



## RESEARCH ARTICLE

# Legal Analysis of the Relationship between Midwives and Patients in Therapeutic Agreements in Indonesia

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ARTICLE INFO	ABSTRACT
Received: Apr 24, 2024	This research analyzes the evolving relationship between midwives and patients in Indonesia, transitioning from a paternalistic to a contractual relationship based on equality. The validity of therapeutic agreements is examined under Article 1320 of the Civil Code, including agreement, competence, specific objects, and lawful causes. Informed Consent is a crucial element, where patients give consent after receiving comprehensive information about medical procedures. The stages of the agreement process between midwives and patients include anamnesis, diagnosis, and medical procedures. This study underscores the importance of a thorough understanding of the legal and ethical aspects of therapeutic relationships to protect patient rights and ensure midwives perform their duties according to legal standards.
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## INTRODUCTION

Health is a human right and one element of prosperity that must be realized by the ideals of the Indonesian nation as intended in Pancasila and the 1945 Constitution of the Republic of Indonesia.

<sup>1</sup>In the 1945 Constitution of the Republic of Indonesia, from now on referred to as the 1945 Constitution, Article 28H paragraph (1) explains that: "Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and the right to receive health services."

Health law develops in line with developments in the field of health services. It is seen as something that is increasingly necessary for maintaining the balance of each person in maintaining and improving their level of health. Therefore, the normative health legal order fosters the development of special health laws ( *Lex Specialis* ), which contain deviation/ exceptional provisions compared to general law provisions ( *Lex Generale* ).<sup>2</sup>

A health worker is "any person who dedicates themselves to the health sector and has knowledge and skills through education in the health sector which for certain types requires authority to carry out health efforts." <sup>3</sup>Health workers themselves are divided into medical and non-medical personnel.

<sup>1</sup> Preamble Constitution Number 36 of 2009 concerning Health, point a.

<sup>2</sup>Herman, H., Razak, A., & Riza, M. (2020). Idea Court Specialized in Settlement Dispute Medical As an Effort to Legal Protection for Medical Personnel. *Jurisprudentie : Department Faculty of Sharia and Law* , 7 (1), p. 117

<sup>3</sup> Constitution Number 36 of 2014 concerning Health Workers, Article 1 number 1.

Midwives are one of non-medical health workers who, in accordance with their competence and authority, provide midwifery services, which are an integral part of health services.<sup>4</sup>

Article 1 point 3 of Law Number 4 of 2019 concerning Midwifery (hereinafter referred to as the Midwifery Law) explains 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 have fulfilled the requirements to practice midwifery".

It is also explained in Article 1 number 1 of the Regulation of the Minister of Health of the Republic of Indonesia Number 28 of 2017 concerning Permits and Implementation of Midwife Practices that a midwife is a woman who has graduated from registered midwife education in accordance with statutory regulations. This means that the midwife profession must be carried out by women, because midwives' duties include providing midwifery services and women's reproductive services. A midwife must at least be a graduate of midwife education before 2000 or DIII, and in carrying out midwife practice must have a Midwife Practice License (SIPB). This is in accordance with the provisions of the Republic of Indonesia Minister of Health Regulation Number 900/Menkes/SK/III/2002 concerning Registration and Practice of Midwives. Ownership of SIPB is proof that a midwife can practice throughout Indonesia according to professional standards.<sup>5</sup>

Article 15 Minister of Health Regulation no. 28 of 2017 concerning Licensing and Implementation of Midwife Practices, determines that midwives can carry out midwifery practices independently and/or work in health service facilities. Independent midwifery practice is in the form of Independent Midwife Practice. Health service facilities can be in the form of: Clinics, Community Health Centers, Hospitals and/or other health facilities.

Practice is a service center that provides health services for maternal and child health. Recently, it has been seen that the Independent Practice of Midwives continues to grow, both in number, capacity and infrastructure along with technological developments . Even though there have been developments in Independent Midwife Practice over time, the basic function of an Independent Midwife Practice remains unchanged. The basic function of Independent Midwife Practice is Health Services for Mothers and Children, which includes pregnancy checks, birth assistance, immunizations and family planning.<sup>6</sup>

Midwives are one of the health workers who have an important and strategic position, especially in reducing the Maternal Mortality Rate (MMR) and the Mortality Rate and Infant Mortality Rate (IMR). Midwives provide continuous and complete midwifery services, focusing on aspects of prevention, promotion based on partnership and community empowerment together with other health workers to always serve anyone who needs it, whenever and wherever they are. To maintain this quality, a professional standard is needed as a reference for carrying out all actions and things given in all aspects of professional service to individuals, families and society, both from the input , process and output aspects .<sup>7</sup>

As a health worker who directly provides health services to the community, a midwife must act in midwifery practice ethically, and must have midwifery ethics that are in accordance with the philosophical beliefs of the profession and society. Apart from that, midwives also play a role in

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<sup>4</sup>Mahalia, 2021, *Chapter 1*, (Online), <https://repository.unika.ac.id>, ( accessed 22 August 2023).

<sup>5</sup> Antari Inaka Turingsih . RA 2012. *Civil responsibilities of midwives in health services* . ( On line ). LEGAL JUDICIARY Volume 24, Number 2.

<sup>6</sup>Dewi Sayati, 2019, *Analysis Quality Health Services in Midwife Practice Mandiri Palembang City*. (On line), Magazine Medical Sriwijaya , Th. 51 Number 3, ( accessed 27 August 2023).

<sup>7</sup>Diah Arimbi , 2013, *Action Study Against the Law Against Authority Practical Midwife Services Independent in the Regency Banyumas* , (Online), Journal Legal Dynamics Vol. 13 No. 2, ( accessed 27 August 2023).

providing safe births, ensuring that all birth attendants have the knowledge, skills and tools to provide safe and clean assistance.<sup>8</sup>

When the community's need for health services increases, especially midwife services, but is not balanced by the expertise and skills of midwives to form a good service work mechanism, then there will be inappropriate midwife services, there will be irregularities such as the provision of midwife services that are not in accordance with the Code of Ethics. Midwives, professional standards and law.<sup>9</sup>

Based on the results of research conducted by Diah Arimbi in her research entitled "Study of Unlawful Actions Against the Authority of Independent Practice Midwife Services in Banyumas Regency", it is known that in the Independent Practice Midwife service in Banyumas Regency, there were 13 (thirteen) perinatal deaths (newborn babies). ) and 6 (sixteen) maternal deaths (mothers giving birth). Some of these incidents are not under the midwife's authority in carrying out her practice and should be referred to a higher level to obtain help and in accordance with her authority or responsibility.<sup>10</sup>

Likewise research conducted by Ayoe Apriani Pradana, in her research entitled "Responsibilities of Independent Practicing Midwives in Carrying Out Breech Delivery Procedures That Cause Infant Death in View of Minister of Health Regulation Number 1464 of 2010 Concerning Licensing and Implementation of Midwife Practices Linked to Midwife Professional Standards", that in providing midwifery services, midwives are still found carrying out birth actions outside their authority, namely breech births which result in death;<sup>11</sup>

Apart from the examples of cases mentioned above, several examples of cases that occurred in midwifery services, which were caused by errors or negligence of midwives which caused harm to patients, both those that had been litigated in court and those that had not been litigated in court were such as the following cases:

1. The case of Midwife Herawati (Defendant I), Pasar Rebo Hospital (Defendant II), and the Government of the Republic of Indonesia *cq* Minister of Health (Defendant III) who were charged with committing unlawful acts by Mesdiwanda Sitepu, a housewife for the actions of Defendant I in carrying out childbirth assistance with a *vacuum process*. The plaintiff gave birth to her baby without crying and was immediately taken to the child care room. The pediatrician who treated the plaintiff's child stated to the plaintiff that the plaintiff's child had a lot of fluid on his head and there was bleeding on the brain due to injuries during the *vacuum*.

Finally, the Plaintiff filed a lawsuit against Midwife Herawati (Defendant I), Pasar Rebo Hospital (Defendant II), and the Government of the Republic of Indonesia *cq* Minister of Health of the Republic of Indonesia (Defendant III).

The East Jakarta District Court which examined and tried this case decided that the plaintiff's lawsuit was granted.<sup>12</sup>

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<sup>8</sup> *Ibid*.

<sup>9</sup> *Ibid*.

<sup>10</sup> *Ibid*.

<sup>11</sup> Ayoe Apriani Pradana, 2019, *Responsibilities of Practicing Midwives Independent in Performing breech delivery that causes it Infant Mortality reviewed from Minister of Health Regulation Number 1464 of 2010 concerning Permits and Operation Midwife Practices are linked with Standard Midwife Profession*, ( Online ), AKTUALITA, Vol. 2 No.1, ( accessed 15 July 2023).

<sup>12</sup> Ervitiana Hamdiah, 2009, *Civil Responsibility of Midwives in Help Childbirth in Hospital ( Case Study Mesdiwanda Sitepu Against Midwife Herawati, Pasar Rebo Hospital and the Government Republic of Indonesia cq*

2. Several residents of Semarang Village, Sungai Serut District, admitted that an infection had occurred in the area of the skin where the injection was given by Midwife "T" which resulted in swelling and fluid leaking. Residents who experience infections demand compensation from midwives and responsibility for carrying out treatment until they recover.<sup>13</sup> This resulted in the temporary suspension of Midwife Turyati at the Semarang Community Health Center and the appointment of a temporary midwife so that services would not stop.<sup>14</sup>

3. RA (30 years old) is seven months pregnant. She followed birth control, but was still pregnant. According to RA, this incident started when he attended a PKK cadre meeting in his village. At that time, he received an acceptor form KB from a KB officer (PLKB). According to the invitation, according to RA, to become a family planning acceptor, he came to the Wates Health Center. His plan was to become a family planning acceptor by installing an IUD, but the installation was not carried out at the Community Health Center, but at the house of the Deputy Chair of the DPRD. At that house, there was a family planning program going on. She then underwent a urine pregnancy test. "At that time I was tested twice, and the results were negative both times." She then agreed to have an IUD installed. A week after the spiral was installed (May 21 2011), she felt pain in her stomach and shortness of breath. She then asked the health center staff about these symptoms. Wates and a midwife at Wates. However, at that time she didn't get any answers, she was only given vitamins. "After I tested it myself, it turned out the results were positive." He went to the authorized officer to ask about this, but he admitted that he often "was left behind." Therefore, this resident of Sanggrahan Lor, Bendungan, Wates, Kulonprogo went to the LBH Yogyakarta office to ask. legal aid.<sup>15</sup>

The increasing number of cases resulting from errors or negligence by midwives in health services, especially midwifery services at Independent Midwife Practices, is a warning and at the same time an encouragement to further improve the quality of services. Carrying out duties by adhering to professional promises and the determination to always improve one's quality needs to always be maintained. Collaboration involving the entire health service team needs to be strengthened with clarity in its authority and functions. Therefore, without paying attention to the matters mentioned above, legal consequences will arise when irregularities occur in health services. From a legal perspective, professional health workers can be held legally accountable, whether based on civil law, criminal law or administrative law.<sup>16</sup>

Civil law recognizes two bases of liability or legal liability, namely liability based on breach of contract as regulated in Article 1239 BW and liability based on unlawful acts as regulated in Articles 1365-1380 BW.<sup>17</sup> Basically, civil liability aims to obtain compensation for losses suffered, in addition to preventing undesirable things from happening.<sup>18</sup>

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*Indonesian Minister of Health*, Thesis, Faculty of Law, University of Indonesia, p. 80-83, (Online), (<http://google.com>), (accessed March 30, 2022).

<sup>13</sup><https://bengkuluekspress.rakyatbengkulu.com/diduga-malpolitik-bidan-dituntut-mundur-2/>, (Online), (accessed 10 March 2022).

<sup>14</sup> Health Department Investigates Alleged Malpractice - Bengkulu Ekspres <https://bengkuluekspress.rakyatbengkulu.com/dinkes-investigasi-dugaan-malpolitik>, (Online), (accessed 10 March 2022).

<sup>15</sup><https://www.republika.co.id/berita/nasional/umum/11/10/10/lsua6u-berkb-tapi-tetap-hamil-rini-tempuh-jalur-Hukum>, (Online), (accessed March 10 2022).

<sup>16</sup> <https://aliumarfaisal.wordpress.com/respons-respons-bidan>, (Online), accessed 26 August 2023.

<sup>17</sup> Bahder Johan Nasution, 2013, *Doctor's Liability Health Law*, Rineka Cipta: Jakarta, p. 63.

<sup>18</sup> Anny Isfandyarie, 2006, *Legal Responsibility and Sanctions for Doctors, Book I*, Library Achievement : Jakarta, p. 6.

Article 1338 (1) BW explains that: "All agreements made legally apply as law to those who make them." The parties must comply with the agreement as they comply with the law. This means that the rights and obligations arising from the therapeutic agreement must be maintained and implemented by the parties. If one of the parties does not carry out his obligations, which in contract law is called a breach of contract, then he can be sued for losses incurred because of his actions. In addition to protecting someone contractually through a breach of contract, the law of engagement also provides protection based on unlawful acts.<sup>19</sup>

Based on the description and phenomena above, several important issues can be raised regarding the responsibilities of midwives in health services, especially in Independent Midwife Practice Places, namely that in carrying out their duties, midwife services are still found that do not meet patient expectations; midwives act beyond their authority, provide services outside their competence, resulting in harm to patients, but there are no clear rules regarding who should be responsible for losses resulting from errors or negligence of health workers, especially midwives, who provide health services outside Hospitals, such as the Midwife's Independent Practice Place, as regulated in Article 44 of the Hospital Law. These various problems, phenomena and issues are the motivation for the author to formulate problems related to the responsibilities of midwives in health services, especially midwifery services at independent midwife practice sites from a civil aspect.

## RESEARCH METHODS

This research is legal research normative, the approach used in this research is Approach Legislation ( *Statute Approach* ), and Conceptual Approach ( *Conceptual Approach* ), The data obtained in this research were analyzed using *qualitative descriptive analysis methods*, <sup>20</sup>namely data obtained from observations and literature is collected, processed in depth and realized directly in the form of prescriptions.

## RESEARCH RESULTS AND DISCUSSION

As developments require the relationship between midwife and patient to no longer be a paternalistic relationship but to be a relationship based on an equal/partner position, the relationship becomes a contractual relationship. The contractual relationship occurs because the parties, namely the midwife and the patient, are each believed to have freedom and have equal status. The two parties then enter into an agreement or agreement in which each party must carry out its role or function towards the other. These roles can take the form of rights and obligations.<sup>21</sup>

In general, legally the relationship between a midwife and a patient is a relationship of maximum effort or effort. Midwives do not promise healing, but do their best to make sure the patient recovers.

Basically, contracts originate from differences or unequal interests between the parties. The formulation of contractual relationships generally always begins with a negotiation process between the parties. Through negotiation, the parties try to create forms of agreement to bring together what they want (interests) through a bargaining process. In general, business contracts actually start from differences in interests that are tried to be reconciled through contact. Through the contract, these differences are accommodated or further framed by legal instruments so that they are binding on the parties. In contracts, questions regarding the content of certainty and fairness will actually be

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<sup>19</sup>RA Antari Inaka Turingsih, *Op.cit*,

<sup>20</sup> Lexy J. Moleong, 2010, *Methodology study qualitative*. Teen PT Rosdakarya : Bandung, p. 3

<sup>21</sup> Safitri Hariyani. 2005. *Disputes Medic Alternative Completion Dispute Between Doctors and Patient*. Edited Media: Jakarta, p. 11.

achieved if the differences that exist between the parties are accommodated through contractual relationship mechanisms that work proportionally.<sup>22</sup>

As an agreement, as is usual for agreements, for the agreement to be valid it must fulfill the conditions specified in Article 1320 BW, namely:

1. agree with those who bind themselves;
2. the ability to create an agreement;
3. a certain thing;
4. a lawful cause.

Of the four conditions, the first and second conditions are requirements of the subject entering into the medical contract, therefore they are called subjective conditions, while the third and fourth conditions are about the object of the medical contract and are usually called objective conditions.<sup>23</sup>

### 1. Agreement

Agreement in a therapeutic agreement occurs when the patient understands the information conveyed by the health professional completely and agrees to the medical action that will be carried out by the health professional. This patient consent can occur implicitly or explicitly. Consent to high- risk medical procedures requires an explicit form of consent or written informed *consent* ). *Informed consent* is the starting point for the birth of a therapeutic agreement. After this therapeutic agreement is entered into, an agreement is born which gives rise to rights and obligations in the legal relationship between health workers and patients.<sup>24</sup> The occurrence of conformity to the statement of will in a therapeutic agreement is in accordance with the theory of knowledge ( *vernemingstheorie* ), that an agreement occurs if the party offering is aware of the existence of *acceptatie* (acceptance).<sup>25</sup>

Based on the research results, it is known that the agreement between midwives and patients in health services occurs through several stages as follows:<sup>26</sup>

a. The first stage, namely the offer and acceptance between the midwife and the patient, which begins with the patient arriving at the midwife's practice and registering, followed by questions and answers between the midwife and the patient regarding complaints about the disease suffered by the patient or the services intended by the patient, is called the stage *anamnesis* . After the anamnesis stage, the next stage is the examination stage. After the examination process, the next stage is the diagnosis stage, where the midwife determines a certain type of action based on a thorough analysis of the results of the anamnesis and examination.

b. The second stage, namely the conformity of the statement of will between the midwife and the patient, namely after the patient understands the

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<sup>22</sup> Mohamad N Muliatio Abbas, Ahmadi Miru, Nurfaidah Said. (2020). Abuse Circumstances in Standard Contract Agreements Bank Credit . *Gorontalo Law Review* , 3 (2), 188-204. Pg 189

<sup>23</sup> *Ibid* , p . 12-13.

<sup>24</sup> Muhammad Faqih, Yulia K Wardani & Dedi Putra, *Characteristics Alliance of Endeavors ( Inspanningverbinten ) in Relationship between doctors and patients in hospitals*, <http://repository.lppm.unila.ac.id>, ( Online ), ( accessed 2 May 2024).

<sup>25</sup> Salim HS, *Op.cit* , p . 162.

<sup>26</sup> The results of research on the TPMB are used sample research , 28 November 2022 - 06 March 2023.

information conveyed and agrees to the medical action that will be carried out by the midwife. There are two ways to approve medical procedures, namely;

- 1). Implicitly or implicitly, this method is usually used in midwifery services where the risk is not too high, such as pregnant women who come to the midwife's practice for consultation about their pregnancy, patients who consult about irregular menstruation. For services like this, the midwife simply conducts a question and answer session with the patient concerned and then the midwife conveys the diagnosis results and provides education and advice according to the diagnosis results;
- 2). Explicitly or in the form of written consent ( *informed consent* ). This second method is used for midwifery services where the risk is high, such as patients refusing to be referred (because the membranes have ruptured, the baby is large, or labor is not progressing and is not supported by adequate equipment), or for midwifery services where the success rate is not one hundred percent will be successful, such as installing contraceptives.
- 3). The third stage, namely the implementation of the agreement. The midwife takes action according to the results of the diagnosis.

The stages of agreement in the agreement between the midwife and the patient above are also in accordance with the new theory of agreement, put forward by Van Dunne . The new theory put forward does not only look at agreements alone, but must also look at previous or preceding actions. There are three stages in making an agreement according to the new theory, namely:<sup>27</sup>

- 1). *Precontractual* stage , namely the offer and acceptance;
- 2). *Contractual* Stage , namely the agreement between the parties' statements of will;
- 3). *Post Stage Contractual* , namely the implementation of the agreement.

Based on these stages, it can also be seen when an agreement occurs between the midwife and the patient, namely after the patient understands the information conveyed and agrees to the medical action that will be carried out by the midwife, namely in two ways, namely; implicitly or impliedly and explicitly or in the form of written agreement ( *Imformed consent* ).

*Informed Consent* is approval given by the patient or his family on the basis of an explanation of the medical action that will be carried out on the patient. In order to carry out certain medical actions, whether in the form of diagnostic or therapeutic, *information is required Consent* is a construct of conformity of will that must be expressed, both by the health worker and the patient after each has expressed his or her will so that each has expressed information reciprocally. Therefore, *informed Consent* is defined as informed consent.<sup>28</sup>

A medical agreement is like an agreement, the most important condition is an agreement that occurs due to cooperation between the midwife and the patient. *Informed Consent* is *the patient's right*, and the midwife is obliged to explain everything about the patient's illness to obtain approval for medical procedures. So approval was given after he received the information. Regarding *informed consent* , what you need to know includes what elements must be informed, who has the right to provide information and who is obliged to give consent and what sanctions may be imposed.<sup>29</sup>

Elements that need to be informed include the procedures that will be carried out and alternative actions that can be taken. Apart from that, it is also necessary to provide information about the possibilities that could arise if action is not taken and the prognosis or course of the disease suffered. Patients have the right to receive information regarding estimated costs. The procedure that will be

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<sup>27</sup>Salim HS, *Op.cit* , p . 161.

<sup>28</sup>Endang Kusuma Astuti, *Op.cit* , p . 129.

<sup>29</sup> Safitri Hariyani , *Op.cit* , p . 23-24.

carried out needs to be explained again, including the tools that will be used, which parts of the body will be affected, the possibility of feeling pain that will arise, the possibility of expanding the operation, and what is important is the purpose of the action, diagnostic or therapeutic.<sup>30</sup>

*Informed Consent* is a condition for a therapeutic transaction to occur, because a therapeutic transaction relies on two kinds of human rights which are basic human rights, namely: the right to information and the right to determine one's own fate. Because the patient has an interest in determining what will be done to his body, it is clear that there is *information Consent* in a therapeutic transaction is a patient's right before he undergoes a medical effort carried out by a midwife to help him. This right means an authority to act or not to act, so that the patient has the freedom to use or not use it. But *informed Consent* is felt to be very necessary in a therapeutic transaction, namely:<sup>31</sup>

*" Probably the actual statements of a doctrine as to the necessity for and informed consent in a medical context has evolved in part because of breaches of good faith or of gross insensitivity to the patient's right and feeling be a small minority of physicians ..., resulting in shocking outcomes " .*

Even according to Joseph King, if the agreement/agreement ( *informed consent* ) does not exist, the consequences are as follows:<sup>32</sup>

*" Treatment performed in the absence of valid consent may consist of a battery and be actionable without expert testimonials on the standards of care . Moreover , since recovery may be based in the invasion of one's dignitary interests , one may recover for battery even in the absence of physical harm . When there has been consent to the medical procedure , but that consent was not quite enough informed , the physician may be liable , usually under a negligence theory , for harm that would have probably been avoid had the required disclosures been made " .*

Actually agreement/agreement ( *informed consent* ) is generally considered to exist, because it is based on the following conditions:<sup>33</sup>

- 1). In fact, the patient wants to undergo a health procedure in order to treat his illness.
- 2). With or without factual consent, namely based on the patient's attitude, it can be concluded that the person concerned has given their consent.

Juridically, these conditions are an important basis for determining the agreement/consent given by the patient to the midwife or other health worker who is caring for him. So, to assess whether there is agreement/agreement with the patient, the patient's attitude must be understood by the midwife or other health worker. Thus, the main known forms of patient consent are:<sup>34</sup>

- 1). Effective consent that includes:
  - a). Expressive consent, namely if the patient is factually willing to undergo a medical procedure in order to treat his illness.
  - b). Non-expressive consent , namely if based on the patient's attitudes and actions it can be concluded that the patient concerned has given his consent.
- 2). Implicit consent , especially in emergencies. Because in an emergency situation with the threat of death for the patient, both adults and children, there is no need to question whether there is consent or not, then in such a situation it is concluded ( *implicatively* ) that there is consent from

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<sup>30</sup> *Ibid.*

<sup>31</sup> Charles P. Baley, in *Ibid* , p . 88.

<sup>32</sup> Joseph King in , *Ibid* .

<sup>33</sup> *Ibid.*

<sup>34</sup> Veronica Komalawati . D. 1989. *Law and Ethics in Clinic* . Sinar Harapan Library : Jakarta p . 89.



the patient concerned and the doctor or other health worker is fully obliged to carry out any efforts. reasonable to save the patient.

From this explanation it appears that the patient is considered to have given his agreement or consent when his attitudes and actions show the conditions mentioned above. It is also at that time that therapeutic transactions (healing) occur, resulting in a bond between health workers and patients. On the one hand, health workers are obliged to perform an achievement and on the other hand, the patient is entitled to that achievement, and vice versa.

## **2. Capable of making agreements;**

Medical agreements have a special nature, so not all of the legal provisions in the BW above can be applied. In fact, the provisions regarding who has the right to give approval in the Republic of Indonesia Minister of Health Regulation No. 585/MEN-KES/IX/1989 concerning Approval of Medical Procedures also needs to be considered in practice. It is impossible for midwives to refuse to treat patients who are not yet 21 years old who come alone to their practice. The Minister of Health regulation requires 21 years of age as an adult.<sup>35</sup>

Based on the research results, it is known that in a therapeutic agreement between a midwife and a patient, the parties to the agreement are the midwife as the provider of health services and the recipient of health services, namely; mother and child (represented by parents or family who are competent to act).<sup>36</sup>

The capacity of the parties in a therapeutic agreement, means that the parties are in a condition of capacity that is permitted or deemed suitable and appropriate in the assessment of both parties:<sup>37</sup>

### **a. Patient Party:**

- 1). The patient is 21 (twenty one) years old,
- 2). have married,
- 3). Not under pardon.

Article 12 of the Minister of Health Regulation Number 290/MENKES/PER/III/2008 concerning Approval of Medical Procedures, states that those who have the right to give approval for medical procedures are:

- 1). Consent is given by a competent patient or by an expert or close family member or guardian.
- 2). Consent given by patients who are incompetent or whose competence is doubtful is still considered valid or can be revoked by their guardian, next of kin or guardian.
- 3). Patients are considered competent based on their age if:
  - a). Adult patients, namely 21 (twenty one) years old or have/have been married.
  - b). The patient is 18 (eighteen) years old, not including children according to statutory regulations.
- 4). Based on his awareness.
  - a). A patient is considered competent if the patient's physical consciousness is not impaired, so he is able to communicate reasonably and is able to make decisions freely.

<sup>35</sup> Safitri Hariyani , *Op.cit*, p . 13-14.

<sup>36</sup> The results of research on TPMB in Makassar, Maros and Gowa are used sample in study this , 28 November 2022-06 March 2023.

<sup>37</sup> Desrisa Ratman. 2018. *Legal Aspects of Informed Consent and Recording Medical In Transactions Therapeutic* . Keni Media: Bandung, p . 25.

b). The patient may lose competence temporarily if he experiences shock, severe pain or other weakness due to his illness.

5). Based on his mental health.

a). A patient is considered competent if the patient does not experience developmental setbacks (mental retardation) and does not experience a mental illness that makes him unable to make decisions freely.

b). Patients with mental disorders can be considered competent if they are still able to understand information, believe it, retain it, and then use it to make free decisions.

6). The patient's competency must be assessed by a doctor when approval is required and if in doubt it must be determined by a competent doctor.

b. Health workers, who must:<sup>38</sup>

1). Complete permits, such as: diploma, registration certificate, and practice permit.

2). Competency : carrying out practices in accordance with the knowledge obtained during college.

3). Authority: services in accordance with the relevant practice permit.

According to the theory of authority by Phillipus M. Hadjon , that: "every government action is required to be based on legitimate authority, namely originating from attribution which is usually outlined through the division of state power by the constitution and which originates from delegation and mandate originating from delegation . In accordance with this theory of authority, the midwife profession in providing midwifery care must be in accordance with its authority after being granted a license by the government in the form of a Registration Certificate (STR). <sup>39</sup>The legal basis for a midwife's authority is:

a). Law Number 36 of 2009 concerning Health.

Based on the provisions of Article 23 it is determined that:

“(1). Health workers have the authority to provide health services.

(2). The authority to provide health services as intended in paragraph (1) is carried out in accordance with the field of expertise held.

(3) In providing health services, health workers are required to have permission from the government.”

This provision serves as a legal umbrella, that every health worker, including the midwife profession, has the authority to carry out their professional duties as long as they are carried out in accordance with their expertise (paragraph 2).<sup>40</sup>

b). Law Number 29 of 2004 concerning Medical Practice and Minister of Health Regulation Number 2052 of 2011 concerning Practice Permits and Organizing Medical Practice.

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<sup>38</sup> Desrisa Ratman, *Op.cit* , p . 25.

<sup>39</sup> Noviyanti , Endang Wahyati & Tammy J. Siarif , 2021, *Midwife Competency Standards and Midwife Authority in Emergency Delivery* , (Online), SOEPRA Health Law Journal : <http://journal.unika.ac.id/index.php/shk>, ( accessed 05 September 2023).

<sup>40</sup> *Ibid* .

This law regulates the delegation of authority from the medical profession to other health workers, including the midwife profession, to carry out actions that should fall under the authority of doctors.

Based on the provisions of Article 23 of the Minister of Health Regulation no. 2052 of 2011 concerning Practice Licenses and the Implementation of Medical Practices, it is determined that:

- “1). A doctor or dentist can delegate a medical or dental procedure to a nurse, midwife or certain other health worker in writing when carrying out a medical or dental procedure.
- 2). Medical or dental procedures as intended in paragraph (1) can only be carried out in situations where there is a need for services that exceeds the availability of doctors or dentists at the service facility.
- 3). The delegation of action as intended in paragraph (1) is carried out with the following provisions:
  - a). the delegated action includes the abilities and skills possessed by the delegatee;
  - b). implementation of the delegated action remains under the supervision of the delegatee;
  - c). the person giving the delegation remains responsible for the delegated action as long as the implementation of the action is in accordance with the delegation given;
  - d). the delegated action does not include taking clinical decisions as the basis for carrying out the action; and e. the action delegated is not continuous.”

The delegation of authority to carry out medical procedures can be carried out on the condition that due to a shortage of doctors, it is delegated to competent health personnel, it is carried out limited to the authority delegated and it cannot be carried out continuously, meaning temporarily. Delegation of actions given to midwives is carried out with the following provisions:<sup>41</sup>

- 1). The actions delegated include the abilities and skills possessed by the recipient of the delegation;
- 2). Implementation of delegated actions remains under the supervision of the delegatee;
- 3). The delegater remains responsible for the delegated action as long as the implementation of the action is in accordance with the delegation given;
- 4). Delegated action does not include taking clinical decisions as the basis for carrying out the action; And
- 5). The delegated action is not continuous.”

This provision regulates the delegation of authority by medical personnel, in this case doctors, to other health personnel. This could result in a delegation of services provided to the midwife profession. This shows that legally what is delegated is an action that is not under their authority, only because of certain situations this authority is given, this shows the dependent role of the midwife profession. This act of delegation cannot be given just like that, but there are limits that must be followed as stipulated in the provisions above.<sup>42</sup>

- c). Law Number 4 of 2019 concerning Midwifery. The Midwifery Law defines the duties and authorities of midwives:

Article 46 paragraph (1):

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<sup>41</sup> *Ibid* .

<sup>42</sup> *Ibid*.

"In carrying out midwifery practice, midwives are tasked with providing services which include:

- 1). maternal health services;
- 2). children's health services;
- 3). women's reproductive health and family planning services;
- 4). implementation of tasks based on delegation of authority; and/or
- 5). carrying out tasks under certain limited circumstances."

Article 53:

"The delegation of authority as intended in Article 46 paragraph (1) letter d consists of:

- 1). delegation by mandate; And
- 2). delegation by delegation."

Article 54:

- "1). The delegation of authority by mandate as intended in Article 53 letter a is given by doctors to midwives according to their competence.
- 2). The mandate delegation of authority as intended in paragraph (1) must be carried out in writing.
- 3). Delegation of authority by mandate as intended in paragraph (1) with responsibility residing on the person giving the delegation of authority.
- 4). "The doctor who delegates authority as intended in paragraph (1) must carry out regular supervision and evaluation."

Article 55:

- 1). Delegative delegation of authority as intended in Article 53 letter b is given by the Regional government to midwives.
- 2). Delegative delegation of authority as intended in paragraph (1) is given by the Regional Government in the context of:
  - (a). carrying out tasks under certain limitations; or
  - (b). government program.
- 3). The delegation of authority as intended in paragraph (1) is given accompanied by the delegation of responsibility.

Thus, the parties to a therapeutic agreement between a midwife and a patient fulfill the subjective requirements in accordance with Article 1320 BW, namely being competent to enter into an agreement.

3. Regarding a certain matter;

In an agreement, the object of the agreement must be clear and determined by the parties. The object of the agreement can be goods or services, but it can also be not doing something. This particular

thing in the agreement is called a tangible achievement; goods, skills/energy and not doing something.<sup>43</sup>

Achievements as regulated in Article 1234 BW can be in the form of:<sup>44</sup>

- a. hand over/give something;
- b. do something; And
- c. didn't do anything.

Paying attention to achievements as regulated in Article 1234 BW, if it is related to the form of achievement, it can be said that achievements in the form of handing over/giving something are in the form of goods, achievements in the form of doing something are in the form of services, while not doing something in the form of achievement is being passive.<sup>45</sup>

Connected with the object in the therapeutic agreement, the matter referred to is something that needs to be handled, namely in the form of healing efforts. These healing efforts must be explained because their implementation requires cooperation based on mutual trust between the midwife and the patient. Because the healing efforts that will be carried out must be determined, it is necessary to have health service standards.<sup>46</sup>

The provisions regarding the object of this agreement are closely related to the issue of implementing medical efforts in accordance with health service standards, which include professional standards, professional service standards and other standards, and the issue of the information provided must not exceed that required by the patient. This particular thing can be related to the object of a therapeutic agreement, namely healing efforts. Because the object is a healing effort, the results obtained from achieving this effort cannot or should not be guaranteed by the midwife concerned. Moreover, the implementation of healing efforts does not only depend on the midwife's sincerity and expertise in carrying out her professional duties, but many other factors play a role, for example the patient's resistance to certain drugs, the severity of the disease, and also the patient's role in carrying out the midwife's orders for the patient's benefit. itself.<sup>47</sup>

The agreement between the midwife and the patient, the specific thing or object of the agreement is Midwifery Care, <sup>48</sup>which in detail can be seen in the Minister of Health Regulation Number 28 of 2017 concerning Licensing and Implementation of Midwife Practice, which is as follows:

Article 18:

"In carrying out Midwifery Practices, Midwives have the authority to provide:

- a. maternal health services;
- b. Children's health services; And
- c. Women's reproductive health and family planning services."

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<sup>43</sup>Ahmadi Miru & Sakka Pati. 2020. Understanding Conditions for the Validity of the Agreement . Unhas Press: Makassar, p . 67.

<sup>44</sup> *Ibid*,

<sup>45</sup> *Ibid* ,

<sup>46</sup>Endang Kusuma Astuti, 2009, *Transactions Therapeutic in Service Efforts Medical in Hospitals* , Citra Aditya Bakti: Bandung, p . 120-121.

<sup>47</sup> *Ibid*

<sup>48</sup>In Law Number 4 of 2019 concerning Obstetrics , explained about Care Midwifery is Suite activities based on the retrieval process decisions and actions taken by midwives in accordance with authority and space scope the practice based on knowledge and tips midwifery .

## Article 19:

“a. Maternal health services as referred to in Article 18 letter a are provided during the pre-pregnancy period, pregnancy period, delivery period, postpartum period, breastfeeding period, and the period between two pregnancies.

b. Maternal health services as intended in paragraph (1) include services:

- 1). counseling during the pre-pregnancy period;
- 2). antenatal during normal pregnancy;
- 3). normal delivery;
- 4). normal postpartum mother;
- 5). breastfeeding mothers; And
- 6). counseling in the period between two pregnancies.

c. In providing maternal health services as intended in paragraph (2), Midwives have the authority to:

- 1). episiotomy <sup>49</sup>;
- 2). normal delivery assistance;
- 3). suturing level I and II birth canal wounds;
- 4). handling emergencies , followed by referral ;
- 5). giving blood supplement tablets to pregnant women;
- 6). giving high doses of vitamin A to postpartum mothers;
- 7). facilities/guidance for early initiation of breastfeeding and promotion of exclusive breast milk ;
- 8). administration of uterotonics <sup>50</sup>in active management of the third stage and postpartum ;
- 9). counseling and counseling;
- 10). guidance to groups of pregnant women; And
- 11). providing pregnancy and birth certificates.”

## Article 20:

“a. Child health services as referred to in Article 18 letter b are provided to newborns, infants, toddlers and preschool children.

b. In providing child health services as intended in paragraph (1), Midwives have the authority to:

- 1). essential neonatal services;
- 2). emergency management , followed by referral ;
- 3). monitoring the growth and development of babies, toddlers, and preschool children; And

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<sup>49</sup> Episiotomy is A slice surgery through [perineum](#) performed For widen [vagina](#) with Meaning For help with the birth process baby , <https://id.wikipedia.org/wiki>, (*Online*), ( accessed 04 August 2023).

<sup>50</sup>Uterotonics is drugs that stimulate uterine contractions . <https://eprints.umm.ac.id>, ( *Online* ), ( accessed 04 August 2023).

4). counseling and counseling.

c. Essential neonatal services as referred to in paragraph (2) letter a include initiating early breastfeeding, cutting and caring for the umbilical cord, administering Vit K1 injections, administering B0 immunization, physical examination of newborns, monitoring danger signs, providing personal identification marks, and referring cases. who cannot be treated in a stable condition and in a timely manner to a more capable Health Service Facility.

d. Emergency handling , followed by referral as intended in paragraph (2) letter b includes:

1). initial treatment of newborn asphyxia through airway clearance, positive pressure ventilation, and/or cardiac compression;

2). initial treatment of hypothermia in LBW newborns through the use of blankets or facilitation by warming the baby's body using the kangaroo method;

3). Initial treatment of umbilical cord infections by applying alcohol or povidone-iodine and keep the umbilical cord wound clean and dry; And

4). cleaning and administering eye ointment to newborns with gonorrhea infection (GO).

e. Monitoring the growth and development of babies, toddlers and preschool children as referred to in paragraph (2) letter c includes weighing activities, head circumference measurements, height measurements, early detection stimulation and early intervention for deviations in the growth and development of toddlers using the Pre-Screening Questionnaire. Development (KPSP)

f. Counseling and counseling as referred to in paragraph (2) letter d includes providing communication, information, education (KIE) to mothers and families regarding newborn care, exclusive breastfeeding, danger signs in newborns, health services, immunizations, balanced nutrition, PHBS, and growth and development."

Article 21:

"a. women's reproductive health and family planning education and counseling; And

b. oral contraceptive services, condoms and injections."

Juridically, all of the medical procedures mentioned above can be the object of a valid agreement.

4. A lawful cause;

In a therapeutic agreement between a midwife and a patient, the reason that is halal is that the object agreed between the midwife and the patient does not conflict with the law, morality or public order. Based on the research results, <sup>51</sup>the object of agreement between the midwife and the patient is Midwifery Care in accordance with what has been determined in the Midwifery Law and the Regulation of the Minister of Health concerning Licenses and Implementation of Midwifery Practices, namely: Family Planning (KB) services, Services for Pregnant Women, Services to women giving birth, services to postpartum women, immunization services, services to babies and toddlers (basic services).

## CONCLUSION:

The relationship between midwives and patients in Indonesia has evolved into a contractual relationship based on the principles of equality and freedom. The validity of therapeutic agreements must meet the conditions of agreement, competence, specific objects, and lawful causes in accordance with Article 1320 of the Civil Code. Informed Consent is a key element ensuring patients provide

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<sup>51</sup>The results of research on TPMB in Makassar, Maros and Gowa are used sample in study this , 28 November 2022 - 06 March 2023.

consent based on adequate information. The parties to a therapeutic agreement must meet the requirements for legal competence and authority as regulated by statutory regulations. The implementation of medical efforts by midwives must comply with health service standards and not conflict with law, morality, or public order. Understanding and applying legal and ethical aspects in therapeutic relationships are crucial to protecting patient rights and ensuring midwives perform their duties professionally and within their authority. Recommendations for future research include conducting empirical studies on the implementation of Informed Consent in midwifery practice across various regions in Indonesia and evaluating the effectiveness of existing regulations in protecting patient rights and midwife obligations.

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