



**LEGAL PROTECTION FOR MIDWIVES IN PERFORMING MEDICAL SERVICES
OUTSIDE THEIR AUTHORITY: A NORMATIVE JURIDICAL ANALYSIS**

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ABSTRACT

Legal protection for midwives in healthcare practices, particularly in emergency situations, is a crucial issue in Indonesia's healthcare legal system. Although various regulations, such as Law Number 4 of 2019 concerning Midwifery, Law Number 17 of 2023 concerning Health, and Government Regulation Number 28 of 2024, regulate the authority and legal protection of healthcare workers, these regulations are still general in nature and do not provide operational clarity in emergency situations. This study aims to analyze the legal norms regarding midwives' authority and the forms of legal protection they provide for performing medical procedures outside of their formal authority, particularly in emergency situations. The research method used is normative juridical with a statutory and conceptual approach, through an analysis of Law Number 4 of 2019 concerning Midwifery, Law Number 17 of 2023 concerning Health, and Government Regulation Number 28 of 2024. The analysis was conducted qualitatively by interpreting existing legal norms to identify legal gaps related to the legal protection of midwives in emergency situations. The results of the study indicate that normatively, legal protection for midwives has been regulated, but the regulations are still general and do not provide operational clarity regarding medical actions in emergency conditions. This gives rise to multiple interpretations of norms and has the potential to create legal uncertainty in practice. Thus, it is necessary to strengthen more specific and operational regulations to ensure legal certainty and optimal legal protection for midwives.

Keywords: legal protection; midwife; medical services; normative jurisprudence; outside authority

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INTRODUCTION

Legal protection for health workers is a crucial issue in modern health care governance, particularly in ensuring legal certainty in professional practice. Midwives as health workers have a strategic role in maternal and child health services and primary health care in the community. In the context of national law, the authority of midwives has been explicitly regulated in Law Number 4 of 2019 concerning Midwifery, which emphasizes that midwives are authorized to provide health services in accordance with their competencies, professional standards, and the health care needs of the community. In addition, further regulations regarding midwifery practice are also regulated in Minister of Health Regulation Number 28 of 2017 concerning Licensing and Implementation of Midwifery Practice and are strengthened in Government Regulation Number 28 of 2024 concerning Implementing Regulations of the Health Law, which emphasizes the importance of service standards and patient safety in health care practice. (Nur Asyah, 2021; Salima et al., 2022).

From a health law perspective, a midwife's authority to provide services, including in emergencies, is essentially normative and based on professional standards and operational procedures. This means that every action taken by a midwife must comply with the principle of prudence (professional standards of care) and be in accordance with their competencies. However, in practice, midwives often face emergency situations that require quick decision-making to save patients' lives, particularly in areas with limited medical personnel (Nur Asyah, 2021; Salima et al., 2022). Research shows that under certain circumstances, midwives are forced to take actions beyond their formal authority in response to a patient's urgent needs. This situation places midwives in a dilemma between the ethical obligation to save the patient's life and the potential legal

risks resulting from exceeding their authority (Hanafi et al., 2023). Normatively, these actions are justifiable as long as they meet the elements of an emergency and are carried out in accordance with professional standards. However, in practice, the assessment of an emergency situation is often interpretive and dependent on later evidence.

From a legal perspective, this reliance on interpretive judgments has the potential to create legal uncertainty for midwives. Although regulations such as the Midwifery Law and its derivatives provide a basis for legal protection, their implementation has not fully provided legal certainty, particularly in addressing potential legal liability, whether administrative, civil, or criminal (Astuti & Savitri, 2023). In the context of civil law, actions by midwives deemed to exceed their authority and cause harm can be classified as unlawful acts as stipulated in Article 1365 of the Civil Code (Salima et al., 2022). Furthermore, Government Regulation Number 28 of 2024 concerning the Implementing Regulations of the Health Law also emphasizes that healthcare workers are required to provide services in emergency situations as part of their professional responsibilities. However, this regulation does not specifically define the operational limits of midwives' authority in emergency situations, leaving room for diverse interpretations in practice. This reinforces the argument that existing legal protection remains normative and does not fully provide legal certainty for midwives. Furthermore, Minister of Health Regulation No. 28 of 2017 concerning Licensing and Implementation of Midwifery Practice stipulates that midwives' practices must be in accordance with their authority and competence. However, this regulation does not explicitly accommodate emergency situations that require flexibility in medical intervention. As a result, midwives are often vulnerable to potential criminalization when performing life-saving measures that are actually based on good faith and humanitarian principles.

Although a legal framework is in place, various studies show that legal protection for midwives in practice still faces obstacles, such as a lack of clarity regarding operational standards in emergency situations, weak regulatory dissemination, and minimal legal assistance for health workers (Purnomo et al., 2024). This ambiguity lies not in the implementation of the norm, but rather in the substance of the norm itself, which does not yet specify the limits of permissible medical procedures in emergency situations. This situation gives rise to multiple interpretations of the legal norm, potentially creating legal uncertainty in practice. Thus, the aims of the study is analyzing normative problems in the form of vague and incomplete norms, particularly regarding legal protection for midwives in carrying out medical actions outside their authority in emergency conditions.

METHOD

This research uses a normative juridical approach, focusing on analyzing the legal norms applicable within the positive legal system. This approach is conducted by examining the laws and regulations governing midwifery practice, particularly those related to the authority and legal protection of midwives. The legal materials used include: Primary legal materials, namely: (a) Law Number 4 of 2019 concerning Midwifery , (b) Law Number 17 of 2023 concerning Health , (c) Government Regulation Number 28 of 2024 , (d) Regulation of the Minister of Health concerning midwifery practice . Secondary legal materials, in the form of scientific journals, books, and previous research results. The approaches used include: Statute approach and conceptual approach. The analysis was conducted qualitatively by interpreting existing legal norms to identify legal gaps related to the legal protection of midwives in emergency situations. This approach was used to examine the consistency, synchronization, and adequacy of legal norms in providing legal protection for midwives.

RESULT

The research results show that the authority and legal protection of midwives in the Indonesian legal system are regulated in various laws and regulations. Law Number 4 of 2019 concerning Midwifery affirms that midwives have the authority to provide health services in accordance with their competencies, professional standards, and code of ethics. Furthermore, Law Number 17 of 2023 concerning Health guarantees legal protection for healthcare workers while practicing in accordance with service and professional standards. This demonstrates that the state has normatively provided a basis for legal protection for midwives.

However, these regulations are still general in nature and do not specifically address emergency situations that require swift action beyond formal authority. Government Regulation No. 28 of 2024 does require healthcare workers to provide services in emergency situations, but it does not specifically outline the limits of midwives' authority in such situations. The absence of explicit regulations regarding the limits of actions in emergency conditions creates a legal gap, particularly regarding: (a) Limits of authority for emergency medical actions, (b) Legal protection for life-saving actions, (c) Standards for proving the good faith of health workers. As a result, legal protection for midwives is conditional and highly dependent on interpretations of professional standards and the specific situation at hand. This situation demonstrates that existing regulations lack clear, unambiguous norms, leaving room for multiple interpretations in their application. This ambiguity indicates a vague norm *and* a lack of specific operational norms (*a legal gap*) governing emergency medical procedures by midwives.

DISCUSSION

This discussion focuses on a legal analysis of the authority and legal protection of midwives within the framework of Indonesian positive law, particularly in identifying legal gaps *in* emergency situations.

Legal Position of Midwives in Professional Practice

Midwives, as healthcare workers, have a clear legal standing within the Indonesian healthcare legal system. This status is regulated by Law Number 4 of 2019 concerning Midwifery, which affirms that midwives are healthcare workers authorized to provide healthcare services in accordance with their competencies, professional standards, and code of ethics. Internationally, the legal position of midwives is closely associated with regulatory frameworks that define professional competencies, scope of practice, and licensing mechanisms. Comparative studies indicate substantial variation among countries regarding the authority granted to midwives, which directly affects legal certainty and professional autonomy (Chakraborty et al., 2023; Ranchoff & Declercq, 2020).

Furthermore, Law Number 17 of 2023 concerning Health also strengthens the position of midwives by guaranteeing the right of healthcare workers to legal protection in carrying out their professional practice. This provision demonstrates that the state has normatively recognized and protected the existence of midwives as part of the national healthcare system. Contemporary evidence also demonstrates that a clear regulatory framework contributes significantly to strengthening professional identity, accountability, and the delivery of safe maternal and neonatal care services (Toll et al., 2024; McAuliffe et al., 2023). In practice, this legal status places midwives as legal subjects with rights and obligations. While midwives have the authority to provide healthcare services, they are also limited by professional standards, service standards, and applicable legal provisions. Therefore, any medical procedures performed by midwives must be within established legal boundaries.

Legal Protection for Midwives' Medical Actions

Legal protection for midwives in medical practice is essentially conditional, provided that their actions comply with professional standards, service standards, and operational procedures. This aligns with the fundamental principle of health law, which emphasizes that healthcare workers' actions must meet the *professional standard of care*. Within the positive legal framework, Law Number 17 of 2023 concerning Health guarantees legal protection for healthcare workers while carrying out their duties in accordance with their competencies and applicable standards. This protection covers administrative, civil, and criminal aspects, provided there is no element of negligence or professional misconduct. The principle of legal protection for healthcare professionals is closely linked to compliance with professional standards and evidence-based practice. Studies from various jurisdictions indicate that adherence to professional guidelines remains one of the strongest legal defenses against allegations of negligence or malpractice (Kloester et al., 2022; McAuliffe et al., 2023). However, this legal protection is not absolute. If actions exceed their authority without a justifiable basis, healthcare workers, including midwives, can still be held

legally accountable. Therefore, the existence of professional standards and operational procedures is the primary instrument in determining whether an action is categorized as protected by law. In addition, healthcare governance literature emphasizes that legal protection should not merely focus on accountability but also provide a supportive environment that enables healthcare workers to exercise professional judgment safely, particularly in complex clinical situations (Toll et al., 2024).

Legal Gap in Emergency Situations

Although laws and regulations stipulate the obligations of healthcare workers to provide assistance in emergency situations, there are currently no specific regulations governing the authority of midwives to perform medical procedures outside of their formal authority to save a patient's life. Similar challenges have been reported internationally, where emergency situations often require healthcare professionals to act beyond routine clinical protocols. In such circumstances, ambiguity regarding professional authority may create uncertainty in determining legal liability and professional accountability (Chakraborty et al., 2023; Kloester et al., 2022). This lack of explicit regulation creates ambiguity regarding: limits of authority for medical action in emergency situations, parameters for legally justifiable actions, standards for proving good faith by health workers. The absence of these norms indicates that existing regulations do not fulfill the principle of legal certainty as a fundamental principle in the legal system. The absence of clear parameters makes it difficult to determine whether an action can be categorized as legally valid or as exceeding authority. The absence of clear legal parameters for emergency decision-making may discourage healthcare workers from taking necessary life-saving actions. This phenomenon has been described as a form of defensive practice resulting from concerns about potential legal consequences (McAuliffe et al., 2023; Toll et al., 2024). In legal practice, this situation has the potential to create legal uncertainty because the assessment of a midwife's actions is highly dependent on the interpretation of the specific situation. Consequently, actions medically intended to save lives can potentially be legally challenged if there is no clear normative basis. This legal vacuum shows that existing regulations are not fully responsive to the dynamics of healthcare practices, particularly in emergency situations that require flexible medical procedures.

Legal Implications in Midwifery Practice

The legal implications of the absence of this norm can be seen in several cases that have occurred in Indonesia, where health workers, including midwives, faced legal problems due to medical actions in emergency conditions. In Indonesian healthcare practice, there have been cases of midwives being prosecuted for medical actions they performed. These two cases involved Midwife Z and Midwife A. In Midwife Z's case, her actions caused pain and death to a female patient. Midwife Z was proven guilty of committing the crime criminal offense "Using tools, methods or other means in providing services to the community gives the impression that the person concerned is a health worker who has a STR and SIP". In addition, other cases which is being processed in court without any recommendation for investigation from the MDP, namely the case of Midwife A, which is currently being processed in court (Tanjung, 2024). Midwife A is suspected of malpractice because The patient experienced damage to the cornea of the eye, resulting in blindness and causing the syndrome Stevens-Johnson Syndrome (SJS) (Tanjung, 2025). This case shows that midwives can face legal liability when health care actions are deemed to exceed their authority or are deemed not to comply with professional standards (Astuti & Savitri, 2025). International evidence suggests that professional liability cases involving midwives frequently arise not only from clinical errors but also from unclear regulatory boundaries regarding scope of practice and emergency interventions. Consequently, legal disputes often reflect systemic regulatory weaknesses rather than purely individual professional misconduct (Ranchoff & Declercq, 2020; Chakraborty et al., 2023). This case demonstrates that the lack of specific regulations regarding the limits of midwives' authority in emergency situations has the potential to create legal uncertainty in healthcare practices. Consequently, midwives who perform medical procedures to care for and save patients are still at risk of legal action, even if the actions are performed in good faith and with due consideration

(Astuti & Savitri, 2025). Thus, it can be concluded that the main problem does not lie in the implementation of practice, but rather in the absence of norms, even though the problem of handling patients in medical emergency conditions is a real event (inevitable) in patient handling, so that more specific and operational regulatory improvements are needed. Furthermore, studies on professional autonomy demonstrate that healthcare workers who practice within a clearly defined scope of authority are more likely to provide timely and effective emergency care without fear of legal repercussions (McAuliffe et al., 2023; Yadav et al., 2022).

Recommendations for Strengthening Regulations

Based on the results of the normative legal analysis, efforts are needed to strengthen regulations to address the existing legal vacuum. Recommendations that can be submitted include: (1) Determining the authority in emergency conditions. (2) Regulations need to explicitly regulate the scope of medical actions that can be carried out by midwives in emergency conditions, including limitations and conditions that must be met. (3) Strengthening legal protection based on good faith. (4) Regulations are needed that provide legal protection to health workers who act in emergency conditions with good faith to save the patient's life. Standardization of emergency medical procedures: Preparation of more specific guidelines or operational standards related to emergency medical procedures for midwives as a reference for practice and legal protection. Strengthening regulatory harmonization: Synchronization between laws, government regulations, and technical regulations to prevent overlapping or gaps in norms in health service practices. By strengthening these regulations, it is hoped that better legal certainty will be created for midwives in carrying out their professional practice, while also guaranteeing patient safety in health services. Comparative experiences from several countries indicate that strengthening legal certainty requires harmonization between statutory law, professional regulations, and clinical practice guidelines. Effective regulatory frameworks not only define professional authority but also establish explicit legal safeguards for healthcare workers acting in good faith during emergencies (Toll et al., 2024; Chakraborty et al., 2023; Kloester et al., 2022).

CONCLUSION

Based on the results of the normative legal analysis, it can be concluded that various laws and regulations provide legal protection for midwives in performing medical procedures. However, these regulations do not yet regulate the authority midwives have to perform necessary actions in emergencies. There is a legal gap regarding the limits of authority for medical procedures in emergency situations. This condition has led to the emergence of various legal incidents that have resulted in midwives being processed and found guilty of committing errors in court. Therefore, a more specific, operational, and integrated regulatory reformulation is needed to ensure legal certainty and optimal legal protection for midwives.

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