

## Ethical And Juridical Issues In Midwifery Malpractice Cases: An Ethicolegal Study

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### *Abstract.*

*Medical malpractice is one of the branches of error in the professional field, especially in the world of health. in the professional field, especially in the world of health. Actions of Medical malpractice involving doctors and other health workers such as nurses and midwives is of many types and forms. The research method used is library legal research. The data used is The data used is secondary data obtained from textbooks, articles, opinions of experts and journals. The type of research in this thesis is qualitative research with a descriptive approach. Misconduct in obstetric procedures is one of the branches of misconduct in the professional field, within the professional field. There are many types and forms of errors in medical procedures involving doctors or midwifery. There are many types and forms of errors in medical procedures involving doctors and health workers such as midwives. Midwives in carrying out carrying out their duties are not infrequently protested by patients for making mistakes or being negligent which results in loss. Medical errors occur into 3 (three) of them are international professional misconduct, Negligence and Lack of Skill.*

*Keywords : Malpractice, Midwifery, Ethical, Juridical and Issue 085740581289.*

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### I. INTRODUCTION

The rise of malpractice in Indonesia has made people distrust health services in Indonesia. Ironically, the health sector is also worried that medical personnel in Indonesia will no longer dare to perform medical acts for fear of facing the law. Indonesia will no longer dare to take medical action for fear of facing the law. Again, this is due to the lack of good communication between medical personnel and patients. It is not uncommon for medical personnel not to inform the cause and effect of a medical procedure. Patients are also reluctant to communicate with medical personnel about their illness [1]. The Ministry of Health needs to conduct counselling or socialisation to the public about the performance of medical personnel. Nowadays, professional demands on this profession are getting higher. News that and accusations that doctors have made mistakes in the medical field have been popping up. In developed countries, where the term medical malpractice was first recognised, it turns out that the prosecution of medical personnel who commit ineligible practices is also increasing. It turns out that the demands for medical personnel who commit inappropriate practices have not diminished. Usually the biggest targets are surgeons (orthopaedic, plastic and neurological), anaesthetists and obstetrics and gynaecology specialists. There are many types and forms of medical malpractice involving doctors and other health workers such as nurses and midwives, such as misdiagnosis, wrong treatment treatment appropriate to the patient or failing to carry out the process of delivery of the patient properly, carefully and meticulously.

Midwifery services are carried out by midwives starting from the primary, secondary and tertiary health services. To provide quality midwifery services, midwives are needed who have the ability in aspects of cognitive intensity not only at the level of knowledge, comprehensive and application, but need to have the ability to analyse, synthesise and evaluate, so that they are able to think critically in making the right decisions and are able to understand the feelings of clients being handled Midwives as service providers must ensure professional services and accountability and legal aspects in midwifery services [2]. Midwives are health workers who have been trusted by the community. Both in providing midwifery services and in other matters related to health in the community. The development of science and technology has an impact

on changes in human mindset. The community is increasingly critical so that there is a strengthening of demands for quality of service. A strong foundation of commitment with a good legal and moral basis is needed to achieve good service quality. In order not to harm the community, in providing services in addition to equipping themselves with good competence, midwives must pay attention to the authority and applicable regulations. Health is a human right that must be realised in the form of providing various health services to the entire community through the implementation of comprehensive health development by the Government, Regional Governments, and the community in a directed, integrated and sustainable, fair and equitable manner, as well as safe, quality, and affordable by the community. Health as a development capital requires support from health workers, including midwives and nurses.

## II. METHODS

The research method used is library legal research. The data used is The data used is secondary data obtained from textbooks, articles, opinions of experts and journals. The type of research in this thesis is qualitative research with a descriptive approach. It is a research procedure that produces descriptive data in the form of written or oral words from research informants and the behaviour of observed research objects. or oral from research informants and the behaviour of observed research objects. The specification of this research is descriptive analytical, which is to describe, find legal facts thoroughly and examine systematically applicable laws and regulations are associated with legal theories and positive legal implementation practices related to the problem.

The data analysis stage is to describe the data in the form of good and correct sentences, while the analysis used in this research is a qualitative technique, namely an analysis using how to collect the data obtained and explain it clearly, so that a conclusion can be drawn from it. explain clearly, so that a conclusion can be drawn from the existing problems. The study focuses on an analysis related to written materials such as journals, articles, books, and other written materials. written materials such as journals, articles, books, and other written materials.

## III. RESULT AND DISCUSSION

### *Malpractice Meanings*

Planning for the need for health workers nationally is adjusted to the needs based on health problems, health development programme needs, as well as the availability of the Health Workers. Procurement of health workers in accordance with planning needs is organised through education and training, both by the Government, Government, Regional Government, and the community, including the private sector. The utilisation of health workers includes the distribution of health workers evenly and equitably, the utilisation of health workers, and the availability of health workers. Equitable distribution of health workers, utilisation of health workers, and development of health workers, including career advancement. career improvement. Development and supervision of the quality of health workers is mainly aimed at to improve the quality of health workers in accordance with the expected competence in supporting the implementation of health services for the entire population. An attitude of wrong action and having skills that are lacking in unreasonable measure is an act of malpractice. an act of malpractice. Usually the term is usually applied to the behaviour of lawyers, doctors, accountants. A professional act that fails to be performed at a reasonable level of reasonable degree of skill and intelligence, committed in the community that results in injury, loss or damage to the recipient of the service will make an impression on the the recipient of the service. It also includes professional misconduct, lack of skills that tend to be more unnatural and poor practice, illegality and immorality. immoral behaviour [3]. Professional misconduct or unreasonable lack of skill.

This term is usually applied to such conduct by doctors, lawyers, and accountants. Failure of one rendering professional services to exercise that degree of skill and learning commonly applied under all the circumstances in the community by the average prudent reputable member of the profession with the result of injury, loss or damage to the recipient of this services or to those entitled to rely upon them. It is any professional misconduct, unreasonable lack of skill or fidelity in professional or fiduciary duties, evil

practice, or illegal or immoral conduct [4]. From various existing cases, it is necessary to study medical/health law to provide juridical insights for doctors and other health workers [5]. Therefore, malpractice can be caused due to indifferent attitude/behaviour, negligence or lack of skill/accuracy in carrying out professional obligations; committing acts of or wrongdoing intentionally; or carrying out practice that is not legal or ethical [6]. Malpractice in the health sector committed by health workers can cause suffering and even death to patients. Malpractice in the health sector can occur due to several things, namely: (a) providing services not in accordance with professional standards; (b) not following the progress of science and technology in the field of health that is generally accepted in the health profession; (c) committing (c) committing negligence due to a lack of prudence in performing health services; and (d) performing medical acts that are contrary to with the law. On the other hand, in the implementation of health care actions, medical personnel, namely doctors and nurses, do not rule out the possibility of an error or negligence. and nurses do not rule out the possibility of an error or negligence. Errors or negligence committed by doctors in carrying out their professional duties can fatal both to the body and soul of the patient (in medical / legal terms this incident is called malpractice) and this is of course very detrimental to the patient as a victim of malpractice.

#### ***Ethical and Juridical Perspective***

There are various factors behind the emergence of malpractice lawsuits, all of which stem from the psychological and physical harm to victims. and all of them stem from the psychological and physical losses of the victims. Starting from the wrong misdiagnosis, which in turn leads to therapeutic errors, to doctors' negligence in post-surgery operations on patients (surgical instruments left inside the body), and other factors. postoperative surgery on the patient (surgical instruments left inside the body), and other factors [7]. the implementation of health care actions, medical personnel, namely doctors and nurses, do not rule out the possibility of an error or negligence. and nurses do not rule out the possibility of an error or negligence [8]. Legal protection of patients is related to Law Number 36 Year 2009, which regulates the rights and obligations of patients and the rights and obligations of personnel. which regulates the rights and obligations of patients and the rights and obligations of health workers so that a legal relationship between patients and health workers is created. Health workers so as to create a legal relationship between patients and health workers so as to create legal protection given to patients.

The legal relationship between patient and health worker arises when the patient contacts a doctor / health worker to ask for help with his health because health workers to ask for help with their health because health workers are considered as an intermediary who can cure the disease. Patients who are unfamiliar with health trust doctors, midwives or other health workers in handling their health. Doctors, midwives or other health workers in providing services to patients must be with the principle of justice, meaning that in providing health services to patients not social and economic status of the patient, prioritising the rights and comfort of the patient. Doctors, midwives and other health workers must also provide information about the patient's illness correctly and honestly. Patients correctly and honestly while maintaining confidentiality about the disease suffered by the patient. Criminal medical malpractice only occurs in material criminal offences (KUHP), namely a criminal offence that prohibits causing certain consequences that are threatened with sanctions in the form of in the form of punishment. The occurrence of consequences is a condition for the completion of a criminal offence. As for the consequences that elements of criminal medical malpractice are death, serious injury, pain, or injury that causes disease, or injury that inhibits the development of the disease. That causes illness, or injury that impedes the performance of one's duties [9].

To be able to assess and prove an act (medical action) is included in the category of malpractice or not, according to Hubert W. Smith. According to Hubert W. Smith, malpractice includes 4D, namely: (a) the existence of an obligation (duty), in this element there is no negligence if there is no obligation, Therefore, this first element states that there must be a legal relationship between the patient and the doctor/hospital. (b) The existence of deviations in the performance of duties (dereliction), namely the doctor in carrying out obligation to the patient performs acts of deviation from the professional standards. (c) Deviation will result in damage (direct caution), in this element there is a clear causal relationship between the doctor's medical action and the harm suffered by the patient. (d) The doctor will cause damage (damage), namely that the

medical action performed by the doctor is the direct cause of the loss to the patient. Performed by the doctor is the direct cause of the harm to the patient[10].

#### IV. CONCLUSION

In carrying out the obligations of health services health services, midwives must follow professional standards. If in carrying out their obligations the midwife makes a mistake, then she can be held accountable. The patient as the party who is can file a lawsuit based on default or tort. Default or tort is a form of civil liability that can be used by the patient in a lawsuit for health services. However, because the scope of the lawsuit based on tort is broader than default, then a lawsuit based on tort is more often used by patients. In addition, proof in lawsuit based on default is more difficult than in tort. Therefore, in carrying out profession, a midwife must fulfil the provisions of professional standards, standard and code of ethics.

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