
**Resolution Of Cases Of Alleged Malpractice Of Bidan In Supporting Birth In Hospitals
By Penal Mediation (Case Study Of Alleged Midwife Malpractice In A Cirebon
Regency Hospital)**

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KEYWORDS

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ABSTRACT

Malpractice is an error of medical personnel in carrying out their profession that is not in accordance with professional standards and standard operating procedures, resulting in the patient receiving serious injuries, disabilities, and even death. This study aims to analyze the factors that cause the alleged malpractice of midwives in assisting childbirth and the settlement of cases of alleged malpractice with penal mediation. In this study, the method used is a normative juridical approach that involves analyzing the applicable laws related to malpractice cases by midwives as well as reviewing recent cases, with the use of secondary data collection techniques focused on literature review. The results of this study conclude that the main factor in the occurrence of malpractice in midwives is the existence of errors in the form of both negligence and culpa caused by carelessness. The settlement of alleged malpractice cases with penal mediation is a settlement of cases outside the court by bringing together the parties involved, one of the alternative solutions is Penal Mediation. These findings can provide a deeper understanding of the application of responsibility in the context of alleged malpractice by midwives and can contribute to the improvement of legal norms that are more effective in dealing with these problems. The implications of the results of this study are expected to serve as a guide for the authorities, legal practitioners, and the public in facing and understanding the challenges associated with alleged malpractice cases involving midwives.

INTRODUCTION

The right to health, as mandated in Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, is a right inherent in human dignity that strives for equal access for all individuals in achieving physical, mental, and social well-being and receiving health services. The principle of justice is the main foundation for ensuring fair treatment for all individuals under the law. Correspondingly, humanitarian principles affirm the legality of the right to legal protection regardless of an individual's background. The concept of equality before the law is used as a foundation for preventing discrimination in the justice system, while the principle of legal certainty provides guarantees for the rights and obligations of

individuals. The importance of comprehensive legal protection is also emphasized to ensure that individual rights are fully protected from possible violations. Thus, Article 28 H paragraph (1) has the main objective of establishing a strong legal basis for an Indonesian legal system that is fair, just, and respects the rights of every individual.

According to Article 34 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, the state has the responsibility to maintain health services through the provision of good quality public services. The implementation of health services has a significant impact on improving the welfare of the community, through cooperation between the government and the community to strengthen, maintain, and restore public health. Comprehensive well-being not only includes physical, mental, and social aspects but also involves the productivity of individuals in their contribution to society. Sustainability, non-discrimination, and participation are the pillars of maintaining and improving public health. In the process of nation-building, high-quality human resources are needed to improve the country's resilience and competitiveness (Indraswari SP, 2022:1). According to Law No. 17 of 2023 on Health, the government, through the Ministry of Health, is tasked with providing quality maternal health services, including antenatal care, delivery by trained medical personnel, and follow-up care for mothers and babies. Hospitals, as advanced healthcare facilities, receive referrals from primary healthcare facilities, with midwives playing an important role in reducing maternal and infant mortality rates. Midwifery care, which includes promotion, prevention, and integrated services to improve reproductive and family health, is integral to improving the quality of future human resources (Virahayu, 2018).

According to the regulations in Law No. 17 of 2023 on Health, there is an affirmation that health is a holistic condition that must be strived for by every individual. This includes efforts to reduce maternal and infant mortality, which is in line with the Sustainable Development Goals (SDGs). The responsibility of the Government, represented by the Ministry of Health, is to provide high-quality maternal health services. This includes antenatal care, delivery by trained medical personnel, and follow-up care for mothers and babies. In the context of accepting referrals from primary healthcare facilities, hospitals serve as a place of follow-up healthcare. Midwives also play an important role in reducing maternal and infant mortality rates as one of the health service providers (Roihanah, 2019).

Midwives, defined as trained health professionals, play a significant role in reducing maternal and infant mortality. They are not only the continuous and comprehensive guardians of health but are also involved in health promotion and the social life of the community, working together with other health professionals. In the context of health institutions, midwives have broad responsibilities, focusing on the care of women throughout the reproductive cycle, giving birth, and caring for newborns, and infants. The core objective is the improvement of future human resources including the quality that is interwoven in the provision of family health services (Virahayu, 2019).

In 2021, an incident of alleged malpractice involving a midwife in one of the hospitals in Cirebon who assisted in the delivery of a 26-year-old pregnant woman with twin pregnancies at 30 weeks gestation, when she experienced premature rupture of membranes. Although the situation required a cesarean section, the hospital recommended normal

delivery and the midwife as the executor of the delivery process. As a result, the first baby was born dead with the head and body separated, while the second baby was born alive a few minutes later. In the case mentioned above, there were allegations of malpractice committed by midwives in the hospital. Is there a violation of the midwife's professionalism in the case and how is the midwife responsible in the alleged malpractice case? The contents of Law no. 17 of 2023 Article 310, if medical personnel are suspected of making mistakes that result in harm to patients, then the dispute that occurs can be resolved first out of court.

In the medical world, there are two ways to resolve conflicts, namely through legal channels and ethical channels. Settlement through civil, criminal, and consumer protection law is part of the legal route, and the ethical route involves the Medical and Health Personnel Disciplinary Council. In Law No. 36 of 2009, non-litigation methods in the form of mediation constitute dispute resolution in the medical field. Furthermore, as regulated by the new Health Law No. 17 of 2023, dispute resolution is broader because it is not only mediation but also arbitration which is another alternative to resolving medical disputes.

The law is responsible for criminal, civil, and administrative law while working. Criminal liability arises if professional misconduct is proven. According to criminal law, malice or negligence takes place against the law, an act committed by an individual who can be held responsible if he understands the meaning and consequences of his actions, and can calm the intention to do so (Nuralim, 2018). Indonesian law still does not firmly establish criminal liability for malpractice cases. The paradigm of criminal liability was changed by Health Law No. 17 of 2023, which shifted from individuals to companies. In this case, hospitals can also be subject to criminal sanctions, especially related to patient handling (Anny Retnowati & Elisabeth Sundari, 2021). Legal subjects can be divided into individuals and legal entities, both of which can be held criminally and civilly liable for malpractice.

Breach Of Professionalism

Professional misconduct refers to behavior or actions that violate recognized standards, codes of conduct, or norms within a profession, such as unethical conduct, breach of contract, fraud, abuse of trust, or non-compliance with professional rules and responsibilities. The consequences of such violations can be detrimental to clients, colleagues, organizations, or society in general, as well as potentially damaging to a professional's reputation and integrity. Situations of professional misconduct occur when individuals do not adhere to standards or procedures, do not perform with sufficient competence or expertise, do not prioritize quality service, or violate applicable codes of ethics. Violations of the code of ethics will usually be handled by a body or commission specifically established to handle such matters, where cases of code of ethics violations will be investigated, adjudicated, and sanctioned such as suspension or termination of professional relationships, in accordance with the written regulations.

Professionalism violations refer to non-compliance with established standards, procedures, and ethical principles. This may be due to a lack of competence, insufficient expertise, lack of focus on quality service, or violation of the applicable code of ethics. Actions that violate the code of ethics will be investigated and assessed by a specialized body, such as an honor council, code of ethics assembly, or code of ethics commission. The function of the council or assembly is to handle each case of violation of the code of ethics, which involves a process of classification, examination, investigation, trial, and

determination of sanctions for violations that occur. Sanctions given can be in the form of suspension or termination of academic relations in accordance with applicable regulations.

The midwife code of ethics is a set of norms that regulate the behavior of a midwife in carrying out her professional duties. Originally formulated in 1986 and then officially recognized at the Indonesian Midwives Association X National Congress in 1988, these ethics received official implementation guidelines through the IBI National Working Meeting (Rakernas) in 1991, which became the foundation for midwives' behavior. Consisting of seven chapters, the Indonesian Midwives Code of Ethics addresses various aspects including responsibilities towards clients, society, duty, fellow health workers, the profession, self, and the government. It is an important guide in ensuring consistency in providing professional midwifery services and regulating the practice of midwives with a set of obligations that must be upheld in interactions with the various parties involved.

Negligence as a Form of Malpractice

Malpractice refers to improper behavior or actions as well as a lack of skill to an unacceptable degree. Typically, the term is used to describe the behavior of practitioners such as midwives, lawyers, and accountants. This occurs when they fail to provide services that conform to the professional standards and level of skill expected by society in their profession, which then results in injury, harm, or loss of trust from the recipients of those services. Malpractice covers a wide range of professional misconduct, unacceptable lack of skill, imprudence, breach of legal duty, unethical practice, or illegal acts. (Suryani Soepardan, 2008).

The common terminology known as malpractice is not necessarily limited to juridical aspects. The Latin origin of the word 'mal' denotes 'error', while 'practice' refers to 'action' or 'deed'. Hence, malpractice is the judgment of a wrong action. Although etymologically so, the majority of uses of the term relate to the judgment of erroneous actions in the performance of a duty or profession.

Malpractice is a professional error that occurs when not carrying out examinations, evaluations, or actions that should be carried out in similar situations and conditions (Heryanto, B. 2010).

Errors that occur in medical practice require an understanding of the responsibilities attached to these practitioners in carrying out their profession. Such deviations often occur as a result of the non-fulfillment of the obligations mandated for midwives. The concept of medical malpractice refers to a failure or lack of prudence in action. As trained and experienced individuals, midwives are expected to use their knowledge and experience carefully and responsibly to avoid mistakes. One of the main responsibilities of midwives in carrying out medical practice is to provide services that are in accordance with the standards set out in their professional field.

Malpractice has become a common topic of discussion in public life that has been widely highlighted by the mass media. The negative impact of this phenomenon on Indonesia's health sector is significant. There are several different concepts related to the idea of malpractice in literature, as proposed by Veronica Komalawati (1989), who argues that the term malpractice is derived from "malpractice", and that the term "malpractice" essentially refers to errors that occur in the profession as a result of obligations that must be fulfilled. Wiradharmairadharma (1999) describes malpractice as responsibility for the bonding relationship with the patient, where the midwife commits an error in practice. Meanwhile, according to KBBI, medical

malpractice is defined as medical actions or practices that are performed incorrectly, wrongly, or not in accordance with the norms (Suryani Soepardan, 2008).

In the context of medical practice, there are various aspects that can be the subject of malpractice claims. Examples include improper or delayed diagnosis due to limited examination facilities, application of outdated therapies, procedural errors during surgery, administration of inappropriate drug doses, use of inappropriate test or treatment methods, deficiencies in care, lack of supervision of patients, failure in communication, and failure of supporting equipment.

Malpractice is not limited to surgery alone but can occur throughout the diagnosis and recovery process. It falls under the concept of negligence, especially regarding poorly structured medical measures. Thus, malpractice is not limited to surgery alone but can occur throughout the process of diagnosis to recovery of the patient. Apart from midwives, other health workers such as nurses and doctors also have the risk of being involved in medical malpractice. This is due to the similarity of the tasks they perform with midwives, namely providing health services to the community.

METHOD RESEARCH

Research is a scientific activity that aims to collect data to achieve a certain goal. Individuals involved in research are not only limited to disease researchers but also involve indigenous researchers both individually and in the form of groups or organizations. The type of normative juridical research discussed uses secondary data analysis and is included in the category of compliance studies or document studies. Normative legal research, also known as doctrinal legal research, discusses the law as it is sometimes documented in law books or as norms governing human behavior that are considered appropriate. As such, this research utilizes only secondary data, which includes primary, secondary, and tertiary legal resources.

Data Collection Technique

Secondary data collection focuses on library research by studying:

- a. Primary Legal Materials include basic legal materials such as legislation, government decrees, and regulations that still have legal force.
- b. Secondary Legal Materials involving evaluation of hypotheses, expert views, and previous research related to the research subject.
- c. Tertiary Legal Material acts as an additional source that deepens the understanding of primary and secondary legal materials. This is reflected in its use, which includes references from various sources such as the Big Indonesian Dictionary, dictionaries that specialize in the field of law, as well as online information sources such as Wikipedia and websites that are recognized for their trustworthiness.

RESULTS AND DISCUSSION

Factors Causing Midwife Malpractice

1. Negligence (negligence, culpa)

Negligence or error is caused because the perpetrator does not meet the standards of behavior that have been determined by the law so it can occur due to the person's own behavior (Fitri Wahyuni, 2017: 74). Simply put, a perpetrator who does not meet the standards of behavior can cause negligence itself. Negligence can arise from within the perpetrator. As stated in criminal law, negligence consists of two types. The first is "negligent conduct", i.e. if the act itself constitutes a criminal case, then there is no need to consider the consequences arising from the act. Second, is "negligence of consequences", in Articles 359, 360, and 361 of the Criminal Code, which is a criminal event that causes consequences and is prohibited by criminal law, such as disability and even death of others.

In health care, "consequential negligence" refers to negligence caused by the actions of a midwife. As the midwife's actions can result in the death or disability of the person in her care, she is liable for her actions. Negligence (*culpa*) in its measure is as follows:

1. *Culpa lata* (gross fault/neglect), a major fault.
2. *Culpa levis* (ordinary fault/neglect), or ordinary fault.
3. *Culpa levissima* (slight fault/neglect), is a very minor fault.

According to criminal law, negligence when carrying out the duties of the midwife profession is considered a major mistake (*culpa lata*). An example of midwife negligence in childbirth practice is when the midwife is in the wrong position when trying to remove the baby, which can cause the baby to be injured or even die.

2. Lack of Knowledge and Experience

Patients who go to midwives hope that with their expertise and knowledge of health, midwives can help improve their health. If a mother or pregnant woman visits a midwife, they would expect them to help them give birth safely. However, midwives can make mistakes when treating their patients, which can jeopardize the patient's health or result in disability or even the death of the baby or patient.

This can occur because the knowledge possessed by the midwife is lacking. Errors arising from this lack of knowledge may occur when diagnosing or providing care to patients.

a. Economic factors

Those who work as midwives are basically ordinary people who have needs in their lives that must be met. Especially when the Indonesian economy is experiencing difficulties, it does not rule out the possibility that the noble role of the midwife profession can be done to meet material needs. The main focus in midwife practice is orientation to the rewards received from patients so that the quality of service to patients is not optimal.

For example, malpractice activities committed by midwives are due to economic factors, such as receiving certain rewards and divulging patient secrets to parties who do not have the right to know. In their oath of office, midwives may not disclose the secrets of their patients to any party except for testimony in the interests of the court. This rule is stated in the Midwives' Code of Ethics and criminal law, as explained in Chapter 1 regarding midwives' commitment to clients and society, specifically point (1) which

states: "A midwife must always respect, understand, and strictly adhere to her oath of office in carrying out her duties".

Settlement of Alleged Midwife Malpractice Cases Through Penal Mediation

One of the solutions offered in the settlement of medical malpractice cases in Indonesia is to involve a medical dispute resolution institution. It is an institution established specifically to handle health problems that arise. The settlement procedure used is fast, precise, and inexpensive (Widodo Tresno Novianto, 2014: 153).

The resolution of malpractice cases by midwives through mediation involves structured steps. The process begins with an initial approach from the aggrieved party or their representative, who submits a request to initiate mediation. Thereafter, the mediator arranges a meeting between the two parties to facilitate discussions. During the meeting, relevant information, such as medical records and other evidence, may be exchanged. The negotiation process begins after the information has been gathered, with the mediator helping both parties reach an acceptable agreement. An agreement is reached through the signing of a formal document containing details of compensation if any, as well as a commitment not to pursue legal proceedings. Once the agreement is signed, the parties involved must comply with the agreed terms, such as the payment of compensation or other necessary measures. The entire mediation process is aimed at obtaining an agreement for both parties without going to court, which is often faster, cheaper, and more predictable.

Resolving cases of alleged midwife malpractice through penal mediation involves steps that focus on open dialogue between the victimized patient and the midwife involved in the case. With careful preparation, both parties present their views and evidence before a skilled mediator. To reach an agreement that is fair to all parties, the mediation process prioritizes a cooperative approach. Through constructive negotiations, an agreement is reached, which is then recorded in writing and signed by the parties involved. The recording of this agreement becomes official evidence of the settlement of the case, which is then carried out in accordance with the contents of the agreement.

The process of resolving cases of alleged midwife malpractice through penal mediation begins with careful preparation from both parties, namely the patient who feels victimized and the midwife involved in the case. This preparation includes the collection of evidence, medical records, and other relevant information relevant to the case. After preparation, a skilled mediator is selected to facilitate the mediation process.

The mediation session begins with an opening by the mediator, who explains the purpose, process, and rules of the mediation to the parties involved. During the mediation session, the parties involved are given the opportunity to express their views on the case, listen to the views of the other party, and participate in constructive discussions. A collaborative approach is strongly emphasized in this mediation, where both parties are encouraged to seek a solution that is satisfactory to all parties.

Negotiations are conducted by considering the interests and needs of each party. Agreements that include financial compensation for the patient, changes in procedures or

policies at the midwife's place of practice, or other stages that are considered to improve the situation and prevent the recurrence of similar cases in the future can be reached.

Once an agreement is reached, all parties involved sign in writing the agreement. This becomes the official evidence of the settlement of the case through penal mediation. The parties involved must comply with the agreement as agreed.

CONCLUSION

Factors causing malpractice by midwives include several key aspects, such as negligence that can lead to patient harm or even death, lack of adequate education and training, miscommunication between midwives and patients or members of the medical team, and lack of supervision and quality control in medical practice. Resolving cases of alleged midwife malpractice through penal mediation involves an open dialog between the patient and the midwife, facilitated by a skilled mediator. The process prioritizes a collaborative approach to reach a fair agreement, with the outcome formally recorded and implemented as agreed. Penal mediation not only resolves conflicts but also improves relationships and prevents recurrence of similar cases. Suggestions include increasing the awareness and competence of midwives and maximizing health services, as well as using penal mediation for fair healing and reconciliation, paying attention to the emotional aspects of the case, and building trust in the health system.

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