive and anticipatory nature. Legal protection is a guarantee given by certain authorities to all parties to be able to exercise their legal rights and interests in their capacity as legal subjects. Legal protection is given to health workers as legal subjects who carry out their duties in accordance with professional standards.

Midwife services are a form of professional work whose permits are given to midwives by the health office by obtaining a SIPB (Midwife Practice Permit). The aim of midwife services is to be responsible in the health service system to provide care for maternal and child health so that family and community health is realized. Midwives in carrying out their duties are an integral part of health services, which are directed to improve the quality of family health. Midwife services have a scope on individuals, families and communities by trying to improve, prevent, perform healing and recovery.

Article 29 of the Regulation of the Minister of Health on Permits and Implementation of Midwife Practices, explains that midwives receive legal protection as long as they carry out services in accordance with professional standards, service standards and standard operating procedures. This rule forms the basis for internal midwives carry out their authority to provide services including

maternal health services, child health services, women's reproductive health services and family planning, as well as carrying out tasks based on delegation of authority, and/or carrying out tasks in certain limited circumstances. It should be noted that the field gets legal protection if in carrying out its services in accordance with professional standards, service standards that apply at the assigned hospital, and standard operating procedures for the field it works at the assigned hospital.

Professional standards, standard procedures and standard operating procedures for midwives need to be implemented in order to obtain legal protection. Midwives have the right to maintain their credibility in a legal case related to legal aspects based on applicable regulations. This right is not to protect midwives from doing things that should not be outside the authority of midwives. Legal protection for midwives in order to provide justice for midwives in a case involving the midwife concerned, to be reviewed from the aspect of the authority exercised. If in practice midwives do not carry out their duties in accordance with their authority, then the midwife concerned must still be held responsible and given sanctions. The basis for this opinion is that in practice there are two possibilities, that is, if there is a loss to the midwife in terms

of health and safety caused by the patient, this problem may not reach the realm of law. However, if there is a loss for the patient and his family, the blame will be directly assigned to the medical staff, in this case the medical staff needs to get legal protection.(Arimbi, 2013).

The midwife profession in making professional standards is carried out by the Indonesian Midwives Association (IBI). IBI has a function to control midwives as members with the aim of maintaining, controlling the quality of service and dedication to the midwifery profession(Damayanti et al., 2016). IBI's efforts in supervising and maintaining the professional quality of midwives in order to protect midwives and the public. Legal protection for midwives who carry out their duties and there are cases where harm to the patient is carried out through the role of IBI. IBI in handling cases is carried out through mediation between the midwife and the patient's family, so that it can be studied further and does not spread to the legal environment. The function of IBI is also in carrying out its role in order to overcome the decline in public trust in health services, especially in the scope of the midwifery profession(Firmanto, 2019).

The development of midwifery services as a profession needs to maintain its professionalism by following developments in science and technology.

Professionalism is closely related to the competencies that professionals such as midwives need to have. Based on the Decree of the Minister of Health Number 320 of 2020 concerning Professional Standards for Midwives, it is explained that the professional midwife in question must have clinical competence (midwifery skills), socio-cultural skills to analyze, advocate and empower in finding solutions and innovations to improve the welfare of women, families and public(Komaria & Novianti, 2022). If midwives in carrying out their duties violate the code of ethics, the resolution process is carried out through the midwifery professional forum, namely IBI. Midwives who are involved are given sanctions based on the rules that apply to IBI.

Midwives who commit intentional or unintentional deviations, even if appropriate, are audited by a special board. Audits are carried out to explore problems that occur between midwives and patients by IBI or the Health Office in the local district. If in the implementation of their services it is proven that there have been violations or deviations that are not in accordance with the midwife's authority, then the midwife will be given strict sanctions through IBI. The purpose of the sanction is for midwives to carry out their duties in accordance with the authority and professional standards, service standards

and operational procedures. Sanctions in the form of negative rewards from losses determined by applicable law carried out by the IBI professional organization. Sanctions that can be received by midwives if they do not comply with their authority, then they are given disciplinary sanctions,

Evaluation of whether there are errors in midwifery practice is the responsibility of the midwife concerned. Responsibility in this service is carried out in accordance with the *Res Ipsa Loquitur* (the thing speaks for itself) doctrine, this means that something speaks, then if the victim can prove that irregularities that occurred resulted in losses based on facts, situations and conditions, then deviations are true happen. This doctrine is a legal effort that takes the side of the victim, especially often in the medical world that takes the side of the patient victim. However, this doctrine does not always apply when the condition of the loss to the injured patient is not based on the midwife's fault or negligence. However, if the facts are proven due to deviations in authority, the midwife must be held accountable, and *Res Ipsa Loquitur* applies.

Midwives who commit violations can also be brought before the court. Violations committed by midwives were then followed up by IBI through the IBI Member Defense Council (MPA) and the

IBI Midwife Ethics Advisory Council (MPEB), followed up by assessing the midwife concerned had really made a mistake. If from the results of the assessment by MPA IBI and MPEB IBI the violations that occurred were not caused by the midwife, and the midwife concerned had carried out her duties in accordance with applicable professional standards, service standards and standard operating procedures, then IBI through MPA and MPEB has the authority to provide assistance law against the midwife concerned in facing demands or lawsuits in court.

4. CONCLUSION

Based on the results of the discussion, midwives in carrying out their duties in hospitals are protected by their authority as medical personnel. The authority of midwives is aimed at providing services which include maternal health services, child health services, women's reproductive health services and family planning, as well as carrying out tasks based on delegation of authority, and/or carrying out tasks in certain limited circumstances. To monitor the authority of midwives, an evaluation is carried out to ensure that midwives do not act outside their authority, resulting in legal consequences. The results regarding the

legal protection of midwives working in hospitals are carried out through IBI. Midwives to obtain legal protection must exercise their authority in accordance with professional standards, service standards and standard operating procedures. If there is a violation that causes the midwife to go to court, a review will be carried out by IBI through MPA IBI and MPEB IBI. If the midwife concerned adheres to professional standards, service standards and standard operating procedures, then IBI will provide legal assistance in facing claims or lawsuits in court.

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