

## CONSTRUCTION OF REGULATION LEGAL PROTECTION ARRANGEMENTS FOR MIDWIVES PERFORMING PATHOLOGICAL LABOR ASSISTANCE IN PRIMARY HEALTH CARE FACILITIES IN THE PERSPECTIVE OF THE LAW OF MIDWIFERY

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### ABSTRACT

*The profession of a midwife is legally recognized in law, therefore in carrying out their duties and responsibilities as health workers they must always adhere to legal, ethical and moral rules as stated in the Law of the Republic of Indonesia Number 4 of 2019 concerning Midwifery. Midwives as health workers who provide health services are required to carry out services according to their authority. Under certain conditions, midwives are forced to exceed their authority, one of which is to provide birth assistance, which is classified as pathological, and this causes midwives to be in a weak and dilemma position, on the one hand, they are limited by regulations, on the other hand, they feel humanity and helplessness when faced with coercive conditions from the patient's family. The purpose of this research is to find out the causes of the absence of adequate regulations for midwives who perform pathological deliveries in primary health care facilities so that an ideal legal arrangement can then be formulated. The research method used is empirical/ non-doctrinal legal research with a qualitative approach. Sources of research data obtained from primary data and secondary data. Sampling using Purposive Sampling technique. The analysis used is descriptive qualitative. Research result it can be concluded: First, there is no adequate regulation for midwives who perform pathological delivery assistance at primary level health care facilities due to several factors including: a). The Midwifery Law is not comprehensive because it does not accommodate midwives' authority in pathological delivery assistance. b) The existing arrangements are still partial, namely limited to emergency first aid. Second, the ideal arrangement for midwives who perform pathological delivery assistance at primary-level health care facilities is to revise the Midwifery Law by a). " is emergency first aid for resuscitation and/or stabilization before referral, in fact not all pathological cases require referral. Then add in Article 49 paragraph (c) the authority of midwives to assist with pathological deliveries and provide clear and more detailed boundaries by not limiting only to emergency first aid but also the authority of midwives to handle and manage several deliveries which are classified as pathological conditions.*

**Keywords:** Midwives, Legal Protection

### INTRODUCTION

The midwifery profession is legally recognized in the Law of the Republic of Indonesia Number 36 of 2014 concerning Health Workers<sup>1</sup>, therefore in carrying out their duties and responsibilities as health workers they must always adhere to legal, ethical and moral rules. Article 1 of Law Number 4 of 2019 concerning Midwifery states that a midwife is a woman who has completed a midwifery education program both domestically and abroad which is legally recognized by the central government and meets the requirements to practice midwifery. It was also stated that one of the principles in implementing midwifery practice is based on ethics and professionalism.

Midwives in carrying out health services have the authority regulated in Law Number 4 of 2009 concerning Midwifery, Regulation of the Minister of Health of the Republic of Indonesia Number 28 of 2017 concerning Permits and Implementation of Midwife Practice and Decree of the Minister of Health of the Republic of Indonesia Number 320 of 2020 concerning Midwife Competency Standards. All of the regulations mentioned above contain the authority of midwives, namely maternal health services, child health services and women's reproductive services and family planning. The authority of a midwife is clearly stipulated in the current regulations, but in practice and in reality there are still midwives who either intentionally or under conditions of necessity perform actions beyond their authority such as assisting in deliveries which are classified as pathological. In this forced situation because midwives are in certain conditions that make it impossible for midwives to omit patients including the geographical conditions of an area far from referral health facilities, patients and families who refuse referrals for various reasons including limited funds, to trust in midwives who are considered capable of handling all patient conditions. Health services or actions outside the authority that are often performed by midwives range from general health services to both adult and child patients, to pathological delivery assistance even though they are not in an emergency condition.

The authority of midwives further explained in Articles 49 and 59 of Law Number 4 of 2019 concerning Midwifery is that in carrying out the task of providing maternal health services, one of them is that midwives have the authority to provide emergency first aid and further emphasized in Article 59 that in an emergency condition to provide assistance First, midwives can perform health services beyond their authority in accordance with their competence where the first aid aims to save the client's life. However, it is further explained in the explanation section that what is meant by "first aid" is emergency initial assistance for *resuscitation* and/or stabilization before referral is made, for example handling *postpartum hemorrhage with uterine atony*, emergency assistance for stabilizing the mother before making referrals (such as: installing infusion, administration of oxygen). Based on these articles and explanations, it can be interpreted that the emergency assistance in question is only in the first aid/patient stabilization steps before referral is made.

The fact that occurs especially in Berau District, East Kalimantan from observations made with geographical conditions where the distance is quite far and the terrain traversed is sometimes a consideration when making referrals and the next problem

<sup>1</sup> Article 11 of the Law of the Republic of Indonesia Number 36 of 2014 concerning Health Workers

is, the patient's economic level so they don't want to give birth at a follow-up health facility to the refusal of patients for reasons of limited funds and trust that midwives can perform certain actions also causes midwives to be forced to assist pathological deliveries, such as breech deliveries, deliveries with large babies or deliveries to mothers with high risk. Looking at the context of the existing law, the authors argue that the existing arrangements have not provided sufficient legal protection for midwives who perform pathological delivery assistance at primary-level health care facilities because the existing arrangements only describe the action of "first aid in an emergency which in this case is explained as a reference preparatory step. In providing health services beyond the authority that one has to do, it does not rule out the possibility of having an unfavorable impact or other health problems for patients and babies being born so that there is a great potential to cause complaints from the public which then triggers lawsuits against midwives if they are felt to cause harm to patients. The lack of clarity in the arrangements regarding legal protection for midwives who perform pathological delivery assistance under certain conditions and situations in puskesmas, polindes and independent practice will provide opportunities for lawsuits for these midwives. Based on the description stated above, the authors are interested in studying and researching further why there are no regulations for midwives who perform pathological delivery assistance and how to construct an ideal arrangement so as to be able to provide legal protection for midwives in assisting pathological deliveries.

## RESEARCH METHODS

The characteristics of this research are non-doctrinal or empirical, where the research is carried out directly by looking at the realities that exist in practice in the field.<sup>2</sup>by using a *Socio-legal approach*. The socio-legal approach is a study of law using legal and social science approaches.<sup>3</sup>This research is explanatory in nature by examining several legal sources regarding laws and regulations regarding health and midwifery with events that occur in the field. This research uses a qualitative approach, where a qualitative approach is a research procedure that produces descriptive data, namely what is stated by informants in writing or orally, and real behavior.<sup>4</sup>The qualitative approach used in this research is to see, study, and understand the reality and practice in the field through observation and interviews.

## RESULTS AND DISCUSSION

### A. FACTORS THAT CAUSE THE LACK OF ADEQUATE REGULATIONS FOR MIDWIFE WHO PERFORM PATHOLOGICAL DELIVERY ASSISTANCE IN HEALTH SERVICE FACILITIES AT THE LEVEL OF PRIMARY HEALTH CARE

#### 1. The Law on Midwifery Does Not Accommodate the Authority of Midwives in Assisting Pathological Delivery

Law Number 4 of 2019 concerning Midwifery states that a midwife is a woman who has completed a midwifery education program both domestically and abroad which is legally recognized by the central government and meets the requirements to practice midwifery. It was also stated that one of the principles in implementing midwifery practice is based on ethics and professionalism. Midwives who are professional staff are responsible and authorized to provide midwifery services independently and collaboratively in accordance with their competence and authority in the scope of midwifery practice provided to clients, both individuals, families and community groups. The Central Statistics Agency noted that in 2022 there were 336,984 midwives in Indonesia, this number places the midwifery profession in the position of the second most health workers after nurses. The profession of midwives is spread across the archipelago to Berau District, East Kalimantan Province.

Midwives as health workers have a very important role in efforts to improve quality in the delivery of health services just like other health workers as stated in article 23 paragraph 1 of Law Number 36 of 2009 concerning Health that health workers are authorized to provide health services. However, the health services in question are limited to midwifery practices that are in accordance with their authority as stated in Article 62 paragraph (1) of Law Number 36 of 2014 concerning Health Workers, namely "Health workers in carrying out practices must be carried out in accordance with their authority based on competence, which he has"

Authority is a formal power derived from law<sup>5</sup>, therefore as a legal subject midwives are authorized to do something specific within the scope of their authority in accordance with statutory orders. The authority of midwives is regulated in several regulations including Law Number 4 of 2019 concerning Midwifery, Regulation of the Minister of Health Number 28 of 2017 concerning Permits and Implementation of Midwife Practice and Decree of the Minister of Health Number 320 of 2020 concerning Midwife Professional Standards. Articles 46 and 47 of Law Number 4 of 2019 concerning Midwifery state that midwifery practices carried out by midwives can be carried out independently or in collaboration must be in accordance with their competence and authority.

Maternal health services which are the authority of midwives referred to in Article 49 of Law Number 4 of 2019 concerning Midwifery include providing midwifery care before pregnancy, provide midwifery care during normal pregnancy, provide midwifery care during labor and assist normal delivery, provide midwifery care during the puerperium, perform emergency first aid for pregnant women, maternity, postpartum and referrals, perform early detection of risk and complication cases during pregnancy, during delivery, post-delivery, postpartum and post-miscarriage care and continued with referrals. Based on Article 49 of Law Number 4 of 2019 concerning Midwifery, if it is focused on the discussion of childbirth, it can be seen that the authority

<sup>2</sup>Salim Hs And Hrlies Septian Nurbani. (2007). Application of Legal Theory in Thesis and Dissertation Research, Jakarta: Pt Raja Grafindo Persad, Pg.37

<sup>3</sup>Sulistiyowati Irianto, Adriaan W. Bedner et al. (2012). *Socio-Legal Studies*, Denpasar: Reference Library, Pg. 2

<sup>4</sup>Setiono. (2002). Understanding of Legal Research Methods. (Surakarta: Uns Postgraduate Law Study Program, 2002), Pg. 32

<sup>5</sup>Aulia, R. (2021). Analysis of Forced Crisis in Formation of Perppu No. 1 of 2020 Concerning State Financial Policy and Financial System Stability for Handling the Covid-19 Pandemic ( *Doctoral Dissertation* , Uin Smh Banten).

of midwives for childbirth is limited to providing care and providing assistance for normal deliveries and providing emergency first aid for mothers in labor. Midwives must have special expertise in carrying out delivery assistance, because in the case of deliveries to mothers whose pregnancies are healthy and normal, the delivery process is not necessarily normal, and vice versa. Labor and birth are actually normal events in life, but in the process due to several reasons, both direct and indirect causes, it is not uncommon for labor that should be running physiologically or normally to become a pathological or abnormal condition.

The results of interviews conducted by 21 midwives working within the Berau District Health Office spread across 21 primary health centers and 7 midwives of whom have independent practice places, stated that in certain cases where patients who should have been referred often received rejection from both the patient and his family. The majority of midwives stated that they refused referrals because there was a belief from the patient's family to seek traditional alternatives or certain beliefs in order to expedite the delivery process and not to be referred to the hospital. Furthermore, the informant midwife also said that there was fear from both the patient and the family that if they gave birth in the hospital or were referred to the hospital they would have an operation so that the costs incurred would increase. Geographical constraints were also one of the reasons midwives performed pathological delivery assistance. 16 midwives stated that they had helped breech births, shoulder dystocia, premature rupture of membranes which were classified as pathological conditions, but due to consideration of the distance to the district which was not possible to reach in a short time, the midwives thought Instead of being born on the way or in a referral vehicle, the midwife finally decided to continue observing and assisting the pathological delivery. This was reinforced by the statement by the Head of the Public Health Division of the Berau District Health Office during an interview that " Health workers are often required to provide health services to the community in conditions that actually have the potential for pathological delivery so that there is an opportunity for medical disputes to occur if things go wrong." It is desirable when assisting in childbirth, especially in Berau District considering the geographical conditions, the distance between the First (Primary) and Referral health facilities, the availability of infrastructure and cultural conditions in the community are obstacles for midwives to work according to their authority.

The facts do position midwives in an ethical dilemma. Midwives know that the case is in a pathological condition so it cannot be assisted by midwives and must be referred immediately, but certain situations and conditions include refusal of referrals by families and patients requiring midwives to act outside their authority . Midwives who carry out their duties in accordance with their authority, professional standards and procedural standards will receive legal protection if there is an impact of normal delivery assistance. However, this is not the case for midwives who are forced to assist with pathological deliveries, even though the actions taken are in accordance with SOP midwives will still get legal problems because they work outside their authority.

Midwives deserve legal protection because as an extension of the government, midwives have a duty to help and even protect the community so that they are able to achieve optimal health status. Apart from all the duties and responsibilities of the profession carried out, midwives are also humans, ordinary people who are included as legal subjects whose human rights must also be protected as the function of the law itself is to provide protection to humans in fulfilling various kinds of interests, with human conditions . must also protect the interests of others. Legal protection can function as follows <sup>6</sup>:

- a. Directive, as a guide in building and shaping the society to be achieved in accordance with the goals of state life.
- b. Integrative, as builder of national unity
- c. Stability, as a caretaker and maintain harmony, harmony and balance in the life of the nation and state.
- d. Perfective, as a complement to both the attitude of state administration and the attitude of citizens when there is conflict in the life of the state and society.
- e. Corrective, as a corrective for the attitude of state administration and citizens in the event of a conflict of rights and obligations to obtain justice.

Legal protection is a protection given to legal subjects, namely people or legal entities in the form of devices that are both preventive and repressive in nature, both verbal and written. The form of preventive legal protection by the government for midwives is by preventing disputes from occurring through midwifery laws that regulate registration to the authority of midwives in midwifery practice.

## 2. Existing Settings are Still Partial

The Unitary State of the Republic of Indonesia was formed with the aim of protecting the whole nation, and all of Indonesia's bloodshed, promoting public welfare, educating the nation's life and participating in carrying out world order based on freedom, eternal peace and social justice as stated in the opening of the Constitution of the Republic of Indonesia 1945. The State of Indonesia is also a constitutional state as emphasized in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which in the end has consequences for all state actions which must be in accordance with law and not based on mere power.

As a country based on law, legal certainty is a very important condition for its implementation to be guaranteed by the state. To achieve this goal, legal means are used which are divided into written and unwritten laws. Unwritten law is customary law (*customary law*) and customary law. While one of the written laws is in the form of statutory regulations.<sup>7</sup>

Whatever the form of the law, it should contain three basic values, namely justice, certainty and benefit as stated by Gustav Radburch. The law has been formed in such a way as to be implemented in order to create order in society, but in reality in empirical practice there are regulations that are so difficult to implement that they are not even obeyed and not enforced. Lawrence M. Friedman revealed that law can only work when important components in the legal system such as legal structure , legal substance , and legal culture *are* in synergy with one another. Law plays an important role in administering health in order to achieve optimal health status. Health effort activities require legal instruments and protection for providers and recipients of health services.

<sup>6</sup>Sudrajat, T. Endra Wijaya, 2020. Legal Protection Against Government Actions . Jakarta; Graphics Light

<sup>7</sup>Maidianti, S. (2022). The Role of Legal Politics in Forming Legislation in Indonesia, as a Means of Realizing State Goals. *Journal Of Social And Economics Research* , 4 (2), 191-197.

In substance, Article 59 of Law Number 4 of 2019 concerning Midwifery states that in carrying out the task of providing maternal health services, one of them is that midwives have the authority to provide emergency first aid. Emergency in general means a serious condition, which must get help immediately. Emergencies in obstetrics are emergencies or emergencies that occur in pregnant, giving birth or postpartum women. Furthermore, it is stated in Article 59 that in an emergency condition for providing first aid, midwives can perform health services beyond their authority in accordance with their competence where first aid aims to save the client's life. However, further emphasized in the explanatory section of Law Number 4 of 2019 concerning Midwifery, what is meant by "first aid" is emergency initial assistance for *resuscitation* and/or *stabilization* before referral is made, for example handling postpartum hemorrhage with uterine atony, providing emergency assistance for stabilization of the mother before making referrals (such as: infusion, administration of uterotonics, oxygen). There are different interpretations of what is contained in the existing regulations, as explained by the author, the authors are of the opinion that legally in several regulations governing the authority of midwives in assisting childbirth there is no legal certainty so that in carrying out midwifery care services a midwife is in doubt and if there is negligence that causes illness, disability or death there will be no legal protection for midwives. Therefore, preventive legal protection is needed where preventive legal protection is protection provided by the government to prevent before a violation occurs where preventive legal protection is in the form of signs or limitations in carrying out obligations as outlined in laws and regulations.

## B. IDEAL ARRANGEMENTS FOR THE MIDWIFE IN PATHOLOGICAL DELIVERY AID.

Legislation is an important element in a rule of law to carry out efforts to achieve national goals. Legislation will become a means to support the realization of development goals in the context of development itself. Position Laws and regulations provide legitimacy and legality for government actions within the framework of implementing development. The role of laws and regulations as a means of realizing development can be achieved with the prerequisite that these laws and regulations are in a good system and can produce quality products. Failure to create a good system of laws and regulations will result in the opposite condition, namely laws and regulations become the main obstacle in the implementation of development. This condition is currently happening in Indonesia. Problems related to the legal system often become obstacles in various aspects of the interaction between the state and social systems.<sup>8</sup>The development in the health sector is no exception, the government has also attempted to provide legitimacy and legality by issuing several laws and regulations related to professions in the health sector which accommodate legal protection for health workers in carrying out their duties as an extension of the government's arm in carrying out development in the health sector which aims to improve highest degree of health.

From several existing regulations related to midwifery profession and services, it can be seen that the existing regulations are not yet focused and are still scattered across several regulations that actually regulate the same sector. Therefore, the authors argue that the simplification of regulation is necessary to create an ideal arrangement which of course still has three basic values, namely fairness, certainty and expediency. According to the author, the ideal arrangement for midwives who perform further pathological delivery assistance is to provide clarity to Law Number 4 of 2019 concerning midwifery by re-clarifying the existence of a "first aid" clause in Article 59 which states that in an emergency condition for administering first aid, midwives can perform health services beyond their authority in accordance with their competence where the first aid aims to save the client's life. In the author's opinion, the word first aid will narrow the scope of opportunities for midwives to take action according to their competence, wherein the Decree of the Minister of Health Number 320 of 2020 concerning Professional Standards for Midwives explains in the matrix of clinical skill levels that professional midwives are at level 3, namely skilled at performing or skilled at applying Initial management of labor which includes the pathological category. the existence of the first aid clause also gives the midwife an understanding that the next action is a referral. This seems to be clarified when we look at the explanation section in Law Number 4 of 2019 concerning Midwifery that what is meant by "first aid" is emergency first aid for *resuscitation* and/or *stabilization* before referral is made, for example handling postpartum hemorrhage with uterine atony, emergency assistance is carried out to stabilize the mother before making a referral (such as: placing an IV, administering uterotonics, oxygen). It can be seen that there is no clear description of the authority of midwives in carrying out birth assistance which is classified as pathological which is not even found in the explanation section which only mentions the initial steps before referral is made. In fact, pathological conditions such as breech birth assistance, shoulder dystocia in some cases do not require referral because the patient's condition is stable or not an emergency and the delivery assistance runs smoothly because the midwife has qualified skills and experience.

Reflecting on the practice of midwives in Malaysia, which regulates midwifery authority in a more detailed and comprehensive manner, it should also be applicable in Indonesia. Midwifery authority arrangements in the practice of midwives in Malaysia look clearer and more comprehensive. Where the authority given by the Malaysian government to midwives in setting midwife authority is stated "Assisting in spontaneous births, performing episiotomies when needed, repairing first degree tears and being able to handle emergency cases and handle breech deliveries"<sup>9</sup>. This regulation is not limited to emergency first aid, but also gives authority to midwives to handle emergency cases and breech deliveries which are pathological conditions.

The laws and regulations governing the implementation of midwifery practice are currently dominated by formal needs and government interests<sup>10</sup>, while the role of the profession is still lacking, especially when compared to legal instruments in other countries. The rapid progress of science and technology in midwifery must be balanced with law, so as to provide comprehensive protection to midwifery staff as service providers and the community as service recipients. Therefore, in forming or making changes to a regulation, it is better for the government and all structures involved in it to be oriented towards scientific and technological progress in the field of midwifery and to accommodate the needs of the community.

<sup>8</sup>Diani Sadiawati; et al (2019). Study of Regulatory Reform in Indonesia: Main Problems and Strategies for Handling them. Jakarta. Indonesian Law and Policy Studies Foundation (YSHK)

<sup>9</sup>Nurdamayanti et.al. (2019). Protection law profession midwife \_ Semarang. Unimuspress

<sup>10</sup>Asi, M. (2022). Chapter 3 Legal Aspects of Midwifery Practice. *Ethicolegal in Midwifery Practice* , 20.

## CONCLUSION

Based on the results of the research and discussion that have been put forward, the writer can draw the conclusion that:

1. The absence of adequate legal protection arrangements for midwives who perform pathological delivery assistance at primary level health care facilities is due to factors including:
  - a) Law Number 4 of 2019 concerning Midwifery is not comprehensive because it does not accommodate midwives' authority in assisting pathological deliveries.
  - b) The existing arrangements are still partial, namely limiting the authority of midwives only to emergency first aid.
2. The ideal construction of legal protection arrangements for midwives in assisting pathological births is to revise the midwifery law by:
  - a) Clarifying the meaning of the first aid clause in Article 59 of Law Number 4 of 2019 concerning midwifery where there is a first aid clause also gives the midwife an understanding that actions after first aid are a referral because in the explanatory part of the Act it states that what is meant by "first aid" is emergency initial assistance for *resuscitation* and/or *stabilization* prior to referral, for example handling postpartum hemorrhage with uterine atony, emergency assistance for mother stabilization prior to referral (such as: infusion, uterotonic administration, oxygen). In fact, not all pathological cases require referral. An example is breech delivery, which in some cases does not require referral because the condition of the mother and baby is stable or not an emergency.
  - a. Adding midwives' authority in assisting pathological deliveries to Article 49 paragraph (c) in the law on midwifery and providing clearer and more detailed boundaries by not limiting only emergency first aid but also midwives' authority to handle or manage several deliveries which include conditions pathological.

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