

Juridical Study of Medical Malpractice by Midwives Based on Law No. IX. 17 of 2023 Concerning Health

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ABSTRACT

Medical malpractice committed by midwives is a serious problem in the Indonesian healthcare system, impacting patient safety and trust in the healthcare profession. This research aims to examine patterns of medical malpractice committed by midwives from a criminological perspective and analyze the juridical protections available to patients and midwives. Using a normative juridical approach, this research analyzes various regulations, including Law No. 17 of 2023 concerning Health and Minister of Health Regulation No. 28 of 2017 concerning Licenses and the Practice of Midwifery. Research findings show that malpractice often occurs due to negligence, non-compliance with professional standards, and lack of training. In certain cases, patients' ignorance of their rights exacerbates the situation. Regulations have provided a juridical framework for the protection of patients and midwives, including dispute resolution mechanisms through mediation. The implementation of these regulations, however, still faces challenges, such as weak supervision and limited juridical education. Research recommendations include strengthening supervision, providing continuing education for midwives, and increasing patients' juridical awareness to create a fair and high-quality health system.

INTRODUCTION

Medical malpractice committed by midwives remains an issue that requires serious attention in Indonesia's healthcare system. Regulations such as Law No. 17 of 2023 on Health should provide a strong juridical basis for regulating healthcare service standards, however malpractice continues to occur, resulting in physical and mental harm and even death for patients. Ministry of Health Regulation No. 28 of 2017 concerning Midwife Practice Licenses and Operations sets clear standards for midwifery practice. Reports of violations, however, are common, as reflected in the research by Kadafi et al. (2021), which highlights violations in the implementation of referrals by midwives.

Cases of malpractice by midwives, as noted by Casesaria and Ravena (2023) in "Cases of Malpractice by Midwives Who Make Childbirth Errors," demonstrate weaknesses in the implementation of regulations such as Law No. 36 of 2009 concerning Health. The discrepancy between standard operating procedures and actual practices in the field is the main cause of cases that harm patients. Indonesian Minister of Health Decree No. 369 of 2007 on Midwifery Professional Standards regulates emergency response

procedures, but its implementation is often limited by the lack of midwife competence or inadequate health facilities.

Patients' rights are often ignored in situations where patients lack the knowledge or ability to protest midwives' actions that do not follow procedure. Tengker (2007) notes that patients often do not receive adequate information regarding medical procedures, leaving them in a very weak bargaining position. Article 53 of Minister of Health Regulation No. 1464/Menkes/Per/X/2010 stipulates midwives' obligation to obtain informed consent. Violations of this regulation are common, however, as explained by Fitriana and Pratiwi (2018), who found minimal compliance with patient safety procedures in health facilities.

Medical malpractice by midwives also creates challenges for juridical enforcement (Kusworo & Fauzi, 2023). The ambiguity between professional responsibility and individual negligence often provides loopholes for perpetrators to avoid sanctions. The Criminal Code provides a juridical framework for prosecuting unlawful acts; however, inconsistent interpretations hinder the strict application of the law (Emlijah & Israhadi, 2022).

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Professional ethics, which should serve as a moral guide for midwives, are often violated, as revealed by Yanti and Nurul (2010). These ethical standards, while formulated, lack effective supervision, thus providing room for unethical practices (Mulyadi, 2021). Hady (2017) notes that supervision of the midwifery profession is still focused on administrative aspects rather than on the quality of services provided.

Malpractice also has a significant impact on the credibility of health institutions. Dispute resolution often takes a long time and is costly, so patients from low-income groups are the most disadvantaged. Juridical protection for patients using BPJS Kesehatan at hospitals is still far from ideal.

In Tengker's (2007) research on patient rights, it was found that the gap between regulations and implementation in the field was a major factor in the low level of public trust in health services. Minister of Health Decree No. 369 of 2007, while setting professional standards for midwives, often fails to be implemented consistently. Fitriana and Pratiwi (2018) also mention that the lack of continuing education leads to low competence among midwives in handling emergency situations.

Nazriah (2009) noted that weak regulations led to high rates of malpractice. She emphasized the importance of revising regulations to provide further clarity regarding the responsibilities and sanctions for violators. Gunawan Widjaja and Ahmad Yani (2000) highlighted the need for a consumer protection perspective in malpractice cases, which is still rarely discussed in health juridical.

Research on medical malpractice by midwives often focuses on administrative and procedural aspects without thoroughly examining the criminological dimensions that can strengthen the juridical framework. This leaves an important gap in the analysis of juridical protection for both patients and midwives. This research offers a criminological perspective to identify the root causes and patterns of malpractice committed by midwives, as well as to formulate strategic, law-based measures to prevent similar cases from recurring. This approach expands on previous research by integrating criminal juridical analysis, civil juridical analysis, and professional ethics.

This research aims to analyze patterns of medical malpractice committed by midwives through a criminological approach, as well as to identify effective juridical protection mechanisms for both patients and midwives in preventing and handling cases of malpractice.

RESEARCH METHOD

This research uses a normative juridical approach, which focuses on analyzing legislation, legal doctrines, and relevant juridical concepts related to medical malpractice by midwives. This approach aims to explore applicable legal rules, identify juridical loopholes, and provide a theoretical basis that supports juridical protection in cases of medical malpractice.

The data sources in this research include secondary data obtained from legislation such as Law No. 17 of 2023 concerning Health, the Criminal Code, Minister of Health Regulation No. 28 of 2017 concerning Licenses and the Practice of Midwifery, and related policy documents. Academic literature in the form of journals, books, and research reports relevant to the topic of medical malpractice were used besides as material for analysis.

Data collection was conducted through document studies, including analysis of juridical regulations, court decisions, and scientific publications discussing juridical, criminological, and professional ethical aspects in midwifery practice. This literature study was designed to ensure data completeness and the relevance of findings to the research focus.

Data analysis techniques were descriptive-analytical, identifying juridical norms, evaluating the application of regulations, and synthesizing findings to answer the research questions. This analysis included a systematic interpretation of the articles of legislation and relevant juridical principles to provide recommendations that support juridical protection for patients and midwives in cases of malpractice.

RESULT AND DISCUSSION

Criminological Review of Patterns of Medical Malpractice Committed by Midwives

Medical malpractice by midwives is a crucial issue in the world of health because it involves aspects of ethics, professionalism, and juridical. Criminologically, this action can be categorized as a form of non-conventional crime that harms patients physically, psychologically, and financially. In this review, an analysis is conducted on the patterns of medical malpractice that often occur, highlighting the causes, behavioral patterns, and juridical implications based on the regulatory framework in Indonesia (Mulyadi, 2021).

Patterns of medical malpractice by midwives are often related to professional incompetence in handling complex cases beyond their authority (Ramadhani, 2022). Ministry of Health Regulation No. 28 of 2017 concerning Midwife Practice Licenses and Operations states that midwives are only allowed to perform actions within the limits of their competence, except in emergencies. Violations of these competency limits,

such as handling deliveries with serious complications without referring patients to further health facilities, are a common pattern of malpractice (Kadafi et al., 2021).

In the context of criminology, this action can be understood through the strain theory approach, which identifies pressure or imbalance between professional demands and capabilities. Midwives working in remote areas with limited access to medical facilities tend to feel pressured to handle cases beyond their authority, thereby triggering malpractice (Emljah & Israhadi, 2022). Ministry of Health Decree No. 369/Menkes/SK/III/2007 on Midwifery Professional Standards stipulates midwives must act in accordance with professional standards, but environmental pressures often cause them to exceed these limits.

A criminological review also reveals that ignorance or non-compliance with regulations, such as Law No. 17 of 2023 on Health, exacerbates malpractice patterns. Article 4 paragraph (3) of this juridical emphasizes the importance of safe and professional standard practices. Its implementation, however, is often hampered by a lack of legal training for midwives, as highlighted by Taufan et al. (2023), who state that many health workers still have a limited understanding of regulations.

From a victimology perspective, patients often become helpless victims of midwifery malpractice. They usually come from lower-middle-class communities that do not have access to better health services. This is exacerbated by patients' low juridical awareness, as described by Danandhika et al. (2022), that many patients do not understand their rights to safe and quality services.

In terms of behavior patterns, malpractice often involves violations of standard operating procedures (SOPs) and decision-making without informed consent (Kusworo & Fauzi, 2023). Fitriana and Pratiwi (2018) emphasize that informed consent is a basic right of patients that is often ignored in emergency situations or due to midwife negligence. In some cases, this negligence leads to serious consequences such as patient injury or death, creating potential juridical conflicts (Kholis et al., 2023).

Juridically, Article 359 of the Criminal Code (KUHP) states that any act that causes death due to negligence is punishable by imprisonment of up to five years. Midwifery malpractice that is not in accordance with professional authority can be categorized as gross negligence. Another pattern that is often found is the manipulation of medical data to cover up mistakes, which can be subject to sanctions under Article 263 of the Criminal Code concerning document falsification.

Criminology also highlights the element of intent in some cases, such as the use of drugs or equipment that do not meet standards, which violates Government

Regulation No. 51 of 2009 concerning Pharmaceutical Work. In such cases, the midwife's actions can be categorized as intentional active crimes, due to the awareness of committing unlawful acts (Mulyadi, 2021).

This analysis shows that patterns of medical malpractice by midwives include negligence, procedural violations, and in some cases, intentional acts. From a regulatory perspective, while various regulations have outlined clear boundaries, implementation in the field still requires strengthening, both through supervision and juridical education for medical personnel. A more comprehensive approach is needed to address the factors causing this malpractice, in order to protect patients' rights and maintain the integrity of the midwifery profession.

In relation to Law No. 17 of 2023 concerning Health, patterns of medical malpractice committed by midwives are closely related to various provisions in this law. Article 4 paragraph (1) of Law No. 17 of 2023 emphasizes that every individual has the right to safe, quality health services that meet professional standards. In practice, however, violations of this provision often occur, particularly in medical actions performed by midwives beyond their scope of competence.

Article 4 paragraph (3) of this law gives health workers, including midwives, the discretion to act without the patient's consent in emergency situations. This provision, however, still requires that such actions be taken with the patient's safety and applicable professional standards as the priority. Failure to comply with this article can be categorized as negligence or even professional misconduct, depending on the severity of the impact.

Article 12, besides emphasizing the responsibility of the central and regional governments to ensure supervision of health workers, including midwives, also underscores the need to ensure that health workers, including midwives, are properly supervised. Unfortunately, weak supervision is often one of the main causes of malpractice. Many cases show that midwives involved in malpractice often operate without adequate supervision or training, thereby violating the principles set out in this law.

Law No. 17 of 2023 also regulates juridical protection mechanisms for patients and health workers. Article 13, for example, guarantees the right of patients to file complaints about the services they receive. This regulation also provides midwives with legal protection if their actions are taken in emergency situations and in accordance with professional standards. This shows that the law seeks to strike a balance between protecting patients and healthcare workers, while implementation in the field is often far from ideal.

As a result, a juridical analysis of midwives' medical malpractice patterns based on Law No. 17 of 2023 confirms that while a juridical framework is in place, its implementation still needs to be strengthened. The role of government oversight, juridical education for midwives, and increasing patient awareness of their rights are key to minimizing the risk of malpractice and strengthening a fair and high-quality healthcare system (Lethy et al., 2023).

A criminological review of patterns of medical malpractice committed by midwives includes an in-depth analysis of various contributing factors that may lead to malpractice. One of the main factors is negligence, where many cases of malpractice occur due to a lack of attention in providing appropriate care. This is often triggered by work pressure, fatigue, or a lack of experience on the part of midwives.

Lack of knowledge is besides an important factor. Midwives who do not have adequate understanding of medical procedures or the latest developments in health practices are at high risk of making mistakes. Ineffective communication between midwives and patients, as well as between midwives and other medical teams, can also lead to misunderstandings that result in wrong decisions in care (Emlijah & Israhadi, 2022).

The impact of medical malpractice is far-reaching. From a juridical perspective, malpractice can result in lawsuits against midwives, which could potentially lead to administrative or even criminal sanctions. Socially, cases of malpractice can damage the reputation of midwives and the institutions where they work, as well as reduce public trust in healthcare services as a whole (Kusworo & Fauzi, 2023). The psychological impact, besides, cannot be ignored either, both for patients who experience malpractice and for midwives themselves, who may experience trauma and stress as a result of the situation.

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By understanding the criminological review of patterns of medical malpractice, it is hoped that effective solutions can be found to prevent and address this problem in midwifery practice, so that the quality of health services can continue to be improved.

Juridical Protection for Patients and Midwives in Cases of Medical Malpractice

Juridical protection for patients and midwives in cases of medical malpractice is comprehensively regulated in Law No. 17 of 2023 concerning Health. This regulation provides guarantees for the protection of patients' rights, the obligations of medical personnel, and fair dispute resolution mechanisms.

Article 4 of Law No. 17 of 2023 states that every individual has the right to safe, high-quality healthcare services that meet professional standards. In emergency situations, as stipulated in Article 4 paragraph (3), patient consent to medical treatment may be waived in order to save lives or prevent further disability. This provision allows medical personnel to act quickly in urgent situations.

Article 8 emphasizes that the government is responsible for ensuring that health services are provided in accordance with standards and for protecting patients from unlawful actions. Patients' rights also include the right to information as stipulated in Article 4 paragraph (1) letter h, which requires medical personnel to provide information related to medical procedures performed.

In the context of juridical protection for midwives, Article 10 of Law No. 17 of 2023 states that the government has a responsibility to ensure that health workers receive juridical protection when performing their duties in accordance with professional standards. This is further regulated in Article 452, which states that disciplinary violations by health workers must be handled through internal mechanisms before proceeding to criminal law. Midwives facing allegations of malpractice have the right to defend themselves if their actions were carried out in accordance with professional standards and in good faith. The juridical principle of "no crime without fault" protects medical personnel from criminal charges if their actions were intended to save the patient's life, while the outcome was not as expected.

The dispute resolution mechanism in medical malpractice cases emphasizes non-litigation resolutions such as mediation. The mediation process aims to provide a fair solution for patients and healthcare professionals without having to go through a long and complicated juridical process. This provides the basis for a quick and efficient dispute resolution, while maintaining good relations between patients and midwives. If mediation does not result in an agreement, the case can be pursued through juridical channels in accordance with applicable regulations (Mulyadi, 2021).

While regulations provide adequate protection, implementation in the field often faces obstacles such as a lack of understanding among health workers of their

rights and obligations, as well as limited juridical support. Intensive juridical education and training for health workers is an important step to ensure that they understand and can utilize the juridical protections that have been established (Kusworo & Fauzi, 2023).

Law No. 17 of 2023 provides clear juridical protection for both patients and midwives in cases of medical malpractice. With a dispute resolution mechanism that focuses on mediation and legal protection for health workers who act in accordance with professional standards, this regulation aims to create a fair and responsive health system. Implementation, however, requires adequate legal education support to ensure that all parties can benefit from this protection.

Juridical protection for patients and midwives in handling medical malpractice cases in Indonesia is regulated by various laws and regulations that aim to protect the rights of both parties (Ramadhani, 2022). Patients, as consumers of health services, have the right to receive compensation and damages if they suffer losses due to negligence or malpractice committed by midwives. Patients have the right to file a lawsuit in accordance with their rights as the aggrieved party (Emlijah & Israhadi, 2022).

One important aspect of juridical protection for patients is the right to compensation. If a patient suffers losses due to malpractice, they are entitled to compensation covering additional medical expenses, loss of income, and any psychological impact they may experience. Regulations governing this matter are contained in Law No. 17 of 2023 concerning Health. There are exceptions, such as in Article 275 paragraph (2), which states that Medical Personnel and Health Workers who provide Health Services in the context of saving lives or preventing disability in a person in an Emergency and/or disaster are exempt from compensation claims. This juridical provides a juridical basis for patients to claim their rights by regulating the responsibilities of health workers, including midwives, in providing safe and quality services. In addition, juridical protection is also preventive in nature, where existing regulations aim to prevent malpractice through supervision and accreditation of health practices.

Midwives accused of malpractice also have juridical protection. They have the right to defend themselves and can submit evidence and witnesses to support their position in legal proceedings. Sanctions imposed on midwives in malpractice cases must be proportional to the offense committed, whether they are administrative sanctions such as revocation of practice licenses or

criminal sanctions if they are found guilty of gross negligence. Juridical protection also includes the obligation for midwives to continuously improve their knowledge and skills through continuing education and training, which aims to minimize the risk of malpractice.

The juridical protection of patients and midwives in cases of medical malpractice is crucial to ensuring fairness and safety in healthcare services. With clear regulations in place, it is hoped that both patients and midwives can properly exercise their rights and fulfill their obligations, thereby reducing the risk of malpractice in the future.

CONCLUSION

The conclusion of this research emphasizes that medical malpractice by midwives has serious criminological consequences, given that their professional and juridical responsibilities are strictly regulated by various regulations, including Law No. 17 of 2023 concerning Health. Based on the analysis, malpractice is often caused by a lack of competence, violations of standard procedures, or disregard for the professional code of ethics. This pattern of behavior indicates gaps in the supervision and implementation of midwives' responsibilities in the field. The juridical protection system for patients and midwives still needs to be strengthened to ensure a balance between the rights of patients and the rights of midwives as health workers. Juridical protection for patients includes the right to safe and quality health services, while protection for midwives aims to provide guarantees for actions taken in good faith and in accordance with professional standards.

The recommendation from this research is that the government needs to strengthen the existing juridical framework by drafting more specific and implementable regulations related to medical practices by midwives, especially in handling cases of malpractice. Juridical enforcement in cases of malpractice needs to be carried out fairly and without discrimination, taking into account the rights and obligations of all parties involved. Ongoing training and guidance for midwives should be a priority in order to improve their competence and understanding of applicable regulations. Mediation should be encouraged as an alternative to litigation. The government should also improve its monitoring system for midwifery practices, both through regular audits and by encouraging the public to report violations. These steps should help create a fairer, safer, and higher-quality healthcare system for everyone.

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