KORESONDENSI

▪ **Judul Artikel:** Juridical Study of Criminal Law on Delegation of Authority of Obstetricians and Gynecologists to Midwives in Health Services
▪ **E-ISSN:** 2550-0090
▪ **P-ISSN:** 1412-6834
▪ **DOI:** http://dx.doi.org/10.26555/novelty.v14i2.a25748
▪ **Publish:** Jurnal Hukum Novelty, Volume 14, Issue 2, 2023, pp. 272-287
▪ **Publisher:** Faculty of Law, Universitas Ahmad Dahlan, http://journal.uad.ac.id/index.php/Novelty
▪ **URL:** http://journal.uad.ac.id/index.php/Novelty/article/view/25748
▪ **Tanggal Publisher:** 2023-12-27

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1. Riwayat Submit
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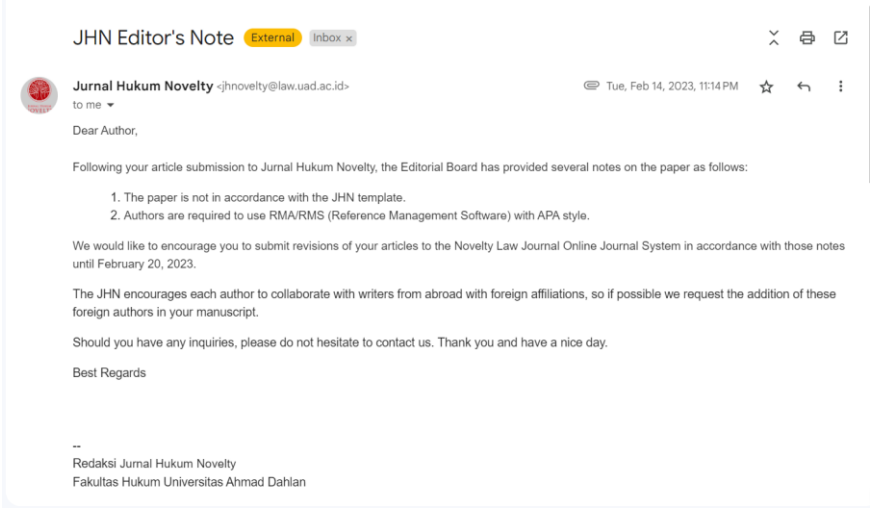
4. Manuskrip setelah review
5. In Press
6. Artikel sudah publish

1. RIWAYAT SUBMIT



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Jurnal Hukum Novelty <jhnovelty@law.uad.ac.id> Tue, Feb 14, 2023, 11:14 PM

to me

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The JHN encourages each author to collaborate with writers from abroad with foreign affiliations, so if possible we request the addition of these foreign authors in your manuscript.

Should you have any inquiries, please do not hesitate to contact us. Thank you and have a nice day.

Best Regards

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JURNAL HUKUM NOVELTY

P-ISSN 1412-6834
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#25748 Summary

SUMMARY REVIEW EDITING

Submission

Authors	Fitriani Nur Damayanti, Lia Mulyanti, Sandeep Poddar
Title	Juridical Study of Criminal Law on Delegation of Authority of Obstetricians and Gynecologists to Midwives in Health Services
Original file	25748-67976-1-SM.DOC 2023-01-29
Supp. files	25748-67977-1-SP.DOC 2023-01-29
Submitter	Fitriani Nur Damayanti
Date submitted	January 29, 2023 - 02:10 PM
Section	Articles
Editor	Arief Budiono
Author comments	Saya berharap artikel saya dapat diterima di jurnal Novelty
Abstract Views	0

Journal History
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2. MANUSKRIP YANG DISUBMIT

Juridical Study of Delegation of Authority Between Doctors and Midwives in Health Services

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Abstract

Introduction to The Problem: The fulfillment of health services is the right of every Indonesian citizen. Health workers have a very important role to improve the maximum quality of health services to the community. Midwives can provide health services in accordance with the doctor's mandate under the supervision of doctors, especially in emergency and referral services
Purpose/Objective Study: This study aims to determine the juridical study of the delegation of authority between doctors and midwives in health services.
Design/Methodology/Approach: The type of research used is normative juridical law using secondary data
Findings: Delegation of authority by midwives in carrying out health service actions is given by mandate from doctors, doctors must carry out periodic monitoring and evaluation. The delegation of authority for medical duties to midwives has so far been carried out in writing and orally by telephone. The party responsible for the process of delegation of authority is the place of health services, the doctor as the party providing the delegation of authority and the midwife as the executor who is delegated authority.
Paper Type: General Review
Keywords: Juridical Studies, Delegation of Authority, Doctors, Midwives, Health Services

Introduction

Fulfillment of health services is the right of every person which is constitutionally guaranteed in the 1945 Constitution of the Republic of Indonesia. protection and sustainability, as stated in Law Number 36 of 2009 Concerning Health (Sahari, 2022)**.** Health workers have a very important role to improve the maximum quality of health services to the community. Health workers are the front line of public health services to achieve health development goals in accordance with national goals. As a key component in the delivery of health services, the existence, roles and responsibilities of health workers are of course very important in health and safety development activities for both the health workers themselves and the community receiving health services.

Midwives are recognized as professional and accountable staff who work as women's partners to provide health services consisting of maternal health services, child health services and women's reproductive health services and family planning. This care includes prevention efforts, promotion of normal delivery, detection of complications in the mother and child and access to medical assistance or other appropriate assistance and carrying out emergency measures (Lastini et al., 2020) .

Midwifery services are services provided by midwives in accordance with their authority with the aim of improving maternal and child health in order to achieve quality, happy and prosperous families. The targets of midwifery services are individuals, families and communities, which include efforts to improve, prevent, cure and recover (Jamillah & Yulianto, 2018) .

A midwife in carrying out her authority must comply with professional standards, have the skills and ability to carry out the actions taken and prioritize the health of the mother and baby or fetus (Mujiwati, 2020) . Midwives can provide health services in accordance with the doctor's mandate under the supervision of doctors, especially in emergency and referral services. In addition, in carrying out certain medical procedures, doctors cannot carry them out themselves, but are assisted by midwives who are at the health care facility (Jamillah & Yulianto, 2018) .

The delegation of authority given by doctors to midwives has not been clearly regulated. Law Number 4 of 2019 concerning Midwifery mentions the delegation of authority as a mandate by doctors to midwives, but it does not clearly stipulate what types of actions are delegated, for example actions that can be delegated delegatively or mandated (Mujiwati, 2020) . The doctor or can give the delegation of a medical action to certain other midwives in writing in carrying out medical procedures. The technical instructions

for delegation in question have not been clearly regulated in legislation, even though many patients who need emergency obstetrics and gynecology care depend on doctors (Setyianta, 2018) .

Methodology

The type of research used is normative juridical law using secondary data. Secondary data consists of primary legal materials, namely Law Number 36 of 2014 concerning Health Workers, Law Number 29 of 2004 concerning Medicine, Law Number 4 concerning Midwifery. The secondary legal data of this research are books and journals related to the delegation of authority from doctors to midwives. The method of data collection was carried out by means of a literature study to examine library materials in the form of books on legislation and other sources related to this research. The results of further research were analyzed normatively qualitatively.

Results and Discussion

Health services cannot be fully carried out by doctors, so many medical services/actions that are under the authority of doctors are carried out by midwives who legally do not have the authority to carry out these medical services (Setyianta, 2018) . The delegation of authority from doctors *(delegans)* to midwives in carrying out medical services is a mandate delegation of authority, because the authority giver *(delegans)* remains responsible for the medical actions that are delegated to the recipient of authority *(delegataris)*. legislation (Hadiwijaya et al., 2017) .

The limited number of doctors creates a situation where midwives have to perform medical procedures or perform medical procedures that are not in accordance with their competence. Article 73 paragraph (3) of Law Number 29 of 2004 concerning Medical Practice provides an opportunity for midwives to carry out medical procedures if they comply with statutory provisions. Minister of Health Regulation Number 2052/Menkes/Per/X/2011 concerning License to Practice and Implementation of Medical Practice, in Article 23 Paragraph (1) states that doctors or dentists can delegate medical or dental procedures to nurses, midwives or certain other health workers in writing in carrying out medical or dental procedures. Article 11 in the Law of the Republic of Indonesia Number 36 of 2014 concerning health workers emphasizes that midwives are one of the health workers, where health workers in exercising their authority must comply with applicable regulations. Law Number 36 of 2009 concerning health Article 23 states that "Health workers have the authority to provide health services" and in this case the authority of midwives is regulated in Law Number 4 of 2014 concerning midwifery that holds Midwifery Practices, Midwives are tasked with providing maternal health services , child health services, women's reproductive health services and family planning, implementation of tasks based on delegation of authority, and/or implementation of tasks in certain limited circumstances.

The delegation of authority by doctors to midwives is regulated in Law No. 4 of 2019 concerning Midwifery in Article 54, namely the delegation of authority by midwives in carrying out health service actions is given on a mandate basis from doctors, health services mandated by doctors to midwives will be the doctor's responsibility as the mandate giver and the doctor must carry out regular monitoring and evaluation.

The implementation of health services in the field of midwives often gets assignments from doctors in the form of mandates (because the responsibility remains with the doctor). Among them are providing medical services (curative) and special actions (which are the authority of doctors and should be carried out by doctors) such as placing infusions, giving injections (Setyianta, 2018) .

The unavailability of regulations for certain types of midwifery procedures that can be performed by a midwife often results in overlap between the duties of midwifery services and those delegated by doctors. The delegation of authority for medical duties to midwives has so far been carried out in writing and

orally by telephone. Places of health services (puskesmas, hospitals, clinics, etc.), doctors and midwives as executors who are delegated with the authority are responsible for the delegation process.

Delegation of authority is a legal term, the application of which creates legal consequences, namely the consequences regulated by law (Saswanti, 2012) . Midwives in accepting the delegation of authority for medical action from doctors, when there is an alleged abuse of authority (Sirait, 2016) , and resulting in harm to the patient, not only the midwife herself is legally responsible. The doctor is also legally responsible, because it can occur due to an error in giving the delegation of authority.

Criminal liability for both doctors and midwives in the event of malpractice that causes harm to patients needs to be examined first, in this case it is necessary to open medical records, if in practice the actions carried out by midwives are not in accordance with standard procedures when receiving mandated delegation of authority from the doctor, the midwife also takes legal responsibility, but in this case the doctor cannot release his responsibility when delegating delegation of authority, mistakes in delegating action by doctors to midwives can also be fatal to patients (Suryanda et al., 2018) .

Therefore it is necessary to review the patient's medical record, where the error occurred, whether the midwife in carrying out the delegation of authority was in accordance with the standards in the hospital or not, or was it the fault of the doctor as the provider of the delegation of authority. If it is proven that there was a mistake, which led to a lawsuit, civil or criminal, it is because there is a legal relationship with the engagement. In addition to civil liability, lawsuits against doctors and midwives can be sued or criminally prosecuted (Lastini et al., 2020) .

Acknowledgment

The authors would like to thank sincere gratitude also goes to anonymous reviewers and editors who have provided constructive feedback so that this manuscript looks worth reading and citing.

Declarations

Author contribution : Author 1: initiated the research ideas, instrument construction, data collection, analysis, and draft writing; Author 2: revised the research ideas, literature review, data presentation and analysis, and the final draft.
Funding statement : This research was not funded by any party
Conflict of interest : The authors declare no conflict of interest.
Additional information : No additional information is available for this paper.

References

Hadiwijaya, H., Widanti, A., & Rahim, A. H. (2017). Peran Bidan Dalam Kewenangan Tindakan Episiotomi Yang Diperluas Pada Praktek Swasta Mandiri Dan Klinik Bersalin. *Soepra Jurnal Hukum Kesehatan*, *2*(1), 42. https://doi.org/10.24167/shk.v2i1.808

Jamillah, S. N. A., & Yulianto, S. (2018). Pertanggungjawaban Hukum Bidan Akibat Pelimpahan Wewenang Oleh Dokter Dalam Pelayanan Kesehatan Di Puskesmas. *Justitia Jurnal Hukum*, *2*(1). https://doi.org/10.30651/justitia.v2i1.1714

Lastini, K., Sutrisno, E., & Sugiarti, T. (2020). Perlindungan Hukum Profesi Bidan Dalam Pelimpahan Wewenang Tindakan Medis. *Mimbar Keadilan*, *13*(2), 131–140. https://doi.org/10.30996/mk.v13i2.3324

Mujiwati. (2020). Perlindungan Hukum Terhadap Bidan Yang Menerima Pelimpahan Kewenangan Tindakan Kebidanan Dihubungkan Dengan Standar Profesi Bidang Kesehatan. *Aktualita*, *3*(1), 5–24.

Saswanti, O. (2012). *Tinjauan Yuridis Tentang Pendelegasian Kewenangan Dokter Kepada Perawat Dalam Pelayanan Kesehatan*.

Setyianta, P. T. (2018). Kajian Yuridis Pelimpahan Kewenangan Dokter Umum Kepada Bidan Dalam Pelayanan Obstetri Dan Neonatal Emergensi Dasar Di Puskesmas Gandrungmangu Satu. *Jurnal Idea Hukum*, *4*(2), 1023–1055. https://doi.org/10.20884/1.jih.2018.4.2.99

Sirait, T. M. (2016). Urgensi Perluasan Pertanggungjawaban Pidana Korporasi Sebagai Manifestasi Pengejawantahan Konstitusi. *Jurnal Konstitusi*, *13*(3), 575. https://doi.org/10.31078/jk1335

Suryanda, A., Wahyati Y., E., & Murni, T. W. (2018). Asas Kehati-Hatian Dan Tanggung Jawab Hukum Pidana Bidan Pada Kasus Angka Kematian Ibu (Aki). *Soepra*, *3*(1), 26. https://doi.org/10.24167/shk.v3i1.695

Law Number 36 of 2014 concerning Health Workers

Law Number 29 of 2004 concerning Medicine

Law No. 4 concerning Midwifery

3. RIWAYAT REVIEW/REVIEW SUBSTANSI

REVIEW: 1 (2023-03-31)

General Remarks:

1. The author(s) are pleased to refer to the author guidelines for such technical mistakes, like number of words in abstract, keywords, and reference style including body notes used in JHN.

Editor Remarks:

1. 80% of journal references must be from journals of the last 10 years
2. Jurnal Hukum Novelty encourages every author to collaborate with writers from abroad with foreign affiliations, so if possible we ask for the addition of these foreign writers in your manuscript.

Please make sure that the author(s) apply the "Track Changes" while revising this manuscript, otherwise we cannot accept your revised manuscript.

Legal Protection for Victims and Children Who Performs Sexual Abuse of Children Underage Perspective of Balinese Local Wisdom

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Abstract

Introduction to The Problem: Indonesia has special rules governing child protection. The low quality of child protection based on the perspective of Positive Law in Indonesia has drawn a lot of criticism from various elements of society who seem to prioritize the interests of victims compared to perpetrators of the crime of rape. Because without optimal protection, children will only become victims of a society that tends to be patriarchal in nature. Therefore, the concept of restorative justice based on local wisdom is one of the solutions in legal protection for victims and children who commit sexual harassment towards minors who prioritize recovery.

Purpose/Objective Study: The purpose of this study is to understand the existence of legal protection for victims and children who sexually abuse minors from the perspective of local wisdom Bali.

Design/Methodology/Approach: The research method used in This research is a normative legal research method, with statutory approaches, conceptual approaches, and case approaches. The types of legal materials used in this research are primary legal materials, secondary legal materials, and tertiary legal materials.

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Commented [A3]: Very challenging for international readers.

Suggestion:
This article is the result of legal research, ...

Findings: Legal protection for children based on local wisdom is a form of settlement that can be used against children as victims and children as perpetrators referring to the provisions of Article 1 number 6 of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System.
Paper Type: Research Article
Keywords: Underage Children; Sexual harassment; Legal protection; Local wisdom.

Introduction

Every human being has the desire and goal to have a child as the next generation that guarantees the continued existence of the nation and state in the future. Children based on the provisions of Article 1 Number 1 Law No. 35 of 2014 concerning Child Protection explains that "a child is someone who is not yet 18 years old and is even still in the womb". For early childhood, parents are the most important person and the household is their main learning environment (Sugiarto, 2021). If a child receives less attention from his immediate environment, it is easy for him to commit acts that deviate from the legal norms in force in society, and acts that are limited to juvenile delinquency and eventually lead to criminal acts that require serious legal action (Pritz, 2016).

The less optimal role of parents during the development of children and adolescents has adverse effects such as increasing delinquency in children and adolescents (Rumiyani, 2021). In its development, Indonesia has had special regulations regarding child protection, namely Law Number 4 of 1979 concerning Child Welfare, Law Number 3 of 1997 concerning Juvenile Court which was subsequently replaced by Law Number 11 of 2012 concerning the Juvenile Criminal Justice System and Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection (Wahyudi, 2015).

The provisions of Article 2 paragraph (3) and paragraph (4) of Law Number 4 of 1979 concerning Child Welfare contain the provision that "a child has the right to care and protection, both during the womb and after birth". With regard to child protection, it is the responsibility and obligation of parents, the general public and institutions authorized by the courts and both central and regional governments, this provision is regulated in the provisions of Article 20 to Article 26 of Law no. 23 of 2002 concerning Child Protection (Bahewa, 2016).

The constitutional justification for protecting children as the main concern of the nation and state, contained in Article 28 paragraph (2) of the 1945 Constitution has explicitly emphasized the constitutional rights of children which read: "Every child has the right to survival, growth and development and protection from various forms of violence. and discrimination". The Republic of Indonesia has explicitly recognized, respected and protected the constitutional rights of children, namely the right to survival, the right to grow and develop and the right to protection from violence and discrimination (Supriyanto, 2015).

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Sexual violence is one of the physical violence which includes criminal acts. Perpetrators of sexual violence do this to satisfy forced desire. Acts of sexual violence are not only in the form of forced sexual intercourse, but other activities such as groping, even if just looking at it, this is in accordance with Orange and Brodwin's narrative in the Journal of Psychology Early Prevention Toward Sexual Abuse on Children which explains that sexual violence in children is coercion, threats or deception of a child in sexual activity (Ratna Sari, 2015). This sexual activity includes seeing, feeling penetration (pressure), abuse and rape. The impact of sexual violence on children can be in the form of physical, psychological and social. The physical impact can be in the form of cuts or tears, on the hymen. The psychological impact includes

mental trauma, fear of embarrassment anxiety and even suicidal ideation or attempts. Social impact for example, cynical treatment from the people around him, fear of being involved in associations and so on. According to the provisions of Article 1 number 1 of Law Number 12 of 2022 concerning Crimes of Sexual Violence, it is defined as "all acts that fulfill the elements of a crime as regulated in this law and other acts of sexual violence as regulated in the law as long as it is determined in the law." Meanwhile if someone commits violence or forces a child to have intercourse, then the perpetrator is also only threatened with imprisonment for a minimum of 5 (five) years and a maximum of 15 (fifteen) years, so the perpetrators of sexual harassment and perpetrators of sexual violence carry the same threat. The important element of sexual harassment is the unwillingness or rejection of any form of attention of a sexual nature, so that it can be actions such as whistling, words, comments which according to local culture or manners (rasa susila) are normal, the occurrence of sexual violence to children can be caused by various factors that influence it so complex, in general it can be stated that the factors that cause sexual crimes against children are divided into 2 (two) parts, namely (Syahputra, 2018) :

1. Internal factors are factors contained within the individual. Factor This is specifically seen in the individual and things that have a relationship with sexual crimes include:
   a. Psychological Factors. Psychological conditions or abnormal self- states of a person can encourage a person to commit a crime. For example, an abnormal sexual appetite can cause perpetrators to commit rape against child victims without realizing their own state;
   b. Biological Factors. In reality human life has various kinds of needs that must be met. There are three types of biological needs, namely food needs, sexual needs and protection needs. The need for sex is the same as other needs that demand fulfillment.
   c. Moral Factor. Moral is an important factor to determine the emergence of crime. Moral is often referred to as a filter against the emergence of deviant behavior. Rape, because the morale of the perpetrators is very low. Like the latest case that occurred in East Jakarta, where a father with the initials YS had the heart to rape his own biological child 35 times and have intercourse with the child.
2. External Factors External factors are factors that are outside oneself perpetrators, as follows:
   a. Socio- Cultural Factors. Increased cases of immoral crimes or Rape is closely related to socio-cultural aspects. As a result of modernization, a culture that is increasingly open and association is increasingly free;
   b. Economic Factors. Difficult economic conditions cause a person to have a low level of education which in turn will have an impact on whether the job obtained is good or not. In general, someone who has a low level of education tends to get a job that is not feasible. The state of the economy is a factor that directly or indirectly affects the main points of people's lives. As a result, there has been an increase in crime, including rape cases;
   c. Mass Media Factor. The mass media is a means of information in sexual life. News about the crime of rape which is often openly informed and dramatized is generally described as the perpetrator's satisfaction. Things like this can stimulate readers, especially people who are mentally evil, to get the idea to commit rape.

Rape cases are rife in Indonesia, because the existing law in Indonesia in regulating rape cases lacks a legal reform that can burden the sanctions of the perpetrators who do it, for this reason the Indonesian people urge the government to enact laws and regulations governing rape, especially rape against minors (Apriyansa, 2019). Sexual violence against children has received attention from many people because sexual violence against children is the highest level of violence compared to physical and psychological violence, which is confirmed by information from the National Commission for Child Protection.

Violence against children in Indonesia up to September 2006 had occurred 861 cases, 60% of them were cases of sexual violence against children. Indonesia is highlighted as a country that has very weak protection for children. The examples of cases include: The rape case that was committed by three elementary school children against a kindergarten student in Dlanggu District, Mojokerto Regency, East Java continued into the realm of law. This was after mediation by village officials with the victim's family, the perpetrator's family, and related parties did not find an agreement. Previously, kindergarten students in Mojokerto Regency were victims of rape by three boys who were still in elementary school. Chronology, the victim was invited by the three perpetrators while playing alone, the victim was invited to an empty house and then forced to lie down and raped.

Commissioner of the Indonesian Child Protection Commission (KPAD) Jasra Putra revealed that data showed that his party found 218 cases of child sexual violence in 2015. Meanwhile, in 2016, KPAI recorded 120 cases of sexual violence against children. Then in 2017 there were 116 cases recorded. Meanwhile, in terms of the age of the perpetrators, it was found that the perpetrators ranged from children to grandparents, in cases of children and adolescents. usually due to the impact of porn VCDs and internet media. Meanwhile, for the age of the perpetrators who are adults, the dominance of power relations is more dominant, for example, fathers and children, grandfathers and grandchildren, neighbors and children next to their house, shamans and patients. Furthermore, to prevent the expansion of problems in the thesis. I this, the sexual harassment in question is limited to sexual intercourse, which occurs against minors and the perpetrators are adults and most of them are people who are known to the victim.

The low quality of child protection in Indonesia has drawn criticism from various elements of society. The question that often arises is to what extent the government has attempted to provide (legal) protection for children, so that children can obtain guarantees for their survival and livelihood as part of human rights, based on provisions of Article 20 of Law no. 23 of 2002 concerning Child Protection, those who are obliged and responsible for implementing child protection are the state, government, community, family and parents. Where lately there has often been a crime of sexual violence against children and the most severe crime of sexual violence is currently not only committed by adults but also by children, in this case children can be said to be victims or perpetrators of acts (Utari, 2020). Seeing that there are still many cases of sexual violence that occur in Indonesia, children's rights have not been fulfilled in accordance with legislation, children's rights have not been fulfilled to the fullest, especially children from minority and isolated groups. This means that the existence of the Child Protection Law has not been balanced by the implementation of child protection. Legal protection regulated in the form of regulation and its application. Is expected to provide guarantees for the fulfillment of children's rights so that they can live, grow and develop and participate optimally in accordance with human dignity. In addition, to get protection from all kinds of acts of violence, injustice, neglect, discrimination, exploitation, and other negative actions for the sake of creating strong children of the nation as the next generation in the future (Fitriani, 2016).

Legal protection for children at this stage is important to put forward because the process can show tendencies to harm Indonesian children in general, especially children in the Bali area in the future, this requires psychological restoration so that children feel like they were in society before. The process of resolving cases of children in Bali who are involved in legal issues, should be different from adults. The procedure needs to be carried out carefully, so that children still get maximum protection in the Traditional Village. In contrast to the formal judiciary, which has been regulated according to Law no. 3 of 1997 concerning Juvenile Courts, the mechanism for resolving cases of troubled children in the Balinese Indigenous community has very strong characteristics with the process rules used are local wisdom rules,

Commented [A5]: This data is too old.
Use the most recent data in the last five years, especially in Bali province.

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Is it true that the quality of child protection is very low?
The following questions can help authors:
What are the current government efforts in protecting children?
Is there any legal instrument?
What's the problem? Who is involved (government, NGOs, or citizens)? What is the budget for a year? What are the forms of socialization or prevention?

namely using the mediation model and avoiding as far as possible formal mechanisms, instead of the legal process for children in the Balinese area reject the formal justice system (judicial demands), unless the mediation is not successful, therefore, the solution is for the child to be returned to the Traditional Village for the legal process by using the legal process of local wisdom (Wartayasa, 2020). Awareness of the importance of adequate legal protection for minors both as victims and perpetrators of acts of sexual harassment, especially regarding legal protection in the perspective of local wisdom in Bali, the authors are interested in further studying "Legal Protection of Victims and Children Who Commit Sexual Harassment Against Underage Children Perspective of Balinese Local Wisdom" in the form of research.

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What is so special about local wisdom in Bali? Can "local Balinese wisdom" effectively reduce the sexual harassment of minors? Why are national laws not effective in Bali?
After that, the writer must write 2-3 problem statements to lead the reader to the discussion section.

Methodology

The type of research method used is the normative legal research method. It is said to be normative, because law is considered as something that is autonomous. its application is determined by the law itself not by factors outside the law. Based on these assumptions, the law is considered perfect and final so it remains to be implemented (Barus, 2013). The techniques for analyzing legal material in this study include Evaluative, Interpretative, Systematic, Constructive, Argumentative, as well as Descriptive basic analysis techniques that cannot be avoided (Ariawan, 2017).

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Suggestion:
This article is the result of legal research, ...

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Suggestion:
See, Peter mahmud Marzuki, Penelitian Hukum, edisi Revisi (jakarta: Kencana Prenada, 2015).

The approach used in this study is the concept and case law approach. The types of legal materials used in this research are primary legal materials, secondary legal materials and tertiary legal materials. The main legal materials used in this research are the 1945 Constitution of the Republic of Indonesia, Law No. 35 of 2014 concerning Child Protection, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System. Secondary legal materials consist of books and scientific papers related to this research. While tertiary legal material is obtained through articles on the internet related to this research. The legal material that has been obtained and collected through research is analyzed using a normative approach, namely the legal material that has been collected is inventoried and analyzed using a theoretical approach and criminal law principles that refer to statutory regulations (Ni Putu Rai Yuliartini, 2022).

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In the abstract, the author also mentions the statutory approach. Why is it different from the abstract?

Results and Discussion

Balinese Local Wisdom- Based Character Formation in Minimizing Deviations by Children

Socio- cultural changes occur due to cultural contact between countries. Cultural contact can be interpreted as a meeting between new values and old values that dominate each other and are very influential at the surface structure level, namely at the attitude and behavior patterns, as well as at the level of deep structure, namely changes in value systems, views on life, philosophy, and beliefs (Suwardani, 2015). Modernization erodes local culture to become Westernized. puritanism often regards culture as a syncretic practice to be avoided. As long as it does not conflict with norms, local culture must always be maintained to strengthen the character of the nation's children.

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Local culture. is a culture that is highly respected by indigenous peoples. In order for the existence of culture to remain strong, it is necessary to instill a sense of love for local culture, especially in the regions, to the next generation and to straighten out the nation's struggle. One way that can be processed is by integrating local cultural wisdom values in the learning process. extra curricular, or student activities at school. For example by optimally applying Local Cultural Wisdom- Based Character Education. There are many local wisdom values that can be used to strengthen. character education, each region certainly has its own culture. various wisdoms in it (Winangun, 2020). Character education is a system of instilling character values in school members which includes components of knowledge, awareness or will, and

Commented [A13]: Reference?

actions to carry out these values, both towards God Almighty, oneself, others, the environment, and nationality.

Character is the values of human behavior related to God Almighty, oneself, fellow human beings, the environment and nationality which are embodied in thoughts, attitudes, feelings, words and actions based on religious norms, laws, manners, culture and customs. Character is a representation of a person's identity that shows his submission to applicable rules or moral standards and reflects his thoughts, feelings and inner attitudes which are manifested in the habit of speaking and acting. Local wisdom is an accumulation of knowledge and policies that grow and develop in a community that represents its theological, cosmological and sociological perspectives. Efforts to build character education based on local wisdom of the Balinese people from an early age through education are considered the right step.

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Commented [A15]: This needs to be explained further. Why is this the right move?

School is a formal institution that forms the basis of education. Education in schools is part of the national education system which has a very important role in improving human resources. Through education in schools it is hoped that it will produce quality Indonesian human resources (Wigunadika, 2018). Local wisdom- based character education implemented in Bali can be seen from the direction of the policies and programs of the Bali Provincial government, namely Nangun Sat Kerthi Loka Bali. The meaning of Nangun Sat Kerthi Loka Bali is to maintain the sanctity and harmony of Bali's nature and its contents in order to create a prosperous and happy Balinese krama life, at the same time, towards the Balinese krama and gumi life in accordance with Bung Karno's Trisakti principles, namely political sovereignty, economic independence, and personality in Culture (Dewi, 2020).

The visions of these programs are intended to lead to a New Era of Bali by fundamentally and comprehensively organizing Bali's development which includes three main aspects namely nature, manners and Balinese culture based on the values of Tri Hita Karana which are rooted in the local wisdom of Sad Kerthi. The value of other Balinese local wisdom concepts that can be used as a basis for instilling character values for early childhood in order to prevent children from deviating actions. Based on this philosophy, it can be stated that to achieve prosperity, peace and harmony. humans must always establish a relationship with the Almighty (God Almighty), with fellow human beings, and with the natural environment in which humans live.

The elements of Tri Hita Karana include Parhayangan which means a harmonious relationship between humans and God, Pawongan which means a harmonious relationship with fellow human beings, and P mahan which means a harmonious relationship between humans and the environment, to achieve a happy and harmonious life. , the three elements of the relationship need to be applied in everyday life in order to achieve a more harmonious life. Humans cannot live without interaction with humans. others and the environment. In addition, the relationship with God teaches individuals to behave in accordance with noble values and morals. In practice, Balinese local wisdom- based character education for early childhood requires a separate strategy. The strategy in question is through habituation and strengthening.

Commented [A16]: Reference?

Through the habituation strategy, ethical behavior and positive character will become the child's daily behavior. Teachers and parents must always be consistent in applying the rules that have been set for children. However, teachers and parents must still provide space for movement. for children to do activities. Reinforcement strategies are intended to provide motivation or encouragement to children both verbally and nonverbally. This reinforcement can encourage children to show attitudes that are considered good by their environment. Basically, everyone, including early childhood, needs recognition for himself and the behavior shown. Verbal praise will create a sense of pride and be appreciated by the environment. Early childhood is very happy when the things they do are praised and declared good or

good by teachers, parents and adults around them. This will make the child to do the same activity. Nonverbally, when a child shows good behavior, for example not disturbing other friends who are praying, the child can be given a stamp in the form of a sticker, applause star, thumbs up or something else (Wardhani, 2020).

Commented [A17]: After this paragraph, the writer needs to explain how successful the habituation strategy, ethical behavior, and positive character are.
Does this affect the low level of violence against children?
If there is data, it should be used in this article.

The Urgency of Social Control Theory as the Foundation for Child Delinquency Management Policy in Bali

Social Control Theory developed by Travis Hirschi departs from an assumption that individuals in society have an equal tendency to be "good" or "evil", more likely to disobey punishments or have incentives to break the law (Setiawati, 2021). Good a person's position is completely dependent on society. He becomes good if society makes it so, and becomes bad if society makes it so. In addition to differences in explaining crime, social control theory is essentially not the same as criminological theories in general, which departs from the basic questions raised by this understanding related to deterrent elements that are able to prevent the emergence of delinquent behavior (behavior that is unacceptable socially) social among community members, especially teenagers.

Social control theory departs from a basic question that must be clarified through this theory, the basic question is "Why do we obey and obey society's norms or "Why don't we commit deviations?". These basic questions reflect an idea that deviation is not a crime, problematic, which is seen as the main issue is obedience or adherence to societal norms Social control theory departs from a basic question that must be clarified through this theory, the basic question is "Why do we obey and obey society's norms" or "Why don't we make deviations?". This basic question reflects a notion that deviation is not a problem, which is seen as a problem. The main thing is obedience or adherence to societal norms. According to Travis Hirschi, there are four elements of social bonds that exist in every society, namely:

1. First, Attachment is the human ability to involve himself towards others. Attachment is often interpreted freely with attachment. The first bond is attachment to parents, attachment to the school (teacher), and attachment to peers;
2. Second, Commitment is a person's attachment to conventional sub- systems such as school, work. organization, and so on. Commitment is a rational aspect that exists in social bonds. All activities carried out by an individual such as school, work. activities in the organization will bring benefits to that person. These benefits can be in the form of property, reputation, future, and so on;
3. Third, involvement, is the activity of a person in the subsystem. If a person plays an active role in the organization, there is little tendency to deviate. The logic of this understanding is that if a person is active in all activities, that person will spend time and energy in these activities. So he doesn't have time to think about things that are against the law. Thus all activities that can provide benefits, will prevent that person from committing acts that are contrary to the law.
4. Fourth, Belief, is a moral aspect contained in social bonds, which is certainly different from the three aspects above. Beliefs is a person's belief in existing moral values. One's belief in existing norms leads to compliance with these norms (Margareth, 2019).

As is the case in Bali, the perpetrators of child delinquency studied in Bali are actually very obedient and pious children, also supported by strong social ties with high social activity, there are many cases of child delinquency, for this reason it is very natural that this is studied according to the theory of Social Control (Ikhwan, 2021). Although it is realized that initially this control theory mainly addresses the problem of juvenile delinquency for some high school students in America, further research has also been carried out in Bali. The study of juvenile delinquency that occurred at Bali was tried to be analyzed using a criminological theory approach, namely social control theory put forward by Travis Hirschi Permanent Professor of Sociology at the University of Arizona. The use of social control theory in this study was based

on the fact that the culture (culture) of Indonesian society (especially Bali) still upholds the norms of decency and eastern customary etiquette.

These four elements influence whether or not the social bonds of children/ adolescents are closely related to society. To the extent that individuals show social ties to society, the question that arises among criminologists is how these bonds can be weakened or broken which in turn gives birth to delinquent behavior (behavior that is not socially acceptable), once one of the four elements weakens over oneself. someone then that person will be "liberated" and the tendency of that person to engage in delinquent behavior increases.

From the description above it can be concluded that social control theory can be used as a basis for tackling juvenile delinquency, given that it has described in detail a social bond that seems clear from elements of social control such as attachment, commitment involvement, and belief. Schools, community leaders, religious leaders, daily life and a community organization, and the benefits that are already evident can be well received by the results, supported by obedience to law and religion, it is inevitable that this theory of social control can be used as a basis for tackling child delinquency. Moreover, this theory is associated with Balinese culture with local wisdom such as Tri Hita Karana, which is local wisdom in the pattern of overcoming child delinquency (Gde Made Swardhana, 2015).

Legal Protection Efforts Against Children As Victims and Perpetrators of Sexual Harassment Local Wisdom Perspective

The development of science and technology in the era of globalization greatly influences the behavior of the nation's children which increasingly makes the values of the nation's character disappear. The existence of deviant behavior from children while in association in society has an impact on the quality of children as the next generation. Deviant behavior which is often referred to as "mischief" is driven by a desire from the child (Prasetyo, 2020). Basically it looks unethical if a crime committed by a child is called a crime, because basically children have a very unstable mental condition. The process of psychic stability produces a critical, aggressive attitude and shows behavior that tends to act to disrupt public order. This cannot be said to be a crime, but delinquency caused by an unbalanced psychological condition and the perpetrator is not yet aware of and understands the actions the child has committed. There are two categories of children's behavior that make children have to deal with the law, namely Status Offence is the behavior of juvenile delinquency which if done by an adult is not considered a crime such as disobeying school or running away from home adults is considered a crime or violation of the law.

The legal protection efforts for children who are in conflict with the law include (Utari, 2020) :

1. Protection of Children as Actors
   Article 3 of Law no. 11 of 2012 provides an age limit for children who are in conflict with the law. The age limit for a child who is in conflict with the law is a child who is 12 (twelve) years old but not yet 18 (eighteen) years old. Then in the provisions of Article 3 of Law Number 11 of 2012 concerning the Juvenile Justice System it clearly states what are the rights of children in criminal justice. During the juvenile criminal justice process, children's rights must receive protection from every level. Such protection is given as a form of respect for children's human rights. The protection of children in conflict with the law has undergone fundamental changes, namely strict arrangements regarding restorative justice and diversion. These arrangements are intended to avoid and distance children from the judicial process, so as to avoid stigmatization of children in conflict with the law. In the provisions of Article 5 of Law Number 11 of 2012 concerning the Juvenile Justice System, it is clearly stated that:
   (1) The Juvenile Justice System must prioritize the Restorative Justice approach;
   (2) The Juvenile Criminal Justice System as referred to in paragraph (1) includes:

a. Criminal investigation and prosecution of children carried out in accordance with the provisions of laws and regulations, unless otherwise specified in this law;
b. Juvenile trials conducted by courts within the general court environment; and
c. Guidance, guidance, supervision and/ or assistance during the process of carrying out a crime or action and after serving a sentence or action.

(3) In the Juvenile Criminal Justice System as referred to in paragraph (2) letters a and b, it is mandatory to seek diversion. Article 6 of the Law Number 11 of 2012 concerning the Diversion Juvenile Justice System aims to:
a. Achieving peace between victim and Child;
b. Resolving child cases outside the judicial process;
c. Prevent children from deprivation of independence;
d. Encouraging the community to participate; And
e. Instill a sense of responsibility to children.

In protecting children who are in conflict with the law, the settlement process is required to involve all parties including the role of parents, family, community, government, other state institutions that are obliged and responsible for improving children's welfare, as well as special protection for the child concerned. The concept of restorative justice is known as the process of diversion.

In the diversion process, namely all parties involved in a particular crime jointly solve problems and create an obligation to make things better by involving victims, children, the community and related parties to find the best solution for children without any element of retaliation. In resolving cases of children in conflict with the law using a restorative justice justice approach, a settlement that involves all parties and jointly resolves cases and seeks the best solution to cases faced by children, thereby protecting children in conflict with the law that prioritizes the best interests for children.

2. Protection of Children as Victims
Protection of child victims of crime as stipulated in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection. Article 1 paragraph (2) Child protection is all activities that guarantee and protect children and their rights so that they can live, grow and develop and participate optimally according to human dignity and dignity and receive protection from violence and discrimination.

Handling cases of children who are in conflict with the law, especially child victims, must be handled specifically, both repressive and preventive measures in order to create a good and prosperous future for children. Regarding child victims, Law Number 11 of 2012 concerning the Juvenile Criminal Justice System in Article 1 paragraph (4) of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that: "Children who are victims of criminal acts, hereinafter referred to as child victims, are children who are not yet 18 (eighteen) years old who experience physical, mental and/ or economic losses caused by criminal acts." Furthermore, in Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, Article 90 paragraph (1) explains that child victims and children of witnesses are entitled to medical rehabilitation and social rehabilitation, both within and outside institutions". In addition to these rights, there are several rights of children as victims to receive medical assistance and psychosocial rehabilitation assistance.

The increase in cases of rape by children is one of the negative effects of the influence of social media on adolescents and children. Apart from the reasons why there has been an increase in cases of rape by children that need to be highlighted next, is that there are also many victims of rape by children who are also children. Rape is a criminal act of a sexual nature that occurs when an individual forces another

Commented [A18]: Reference?

individual to have sexual intercourse in the form of penetration of the vagina with the penis, by means of force or by using physical violence (Rumiyani, 2021).

Juridical protection as well as non- juridical protection needs to be carried out to ensure legal certainty and create justice for children as victims of rape crimes, because without optimal protection children will only become victims of a society that tends to be patriarchal. In efforts to protect victims of child rape, the protection measures that can be taken are preventive and repressive measures. In an effort to protect the law against children as victims of child rape, efforts are needed by the community in general and law enforcers. Legal remedies that can be taken provide protection and supervision of the victim if the victim receives threats from the perpetrator's family.

Commented [A19]: Need to be re-paraphrased so that no words are repeated.

The next protective effort is from a non- medical perspective, namely treating the psychological state of the victim after the incident. leave trauma to the victim. Obstacles in implementing legal protection efforts for children as victims of rape committed by children Perpetrators of criminal acts of children under the age of eighteen have problems, because perpetrators of criminal acts of children cannot be charged with punishment. In the juvenile justice system in Indonesia legal remedies are efforts the last thing that can be done when a conflict occurs, this also occurs in case Number 138/ Pid.Sus/ 2020/ PN.Pti initially the resolution of the conflict is carried out through mediation even though rape is too sadistic the impact on the victim apart from that it also has negative impact on perpetrators (Ni Putu Rai Yuliartini, 2022).

The purpose of punishment should be prioritized in cases of child rape, how can this law save the victim and also reconstruct and fix the perpetrators of the crime. The second obstacle is how the parents of the perpetrators do not understand the child's psychological state the way to solve the problem so that the child does not need to be punished, but this method does not seem very effective in providing a sense of justice for victims who are tormented due to trauma after the incident (Saimima, 2020). In this case the role of parents is very important to educate children so that children do not commit crimes. Second, the legal apparatus must provide counseling to the community so that people have the courage to speak out about the crimes that have occurred against them.

If viewed from the perspective of local wisdom, especially in Bali, where the existence of customary criminal law in Indonesia is not clearly regulated in the Criminal Code or other criminal laws and regulations. However, the existence of rules regarding customary criminal law is still implicitly recognized in the constitution (UUD 1945), as well as in several other laws. Against Balinese Customary Crimes which do not have an equivalent in the Criminal Code, a Penal Mediation mechanism can be carried out with the help of Customary Institutions (such as Banjar with Customary Offices/ Dinas. Desa Adat with Bandesa Adat), with the policies of each sub in the Criminal Justice System. The models used in the settlement of customary cases by the criminal justice system are informal mediation, community panels or courts, and family and community group conferences. Balinese customary crime. Returning to legal protection in the perspective of local wisdom in Bali, namely legal protection for children in Bali who are involved in legal problems, the procedure must be carried out carefully, so that children still get maximum protection from traditional villages.

Commented [A20]: Is Balinese customary criminal law necessary to be included in the Criminal Code or other laws? What about the other laws? The author must argue the importance of customary law regulated in the Criminal Code and other laws. Also, has this been regulated in the new Criminal Code?

Regarding restorative justice, according to the meaning of restorative justice, it is regulated in Article 1 point 6 of Law no. 11 of 2012 concerning the Juvenile Criminal Justice System which reads as follows: "Restorative Justice is the settlement of criminal cases involving perpetrators, victims, families of perpetrators/ victims, and other related parties to jointly seek a fair solution by emphasizing restoration to the the original situation, and not retaliation."Law enforcement officials, families, and the community are required to seek a settlement process outside the courtroom, namely through Diversion based on a Restorative Justice approach". With reference to Article 8 paragraph (1) of the Juvenile Criminal Justice System Law, restorative justice is the approach used in the implementation of diversion, namely the

settlement of juvenile criminal cases by deliberation involving the child and his parents/ guardians, victims and/ or parents/ guardians, social counselors, and professional social workers (Wartayasa, 2020). However, this diversion process can only be carried out for crimes punishable by imprisonment under 7 years and is not a repetition of a crime under the provisions of Article 7 of the Law on the Juvenile Criminal Justice System (Ristina, 2018). Settlement of child cases that are applied to Balinese customary law should be processed through a process outside the criminal justice version), which is an informal mechanism model that represents demands for the interests of children in traditional villages, child cases so that this kind of settlement model needs a matching alternative solution. as is the case with using Penal Mediation with the help of Traditional Institutions (such as Banjar Adat with Adat/ Departmental Offices, Traditional Villages, with Subdistrict MDA, Regency/ City MDA, Provincial MDA) .

Customary Crimes can be carried out by Penal Mediation with the policies of each sub in the Criminal Justice System. The models used in the settlement of customary cases by the criminal justice system are informal mediation, community panels or courts, and family and community group conferences. future child. Furthermore, in the settlement of a general criminal case or specifically for customary crime, a settlement mechanism is built in the form of cooperation between customary institutions and the criminal justice sub- system in implementing the settlement mechanism, oriented towards children obtaining the value of restorative justice, when dealing with the law through regional regulations based on local wisdom.

Conclusion

In its development, Indonesia has had special rules governing child protection, namely Law Number 4 of 1979 concerning Child Welfare, Law Number 3 of 1997 concerning Juvenile Court which was subsequently replaced by Law Number 11 of 2012 concerning the Criminal Justice System. Children and Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection. However, the low quality of child protection based on the perspective of Positive Law in Indonesia has drawn criticism from various elements of society who seem to prioritize the interests of victims over perpetrators. The importance of establishing a special legal protection rule for children based on local wisdom, which refers to the concept of restorative justice, namely restoring the situation to normal which involves the perpetrator and the victim in solving a problem.

Commented [A21]: The conclusion does not answer what has been discussed in the background and discussion section.

References

Apriyansa, D. (2019). Penegakan Hukum Terhadap Tindak Pidana Pemerkosaan Terhadap Anak Dibawah Umu Dan Sanksi Yang Diterapkan. *Jurnal Panorama Hukum, 4(2)* , 135-145.

Ariawan, I. G. (2017). Metode Penelitian Hukum Normatif. *Jurnal Hukum, 1(1)* , 21-30.

Bahewa, R. P. (2016). Perlindungan Hukum Terhadap Anak Sebagai Korban Pelecehan Seksual Menurut Hukum Positif Indonesia. *Jurnal Lex Administratum, 4(4)* , 21-28.

Barus, Z. (2013). Analisis Filosofis Peta Konseptual Penelitian Hukum Normatif dan Penelitian Hukum Sosiologis. *Jurnal Dinamika Hukum, 13(2)* , 307-317.

Dewi, N. P. (2020). Pendidikan Karakter Berbasis Kearifan Lokal Melalui Nangun Sat Kerthi Loka Bali. *Edukasi : Jurnal Pendidikan Dasar, 1(2)* , 197-206.

Fitriani, R. (2016). Peranan Penyelenggara Perlindungan Anak Dalam Melindungi Dan Memenuhi Hak-Hak Anak. *Jurnal Hukum Samudra Keadilan, 11(2)* , 250-258.

Gde Made Swardhana, I. B. (2015). Kebijakan Kriminal Dalam Penanggulangan Tindak Pidana Dan Kenakalan Siswa SMA : Suatu Kajian Tentang Penerapan Teori Kontrol Sosial Dan Kearifan Lokal Di Bali. *Udayana Master Law Journal, 4(1)* , 28-47.

Ikhwan, Z. H. (2021). Kontrol Sosial Lembaga Adat terhadap Kenakalan Remaja. *Jurnal Pendidikan Tambusai, 5(1)* , 4658-4665.

Margareth, S. B. (2019). Kajian Perilaku Seks Bebas Dalam Perspektif Teori Kontrol Sosial Travis Hirschi Di Wilayah Beji Depok. *Jurnal Anomie, 1(1)* , 1-20.

Ni Putu Rai Yuliartini, e. (2022). Perlindungan Hukum Bagi Perempuan dan Anak Korban Perdagangan Manusia di Indonesia. *Jurnal Hukum Novelty, 13(1)* , 26-37.

Prasetyo, A. (2020). Perlindungan Hukum Bagi Anak Pelaku Tindak Pidana. *Mizan : Jurnal Ilmu Hukum, 9 (1)* , 51-60.

Pritz, W. S. (2016). Perlindungan Hukum Bagi Anak Sebagai Pelaku Tindak Pidana Kejahatan Perkosaan. *Jurnal Lex Certa, 1(1)* , 80-93.

Ratna Sari, S. A. (2015). Pelecehan Seksual Terhadap Anak. *Jurnal Prosiding KS : Riset & PKM, 2(1)* , 1-146.

Ristina, L. (2018). Peran Jaksa Dalam Penerapan Kebijakan Diversi Terhadap Anak Pelaku Tindak Pidana. *Jurnal Ius Constituendum, 3(2)* , 166-178.

Rumiyani, R. (2021). Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Pemerkosaan Oleh Anak. *IPMHI Law Journal, 1(2)* , 194-205.

Saimima, H. Z. (2020). Perlindungan Hukum Terhadap Korban Kekerasan Seksual Dalam Rangka Mewujudkan Keadilan Restoratif. *Jurnal Belo, 6(1)* , 48-59.

Setiawati, A. S. (2021). Hubungan Antara Sosial Kontrol Sosial Orang Tua Dengan Prilaku Sosial Remaja. *Jurnal Pendidikan Tambusai, 5(2)* , 4877-4885.

Sugiarto. (2021). Membentuk Karakter Anak Sebagai Generasi Penerus Bangsa Melalui Pendidikan Anak Usia Dini. *Jurnal Mubtadiin, 7(1),* , 185-201.

Supriyanto, B. H. (2015). Perlindungan Hukum Terhadap Anak Pelaku Perkosaan Berdasarkan Hukum Positif Indonesia. *ADIL : Jurnal Hukum, 6(2)* , 147-181.

Suwardani, N. P. (2015). Pewarisan Nilai-Nilai Kearifan Lokal untuk Memproteksi Masyarakat Bali dari Dampak Negatif Globalisasi. *Jurnal Kajian Bali, 5(2)* , 247-264.

Syahputra, R. (2018). Penanggulangan Terhadap Tindakan Kekerasan Seksual Pada Anak Ditinjau Dari Undang-Undang Perlindungan Anak. *Jurnal Lex Crimen, 7(3)* , 123-131.

Utari, G. A. (2020). Perlindungan Hukum Terhadap Anak Sebagai Korban Tindak Pidana Pemerkosaan. *Journal Ilmu Hukum, 9(3)* , 1-14.

Wahyudi, D. (2015). Perlindungan Terhadap Anak Yang Berhadapan Dengan Hukum Melalui Pendekatan Restorative Justice. *Jurnal Ilmu Hukum* , 143-163.

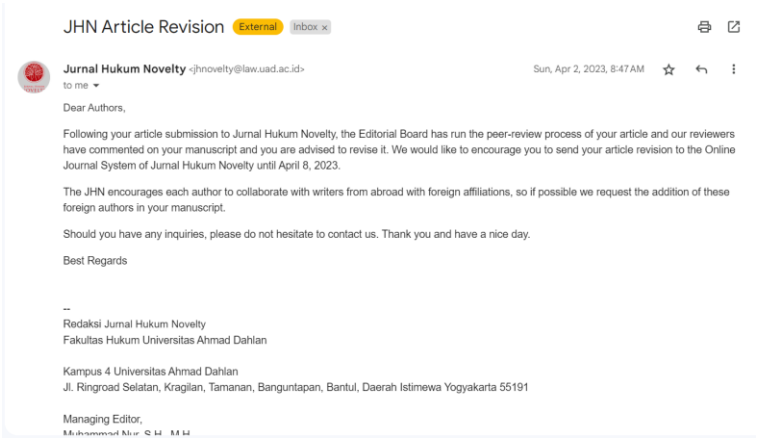
Wardhani, N. K. (2020). Pengembangan Karakter Anak Usia Dini Berbasis Nilai Kearifan Lokal Bali. *Jurnal Penelitian Agama, 6(2)* , 47-54.

Wartayasa, I. K. (2020). Mewujudkan Keadilan Restoratif Bagi Anak Berhadapan Dengan Hukum Melalui PERDA Berbasis Kearifan Lokal. *Jurnal Hukum Agama Hindu, 4(1)* , 46-54.

Wigunadika, I. W. (2018). Pendidikan Karakter Berbasis Kearifan Lokal Masyarakat Bali. *Jurnal Purwadita, 2(2)* , 91-100.

Winangun, I. M. (2020). Penguatan Pendidikan Karakter Melalui Literasi Berbasis Kearifan Lokal. *Jurnal Maha Widya Duta, 4(2)* , 114-122.

REVIEW: 2 (2023-04-02)



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Following your article submission to Jurnal Hukum Novelty, the Editorial Board has run the peer-review process of your article and our reviewers have commented on your manuscript and you are advised to revise it. We would like to encourage you to send your article revision to the Online Journal System of Jurnal Hukum Novelty until April 8, 2023.

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Research Article Form Review

Jurnal Hukum Novelty, Fakultas Hukum Universitas Ahmad Dahlan

Title/Topic : **Juridical Study of Delegation of Authority Between Doctors and Midwives in Health Services**

Based on the submitted article, there are substantial notes from reviewer as follows:

Abstract

1. In the title "doctor towards/to midwives" because if you use the word 'and' it seems as if doctors and midwives have the same position in providing health services.
2. the mention of doctor in the title is made specifically because not all doctors give credentials to midwives.

A. INTRODUCTION

1. Are emergency conditions and referrals still within the authority of midwives?
2. Regulations stipulate that the duties assigned by doctors to midwives are in the form of mandates, mandates or delegations?
3. Doctor what is meant in this sentence. Is this sentence not reversed, where midwives cannot carry out their own actions.
4. In the introduction, explain about the duties of three doctors at the health facility

B. RESEARCH METHOD

Research Article Form Review

Jurnal Hukum Novelty, Fakultas Hukum Universitas Ahmad Dahlan

C. RESULTS AND DISCUSSION

1. Regulations in this discussion are analyzed in more detail **2. Use paraphrasing to reduce plagiarism** **3. Similitary must be below 20% because the similitary is still 33%.**

D. CONCLUSION

what is the conclusion of this research?

REFERENCES

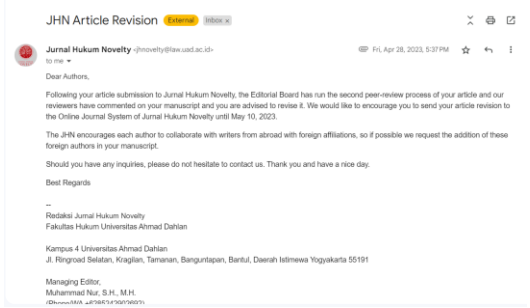
1. References are still less than 20 **2. Add international journal references**

RECOMMENDATION:

ACCEPT FOR PUBLICATION	
REVISION REQUIRED	**√**
REJECT	


Reviewer's Signature

REVIEW: 3 (2023-04-28)



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Managing Editor,
Muhammad Nur, S.H., M.H.

Research Article Form Review

Jurnal Hukum Novelty, Fakultas Hukum Universitas Ahmad Dahlan

Title/Topic : **Juridical Study of Delegation of Authority Between Doctors and Midwives in Health Services**

Based on the submitted article, there are substantial notes from reviewer as follows:

Abstract

The abstract should contain

1. Purpose of the research

It is clear

2. Data sources from where

The use of secondary data must be explained.

3. What method of completion is used

Brief explanation of the method chosen (normative juridical)

4. Research results

It is clear

5. Contribution (Optional)

A. INTRODUCTION

1. State of the art method

2. Anasila GAP

Not yet explained about the relationship with previous studies and the formulation of the selected problem must be written clearly (in this paper it still looks implicit).

B. RESEARCH METHOD

The lack of explanation for each definition of the chosen method, for example, does not include an explanation of quantitative normative legal analysis.

C. RESULTS AND DISCUSSION

The flow of discussion is quite systematic.

Research Article Form Review

Jurnal Hukum Novelty, Fakultas Hukum Universitas Ahmad Dahlan

D. CONCLUSION

The conclusion has answered the problem formulation discussed in the introduction but the section on negligence outside the hospital needs more explanation.

REFERENCES

The percentage of references used that are updated in the last 2 years is still minimal. **4 reference sources used are updated in the last 2 years (16%).** **5 reference sources used are updated in the last 3-5 years (20%).** **16 reference sources used are more than the last 5 years (64%).**

RECOMMENDATION:

ACCEPT FOR PUBLICATION	
REVISION REQUIRED	**√**
REJECT	

Reviewer's Signature

3. MANUSKRIP SETELAH REVIEW
REVISI: 1 (2023-04-08)

Juridical Study of Delegation of Authority Between Doctors Obstetrics and Gynecology Specialist to Midwives in Health Services

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Abstract

Introduction to The Problem: The fulfillment of health services is the right of every Indonesian citizen. Health workers have a very important role to improve the maximum quality of health services to the community. Midwives can provide health services in accordance with the doctor's mandate under the supervision of doctors, especially in emergency and referral services
Purpose : This study aims to determine the juridical study of the delegation of authority between doctors and midwives in health services.
Methodology: The type of research used is normative juridical law using secondary data
Findings: Delegation of authority by midwives in carrying out health service actions is given by mandate from doctors, doctors must carry out periodic monitoring and evaluation. The delegation of authority for medical duties to midwives has so far been carried out in writing and orally by telephone. The party responsible for the process of delegation of authority is the place of health services, the doctor as the party providing the delegation of authority and the midwife as the executor who is delegated authority.
Paper Type: General Review
Keywords: Juridical Studies, Delegation of Authority, Doctors, Midwives, Health Services

Introduction

Fulfillment of health services is the right of every person which is constitutionally guaranteed in the 1945 Constitution of the Republic of Indonesia. protection and sustainability, as stated in Law Number 36 of 2009 Concerning Health (Sahari, 2022) . Health service efforts carried out by the government and/or the community which were originally focused on curative efforts for sufferers have gradually developed towards integration between promotive, preventive, curative and rehabilitative (Soewono, 2005) .

Medical personnel are people who have the right to perform medical procedures. The Indonesian nation has regulations that discuss the differences between health workers and medical officers. Health workers have a very important role to improve the maximum quality of health services to the community. Health workers are the front line of public health services to achieve health development goals in accordance with national goals. As a key component in the delivery of health services, the existence, roles and responsibilities of health workers are of course very important in health and safety development activities for both the health workers themselves and the community receiving health services.

A doctor in practicing at a health facility often collaborates with other health workers, one of which is a midwife (Mohamad, 2019) . The role of a specialist in obstetrics and gynecology is to provide comprehensive and plenary health services for a woman relating to her reproductive health when she is not pregnant or during pregnancy, childbirth or the puerperium. Both are preventive (prevention of disease), curative (healing disease) and rehabilitative (improvement of abnormalities that arise) in the reproductive organs.

Midwives are recognized as professional and accountable personnel who work as women's partners to provide support, care and advice, during pregnancy, childbirth, and the postpartum period, lead deliveries on their own responsibility, and providecare for babies, even newborns. Midwife care consists of : care for prevention efforts, normal delivery care, care for the detectionof complications in mother and child, as well as access to medical assistance and other assistance (Zakariya et al., 2022). This care includes prevention efforts, promotion of normal delivery, detection of complications in the mother and child and access to medical assistance or other appropriate assistance and carrying out emergency measures (Lastini et al., 2020) .

Midwifery services are services provided by midwives in accordance with their authority with the aim of improving maternal and child health in order to achieve quality, happy and prosperous families. The targets of midwifery services are individuals, families and communities, which include efforts to improve, prevent, heal and recover (Jamillah & Yulianto, 2018) .

A midwife in carrying out her authority must comply with professional standards, have the skills and ability to carry out the actions taken and prioritize the health of the mother and baby or fetus (Mujiwati, 2020) . In Law no. 4 of 2019 concerning Midwifery article 59 paragraph 1 states that in an emergency situation for providing first aid, midwives can perform health services outside of their authority according to their competence. Midwives can provide health services in accordance with the doctor's mandate under the supervision of doctors, especially in emergency and referral services. In addition, in carrying out certain medical procedures, doctors cannot carry them out themselves, but are assisted by midwives who are at the health care facility (Jamillah & Yulianto, 2018) .

The delegation of authority from doctors to midwives can only be given on a mandate basis in accordance with Law Number 4 of 2019 concerning Midwifery in article 54 while delegation of authority is delegated by the government to midwives under certain limited circumstances. However, the act of delegating authority given by doctors to midwives has not been clearly regulated. Law Number 4 of 2019 concerning Midwifery mentions the delegation of authority mandated by doctors to midwives, but it does not clearly stipulate what type of action is delegated. (Mujiwati, 2020) . Doctors can delegate a medical action to certain other midwives in writing in carrying out medical procedures. The technical instructions for delegation in question have not been clearly regulated in legislation, even though many patients who need emergency obstetrics and gynecology care depend on doctors (Setyianta, 2018) .

The delegation of duties of authority often occurs verbally by speaking directly or via telephone on the grounds that the doctor is not present and the location is different from the place where the health service is taking place. This has not been clearly regulated in legislation, but this is not a problem if this can be accounted for and no harm occurs to the patient (Anam, 2018) .

Methodology

The type of research used is normative juridical law using secondary data. Secondary data consists of primary legal materials, namely Law Number 36 of 2014 concerning Health Workers, Law Number 29 of 2004 concerning Medicine, Law Number 4 concerning Midwifery . The secondary legal data of this research are books and journals related to the delegation of authority from doctors to midwives. The method of data collection was carried out by means of a literature study to examine library materials in the form of books on legislation and other sources related to this research. The results of further research were analyzed normatively qualitatively.

Results and Discussion

Health services cannot be fully carried out by doctors, so many medical services/actions that are under the authority of doctors are carried out by midwives who legally do not have the authority to carry out these medical services (Setyianta, 2018) . The delegation of authority from doctors (delegans) to midwives in carrying out medical services is a mandate delegation of authority, because the authority giver (delegans) remains responsible for the medical actions that are delegated to the recipient of authority (delegataris) . legislation (Hadiwijaya et al., 2017) .

The limited number of doctors creates a situation where midwives have to perform medical procedures or perform medical procedures that are not in accordance with their competence. Article 73 paragraph (3) of Law Number 29 of 2004 concerning Medical Practice provides an opportunity for midwives to carry out medical procedures if they comply with statutory provisions. Minister of Health Regulation Number 2052/Menkes/Per/X/2011 concerning License to Practice and Implementation of Medical Practice, in Article 23 Paragraph (1) states that doctors or dentists can delegate medical or dental procedures to nurses, midwives or certain other health workers in writing in carrying out medical or dental procedures. Doctors or dentists can delegate a medical or dental procedure to a nurse, midwife or certain other health personnel in writing in carrying out medical or dental procedures. The technical instructions for the delegation referred to in Article 23 Paragraph (1) have not been clearly regulated, while many patients who need emergency care in Obstetrics and Gynecology depend on doctors (Setyianta, 2018) .

Article 11 in the Law of the Republic of Indonesia Number 36 of 2014 concerning health workers emphasizes that midwives are one of the health workers, where health workers in exercising their authority must comply with applicable regulations. Law Number 36 of 2009 concerning health Article 23 states that "Health workers have the authority to provide health services" and in this case the authority of midwives is regulated in Law Number 4 of 2014 concerning midwifery that holds Midwifery Practices, Midwives are tasked with providing maternal health services , child health services, women's reproductive health services and family planning, implementation of tasks based on delegation of authority, and/or implementation of tasks in certain limited circumstances.

The authority of health workers in providing health services is a legal authority (Wila Chandrawila Supriadi, 2001) . Based on the science of state administration law, authority originating from laws and regulations is obtained through three ways, namely attribution, delegation and mandate. Regarding attribution, delegation and mandate, HD Van Wijk defines it as follows:

1) Attribution is the granting of government authority by legislators to government organs.
2) Delegation is the delegation of government authority from one government organ to another government organ.
3) Mandate is when a government organ allows its authority to be exercised by another organ on its behalf (Ridwan, 2003) .

The delegation of authority by doctors to midwives is regulated in Law No. 4 of 2019 concerning Midwifery in Article 54, namely the delegation of authority by midwives in carrying out health service actions is given on a mandate basis from doctors, health services mandated by doctors to midwives will be the doctor's responsibility as the mandate giver and the doctor must carry out regular monitoring and evaluation.

The delegation of authority by doctors to midwives can be done by delegation or by mandate (Merdekawati, 2021) . The delegation of authority is accompanied by a delegation of responsibilities, while the mandate is not accompanied by a delegation of responsibilities (Pramesti, 2013) . The implementation of health services in the field of midwives often gets assignments from doctors in the form of mandates (because the responsibility remains with the doctor). Among them are providing medical services (curative) and special actions (which are the authority of doctors and should be carried out by doctors) such as placing infusions, giving injections (Setyianta, 2018) . Doctors can delegate their

authority to midwives who are given in writing and must be in accordance with educational capabilities, competencies and in accordance with statutory provisions

The guidelines adopted by German State Jurisprudence are as follows: “The doctor may have the right to rely on his staff (whom he has carefully trained and supervises) in the proper performance of his duties, but he is not permitted to delegate his professional duties to them, and if he does so, then he will be directly responsible (personally) for his negligence in doing so and for all acts of negligence or negligence of his staff for carrying out all the mistakes done by the task entrusted” (Sylvana et al., 2021) . Delegative delegation of authority by transferring legal responsibility to midwives does not mean that doctors relinquish responsibility in the event of malpractice which causes loss of life and serious injury to patients. Therefore, it needs to be studied again because errors in doctor's orders can also have fatal consequences for patients (Jamillah & Yulianto, 2018) .

In delegation, the doctor acts as a supervisor so that the prevailing medical standards and practices are maintained. The Ministry of Health conducted consultations with the National Academy of Physicians, dividing the delegated tasks into two types. First, simple tasks are delegated by default to assistants who are considered competent. These tasks are further divided into:

1) Tasks related to daily activities such as cleaning, monitoring vital signs, and providing information to doctors, which are tasks often performed by midwives and nurses.
2) Preparation for surgery and blood sampling are usually performed without direct supervision which are simple therapeutic and nursing tasks.

The unavailability of regulations for certain types of midwifery procedures that can be performed by a midwife often results in overlap between the duties of midwifery services and those delegated by doctors. The delegation of authority for medical duties to midwives has so far been carried out in writing and orally by telephone. Places of health services (puskesmas, hospitals, clinics, etc.), doctors and midwives as executors who are delegated with the authority are responsible for the delegation process. In order to avoid misunderstandings, the delegation is properly and correctly carried out by the doctor, both orally and in writing.

Delegation of authority is a legal term, the application of which creates legal consequences, namely the consequences regulated by law (Saswanti, 2012) . Midwives in accepting the delegation of authority for medical action from doctors, when there is an alleged abuse of authority (Sirait, 2016) , and resulting in harm to the patient, not only the midwife herself is legally responsible. The doctor is also legally responsible, because it can occur due to an error in giving the delegation of authority.

Everyone who is given authority must be held accountable. Responsible for risks that may arise which result in losses to other parties. Responsibility as well as risk is something that is latent. If the risks arise and demands are made, then issues of responsibility and authority will also surface. Lawsuits from other parties, in this case patients, can be caused by malpractice or deviation from the implementation of their duties and lack of respect for patient rights. On the other hand, the community has a higher level of legal knowledge and awareness. Likewise, the law has accommodated patient protection so that the public's tendency to make demands due to irregularities in the actions of health workers is also getting higher (Anam, 2018) .

From a criminal point of view, an act is considered a criminal act if it fulfills the limited conditions specified in a criminal law. Nullum delictum noella poena sine (no offense, no crime without prior regulation). Article 1 paragraph (1) of the Criminal Code is known as the principle of legality. In several articles in the Criminal Code, especially Article 36 of 2009 on Health Law, it regulates criminal sanctions in general. Therefore, if health workers commit carelessness when carrying out health service actions, they can be prosecuted under the law (Nurhalimah, 2017) .

Criminal law responsibility for midwives, while taking into account the criminal elements committed by midwives, are as follows:

a) An act that is against the law, in this case if the midwife performs health services outside of her authority as stipulated in the Regulation of the Minister of Health Number 28 of 2017 concerning Permits and Implementation of Midwifery Practices.
b) Able to be responsible, in this case the midwife understands the consequences of each of her actions and has the ability to receive training and education for this.
c) There is an error (schuld) in the form of intentional or due to negligence (culpa). If the action is carried out because of intention and an element of intent, then the midwife is charged as the perpetrator of the crime. For example, a midwife intentionally gives an injection so that a patient dies.
d) There are no justifications and/or excuses, in this case there are no excuses such as the absence of rules that allow one to take an action, or there are no justifications and excuses such as the risks inherent in the actions taken. In general, the criminal responsibility of a midwife is independent, unlike civil and administrative.

Moeljatno in his book writes that articles 55 to 62 of the Criminal Code, as articles regarding participation. It is said that there is inclusion if not just one person is involved in the occurrence of a criminal act, but several people. What can be called a participant must meet the requirements, namely as a person who commits or participates in committing a criminal act or helps commit a criminal act (Moeljatno, 1985) . Based on articles 55, 56 and 57 of the Criminal Code, midwives and doctors can be prosecuted criminally. Delegation of authority mandated by doctors to midwives when referring to Article 55 of the Criminal Code, namely as a person who orders to do it, where in this crime, there are at least two perpetrators, namely people who order and are ordered. The person who orders can be punished as a person who commits a crime while the person who is ordered cannot be punished because he cannot be responsible by fulfilling several conditions, namely because he is crazy, forced, an illegal position order, and cannot be blamed at all. Referring to article 56 of the Criminal Code, the delegation of authority by mandate, as a category of helpers, midwives can be prosecuted if they commit crimes intentionally, while Article 57 of the Criminal Code for assistants can be reduced by one third.

These three articles can be applied to criminal acts as a result of mandated delegation of authority. Criminal liability for both doctors and midwives in the event of malpractice that causes harm to patients needs to be examined first, in this case it is necessary to open medical records, if during the implementation carried out by midwives not in accordance with standard procedures when receiving delegation of authority mandated by doctors, midwives also take legal responsibility, but in this case also doctors cannot relinquish their responsibilities when delegating delegation of authority, mistakes in delegating actions by doctors to midwives can also be fatal to patients (Suryanda et al., 2018) .

Article 46 of Law Number 44 of 2009 concerning Hospitals is a derivative or derivative of Article 1367 of the Civil Code paragraph (3) which applies specifically to Hospitals, or Article 46 of Law Number 44 of 2009 is lex specialist. The provisions of the Article above are also in line with the provisions of the respondeat superior doctrine. The respondeat superior doctrine implies that an employer is a person who has the right to give instructions and control the actions of his subordinates, both on the results achieved and on the methods used. Besides that, with the development of health law and the sophistication of medical technology, hospitals cannot escape the responsibility for the work done by their employees, including what is done by medical personnel (Nasution, 2005) .

If it is related to the superior response, then the doctrine can be analogous to the relationship between doctors and midwives due to the mandated delegation of authority. However, this doctrine cannot be applied just like that, because for its application certain conditions must first be met, such as the existence of a working relationship between superiors and subordinates and the attitude of subordinates must also be within the scope of work assigned to them. A working relationship is considered to exist, if the superior has the right to directly supervise and control the activities of the subordinates in carrying out their

duties, in this case the work carried out must be a form of an order given by the superior (Jamillah & Yulianto, 2018) .

In the delegation of authority, a written letter is required to delegate the duties of a doctor to a midwife so that there is no confusion between the doctor and the midwife in proving the law (Gunawan & Christianto, 2020) . In the world of health, currently medical records are medical records relating to how medical actions are performed on patients, which are specifically written by doctors and midwives. Medical records can only be seen and their contents known by doctors and midwives who are related to the related patient medical records, this is the weakness of medical records (Susanto, 2018) .

In accordance with the two statutory provisions referring to the existence of conditions in the form of delegation in writing, so that the delegation of authority in writing certainly has legal force because the delegation of authority by doctors to midwives by writing on medical records can be used as legal evidence according to the type of evidence in the criminal procedural law adopted in Indonesia. Therefore the delegation orally has weak legal force because it is not clearly regulated in the law. According to the types of evidence in criminal proceedings, verbal delegation of authority often occurs in rooms equipped with CCTV and delegation by telephone where there is evidence of the conversation not being sufficient as evidence so that this does not guarantee that the verbal delegation of authority has strong legal force (Rafael, 2019) .

Therefore it is necessary to review the patient's medical record, where the error occurred, whether the midwife in carrying out the delegation of authority was in accordance with the standards in the hospital or not, or was it the fault of the doctor as the provider of the delegation of authority. If it is proven that there was a mistake, which led to a lawsuit, civil or criminal, it is because there is a legal relationship with the engagement. In addition to civil liability, lawsuits against doctors and midwives can be sued or prosecuted criminally (Lastini et al., 2020) .

Legal liability aimed at midwives and doctors as providers of delegation of authority by delegation to midwives who commit negligence resulting in losses for patients in health services at puskesmas are still subject to legal responsibility, but still have to review existing medical records, whether the action given is in accordance with the standard procedure or not. Claims or civil lawsuits that can be filed (legal liability) as previously mentioned are:

a. Liability based on default or default or broken promise based on contractual liability as stipulated in Article 1239 of the Civil Code.
b. Liability based on unlawful acts (onrechtmatige-daad) as stipulated in the provisions of Articles 1365 and 1366 of the Civil Code.

Civil liability for midwives as a result of delegation of authority by doctors is different if it occurs in hospitals, according to Article 46 of the Hospital Act that hospitals are responsible for negligence caused by health workers but if negligence at the puskesmas is caused by medical personnel or health workers it needs to be studied again, because the rules regarding the puskesmas do not contain provisions on the legal responsibility of the puskesmas for the negligence of medical personnel and health workers (Mujiwati, 2020) .

The form of compensation incurred due to errors or negligence as a result of the delegation of authority from doctors to midwives on a mandate basis where the responsibility is attached to the doctor is still being studied based on evidence based on existing medical records, and professional standards, and standard operating procedures in the puskesmas, so that responsibility is not only attached to doctors but also midwives as executors of actions by using the principle of joint responsibility such as the case decided by the judge in the case of Pitra Azmirla and Damitri Almira (Jamillah & Yulianto, 2018) .

According to Satjipto Raharjo, legal protection is to provide protection for human rights that are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law. The law can function to realize protection that is not only adaptive and flexible, but also predictive

and anticipatory. Law is needed for those who are weak and not yet strong socially, economically and politically to obtain social justice (Raharjo, 2000) .

The legal protection for midwives is found in Article 60 of Law no. 4 of 2019 concerning midwifery, namely midwives in carrying out Midwifery Practices have the right to:

a. Obtain legal protection as long as carrying out tasks in accordance with competence, authority, and complying with the code of ethics, professional standards, professional service standards, and standard operating procedures;
b. Obtain correct, clear, honest and complete information from clients and/or their families;
c. Refuse the wishes of clients or other parties that are contrary to the code of ethics, professional standards, service standards, standard operating procedures, and provisions of laws and regulations;
d. Receiving compensation for Midwifery Services that have been provided;
e. Obtain work facilities according to standards; And
f. Get the opportunity to develop the profession.

Proof of the presence or absence of errors/negligence by midwives is the main requirement for accountability for the health services they perform. The Res Ispa Loquitor doctrine (the thing spekas for it self) can easily prove that midwives made mistakes (Mujiwati, 2020) .

The enforcement of criminal acts of malpractice in health services still uses the provisions stipulated in Law Number 29 of 2004 concerning Medical Practice, Law Number 44 of 2009 concerning Hospitals, and Law Number 36 of 2009 concerning Health does not specifically regulate specific or unknown criminal acts due to malpractice. However, it is contained in Article 84 of Law Number 36 of 2014 concerning Health Workers regarding criminal provisions, which states that:

(1) Every health worker who commits gross negligence resulting in serious injury to the Recipient of Health Services shall be subject to imprisonment for a maximum of 3 (three) years;
(2) If the gross negligence referred to in paragraph (1) results in death, every health worker shall be punished with imprisonment for a maximum of 5 (five) years.

The normative determination of whether or not there is negligence for the actions taken by doctors and midwives must be reviewed carefully and thoroughly case by case. The judge who holds the key in determining in concreto about whether or not to carry out work according to professional standards and not according to action procedures, is said to have made a mistake/negligence.

Therefore, the delegation of authority given by doctors to midwives either by delegation or mandate, if malpractice occurs is not entirely borne by the doctors themselves or the midwives themselves, criminal responsibility for both doctors and midwives in the event of malpractice that causes harm to patients needs to be investigated. first, in this case it is necessary to open medical records, if in practice the actions carried out by the midwife are not in accordance with standard procedures when receiving the delegation of authority by mandate from the doctor, the midwife also takes legal responsibility, but in this case the doctor cannot release their responsibilities when delegating delegation of authority, mistakes in delegating actions by doctors to midwives can also be fatal to patients (Suryanda et al., 2018; Mujiwati, 2020) .

Conclusion

In carrying out health services at health service facilities, doctors can provide delegation of medical authority to midwives as regulated in legislation. The delegation of authority for medical duties to midwives has so far been carried out in writing and orally by telephone. The party responsible for the process of delegation of authority is the place of health services, the doctor as the party providing the delegation of authority and the midwife as the executor who is delegated authority. Civil liability for midwives due to delegation of authority by doctors is different if it occurs in hospitals, according to Article 46 of the Hospital Act that hospitals are responsible for negligence caused by health workers but if

negligence at the puskesmas or other health facilities is caused by medical personnel or health workers need to be reviewed again. In addition to civil liability, lawsuits against doctors and midwives can be sued or prosecuted criminally.

It is necessary to clearly divide the form of delegation of authority, namely what actions are taken so that midwives have a limit of authority in carrying out delegation tasks. Because the midwifery profession is part of the health profession which is always related to patient safety, it is also necessary to enact a midwifery law that can provide clarity regarding its implementation and protect midwifery practice in obtaining delegation of authority.

Acknowledgment

The authors would like to thank the Universitas Muhammadiyah Semarang for the support given to the authors to conduct this research

Declarations

Author contribution : Author 1: initiated the research ideas, instrument construction, data collection, analysis, and draft writing; Author 2: revised the research ideas, literature review, data presentation and analysis, and the final draft.

Funding statement : This research was not funded by any party

Conflict of interest : The authors declare no conflict of interest.

Additional information : No additional information is available for this paper.

References

Anam, K. (2018). Tanggungjawab dan Kewenangan Perawat Gigi dalam Melakukan Tindakan Medik Kedokteran Gigi. *Ajudikasi : Jurnal Ilmu Hukum*, *2*(1), 67. https://doi.org/10.30656/ajudikasi.v2i1.621

Gunawan, T. S., & Christianto, G. M. (2020). Rekam Medis/Kesehatan Elektronik (RMKE): Integrasi Sistem Kesehatan. *Jurnal Etika Kedokteran Indonesia*, *4*(1), 27. https://doi.org/10.26880/jeki.v4i1.43

Hadiwijaya, H., Widanti, A., & Rahim, A. H. (2017). Peran Bidan Dalam Kewenangan Tindakan Episiotomi Yang Diperluas Pada Praktek Swasta Mandiri Dan Klinik Bersalin. *Soepra Jurnal Hukum Kesehatan*, *2*(1), 42. https://doi.org/10.24167/shk.v2i1.808

Jamillah, S. N. A., & Yulianto, S. (2018). Pertanggungjawaban Hukum Bidan Akibat Pelimpahan Wewenang Oleh Dokter Dalam Pelayanan Kesehatan Di Puskesmas. *Justitia Jurnal Hukum*, *2*(1). https://doi.org/10.30651/justitia.v2i1.1714

Lastini, K., Sutrisno, E., & Sugiarti, T. (2020). Perlindungan Hukum Profesi Bidan Dalam Pelimpahan Wewenang Tindakan Medis. *Mimbar Keadilan*, *13*(2), 131–140. https://doi.org/10.30996/mk.v13i2.3324

Merdekawati, Y. (2021). Tanggung jawab pidana perawat dalam melakukan tindakan keperawatan berdasarkan Undang-Undang Nomor 36 Tahun 2009 Tentang Kesehatan. *Jurnal Nestor Magister Hukum*, *53*(9), 4–6. https://media.neliti.com/media/publications/10590-ID-tanggung-jawab-pidana-perawat-dalam-melakukan-tindakan-keperawatan-berdasarkan-u.pdf

Moeljatno. (1985). *Delik-Delik Percobaan Delik-Delik Penyertaan*. Bina Aksara.

Mohamad, I. R. (2019). Perlindungan Hukum Atas Hak Mendapatkan Pelayanan Kesehatan Ditinjau Dari Aspek Hak Asasi Manusia. *Akademika*, *8*(2), 78. https://doi.org/10.31314/akademika.v8i2.401

Mujiwati. (2020). Perlindungan Hukum Terhadap Bidan Yang Menerima Pelimpahan Kewenangan Tindakan Kebidanan Dihubungkan Dengan Standar Profesi Bidang Kesehatan. *Aktualita*, *3*(1), 5–24.

Nasution, B. J. (2005). *Hukum Kesehatan Pertanggungjawaban Dokter*. Rineka Cipta.

Nurhalimah, S. (2017). PERLINDUNGAN HUKUM TERHADAP TENAGA KERJA INDONESIA. *ADALAH: BULETIN HUKUM DAN KEADILAN*, *1*.

Pramesti, A. (2013). Tanggung Jawab Hukum Dalam Hubungan Dokterperawat. *E-Jurnal Medika Udayana*, *1*(1), 1–11.

Rafael, P. S. (2019). Pertanggungjawaban Pidana Tindakan Malpraktek Kedokteran Dalam Kaitannya Dengan Masalah Pembuktian. *Lex Crimen*, *VIII*(8), 56–63.

Raharjo, S. (2000). *Ilmu Hukum*. PT Citra Aditya Bakti.

Ridwan. (2003). *Hukum Administrasi Negara, Cetakan II*. UII Press.

Sahari, A. (2022). Competence for Male Circumcision by Health Workers According to Health Law. *SOEPRA Jurnal Hukum Kesehatan*, *8*.

Saswanti, O. (2012). *Tinjauan Yuridis Tentang Pendelegasian Kewenangan Dokter Kepada Perawat Dalam Pelayanan Kesehatan*.

Setyianta, P. T. (2018). Kajian Yuridis Pelimpahan Kewenangan Dokter Umum Kepada Bidan Dalam Pelayanan Obstetri Dan Neonatal Emergensi Dasar Di Puskesmas Gandrungmangu Satu. *Jurnal Idea Hukum*, *4*(2), 1023–1055. https://doi.org/10.20884/1.jih.2018.4.2.99

Sirait, T. M. (2016). Urgensi Perluasan Pertanggungjawaban Pidana Korporasi Sebagai Manifestasi Pengejawantahan Konstitusi. *Jurnal Konstitusi*, *13*(3), 575. https://doi.org/10.31078/jk1335

Soewono, H. (2005). *Batas Pertanggungjawaban Hukum Malpraktik Dokter Dalam Transaksi Terapeutik*. Srikandi.

Suryanda, A., Wahyati Y., E., & Murni, T. W. (2018). Asas Kehati-Hatian Dan Tanggung Jawab Hukum Pidana Bidan Pada Kasus Angka Kematian Ibu (Aki). *Soepra*, *3*(1), 26. https://doi.org/10.24167/shk.v3i1.695

Susanto, A. (2018). Manajemen Mutu Sumber Daya Manusia di Unit Rekam Medis PKU Muhammadiyah Surakarta. *Infokes: Jurnal Ilmiah Rekam Medis Dan Informatika Kesehatan*, *8*(2), 70–79. http://ojs.udb.ac.id/index.php/infokes/article/view/206

Sylvana, Y., Firmansyah, Y., & Haryanto, I. (2021). Legal Delegasi (Pelimpahan Wewenang Medis) Dokter Kepada Perawat Ditinjau dari Perspektif Hukum. *Cerdika: Jurnal Ilmiah Indonesia*, *1*(12), 1632–1646. https://doi.org/10.36418/cerdika.v1i12.217

Wila Chandrawila Supriadi. (2001). *Hukum Kedokteran*. Mandar Maju.

Zakariya, H. Z., Rudatyo, R., Ismiyanto, I., & Zanuar, K. M. Z. (2022). Aspects Of Legal Protection Against Midwife Profession In Indonesia. *Jmns*, *4*(1), 1–9. https://doi.org/10.57170/jmns.v4i1.88

Undang-Undang Nomor 36 Tahun 2014 tentang Tenaga Kesehatan

Undang-Undang Nomor 29 Tahun 2004 tentang Kedokteran

Undang-Undang Nomor 4 tentang Kebidanan.

REVISI: 2 (2023-05-02)

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Abstract

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Purpose : This study aims to determine the juridical study of the delegation of authority between doctors and midwives in health services.
Methodology: The type of research used is normative juridical law using secondary data. In this study, the scope of this research will be research by drawing on legal principles, which are carried out on written and unwritten positive laws.
Findings: Delegation of authority by midwives in carrying out health service actions is given by mandate from doctors, doctors must carry out periodic monitoring and evaluation. The delegation of authority for medical duties to midwives has so far been carried out in writing and orally by telephone. The party responsible for the process of delegation of authority is the place of health services, the doctor as the party providing the delegation of authority and the midwife as the executor who is delegated authority.
Paper Type: General Review
Keywords: Juridical Studies, Delegation of Authority, Doctors, Midwives, Health Services

Introduction

Fulfillment of health services is the right of every person which is constitutionally guaranteed in the 1945 Constitution of the Republic of Indonesia. protection and sustainability, as stated in Law Number 36 of 2009 Concerning Health (Sahari, 2022) . Health service efforts carried out by the government and/or the community which were originally focused on curative efforts for sufferers have gradually developed towards integration between promotive, preventive, curative and rehabilitative (Soewono, 2005) .

Medical personnel are people who have the right to perform medical procedures. The Indonesian nation has regulations that discuss the differences between health workers and medical officers. Health workers have a very important role to improve the maximum quality of health services to the community. Health workers are the front line of public health services to achieve health development goals in accordance with national goals. As a key component in the delivery of health services, the existence, roles and responsibilities of health workers are of course very important in health and safety development activities for both the health workers themselves and the community receiving health services.

A doctor in practicing at a health facility often collaborates with other health workers, one of which is a midwife (Mohamad, 2019) . The role of a specialist in obstetrics and gynecology is to provide comprehensive and plenary health services for a woman relating to her reproductive health when she is not pregnant or during pregnancy, childbirth or the puerperium. Both are preventive (prevention of

disease), curative (healing disease) and rehabilitative (improvement of abnormalities that arise) in the reproductive organs.

Midwives are recognized as professional and accountable personnel who work as women's partners to provide support, care and advice, during pregnancy, childbirth, and the postpartum period, lead deliveries on their own responsibility, and providecare for babies, even newborns. Midwife care consists of : care for prevention efforts, normal delivery care, care for the detectionof complications in mother and child, as well as access to medical assistance and other assistance (Zakariya et al., 2022). This care includes prevention efforts, promotion of normal delivery, detection of complications in the mother and child and access to medical assistance or other appropriate assistance and carrying out emergency measures (Lastini et al., 2020) .

Midwifery services are services provided by midwives in accordance with their authority with the aim of improving maternal and child health in order to achieve quality, happy and prosperous families. The targets of midwifery services are individuals, families and communities, which include efforts to improve, prevent, heal and recover (Jamillah & Yulianto, 2018) .

A midwife in carrying out her authority must comply with professional standards, have the skills and ability to carry out the actions taken and prioritize the health of the mother and baby or fetus (Mujiwati, 2020) . In Law no. 4 of 2019 concerning Midwifery article 59 paragraph 1 states that in an emergency situation for providing first aid, midwives can perform health services outside of their authority according to their competence. Midwives can provide health services in accordance with the doctor's mandate under the supervision of doctors, especially in emergency and referral services. In addition, in carrying out certain medical procedures, doctors cannot carry them out themselves, but are assisted by midwives who are at the health care facility (Jamillah & Yulianto, 2018) .

The delegation of authority from doctors to midwives can only be given on a mandate basis in accordance with Law Number 4 of 2019 concerning Midwifery in article 54 while delegation of authority is delegated by the government to midwives under certain limited circumstances. However, the act of delegating authority given by doctors to midwives has not been clearly regulated. Law Number 4 of 2019 concerning Midwifery mentions the delegation of authority mandated by doctors to midwives, but it does not clearly stipulate what type of action is delegated. (Mujiwati, 2020) . Doctors can delegate a medical action to certain other midwives in writing in carrying out medical procedures. The technical instructions for delegation in question have not been clearly regulated in legislation, even though many patients who need emergency obstetrics and gynecology care depend on doctors (Setyianta, 2018) .

The delegation of duties of authority often occurs verbally by speaking directly or via telephone on the grounds that the doctor is not present and the location is different from the place where the health service is taking place. This has not been clearly regulated in legislation, but this is not a problem if this can be accounted for and no harm occurs to the patient (Anam, 2018) . Law has a significant influence on health management to achieve optimal health status. A midwife is a woman who has attended and completed a midwifery education that has been recognized by the government and passed an exam in accordance with applicable requirements, is registered or legally licensed to practice. Midwives generally practice the authority of doctors with delegation of duties in accordance with applicable laws and regulations (Saraswati, 2023)(Hanifa Muslimah & Arrisman, 2022).

Methodology

The type of research used is normative juridical law using secondary data. The normative juridical research method is library law research which is carried out by examining library materials or mere secondary data (Mahmudji, 2003). This research was conducted in order to obtain materials in the form of: theories, concepts, legal principles and legal regulations related to the subject matter. In this study, the scope of this research will be carried out by drawing on legal principles, which are carried out on written and unwritten positive laws (Soekanto, 1996). Secondary data consists of primary legal materials, namely Law Number 36 of 2014 concerning Health Workers, Law Number 29 of 2004 concerning Medicine, Law Number 4 concerning Midwifery. The secondary legal data of this research are books and journals related to the delegation of authority from doctors to midwives. The method of data collection was carried out by means of a literature study to examine library materials in the form of books of laws and other sources related to this research. The results of further research were analyzed normatively qualitatively.

Results and Discussion

Health services cannot be fully carried out by doctors, so many medical services/actions that are under the authority of doctors are carried out by midwives who legally do not have the authority to carry out these medical services (Setyianta, 2018) . The delegation of authority from doctors (delegans) to midwives in carrying out medical services is a mandate delegation of authority, because the authority giver (delegans) remains responsible for the medical actions that are delegated to the recipient of authority (delegataris) . legislation (Hadiwijaya et al., 2017) .

The limited number of doctors creates a situation where midwives have to perform medical procedures or perform medical procedures that are not in accordance with their competence. Article 73 paragraph (3) of Law Number 29 of 2004 concerning Medical Practice provides an opportunity for midwives to carry out medical procedures if they comply with statutory provisions. Minister of Health Regulation Number 2052/Menkes/Per/X/2011 concerning License to Practice and Implementation of Medical Practice, in Article 23 Paragraph (1) states that doctors or dentists can delegate medical or dental procedures to nurses, midwives or certain other health workers in writing in carrying out medical or dental procedures. Doctors or dentists can delegate a medical or dental procedure to a nurse, midwife or certain other health personnel in writing in carrying out medical or dental procedures. The technical instructions for the delegation referred to in Article 23 Paragraph (1) have not been clearly regulated, while many patients who need emergency care in Obstetrics and Gynecology depend on doctors (Setyianta, 2018) .

Article 11 in the Law of the Republic of Indonesia Number 36 of 2014 concerning health workers emphasizes that midwives are one of the health workers, where health workers in exercising their authority must comply with applicable regulations. Law Number 36 of 2009 concerning health Article 23 states that "Health workers have the authority to provide health services" and in this case the authority of midwives is regulated in Law Number 4 of 2014 concerning midwifery that holds Midwifery Practices, Midwives are tasked with providing maternal health services , child health services, women's reproductive health services and family planning, implementation of tasks based on delegation of authority, and/or implementation of tasks in certain limited circumstances.

The authority of health workers in providing health services is a legal authority (Wila Chandrawila Supriadi, 2001) . Based on the science of state administration law, authority originating from laws and regulations is obtained through three ways, namely attribution, delegation and mandate. Regarding attribution, delegation and mandate, HD Van Wijk defines it as follows:

4) Attribution is the granting of government authority by legislators to government organs.
5) Delegation is the delegation of government authority from one government organ to another government organ.

6) Mandate is when a government organ allows its authority to be exercised by another organ on its behalf (Ridwan, 2003) .

The delegation of authority by doctors to midwives is regulated in Law No. 4 of 2019 concerning Midwifery in Article 54, namely the delegation of authority by midwives in carrying out health service actions is given on a mandate basis from doctors, health services mandated by doctors to midwives will be the doctor's responsibility as the mandate giver and the doctor must carry out regular monitoring and evaluation.

The delegation of authority by doctors to midwives can be done by delegation or by mandate (Merdekawati, 2021) . The delegation of authority is accompanied by a delegation of responsibilities, while the mandate is not accompanied by a delegation of responsibilities (Pramesti, 2013) . The implementation of health services in the field of midwives often gets assignments from doctors in the form of mandates (because the responsibility remains with the doctor). Among them are providing medical services (curative) and special actions (which are the authority of doctors and should be carried out by doctors) such as placing infusions, giving injections (Setyianta, 2018) . Doctors can delegate their authority to midwives who are given in writing and must be in accordance with educational capabilities, competencies and in accordance with statutory provisions

The guidelines adopted by German State Jurisprudence are as follows: "The doctor may have the right to rely on his staff (whom he has carefully trained and supervises) in the proper performance of his duties, but he is not permitted to delegate his professional duties to them, and if he does so, then he will be directly responsible (personally) for his negligence in doing so and for all acts of negligence or negligence of his staff for carrying out all the mistakes done by the task entrusted" (Sylvana et al., 2021) . Delegative delegation of authority by transferring legal responsibility to midwives does not mean that doctors relinquish responsibility in the event of malpractice which causes loss of life and serious injury to patients. Therefore, it needs to be studied again because errors in doctor's orders can also have fatal consequences for patients (Jamillah & Yulianto, 2018) .

In delegation, the doctor acts as a supervisor so that the prevailing medical standards and practices are maintained. The Ministry of Health conducted consultations with the National Academy of Physicians, dividing the delegated tasks into two types. First, simple tasks are delegated by default to assistants who are considered competent. These tasks are further divided into:

3) Tasks related to daily activities such as cleaning, monitoring vital signs, and providing information to doctors, which are tasks often performed by midwives and nurses.
4) Preparation for surgery and blood sampling are usually performed without direct supervision which are simple therapeutic and nursing tasks.

The unavailability of regulations for certain types of midwifery procedures that can be performed by a midwife often results in overlap between the duties of midwifery services and those delegated by doctors. The delegation of authority for medical duties to midwives has so far been carried out in writing and orally by telephone. Places of health services (puskesmas, hospitals, clinics, etc.), doctors and midwives as executors who are delegated with the authority are responsible for the delegation process. In order to avoid misunderstandings, the delegation is properly and correctly carried out by the doctor, both orally and in writing.

Delegation of authority is a legal term, the application of which creates legal consequences, namely the consequences regulated by law (Saswanti, 2012) . Midwives in accepting the delegation of authority for medical action from doctors, when there is an alleged abuse of authority (Sirait, 2016) , and resulting in harm to the patient, not only the midwife herself is legally responsible. The doctor is also legally responsible, because it can occur due to an error in giving the delegation of authority.

Everyone who is given authority must be held accountable. Responsible for risks that may arise which result in losses to other parties. Responsibility as well as risk is something that is latent. If the risks arise

and demands are made, then issues of responsibility and authority will also surface. Lawsuits from other parties, in this case patients, can be caused by malpractice or deviation from the implementation of their duties and lack of respect for patient rights. On the other hand, the community has a higher level of legal knowledge and awareness. Likewise, the law has accommodated patient protection so that the public's tendency to make demands due to irregularities in the actions of health workers is also getting higher (Anam, 2018) .

From a criminal point of view, an act is considered a criminal act if it fulfills the limited conditions specified in a criminal law. Nullum delictum noella poena sine (no offense, no crime without prior regulation). Article 1 paragraph (1) of the Criminal Code is known as the principle of legality. In several articles in the Criminal Code, especially Article 36 of 2009 on Health Law, it regulates criminal sanctions in general. Therefore, if health workers commit carelessness when carrying out health service actions, they can be prosecuted under the law (Nurhalimah, 2017) .

Criminal law responsibility for midwives, while taking into account the criminal elements committed by midwives, are as follows:

e) An act that is against the law, in this case if the midwife performs health services outside of her authority as stipulated in the Regulation of the Minister of Health Number 28 of 2017 concerning Permits and Implementation of Midwifery Practices.
f) Able to be responsible, in this case the midwife understands the consequences of each of her actions and has the ability to receive training and education for this.
g) There is an error (schuld) in the form of intentional or due to negligence (culpa). If the action is carried out because of intention and an element of intent, then the midwife is charged as the perpetrator of the crime. For example, a midwife intentionally gives an injection so that a patient dies.
h) There are no justifications and/or excuses, in this case there are no excuses such as the absence of rules that allow one to take an action, or there are no justifications and excuses such as the risks inherent in the actions taken. In general, the criminal responsibility of a midwife is independent, unlike civil and administrative.

Moeljatno in his book writes that articles 55 to 62 of the Criminal Code, as articles regarding participation. It is said that there is inclusion if not just one person is involved in the occurrence of a criminal act, but several people. What can be called a participant must meet the requirements, namely as a person who commits or participates in committing a criminal act or helps commit a criminal act (Moeljatno, 1985) . Based on articles 55, 56 and 57 of the Criminal Code, midwives and doctors can be prosecuted criminally. Delegation of authority mandated by doctors to midwives when referring to Article 55 of the Criminal Code, namely as a person who orders to do it, where in this crime, there are at least two perpetrators, namely people who order and are ordered. The person who orders can be punished as a person who commits a crime while the person who is ordered cannot be punished because he cannot be responsible by fulfilling several conditions, namely because he is crazy, forced, an illegal position order, and cannot be blamed at all. Referring to article 56 of the Criminal Code, the delegation of authority by mandate, as a category of helpers, midwives can be prosecuted if they commit crimes intentionally, while Article 57 of the Criminal Code for assistants can be reduced by one third.

These three articles can be applied to criminal acts as a result of mandated delegation of authority. Criminal liability for both doctors and midwives in the event of malpractice that causes harm to patients needs to be examined first, in this case it is necessary to open medical records, if during the implementation carried out by midwives not in accordance with standard procedures when receiving delegation of authority mandated by doctors, midwives also take legal responsibility, but in this case also doctors cannot relinquish their responsibilities when delegating delegation of authority, mistakes in delegating actions by doctors to midwives can also be fatal to patients (Suryanda et al., 2018) .

Article 46 of Law Number 44 of 2009 concerning Hospitals is a derivative or derivative of Article 1367 of the Civil Code paragraph (3) which applies specifically to Hospitals, or Article 46 of Law Number 44 of 2009 is lex specialist. The provisions of the Article above are also in line with the provisions of the respondeat superior doctrine. The respondeat superior doctrine implies that an employer is a person who has the right to give instructions and control the actions of his subordinates, both on the results achieved and on the methods used. Besides that, with the development of health law and the sophistication of medical technology, hospitals cannot escape the responsibility for the work done by their employees, including what is done by medical personnel (Nasution, 2005) .

If it is related to the superior response, then the doctrine can be analogous to the relationship between doctors and midwives due to the mandated delegation of authority. However, this doctrine cannot be applied just like that, because for its application certain conditions must first be met, such as the existence of a working relationship between superiors and subordinates and the attitude of subordinates must also be within the scope of work assigned to them. A working relationship is considered to exist, if the superior has the right to directly supervise and control the activities of the subordinates in carrying out their duties, in this case the work carried out must be a form of an order given by the superior (Jamillah & Yulianto, 2018) .

In the delegation of authority, a written letter is required to delegate the duties of a doctor to a midwife so that there is no confusion between the doctor and the midwife in proving the law (Gunawan & Christianto, 2020) . In the world of health, currently medical records are medical records relating to how medical actions are performed on patients, which are specifically written by doctors and midwives. Medical records can only be seen and their contents known by doctors and midwives who are related to the related patient medical records, this is the weakness of medical records (Susanto, 2018) .

In accordance with the two statutory provisions referring to the existence of conditions in the form of delegation in writing, so that the delegation of authority in writing certainly has legal force because the delegation of authority by doctors to midwives by writing on medical records can be used as legal evidence according to the type of evidence in the criminal procedural law adopted in Indonesia. Therefore the delegation orally has weak legal force because it is not clearly regulated in the law. According to the types of evidence in criminal proceedings, verbal delegation of authority often occurs in rooms equipped with CCTV and delegation by telephone where there is evidence of the conversation not being sufficient as evidence so that this does not guarantee that the verbal delegation of authority has strong legal force (Rafael, 2019) .

Therefore it is necessary to review the patient's medical record, where the error occurred, whether the midwife in carrying out the delegation of authority was in accordance with the standards in the hospital or not, or was it the fault of the doctor as the provider of the delegation of authority. If it is proven that there was a mistake, which led to a lawsuit, civil or criminal, it is because there is a legal relationship with the engagement. In addition to civil liability, lawsuits against doctors and midwives can be sued or prosecuted criminally (Lastini et al., 2020) .

Legal liability aimed at midwives and doctors as providers of delegation of authority by delegation to midwives who commit negligence resulting in losses for patients in health services at puskesmas are still subject to legal responsibility, but still have to review existing medical records, whether the action given is in accordance with the standard procedure or not. Claims or civil lawsuits that can be filed (legal liability) as previously mentioned are:

c. Liability based on default or default or broken promise based on contractual liability as stipulated in Article 1239 of the Civil Code.
d. Liability based on unlawful acts (onrechtmatige-daad) as stipulated in the provisions of Articles 1365 and 1366 of the Civil Code.

Civil liability for midwives as a result of delegation of authority by doctors is different if it occurs in hospitals, according to Article 46 of the Hospital Act that hospitals are responsible for negligence caused by health workers but if negligence at the puskesmas is caused by medical personnel or health workers it needs to be studied again, because the rules regarding the puskesmas do not contain provisions on the legal responsibility of the puskesmas for the negligence of medical personnel and health workers (Mujiwati, 2020) .

The form of compensation incurred due to errors or negligence as a result of the delegation of authority from doctors to midwives on a mandate basis where the responsibility is attached to the doctor is still being studied based on evidence based on existing medical records, and professional standards, and standard operating procedures in the puskesmas, so that responsibility is not only attached to doctors but also midwives as executors of actions by using the principle of joint responsibility such as the case decided by the judge in the case of Pitra Azmirla and Damitri Almira (Jamillah & Yulianto, 2018) .

According to Satjipto Raharjo, legal protection is to provide protection for human rights that are harmed by other people and this protection is given to the community so that they can enjoy all the rights granted by law. The law can function to realize protection that is not only adaptive and flexible, but also predictive and anticipatory. Law is needed for those who are weak and not yet strong socially, economically and politically to obtain social justice (Raharjo, 2000) .

The legal protection for midwives is found in Article 60 of Law no. 4 of 2019 concerning midwifery, namely midwives in carrying out Midwifery Practices have the right to:

g. Obtain legal protection as long as carrying out tasks in accordance with competence, authority, and complying with the code of ethics, professional standards, professional service standards, and standard operating procedures;
h. Obtain correct, clear, honest and complete information from clients and/or their families;
i. Refuse the wishes of clients or other parties that are contrary to the code of ethics, professional standards, service standards, standard operating procedures, and provisions of laws and regulations;
j. Receiving compensation for Midwifery Services that have been provided;
k. Obtain work facilities according to standards; And
l. Get the opportunity to develop the profession.

Proof of the presence or absence of errors/negligence by midwives is the main requirement for accountability for the health services they perform. The Res Ispa Loquitor doctrine (the thing spekas for it self) can easily prove that midwives made mistakes (Mujiwati, 2020) .

The enforcement of criminal acts of malpractice in health services still uses the provisions stipulated in Law Number 29 of 2004 concerning Medical Practice, Law Number 44 of 2009 concerning Hospitals, and Law Number 36 of 2009 concerning Health does not specifically regulate specific or unknown criminal acts due to malpractice. However, it is contained in Article 84 of Law Number 36 of 2014 concerning Health Workers regarding criminal provisions, which states that:

(3) Every health worker who commits gross negligence resulting in serious injury to the Recipient of Health Services shall be subject to imprisonment for a maximum of 3 (three) years;
(4) If the gross negligence referred to in paragraph (1) results in death, every health worker shall be punished with imprisonment for a maximum of 5 (five) years.

The normative determination of whether or not there is negligence for the actions taken by doctors and midwives must be reviewed carefully and thoroughly case by case. The judge who holds the key in determining in concreto about whether or not to carry out work according to professional standards and not according to action procedures, is said to have made a mistake/negligence.

Therefore, the delegation of authority given by doctors to midwives either by delegation or mandate, if malpractice occurs is not entirely borne by the doctors themselves or the midwives themselves, criminal responsibility for both doctors and midwives in the event of malpractice that causes harm to patients

needs to be investigated. first, in this case it is necessary to open medical records, if in practice the actions carried out by the midwife are not in accordance with standard procedures when receiving the delegation of authority by mandate from the doctor, the midwife also takes legal responsibility, but in this case the doctor cannot release their responsibilities when delegating delegation of authority, mistakes in delegating actions by doctors to midwives can also be fatal to patients (Suryanda et al., 2018; Mujiwati, 2020) .

Conclusion

In carrying out health services at health service facilities, doctors can provide delegation of medical authority to midwives as regulated in legislation. The delegation of authority for medical duties to midwives has so far been carried out in writing and orally by telephone. The party responsible for the process of delegation of authority is the place of health services, the doctor as the party providing the delegation of authority and the midwife as the executor who is delegated authority. Civil liability for midwives due to delegation of authority by doctors is different if it occurs in hospitals, according to Article 46 of the Hospital Act that hospitals are responsible for negligence caused by health workers but if negligence at the puskesmas or other health facilities is caused by medical personnel or health workers need to be reviewed again. In addition to civil liability, lawsuits against doctors and midwives can be sued or prosecuted criminally.

It is necessary to clearly divide the form of delegation of authority, namely what actions are taken so that midwives have a limit of authority in carrying out delegation tasks. Because the midwifery profession is part of the health profession which is always related to patient safety, it is also necessary to enact a midwifery law that can provide clarity regarding its implementation and protect midwifery practice in obtaining delegation of authority.

Acknowledgment

The authors would like to thank the Universitas Muhammadiyah Semarang for the support given to the authors to conduct this research

Declarations

Author contribution : Author 1: initiated the research ideas, instrument construction, data collection, analysis, and draft writing; Author 2: revised the research ideas, literature review, data presentation and analysis, and the final draft.

Funding statement : This research was not funded by any party

Conflict of interest : The authors declare no conflict of interest.

Additional information : No additional information is available for this paper.

References

Anam, K. (2018). Tanggungjawab dan Kewenangan Perawat Gigi dalam Melakukan Tindakan Medik Kedokteran Gigi. *Ajudikasi : Jurnal Ilmu Hukum*, *2*(1), 67. https://doi.org/10.30656/ajudikasi.v2i1.621

Gunawan, T. S., & Christianto, G. M. (2020). Rekam Medis/Kesehatan Elektronik (RMKE): Integrasi Sistem Kesehatan. *Jurnal Etika Kedokteran Indonesia*, *4*(1), 27. https://doi.org/10.26880/jeki.v4i1.43

Hadiwijaya, H., Widanti, A., & Rahim, A. H. (2017). Peran Bidan Dalam Kewenangan Tindakan Episiotomi

Yang Diperluas Pada Praktek Swasta Mandiri Dan Klinik Bersalin. *Soepra Jurnal Hukum Kesehatan*, *2*(1), 42. https://doi.org/10.24167/shk.v2i1.808

Hanifa Muslimah, R., & Arrisman, A. (2022). Perlindungan Hukum Bagi Bidan Dalam Pemberian Pelayanan Umum Di Klinik Praktik Mandiri Bidan. *Jurnal Syntax Fusion*, *2*(03), 461–475. https://doi.org/10.54543/fusion.v2i03.185

Jamillah, S. N. A., & Yulianto, S. (2018). Pertanggungjawaban Hukum Bidan Akibat Pelimpahan Wewenang Oleh Dokter Dalam Pelayanan Kesehatan Di Puskesmas. *Justitia Jurnal Hukum*, *2*(1). https://doi.org/10.30651/justitia.v2i1.1714

Lastini, K., Sutrisno, E., & Sugiarti, T. (2020). Perlindungan Hukum Profesi Bidan Dalam Pelimpahan Wewenang Tindakan Medis. *Mimbar Keadilan*, *13*(2), 131–140. https://doi.org/10.30996/mk.v13i2.3324

Mahmudji, S. S. dan S. (2003). *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Raja Grafindo Persada.

Merdekawati, Y. (2021). Tanggung jawab pidana perawat dalam melakukan tindakan keperawatan berdasarkan Undang-Undang Nomor 36 Tahun 2009 Tentang Kesehatan. *Jurnal Nestor Magister Hukum*, *53*(9), 4–6. https://media.neliti.com/media/publications/10590-ID-tanggung-jawab-pidana-perawat-dalam-melakukan-tindakan-keperawatan-berdasarkan-u.pdf

Moeljatno. (1985). *Delik-Delik Percobaan Delik-Delik Penyertaan*. Bina Aksara.

Mohamad, I. R. (2019). Perlindungan Hukum Atas Hak Mendapatkan Pelayanan Kesehatan Ditinjau Dari Aspek Hak Asasi Manusia. *Akademika*, *8*(2), 78. https://doi.org/10.31314/akademika.v8i2.401

Mujiwati. (2020). Perlindungan Hukum Terhadap Bidan Yang Menerima Pelimpahan Kewenangan Tindakan Kebidanan Dihubungkan Dengan Standar Profesi Bidang Kesehatan. *Aktualita*, *3*(1), 5–24.

Nasution, B. J. (2005). *Hukum Kesehatan Pertanggungjawaban Dokter*. Rineka Cipta.

Nurhalimah, S. (2017). PERLINDUNGAN HUKUM TERHADAP TENAGA KERJA INDONESIA. *ADALAH: BULETIN HUKUM DAN KEADILAN*, *1*.

Pramesti, A. (2013). Tanggung Jawab Hukum Dalam Hubungan Dokterperawat. *E-Jurnal Medika Udayana*, *1*(1), 1–11.

Rafael, P. S. (2019). Pertanggungjawaban Pidana Tindakan Malpraktek Kedokteran Dalam Kaitannya Dengan Masalah Pembuktian. *Lex Crimen*, *VIII*(8), 56–63.

Raharjo, S. (2000). *Ilmu Hukum*. PT Citra Aditya Bakti.

Ridwan. (2003). *Hukum Administrasi Negara, Cetakan II*. UII Press.

Sahari, A. (2022). Competence for Male Circumcision by Health Workers According to Health Law. *SOEPRA Jurnal Hukum Kesehatan*, *8*.

Saraswati, A. (2023). *Analisis Hukum Praktik Bidan Mandiri Dengan Kompetensi Bidan Praktik Mandiri Berdasarkan Hukum Yang Berlaku di Indonesia*. 1–23.

Saswanti, O. (2012). *Tinjauan Yuridis Tentang Pendelegasian Kewenangan Dokter Kepada Perawat Dalam Pelayanan Kesehatan*.

Setyianta, P. T. (2018). Kajian Yuridis Pelimpahan Kewenangan Dokter Umum Kepada Bidan Dalam Pelayanan Obstetri Dan Neonatal Emergensi Dasar Di Puskesmas Gandrungmangu Satu. *Jurnal Idea Hukum*, *4*(2), 1023–1055. https://doi.org/10.20884/1.jih.2018.4.2.99

Sirait, T. M. (2016). Urgensi Perluasan Pertanggungjawaban Pidana Korporasi Sebagai Manifestasi Pengejawantahan Konstitusi. *Jurnal Konstitusi*, *13*(3), 575. https://doi.org/10.31078/jk1335

Soekanto, S. (1996). *Pengantar Penelitian Hukum*. UI Press.

Soewono, H. (2005). *Batas Pertanggungjawaban Hukum Malpraktik Dokter Dalam Transaksi Terapeutik*. Srikandi.

Suryanda, A., Wahyati Y., E., & Murni, T. W. (2018). Asas Kehati-Hatian Dan Tanggung Jawab Hukum Pidana Bidan Pada Kasus Angka Kematian Ibu (Aki). *Soepra*, *3*(1), 26. https://doi.org/10.24167/shk.v3i1.695

Susanto, A. (2018). Manajemen Mutu Sumber Daya Manusia di Unit Rekam Medis PKU Muhammadiyah Surakarta. *Infokes: Jurnal Ilmiah Rekam Medis Dan Informatika Kesehatan*, *8*(2), 70–79. http://ojs.udb.ac.id/index.php/infokes/article/view/206

Sylvana, Y., Firmansyah, Y., & Haryanto, I. (2021). Legal Delegasi (Pelimpahan Wewenang Medis) Dokter Kepada Perawat Ditinjau dari Perspektif Hukum. *Cerdika: Jurnal Ilmiah Indonesia*, *1*(12), 1632–1646. https://doi.org/10.36418/cerdika.v1i12.217

Wila Chandrawila Supriadi. (2001). *Hukum Kedokteran*. Mandar Maju.

Zakariya, H. Z., Rudatyo, R., Ismiyanto, I., & Zanuar, K. M. Z. (2022). Aspects Of Legal Protection Against Midwife Profession In Indonesia. *Jmns*, *4*(1), 1–9. https://doi.org/10.57170/jmns.v4i1.88

Undang-Undang Nomor 36 Tahun 2014 tentang Tenaga Kesehatan

Undang-Undang Nomor 29 Tahun 2004 tentang Kedokteran

Undang-Undang Nomor 4 tentang Kebidanan.

REVISI: 3 (2023-12-19)

Juridical Study of Criminal Law Delegation of Authority of Obstetricians and Gynecologists to Midwives in Health Services

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Abstract

Introduction to the Problem: The entitlement to health services represents an inherent right accorded to each citizen within the Indonesian jurisdiction. Within this framework, health practitioners assume a pivotal role in augmenting the optimal provision of healthcare to the populace. Specifically, midwives play a critical function in delivering health services aligned with the directives of medical professionals, particularly in exigent situations and referral services. The legal ramifications surrounding a midwife's engagement in illicit childbirth practices underscore the imperatives of statutory compliance. Within the confines of the Penal Code, responsibility is construed as an imperative, denoting that transgressions of criminal statutes necessitate accountability in accordance with the prescribed legal provisions.
Objective: This study seeks to elucidate the juridical examination of the delegation of authority within the realm of healthcare services, specifically focusing on the intricate dynamics between medical practitioners and midwives.

Methodology: The employed research methodology involves normative juridical analysis utilizing secondary data. Within the purview of this investigation, the research framework adheres to legal principles, encompassing an examination of both codified positive law and uncodified positive law.
Findings: The delegation of authority upon midwives to execute health service activities is predicated upon a mandate from doctors, necessitating recurrent monitoring and evaluation by the medical practitioners. This delegation of authority pertaining to health-related responsibilities to midwives is effectuated through both written documentation and oral communication via telephone. The locus of responsibility for this delegation rests with the healthcare institution, where physicians assume the role of conferring authority, and midwives act as the executors entrusted with such delegated responsibilities.
Paper Type: Research Article
Keywords: Juridical Studies; Delegation of Authority; Doctors; Midwives; Health Services

Introduction

The entitlement to health services is universally recognized as a fundamental right, constitutionally enshrined in the 1945 Constitution of the Republic of Indonesia. This commitment to health is further underscored by legal provisions, specifically articulated in Law Number 36 of 2009 concerning Health (Sahari, 2022). The evolution of health service initiatives, spearheaded by both governmental and community entities, initially emphasized curative interventions for those in need. Over time, there has been a progressive shift toward a more comprehensive integration of promotive, preventive, curative, and rehabilitative measures, emphasizing a holistic approach to healthcare delivery (Soewono, 2005).

Medical personnel are individuals vested with the authority to execute medical interventions. Indonesian regulations delineate distinctions between health workers and medical practitioners. Health workers play a pivotal role in enhancing the quality of maximal healthcare services rendered to the populace. Positioned at the forefront of public health services, health workers contribute significantly to realizing health development objectives aligned with national goals. Serving as a fundamental element in the execution of health services, the presence, role, and responsibilities of health workers bear profound significance in activities pertaining to the development of health and safety, impacting both the well-being of health workers and the community availing healthcare services.

A medical practitioner functioning within a healthcare setting frequently engages in collaborative efforts with various healthcare professionals, including midwives (Mohamad, 2019). Obstetricians and gynecologists assume the responsibility of delivering thorough and integrated healthcare services pertaining to a woman's reproductive health, spanning periods of non-pregnancy as well as encompassing the stages of pregnancy, childbirth, and the postpartum period. Their multifaceted roles encompass preventive measures aimed at averting diseases, curative interventions focused on remedying ailments, and rehabilitative strategies directed at rectifying abnormalities within the reproductive organs.

Midwives are professional and accountable health providers who work as women's partners to provide support, care, and advice during pregnancy, childbirth, and puerperium, lead childbirth on their own responsibility, and provide care to babies, even newborns. Midwife services consist of: prevention services, normal delivery services, detection of maternal and child complication services, and access to medical assistance and other assistance (Zakariya et al., 2022). These services include prevention efforts, promotion of normal childbirth, detection of maternal and child complications, and access to medical assistance or other appropriate assistance, as well as taking emergency measures (Lastini et al., 2020a). In addition, midwifery services are services provided by midwives in accordance with their authority with the aim of improving maternal and child health in order to create a quality, happy, and prosperous family.

The targets of midwifery services are individuals, families, and communities, which include efforts to improve, prevent, heal, and recover (Jamillah & Yulianto, 2018a).

In exercising her authority, a midwife must meet professional standards, have the skills and abilities to carry out the actions taken, and prioritize the health of the mother and baby or fetus (Mujiwati, 2020a). Under the provisions of Law No. 4 of 2019 concerning Midwifery, as articulated in Article 59(1), midwives are legally empowered to administer health services beyond their designated scope of practice in emergency situations, provided it aligns with their competencies. Specifically, midwives are authorized to deliver health services in conformity with a physician's directives under the watchful supervision of a medical doctor, particularly in circumstances demanding urgent intervention or referral services. Furthermore, it is imperative to note that certain medical procedures necessitate collaboration, wherein doctors are not permitted to act autonomously but require the assistance of midwives within the healthcare facility (Jamillah & Yulianto, 2018b).

The delegation of authority from physicians to midwives is contingent upon a mandate in accordance with Law Number 4 of 2019, which specifically addresses midwifery in Article 54. Under this law, the government is authorized to delegate specific and constrained powers to midwives. However, the regulatory framework for the delegation of authority from doctors to midwives lacks clarity. Although Law Number 4 of 2019 outlines the mandated delegation of authority from doctors to midwives, it does not explicitly specify the particular types of medical actions subject to delegation (Mujiwati, 2020b). In the execution of medical actions, a doctor may delegate certain tasks in writing to designated midwives. Nevertheless, the technical guidelines governing such delegation are not definitively outlined in existing laws and regulations. This gap persists despite the fact that numerous patients in need of emergency obstetrics and gynecology care often rely on doctor (Setyianta, 2018a).

The transference of authority commonly takes place through oral means, either in face-to-face interactions or via telephone communication. This is often necessitated by the unavailability of the doctor and the geographical disparity between the doctor's location and the provision of health services. While the legal framework governing this practice lacks explicit clarity, its potential implications may be mitigated if proper accountability measures are in place, and if it does not result in any detriment to patients (Anam, 2018). The legislative landscape exerts substantial influence on health management, playing a pivotal role in achieving optimal health outcomes. A midwife, defined as a woman who has undergone government-recognized midwifery education, successfully completed requisite examinations, and held registration or a valid practice license, typically exercises delegated authority in alignment with pertinent laws and regulations, thereby assuming responsibilities traditionally associated with medical practitioners (Saraswati, 2023; Hanifa Muslimah & Arrisman, 2022).

The legal responsibility of a midwife engaged in illicit birthing practices is governed by the tenets of the Penal Code. According to Himawan et al., (2022), the principle of responsibility asserts that individuals contravening criminal law must be held accountable for their actions in accordance with statutory provisions. Consequently, any deviation from legal norms exposes one to criminal liability, contingent upon the nature of the transgression. To incur criminal liability, an error must meet three elements: the capacity for responsibility means being in good physical health; the act is in the form of intent (*dolus*) or negligence (*culpa*) and there is no excuse for the cure or remission of any sin (Thrakul et al., 2023).

Methodology

The research methodology employed is normative juridical, utilizing secondary data sources. Normative juridical research involves a literature review of legal materials or reliance on secondary data (Mahmudji,

2003). The study aims to gather theoretical constructs, conceptual frameworks, and legal principles related to the subject matter, adhering to both codified and uncodified positive laws (Soekanto, 1996). Primary legal materials, including Law Number 36 of 2014 concerning Health Workers, Law Number 29 of 2004 concerning Medicine, and Law Number 4 of 2014 concerning Midwifery, form the basis of the research. Secondary legal data consist of books and journals addressing the delegation of authority from doctors to midwives. Following data collection, the study results underwent qualitative normative analysis, interpreting the legal aspects and implications of the delegation of authority from doctors to midwives.

Results and Discussion

The complete execution of health services extends beyond the exclusive purview of physicians, leading to the delegation of certain medical responsibilities by doctors to midwives, even though the latter lack the legal authority for such tasks (Setyianta, 2018b). The transference of authority from doctors, acting as authorizers (delegans), to midwives, as recipients of authority (delegataris), represents an authorization rooted in trust. It is imperative to note that the delegating authority retains responsibility for the medical actions delegated to the recipient of authority. This intricate framework operates within the framework of extant laws and regulations (Hadiwijaya et al., 2017).

The constrained availability of doctors precipitates a scenario wherein midwives are compelled to undertake medical procedures that may exceed the scope of their professional competence. Article 73(3) of Law Number 29 of 2004 offers an avenue for midwives to engage in medical procedures, contingent upon their adherence to stipulated legal provisions and regulations. According to the Minister of Health Regulation Number 2052/Menkes/Per/X/2011 addressing Practice Licensing and the Execution of Medical Practice, as articulated in Article 23(1), doctors or dentists possess the authority to formally delegate medical or dental procedures in writing to nurses, midwives, or specific other healthcare practitioners during the execution of medical or dental processes.

Doctors or dentists possess the authority to formally assign the execution of medical or dental procedures to nursing professionals, midwives, or other healthcare practitioners through written directives during the course of medical or dental interventions. The procedural specifications for such delegation, as delineated in Article 23(1) of Law Number 29 of 2004, lack precise regulatory frameworks. Concurrently, a substantial contingent of patients necessitating emergent interventions in the realm of Obstetrics and Gynecology heavily depend on the expertise of medical practitioners (Setyianta, 2018b).

Article 11 of Law Number 36 of 2014 underscores the inclusion of midwives within the category of health workers, highlighting that these professionals, along with their counterparts, are mandated to execute their authority in adherence to the prevailing regulations. Moreover, Law Number 36 of 2009 on Health, specifically in Article 23, delineates that "Health workers are vested with the authority to administer health services." Conversely, the jurisdiction of midwives is explicitly delineated in Law Number 4 of 2014, which governs Midwifery Practices. This statutory framework assigns midwives the responsibility for delivering a spectrum of health services encompassing maternal care, child health, women's reproductive health, and family planning. Their role involves the execution of tasks based on delegated authority and, alternately, performing assigned duties under specific, circumscribed conditions (Setyianta, 2018c).

The legitimacy of health workers to deliver health services is grounded in legal frameworks, as asserted by Supriadi (2001). Constitutional law delineates three avenues through which authority, emanating from statutory regulations, is acquired: attribution, delegation, and mandate. HD Van Wijk provides nuanced definitions for these concepts:

1. Attribution pertains to the conferment of governmental authority by legislative bodies to government organs.

2. Delegation involves the transference of governmental authority from one governmental organ to another.
3. A mandate is characterized by a government organ permitting the exercise of its authority by another organ on its behalf (Ridwan, 2003).

The legal framework governing the transfer of authority from physicians to midwives is articulated in Law Number 4 of 2019 on Midwifery, with particular emphasis on Article 54. This provision delineates that the delegation of responsibilities to midwives in executing health service interventions is contingent upon a mandate from physicians. Such a mandate involves physicians entrusting specific health services to midwives. In assuming the role of the delegator, the physician assumes responsibility for the midwife and is obligated to conduct systematic and periodic monitoring and evaluation processes.

The conferral of physician authority to midwives can be effectuated through either delegation or mandate (Merdekawati, 2021). Delegated authority is concomitant with delegated responsibility, whereas a mandate does not entail the transfer of responsibility (Pramesti, 2013). The implementation of health services in the field of midwifery often involves midwives receiving assignments from doctors in the form of a mandate (because the responsibility remains with the doctor). Among them are the provision of medical services (curative) and special actions (which fall under the doctor's authority and should be carried out by the doctor), such as the installation of infusions and giving injections (Setyianta, 2018b). Doctors may delegate their authority to midwives given in writing, and it must be in accordance with educational ability, competence, and the provisions of laws and regulations.

In the realm of comparative analysis, the principles delineated in German Jurisprudence assert that a medical practitioner possesses the entitlement to place reliance upon meticulously trained and supervised staff for the competent execution of duties. However, this allowance does not extend to the delegation of professional responsibilities, as such an act renders the doctor personally accountable for any negligence in the delegation process and subsequent errors committed by the entrusted personnel (Sylvana et al., 2021). The act of transferring legal responsibility through delegation of authority to a midwife does not absolve the doctor of culpability in the event of malpractice leading to severe patient harm or loss of life. Consequently, a thorough examination of this practice is imperative, given that inaccuracies in the doctor's directives could potentially yield fatal consequences for the patient (Jamillah & Yulianto, 2018b).

In instances where the allocation of responsibilities between physicians and midwives results in malpractice, it can lead to catastrophic outcomes, including severe disabilities, paralysis, or even fatalities. Such circumstances may expose both doctors and midwives to potential criminal liabilities. To proactively mitigate the risk of malpractice arising from delegated tasks, physicians assume the role of overseers, ensuring the adherence to prevailing medical standards and practices. The Ministry of Health has engaged in consultations with the National Academy of Physicians, categorizing delegated responsibilities into two distinct types. The first category encompasses routine tasks automatically assigned to competent assistants. These tasks, which involve daily activities such as household upkeep, vital sign monitoring, and relaying information to physicians, are commonly executed by midwives and nurses.

The second category involves more intricate duties, such as surgical preparation and blood sampling, which are typically performed without direct supervision. These tasks fall under the purview of straightforward therapeutic and nursing responsibilities. The delineation of such responsibilities seeks to establish a structured framework that minimizes the likelihood of negligence and upholds the highest standards of patient care.

The lack of precise regulations governing specific midwifery procedures often leads to a convergence of responsibilities between midwifery services and tasks delegated by physicians. Delegations of health-related responsibilities to midwives occur through both written documentation and verbal communication via telephone. The responsibility for overseeing the delegation process lies with health

facilities (such as Puskesmas (community health center), hospitals, clinics, etc.), with doctors and midwives acting as the designated executors of the delegated authority. To mitigate the risk of misinterpretations, physicians meticulously and appropriately carry out these delegations, employing both oral communication and written documentation.

The legal concept of delegation of authority engenders legal ramifications, specifically consequences governed by legal norms (Saswanti, 2012). In instances where midwives assume delegated authority for medical procedures from physicians, and allegations of authority abuse arise (Sirait, 2016), leading to patient harm, the legal responsibility does not solely rest upon the midwife. Physicians also assume legal responsibility, as such repercussions may emanate from lapses in the delegation of authority, implicating both parties in legal liability.

Individuals vested with authority bear an imperative duty of accountability within the legal framework. They are obligated to assume responsibility for potential risks that may precipitate losses for other parties. The nexus between responsibility and risk is inherently latent. As risks materialize and demands surface, the concomitant issues of responsibility and authority assume prominence. Legal ramifications, particularly lawsuits initiated by affected parties such as patients, can ensue as a consequence of malpractices or deviations from the prescribed performance of their duties, coupled with a disregard for the rights of patients. Conversely, the broader populace exhibits an elevated degree of legal acumen and awareness. Concurrently, contemporary legislative frameworks have incorporated measures for patient protection, fostering an escalating inclination among the public to assert their rights through legal claims in response to deviations in the conduct of healthcare practitioners (Anam, 2018).

From a jurisprudential standpoint, an act assumes the characterization of a criminal offense when it satisfies the circumscribed criteria delineated within the ambit of criminal law. The maxim "Nullum delictum noella poena sine" encapsulates the foundational precept that denotes the absence of culpability and, consequently, the absence of penal consequences in the absence of antecedent legal prescription. The primacy of the legality principle is enshrined in Article 1, paragraph (1) of the Criminal Code, affirming that criminal liability is contingent upon explicit statutory proscriptions. Article 36 of 2009 intricately delineates the contours of criminal sanctions in a comprehensive manner. Consequently, transgressions perpetrated by healthcare professionals in the form of negligence during the execution of healthcare services render them susceptible to legal prosecution (Nurhalimah, 2017).

The criminal law obligations pertaining to midwives, with due consideration to criminal transgressions committed by midwives, are delineated as follows within a nuanced legal framework:

1. Commission of acts in violation of the law: Midwives engaging in health services beyond the scope of their authorized practice, as defined by the Minister of Health Regulation Number 28 of 2017 on Permission and Implementation of Midwifery Practice, are deemed to be in contravention of the law.
2. Demonstrating accountability: A midwife is expected to comprehend the ramifications of each action, possessing the capacity to undergo requisite training and education to fulfill their responsibilities.
3. Manifestation of culpable errors: Whether deliberate or resulting from negligence, errors (*schuld*) hold significance. In instances of intentional acts with elements of intentionality, the midwife may face criminal charges. For instance, administering a lethal injection with the intent to cause the patient's demise constitutes a criminal offense.
4. Absence of justification and/or rationale: Criminal liability arises when there is an absence of legal justification or rationale. This could manifest in the absence of rules permitting a specific action or when inherent risks associated with the committed action lack justification and rationale.

In a broader context, the criminal responsibility of midwives stands as an independent entity, distinctly diverging from civil and administrative responsibilities within the legal framework.

In his book, Moeljatno delves into the intricacies of articles 55 to 62 within the Criminal Code, specifically addressing the legal framework surrounding participation in criminal activities. Inclusion, as elucidated, transpires not through the solitary involvement of an individual in the perpetration of a criminal act but rather through the collaborative engagement of multiple individuals. Those deemed participants must satisfy specific qualifications, signifying their active involvement in, contribution to, or facilitation of a criminal act (Moeljatno, 1985). Pertinently, articles 55, 56, and 57 of the Criminal Code render midwives and physicians susceptible to criminal prosecution.

The delegation of authority entrusted by doctors to midwives, as stipulated in Article 55 of the Criminal Code, falls under the category of 'a person who gives an order', where in this crime there are at least two perpetrators, namely the person who gives an order and who receives an order. The person who gives an order can be subject to punishment as a person who commits a criminal offense, while the person who receives an order may not face punishment due to specific conditions that absolve them of responsibility. These conditions may include lack of sanity, coercion, an invalid official order, or being completely blameless. Referring to Article 56 of the Criminal Code, the delegation of authority by trust, as a category of accomplices, midwives may face prosecution if they commit a criminal act intentionally, while under Article 57 of the Criminal Code, the penalties for accomplices can be reduced by one-third.

These three legal provisions are applicable to criminal offenses arising from the mandated delegation of authority. It is imperative to scrutinize the criminal liability of both physicians and midwives in instances of medical malpractice resulting in harm to patients. A meticulous examination of medical records is requisite to ascertain the conformity of the midwife's actions with the prevailing standard procedures of the hospital at the time of admission. Legal accountability extends to midwives for the mandated delegation of authority by physicians. Nonetheless, physicians cannot exonerate themselves from their responsibilities when delegating authority; inaccuracies in delegating medical responsibilities to midwives may have severe consequences and prove detrimental to patient outcomes (Suryanda et al., 2018).

Article 46 of Law Number 44 of 2009 on Hospitals can be construed as a legal derivative or instantiation of the principles delineated in Article 1367(3) of the Civil Code, albeit with a specific application tailored to the context of hospitals. Alternatively, one may view Article 46 as a *lex specialis*. The provisions within this article seamlessly align with the doctrine of respondeat superior. Respondeat superior, a legal doctrine, posits that an employer, endowed with the authority to instruct and oversee the actions of subordinates, bears responsibility for both the outcomes and methodologies employed by these subordinates. This doctrine assumes particular relevance in the domain of hospitals, where the intricate landscape of health laws and advancements in medical technology underscores the imperative for hospitals to be answerable for the actions of their personnel, including medical professionals. Eschewing accountability for the work performed by employees is an untenable proposition in the contemporary milieu of healthcare regulation and technological sophistication (Nasution, 2005).

In the context of superiors' responses, the doctrine may be analogized to the professional relationship between physicians and mid-level practitioners, given the mandated delegation of authority. Nevertheless, the indiscriminate application of this doctrine is precluded, and specific prerequisites must be satisfied for its invocation. These prerequisites encompass the establishment of a functional relationship between superiors and subordinates, with subordinates demonstrating a comportment aligned with the prescribed scope of their assigned responsibilities. The recognition of an employment relationship hinges upon the superiors' entitlement to directly supervise and control the activities of subordinates during the discharge of their duties. In such instances, the tasks undertaken by subordinates must be characterized by adherence to directives issued by the superior (Jamillah & Yulianto, 2018b).

In the realm of delegating authority within the healthcare domain, a formal written instrument is necessitated for the purpose of entrusting the responsibilities of physicians to midwives. This procedural measure is imperative to obviate any potential legal ambiguity between the roles of physicians and midwives (Gunawan & Christianto, 2020). Within the ambit of health jurisprudence, contemporary medical documentation predominantly centers on records pertaining to the procedural aspects of medical interventions administered to patients. These records are meticulously recorded by both physicians and midwives, thereby reflecting the collaborative nature of healthcare provision. Access to and knowledge of the contents of such medical records are restricted solely to the pertinent healthcare professionals, encompassing both doctors and midwives involved in the patient's medical care. However, this restricted accessibility constitutes an inherent vulnerability in the prevailing framework of medical record-keeping, warranting critical examination within the legal discourse (Susanto, 2018).

In adherence to statutory provisions and the imperative for explicit authorization in written form, the legal potency of written delegation of authority is unequivocal. This is particularly manifest in instances where medical professionals delegate authority from physicians to midwives through meticulous documentation in medical records, thereby conferring indisputable legal validity. Such documentation stands as a substantive piece of evidence in conformity with the classifications of evidence delineated in the criminal procedure law as adopted in Indonesia. Conversely, oral delegation of authority is characterized by diminished legal efficacy due to its lack of explicit regulation within the legal framework. Instances of oral delegation commonly transpire in settings under surveillance, such as rooms equipped with closed-circuit television (CCTV), or through telephonic communication. Nevertheless, the evidentiary value derived from these oral exchanges is often insufficient to attain the status of robust legal evidence. Consequently, the reliance on oral delegation of authority fails to guarantee the commensurate legal potency upheld by its written counterpart, accentuating the inherent legal frailty associated with such oral arrangements (Raphael,(Rafael, 2019).

Therefore, it is necessary to conduct a review of the patient's medical record to identify the source of errors, whether the midwife's execution of delegated authority complies with the hospital's standards or not, or whether the fault lies with the doctor as the provider of the delegation of authority. If it is proven that an error has occurred, leading to a potential lawsuit, both civil and criminal actions may arise due to the legal relationship associated with the engagement. In addition to civil liability, doctors and midwives may also face criminal prosecution (Lastini et al., 2020b).

The legal responsibility directed towards midwives and doctors, as a result of the delegation of authority, to midwives who commit negligence leading to patient losses during health services at the Puskesmas, remains in effect. Nonetheless, a review of the existing medical records is still required to determine whether the delegated actions were in accordance with standard procedures or not. The civil claims or lawsuits that can be filed (legal liability) as mentioned earlier are:

a. Liability based on default, non-performance, or breach of promise based on contractual liability as stipulated in Article 1239 of the Civil Code.
b. Liability based on unlawful acts (*onrechtmatige-daad*) as stipulated in the provisions of Articles 1365 and 1366 of the Civil Code.

As stipulated in Article 46 of Law No. 44 of 2009, which imposes responsibility on medical institutions for negligence attributable to healthcare practitioners, the civil liability pertaining to midwives arising from the delegation of authority by physicians exhibits distinctions contingent upon the setting in which such instances transpire. Notably, the legal ramifications diverge when negligence transpires within a hospital context. Conversely, should instances of negligence arise within a Puskesmas, the legal framework necessitates scrutiny due to the absence of specific provisions within the regulatory framework governing Puskesmas concerning the legal accountability of these institutions for negligence attributed to medical personnel and healthcare practitioners (Mujiwati, 2020b).

The inquiry into indemnification stemming from lapses or negligence arising from the delegation of authority by physicians to midwives in a reliable fashion, with commensurate accountability ascribed to the physicians, remains the subject of ongoing scrutiny. This examination draws upon evidentiary data extracted from extant medical records, professional norms, and the standard operating procedures established at the Puskesmas. It is imperative to underscore that accountability extends not solely to the physicians but also encompasses the midwive as the executor of the actions, grounded in the doctrine of joint responsibility as articulated by the judiciary in the precedent of Pitra Azmirla and Damitri Almira (Jamillah & Yulianto, 2018b).

In the perspective articulated by Satjipto Raharjo (Raharjo, 2000), legal safeguarding serves as a mechanism to shield infringed human rights, extending such protection to the broader community to facilitate the full enjoyment of rights enshrined in the legal framework. The efficacy of laws lies in their capacity to actualize protections characterized not only by adaptability and flexibility but also by a prescient and anticipatory nature. The indispensability of legal frameworks is particularly pronounced for individuals lacking societal, economic, and political strength, as they strive to attain social justice.

Legal protection for midwives is contained in Article 60 of Law No. 4 of 2019, which states that midwives, when carrying out midwifery practice, have the following rights:

a. Obtaining legal protection as long as they carry out their duties in accordance with competence, authority, and compliance with codes of ethics, professional standards, professional service standards, and standard operating procedures;
b. Obtain accurate, clear, honest, and complete information from clients and/or their families;
c. Reject the wishes of clients or other parties that are contrary to the code of ethics, professional standards, service standards, standard operating procedures, and provisions of laws and regulations;
d. Receive remuneration for Midwifery Services that have been provided;
e. Receive work facilities according to standards; and
f. Have the opportunity to develop their profession.

The evidentiary demonstration of errors or omissions attributable to midwives constitutes a pivotal prerequisite for the elucidation of accountability in the domain of health services. The legal doctrine of *Res Ipsa Loquitur*, being inherently germane, serves as a particularly efficacious means to substantiate instances where a midwife has erred, thereby facilitating the establishment of negligence or malpractice (Mujiwati, 2020b). Midwives engaging in medical practice through delegated authority from physicians may face criminal sanctions in the event of malpractice, as stipulated by Article 84 of Law 36 of 2014. This provision dictates that any health worker found culpable of gross negligence leading to severe harm to the recipient of health services may be subject to a maximum imprisonment term of three years. Should such negligence result in the death of the recipient, health workers, including midwives, could be liable for a maximum imprisonment term of five years (Setyianta, 2018c).

The prosecution of malpractice offenses within the health service sector continues to be guided by the legal frameworks set forth in Law Number 29 of 2004, Law Number 44 of 2009, and Law Number 36 of 2009. However, these statutes lack explicit provisions addressing specific or undisclosed malpractice-related crimes. Nevertheless, legal provisions concerning such matters are delineated in Article 84 of Law Number 36 of 2014. This article stipulates that any health practitioner found guilty of gross negligence leading to severe harm to the recipient of health services may be subject to a maximum imprisonment term of 3 (three) years. Furthermore, in instances where such gross negligence results in the demise of the individual, each health practitioner involved may face a maximum imprisonment term of 5 (five) years.

The normative assessment of the presence or absence of negligence in the conduct of medical professionals, specifically doctors and midwives, necessitates a scrupulous and exhaustive examination on a case-specific basis. Judges, serving a pivotal function in definitively discerning adherence to

professional standards as opposed to procedural norms, are susceptible to potential errors or omissions in this evaluative process.

The allocation of authority from physicians to midwives, whether effectuated through delegation and mandate, and its implications in cases of malpractice, transcends the singular responsibility of either the physician or the midwife. The analysis of criminal liability concerning malpractice resulting in patient harm necessitates a nuanced examination of both physicians and midwives. A comprehensive scrutiny of medical records becomes imperative to ascertain whether the midwife's actions deviate from established protocols when executing delegated authority pursuant to the physician's mandate, thereby implicating the midwife in legal culpability. However, it is imperative to underscore that the physician cannot absolve themselves of accountability when delegating authority. Errors in the delegation of medical responsibilities to midwives can precipitate grave consequences for patients. Thus, the assessment of criminal liability extends beyond the actions of the midwife alone, encompassing the judicious review of the physician's role in the delegation process.

Conclusion

In the execution of healthcare services within medical institutions, physicians possess the legal prerogative to delegate medical authority to midwives in accordance with statutory provisions. The delegation of health-related responsibilities to midwives is effectuated through both written instruments and telephonic communications. The entity accountable for such delegation is the healthcare facility, where physicians act as the delegating party, and midwives serve as the appointed executors of delegated authority. Article 46 of the Hospital Law assumes responsibility for hospital-related negligence attributed to healthcare personnel, delineating distinct civil liabilities for midwives contingent upon whether the delegation transpires within a hospital setting. However, instances of negligence in alternative healthcare facilities such as Puskesmas warrant further examination when attributable to medical practitioners or healthcare personnel, potentially culminating in both civil and criminal liabilities for physicians and midwives.

A requisite imperative involves a meticulous demarcation of the modalities of authority delegation, explicating the procedures undertaken to circumscribe the scope of a midwife's authority in the execution of assigned duties. Given the intrinsic connection between the midwifery profession and patient safety within the broader healthcare framework, it becomes imperative to promulgate legislation specific to midwifery. This legislation should not only elucidate the implementation of delegation of authority but also safeguard the practice of midwifery by providing lucidity on the parameters within which such delegations transpire.

Acknowledgement

The author would like to express gratitude to the University of Muhammadiyah Semarang for the support given to the author to conduct this research.

Declaration

Author's contribution : Author 1: initiator of research ideas, instrument construction, data collection, analysis, and draft writing; Author 2: revise research ideas, literature review, data presentation and analysis, and final draft.
Funding statement : This research was not funded by any party
Conflict of interest : The author states there is no conflict of interest.
Additional information : No additional information is available for this paper.

Reference

Anam, K. (2018). Tanggungjawab dan Kewenangan Perawat Gigi dalam Melakukan Tindakan Medik Kedokteran Gigi. *Ajudikasi : Jurnal Ilmu Hukum*, *2*(1), 67. https://doi.org/10.30656/ajudikasi.v2i1.621

Gunawan, T. S., & Christianto, G. M. (2020). Rekam Medis/Kesehatan Elektronik (RMKE): Integrasi Sistem Kesehatan. *Jurnal Etika Kedokteran Indonesia*, *4*(1), 27. https://doi.org/10.26880/jeki.v4i1.43

Hadiwijaya, H., Widanti, A., & Rahim, A. H. (2017). Peran Bidan Dalam Kewenangan Tindakan Episiotomi Yang Diperluas Pada Praktek Swasta Mandiri Dan Klinik Bersalin. *Soepra Jurnal Hukum Kesehatan*, *2*(1), 42. https://doi.org/10.24167/shk.v2i1.808

Himawan, G. A., AmaliyaVariansyah, N., & Huda, M. (2022). Legal Aspects of Maternity Nursesperforming Childbirth Assistance Measures in the Framework of Carrying Out Doctor's Duties Against the Birth Process in Breach Locations. *Indian Journal of Forensic Medicine & Toxicology*, *16*(2), 27–34.

Jamillah, S. N. A., & Yulianto, S. (2018a). Pertanggungjawaban Hukum Bidan Akibat Pelimpahan Wewenang Oleh Dokter Dalam Pelayanan Kesehatan Di Puskesmas. *Justitia Jurnal Hukum*, *2*(1). https://doi.org/10.30651/justitia.v2i1.1714

Jamillah, S. N. A., & Yulianto, S. (2018b). Pertanggungjawaban Hukum Bidan Akibat Pelimpahan Wewenang Oleh Dokter Dalam Pelayanan Kesehatan Di Puskesmas. *Justitia Jurnal Hukum*, *2*(1). https://doi.org/10.30651/justitia.v2i1.1714

Lastini, K., Sutrisno, E., & Sugiarti, T. (2020a). Perlindungan Hukum Profesi Bidan Dalam Pelimpahan Wewenang Tindakan Medis. *Mimbar Keadilan*, *13*(2), 131–140. https://doi.org/10.30996/mk.v13i2.3324

Lastini, K., Sutrisno, E., & Sugiarti, T. (2020b). Perlindungan Hukum Profesi Bidan Dalam Pelimpahan Wewenang Tindakan Medis. *Mimbar Keadilan*, *13*(2), 131–140. https://doi.org/10.30996/mk.v13i2.3324

Mahmudji, S. S. dan S. (2003). *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Raja Grafindo Persada.

Merdekawati, Y. (2021). Tanggung jawab pidana perawat dalam melakukan tindakan keperawatan berdasarkan Undang-Undang Nomor 36 Tahun 2009 Tentang Kesehatan. *Jurnal Nestor Magister Hukum*, *53*(9), 4–6.

Moeljatno. (1985). *Delik-Delik Percobaan Delik-Delik Penyertaan*. Bina Aksara.

Mohamad, I. R. (2019). Perlindungan Hukum Atas Hak Mendapatkan Pelayanan Kesehatan Ditinjau Dari Aspek Hak Asasi Manusia. *Akademika*, *8*(2), 78. https://doi.org/10.31314/akademika.v8i2.401

Mujiwati. (2020a). Perlindungan Hukum Terhadap Bidan Yang Menerima Pelimpahan Kewenangan Tindakan Kebidanan Dihubungkan Dengan Standar Profesi Bidang Kesehatan. *Aktualita*, *3*(1), 5–24.

Mujiwati. (2020b). Perlindungan Hukum Terhadap Bidan Yang Menerima Pelimpahan Kewenangan Tindakan Kebidanan Dihubungkan Dengan Standar Profesi Bidang Kesehatan. *Aktualita*, *3*(1), 5–24.

Nasution, B. J. (2005). *Hukum Kesehatan Pertanggungjawaban Dokter*. Rineka Cipta.

Nurhalimah, S. (2017). PERLINDUNGAN HUKUM TERHADAP TENAGA KERJA INDONESIA. *ADALAH: BULETIN HUKUM DAN KEADILAN*, *1*.

Pramesti, A. (2013). Tanggung Jawab Hukum Dalam Hubungan Dokterperawat. *E-Jurnal Medika Udayana*, *1*(1), 1–11.

Rafael, P. S. (2019). Pertanggungjawaban Pidana Tindakan Malpraktek Kedokteran Dalam Kaitannya Dengan Masalah Pembuktian. *Lex Crimen*, *VIII*(8), 56–63.

Raharjo, S. (2000). *Ilmu Hukum*. PT Citra Aditya Bakti.

Ridwan. (2003). *Hukum Administrasi Negara, Cetakan II*. UII Press.

Sahari, A. (2022). Competence for Male Circumcision by Health Workers According to Health Law. *SOEPRA Jurnal Hukum Kesehatan*, *8*.

Saraswati, A. (2023). *Analisis Hukum Praktik Bidan Mandiri Dengan Kompetensi Bidan Praktik Mandiri Berdasarkan Hukum Yang Berlaku di Indonesia*. 1–23.

Saswanti, O. (2012). *Tinjauan Yuridis Tentang Pendelegasian Kewenangan Dokter Kepada Perawat Dalam Pelayanan Kesehatan*.

Setyianta, P. T. (2018a). Kajian Yuridis Pelimpahan Kewenangan Dokter Umum Kepada Bidan Dalam Pelayanan Obstetri Dan Neonatal Emergensi Dasar Di Puskesmas Gandrungmangu Satu. *Jurnal Idea Hukum*, *4*(2), 1023–1055. https://doi.org/10.20884/1.jih.2018.4.2.99

Setyianta, P. T. (2018b). Kajian Yuridis Pelimpahan Kewenangan Dokter Umum Kepada Bidan Dalam Pelayanan Obstetri Dan Neonatal Emergensi Dasar Di Puskesmas Gandrungmangu Satu. *Jurnal Idea Hukum*, *4*(2), 1023–1055. https://doi.org/10.20884/1.jih.2018.4.2.99

Setyianta, P. T. (2018c). Kajian Yuridis Pelimpahan Kewenangan Dokter Umum Kepada Bidan Dalam Pelayanan Obstetri Dan Neonatal Emergensi Dasar Di Puskesmas Gandrungmangu Satu. *Jurnal Idea Hukum*, *4*(2), 1023–1055. https://doi.org/10.20884/1.jih.2018.4.2.99

Sirait, T. M. (2016). Urgensi Perluasan Pertanggungjawaban Pidana Korporasi Sebagai Manifestasi Pengejawantahan Konstitusi. *Jurnal Konstitusi*, *13*(3), 575. https://doi.org/10.31078/jk1335

Soekanto, S. (1996). *Pengantar Penelitian Hukum*. UI Press.

Soewono, H. (2005). *Batas Pertanggungjawaban Hukum Malpraktik Dokter Dalam Transaksi Terapeutik*. Srikandi.

Suryanda, A., Wahyati Y., E., & Murni, T. W. (2018). Asas Kehati-Hatian Dan Tanggung Jawab Hukum Pidana Bidan Pada Kasus Angka Kematian Ibu (Aki). *Soepra*, *3*(1), 26. https://doi.org/10.24167/shk.v3i1.695

Susanto, A. (2018). Manajemen Mutu Sumber Daya Manusia di Unit Rekam Medis PKU Muhammadiyah Surakarta. *Infokes: Jurnal Ilmiah Rekam Medis Dan Informatika Kesehatan*, *8*(2), 70–79.

Sylvana, Y., Firmansyah, Y., & Haryanto, I. (2021). Legal Delegasi (Pelimpahan Wewenang Medis) Dokter Kepada Perawat Ditinjau dari Perspektif Hukum. *Cerdika: Jurnal Ilmiah Indonesia*, *1*(12), 1632–1646. https://doi.org/10.36418/cerdika.v1i12.217

Thrakul, S., Insorn, T., Chokprajakchat, S., Arpanantikul, M., & Yotawut, M. (2023). Preventive Measure of Criminal Prosecution for Nursing and Midwifery Errors: Case Studies of Public Hospitals. *International Journal of Criminal Justice Sciences*, *18*(1), 208–231.

Wila Chandrawila Supriadi. (2001). *Hukum Kedokteran*. Mandar Maju.

Zakariya, H. Z., Rudatyo, R., Ismiyanto, I., & Zanuar, K. M. Z. (2022). Aspects Of Legal Protection Against Midwife Profession In Indonesia. *Jmns*, *4*(1), 1–9. https://doi.org/10.57170/jmns.v4i1.88

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Redaksi Jurnal Hukum Novelty
Fakultas Hukum Universitas Ahmad Dahlan

Status

Status	Published Vol 14, No 2 (2023)
Initiated	2023-12-28
Last modified	2024-01-04

6. ARTIKEL SUDAH PUBLISH

JURNAL HUKUM NOVELTY
P-ISSN 1412-6834
E-ISSN 2550-0090

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Juridical Study of Criminal Law on Delegation of Authority of Obstetricians and Gynecologists to Midwives in Health Services

Fitriani Nur Damayanti, Lia Mulyanti, Sandeep Poddar

Abstract

Introduction to the Problem: The entitlement to health services represents an inherent right accorded to each citizen within the Indonesian jurisdiction. Within this framework, health practitioners assume a pivotal role in augmenting the optimal provision of healthcare to the populace. Specifically, midwives play a critical function in delivering health services aligned with the directives of medical professionals, particularly in exigent situations and referral services. The legal ramifications surrounding a midwife's engagement in illicit childbirth practices underscore the imperatives of statutory compliance. Within the confines of the Penal Code, responsibility is construed as an imperative, denoting that transgressions of criminal statutes necessitate accountability in accordance with the prescribed legal provisions.

Purpose/Objective Study: This study seeks to elucidate the juridical examination of the delegation of authority within the realm

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NOVELTY
Volume 14, Issue 2, 2023, pp. 272-287

P-ISSN: 1412-6834
E-ISSN: 2550-0090

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Abstract

Introduction to the Problem: The entitlement to health services represents an inherent right accorded to each citizen within the Indonesian jurisdiction. Within this framework, health practitioners assume a pivotal role in augmenting the optimal provision of healthcare to the populace. Specifically, midwives play a critical function in delivering health services aligned with the directives of medical professionals, particularly in exigent situations and referral services. The legal ramifications surrounding a midwife's engagement in illicit childbirth practices underscore the imperatives of statutory compliance. Within the confines of the Penal Code, responsibility is construed as an imperative, denoting that transgressions of criminal statutes necessitate accountability in accordance with the prescribed legal provisions.
Purpose/Objective Study: This study seeks to elucidate the juridical examination of the delegation of authority within the realm of healthcare services, specifically focusing on the intricate dynamics between medical practitioners and midwives.
Design/Methodology/Approach: The employed research methodology involves normative juridical analysis utilizing secondary data. Within the purview of this investigation, the research framework adheres to legal principles, encompassing an examination of both codified positive law and uncodified positive law.
Findings: The delegation of authority upon midwives to execute health service activities is predicated upon a mandate from doctors, necessitating recurrent monitoring and evaluation by the medical practitioners. This delegation of authority pertaining to health-related responsibilities to midwives is effectuated through both written documentation and oral communication via telephone. The locus of responsibility for this delegation rests with the healthcare institution, where physicians assume the role of conferring authority, and midwives act as the executors entrusted with such delegated responsibilities.
Paper Type: Research Article

P-ISSN: 1412-6834
E-ISSN: 2550-0090

JURNAL HUKUM NOVELTY
Volume 14, Issue 2, 2023, pp. 272-287

Keywords: Juridical Studies; Delegation of Authority; Doctors; Midwives; Health Services

Introduction

The entitlement to health services is universally recognized as a fundamental right, constitutionally enshrined in the 1945 Constitution of the Republic of Indonesia. This commitment to health is further underscored by legal provisions, specifically articulated in Law Number 36 of 2009 concerning Health (Sahari, 2022). The evolution of health service initiatives, spearheaded by both governmental and community entities, initially emphasized curative interventions for those in need. Over time, there has been a progressive shift toward a more comprehensive integration of promotive, preventive, curative, and rehabilitative measures, emphasizing a holistic approach to healthcare delivery (Soewono, 2005).

Medical personnel are individuals vested with the authority to execute medical interventions. Indonesian regulations delineate distinctions between health workers and medical practitioners (Azizah, 2021). Health workers play a pivotal role in enhancing the quality of maximal healthcare services rendered to the populace. Positioned at the forefront of public health services, health workers contribute significantly to realizing health development objectives aligned with national goals. Serving as a fundamental element in the execution of health services, the presence, role, and responsibilities of health workers bear profound significance in activities pertaining to the development of health and safety, impacting both the well-being of health workers and the community availing healthcare services (Damayanti, Absori, Wardiono, et al., 2020).

A medical practitioner functioning within a healthcare setting frequently engages in collaborative efforts with various healthcare professionals, including midwives (Mohamad, 2019). Obstetricians and gynecologists assume the responsibility of delivering thorough and integrated healthcare services pertaining to a woman's reproductive health, spanning periods of non-pregnancy as well as encompassing the stages of pregnancy, childbirth, and the postpartum period. Their multifaceted roles encompass preventive measures aimed at averting diseases, curative interventions focused on remedying ailments, and rehabilitative strategies directed at rectifying abnormalities within the reproductive organs.

Midwives are professional and accountable health providers who work as women's partners to provide support, care, and advice during pregnancy, childbirth, and puerperium, lead childbirth on their own responsibility, and provide care to babies, even newborns (Damayanti, et al., 2020). Midwife services consist of: prevention services, normal delivery services, detection of maternal and child complication services, and access to medical assistance and other assistance (Zakariya et al., 2022). These services include prevention efforts, promotion of normal childbirth, detection of maternal and child complications, and access to medical assistance or other

Article History
Submitted 29 January 2023 - Revision Required 2 April 2023 - Accepted 23 December 2023

JURNAL HUKUM
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P-ISSN: 1412-6834
E-ISSN: 2550-0090

appropriate assistance, as well as taking emergency measures (Lastini et al., 2020). In addition, midwifery services are services provided by midwives in accordance with their authority with the aim of improving maternal and child health in order to create a quality, happy, and prosperous family. The targets of midwifery services are individuals, families, and communities, which include efforts to improve, prevent, heal, and recover (Jamillah & Yulianto, 2018).

In exercising her authority, a midwife must meet professional standards, have the skills and abilities to carry out the actions taken, and prioritize the health of the mother and baby or fetus (Mujiwati, 2020). Under the provisions of Law No. 4 of 2019 concerning Midwifery, as articulated in Article 59(1), midwives are legally empowered to administer health services beyond their designated scope of practice in emergency situations, provided it aligns with their competencies. Specifically, midwives are authorized to deliver health services in conformity with a physician's directives under the watchful supervision of a medical doctor, particularly in circumstances demanding urgent intervention or referral services. Furthermore, it is imperative to note that certain medical procedures necessitate collaboration, wherein doctors are not permitted to act autonomously but require the assistance of midwives within the healthcare facility (Jamillah & Yulianto, 2018).

The delegation of authority from physicians to midwives is contingent upon a mandate in accordance with Law Number 4 of 2019, which specifically addresses midwifery in Article 54. Under this law, the government is authorized to delegate specific and constrained powers to midwives. However, the regulatory framework for the delegation of authority from doctors to midwives lacks clarity. Although Law Number 4 of 2019 outlines the mandated delegation of authority from doctors to midwives, it does not explicitly specify the particular types of medical actions subject to delegation (Mujiwati, 2020). In the execution of medical actions, a doctor may delegate certain tasks in writing to designated midwives. Nevertheless, the technical guidelines governing such delegation are not definitively outlined in existing laws and regulations. This gap persists despite the fact that numerous patients in need of emergency obstetrics and gynecology care often rely on doctor (Setyianta, 2018).

The transference of authority commonly takes place through oral means, either in face-to-face interactions or via telephone communication. This is often necessitated by the unavailability of the doctor and the geographical disparity between the doctor's location and the provision of health services. While the legal framework governing this practice lacks explicit clarity, its potential implications may be mitigated if proper accountability measures are in place, and if it does not result in any detriment to patients (Anam, 2018). The legislative landscape exerts substantial influence on health management, playing a pivotal role in achieving optimal health outcomes. A midwife, defined as a woman who has undergone government-recognized midwifery education, successfully completed requisite examinations, and held registration or a valid practice license, typically exercises delegated authority in

P-ISSN: 1412-6834
E-ISSN: 2550-0090

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alignment with pertinent laws and regulations, thereby assuming responsibilities traditionally associated with medical practitioners (Saraswati, 2023; Hanifa Muslimah & Arrisman, 2022).

The legal responsibility of a midwife engaged in illicit birthing practices is governed by the tenets of the Penal Code. According to Himawan et al., (2022), the principle of responsibility asserts that individuals contravening criminal law must be held accountable for their actions in accordance with statutory provisions. Consequently, any deviation from legal norms exposes one to criminal liability, contingent upon the nature of the transgression. To incur criminal liability, an error must meet three elements: the capacity for responsibility means being in good physical health; the act is in the form of intent (*dolus*) or negligence (*culpa*) and there is no excuse for the cure or remission of any sin (Thrakul et al., 2023).

Methodology

The research methodology employed is normative juridical, utilizing secondary data sources. Normative juridical research involves a literature review of legal materials or reliance on secondary data (Mahmudji, 2003). The study aims to gather theoretical constructs, conceptual frameworks, and legal principles related to the subject matter, adhering to both codified and uncodified positive laws (Soekanto, 1996). Primary legal materials, including Law Number 36 of 2014 concerning Health Workers, Law Number 29 of 2004 concerning Medicine, and Law Number 4 of 2014 concerning Midwifery, form the basis of the research. Secondary legal data consist of books and journals addressing the delegation of authority from doctors to midwives. Following data collection, the study results underwent qualitative normative analysis, interpreting the legal aspects and implications of the delegation of authority from doctors to midwives.

Results and Discussion

The complete execution of health services extends beyond the exclusive purview of physicians, leading to the delegation of certain medical responsibilities by doctors to midwives, even though the latter lack the legal authority for such tasks (Setyianta, 2018). The transference of authority from doctors, acting as authorizers (delegans), to midwives, as recipients of authority (delegataris), represents an authorization rooted in trust. It is imperative to note that the delegating authority retains responsibility for the medical actions delegated to the recipient of authority. This intricate framework operates within the framework of extant laws and regulations (Hadiwijaya et al., 2017).

The constrained availability of doctors precipitates a scenario wherein midwives are compelled to undertake medical procedures that may exceed the scope of their professional competence. Article 73(3) of Law Number 29 of 2004 offers an avenue for midwives to engage in medical procedures, contingent upon their adherence to stipulated legal provisions and regulations. According to the Minister of Health

Article History
Submitted 29 January 2023 - Revision Required 2 April 2023 - Accepted 23 December 2023

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P-ISSN: 1412-6834
E-ISSN: 2550-0090

Regulation Number 2052/Menkes/Per/X/2011 addressing Practice Licensing and the Execution of Medical Practice, as articulated in Article 23(1), doctors or dentists possess the authority to formally delegate medical or dental procedures in writing to nurses, midwives, or specific other healthcare practitioners during the execution of medical or dental processes.

Doctors or dentists possess the authority to formally assign the execution of medical or dental procedures to nursing professionals, midwives, or other healthcare practitioners through written directives during the course of medical or dental interventions. The procedural specifications for such delegation, as delineated in Article 23(1) of Law Number 29 of 2004, lack precise regulatory frameworks. Concurrently, a substantial contingent of patients necessitating emergent interventions in the realm of Obstetrics and Gynecology heavily depend on the expertise of medical practitioners (Setyianta, 2018).

Article 11 of Law Number 36 of 2014 underscores the inclusion of midwives within the category of health workers, highlighting that these professionals, along with their counterparts, are mandated to execute their authority in adherence to the prevailing regulations. Moreover, Law Number 36 of 2009 on Health, specifically in Article 23, delineates that "Health workers are vested with the authority to administer health services." Conversely, the jurisdiction of midwives is explicitly delineated in Law Number 4 of 2014, which governs Midwifery Practices. This statutory framework assigns midwives the responsibility for delivering a spectrum of health services encompassing maternal care, child health, women's reproductive health, and family planning. Their role involves the execution of tasks based on delegated authority and, alternately, performing assigned duties under specific, circumscribed conditions (Setyianta, 2018).

The legitimacy of health workers to deliver health services is grounded in legal frameworks, as asserted by Supriadi (2001). Constitutional law delineates three avenues through which authority, emanating from statutory regulations, is acquired: attribution, delegation, and mandate. HD Van Wijk provides nuanced definitions for these concepts:

1. Attribution pertains to the conferment of governmental authority by legislative bodies to government organs.
2. Delegation involves the transference of governmental authority from one governmental organ to another.
3. A mandate is characterized by a government organ permitting the exercise of its authority by another organ on its behalf (Ridwan, 2003).

The legal framework governing the transfer of authority from physicians to midwives is articulated in Law Number 4 of 2019 on Midwifery, with particular emphasis on Article 54. This provision delineates that the delegation of responsibilities to midwives in executing health service interventions is contingent upon a mandate

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E-ISSN: 2550-0090

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from physicians. Such a mandate involves physicians entrusting specific health services to midwives. In assuming the role of the delegator, the physician assumes responsibility for the midwife and is obligated to conduct systematic and periodic monitoring and evaluation processes.

The conferral of physician authority to midwives can be effectuated through either delegation or mandate (Merdekawati, 2021). Delegated authority is concomitant with delegated responsibility, whereas a mandate does not entail the transfer of responsibility (Pramesti, 2013). The implementation of health services in the field of midwifery often involves midwives receiving assignments from doctors in the form of a mandate (because the responsibility remains with the doctor). Among them are the provision of medical services (curative) and special actions (which fall under the doctor's authority and should be carried out by the doctor), such as the installation of infusions and giving injections (Setyianta, 2018). Doctors may delegate their authority to midwives given in writing, and it must be in accordance with educational ability, competence, and the provisions of laws and regulations.

In the realm of comparative analysis, the principles delineated in German Jurisprudence assert that a medical practitioner possesses the entitlement to place reliance upon meticulously trained and supervised staff for the competent execution of duties. However, this allowance does not extend to the delegation of professional responsibilities, as such an act renders the doctor personally accountable for any negligence in the delegation process and subsequent errors committed by the entrusted personnel (Sylvana et al., 2021). The act of transferring legal responsibility through delegation of authority to a midwife does not absolve the doctor of culpability in the event of malpractice leading to severe patient harm or loss of life. Consequently, a thorough examination of this practice is imperative, given that inaccuracies in the doctor's directives could potentially yield fatal consequences for the patient (Jamillah & Yulianto, 2018).

In instances where the allocation of responsibilities between physicians and midwives results in malpractice, it can lead to catastrophic outcomes, including severe disabilities, paralysis, or even fatalities. Such circumstances may expose both doctors and midwives to potential criminal liabilities. To proactively mitigate the risk of malpractice arising from delegated tasks, physicians assume the role of overseers, ensuring the adherence to prevailing medical standards and practices. The Ministry of Health has engaged in consultations with the National Academy of Physicians, categorizing delegated responsibilities into two distinct types. The first category encompasses routine tasks automatically assigned to competent assistants. These tasks, which involve daily activities such as household upkeep, vital sign monitoring, and relaying information to physicians, are commonly executed by midwives and nurses.

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Submitted 29 January 2023 - Revision Required 2 April 2023 - Accepted 23 December 2023

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P-ISSN: 1412-6834
E-ISSN: 2550-0090

The second category involves more intricate duties, such as surgical preparation and blood sampling, which are typically performed without direct supervision. These tasks fall under the purview of straightforward therapeutic and nursing responsibilities. The delineation of such responsibilities seeks to establish a structured framework that minimizes the likelihood of negligence and upholds the highest standards of patient care.

The lack of precise regulations governing specific midwifery procedures often leads to a convergence of responsibilities between midwifery services and tasks delegated by physicians. Delegations of health-related responsibilities to midwives occur through both written documentation and verbal communication via telephone. The responsibility for overseeing the delegation process lies with health facilities (such as Puskesmas (community health center), hospitals, clinics, etc.), with doctors and midwives acting as the designated executors of the delegated authority. To mitigate the risk of misinterpretations, physicians meticulously and appropriately carry out these delegations, employing both oral communication and written documentation.

The legal concept of delegation of authority engenders legal ramifications, specifically consequences governed by legal norms (Saswanti, 2012). In instances where midwives assume delegated authority for medical procedures from physicians, and allegations of authority abuse arise (Sirait, 2016), leading to patient harm, the legal responsibility does not solely rest upon the midwife. Physicians also assume legal responsibility, as such repercussions may emanate from lapses in the delegation of authority, implicating both parties in legal liability.

Individuals vested with authority bear an imperative duty of accountability within the legal framework. They are obligated to assume responsibility for potential risks that may precipitate losses for other parties. The nexus between responsibility and risk is inherently latent. As risks materialize and demands surface, the concomitant issues of responsibility and authority assume prominence. Legal ramifications, particularly lawsuits initiated by affected parties such as patients, can ensue as a consequence of malpractices or deviations from the prescribed performance of their duties, coupled with a disregard for the rights of patients. Conversely, the broader populace exhibits an elevated degree of legal acumen and awareness. Concurrently, contemporary legislative frameworks have incorporated measures for patient protection, fostering an escalating inclination among the public to assert their rights through legal claims in response to deviations in the conduct of healthcare practitioners (Anam, 2018).

From a jurisprudential standpoint, an act assumes the characterization of a criminal offense when it satisfies the circumscribed criteria delineated within the ambit of criminal law. The maxim "Nullum delictum noella poena sine" encapsulates the foundational precept that denotes the absence of culpability and, consequently, the absence of penal consequences in the absence of antecedent legal prescription. The primacy of the legality principle is enshrined in Article 1, paragraph (1) of the

P-ISSN: 1412-6834
E-ISSN: 2550-0090

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Criminal Code, affirming that criminal liability is contingent upon explicit statutory proscriptions. Article 36 of 2009 intricately delineates the contours of criminal sanctions in a comprehensive manner. Consequently, transgressions perpetrated by healthcare professionals in the form of negligence during the execution of healthcare services render them susceptible to legal prosecution (Nurhalimah, 2017).

The criminal law obligations pertaining to midwives, with due consideration to criminal transgressions committed by midwives, are delineated as follows within a nuanced legal framework:

1. Commission of acts in violation of the law: Midwives engaging in health services beyond the scope of their authorized practice, as defined by the Minister of Health Regulation Number 28 of 2017 on Permission and Implementation of Midwifery Practice, are deemed to be in contravention of the law.
2. Demonstrating accountability: A midwife is expected to comprehend the ramifications of each action, possessing the capacity to undergo requisite training and education to fulfill their responsibilities.
3. Manifestation of culpable errors: Whether deliberate or resulting from negligence, errors (*schuld*) hold significance. In instances of intentional acts with elements of intentionality, the midwife may face criminal charges. For instance, administering a lethal injection with the intent to cause the patient's demise constitutes a criminal offense.
4. Absence of justification and/or rationale: Criminal liability arises when there is an absence of legal justification or rationale. This could manifest in the absence of rules permitting a specific action or when inherent risks associated with the committed action lack justification and rationale.

In a broader context, the criminal responsibility of midwives stands as an independent entity, distinctly diverging from civil and administrative responsibilities within the legal framework.

In his book, Moeljatno delves into the intricacies of articles 55 to 62 within the Criminal Code, specifically addressing the legal framework surrounding participation in criminal activities. Inclusion, as elucidated, transpires not through the solitary involvement of an individual in the perpetration of a criminal act but rather through the collaborative engagement of multiple individuals. Those deemed participants must satisfy specific qualifications, signifying their active involvement in, contribution to, or facilitation of a criminal act (Moeljatno, 1985). Pertinently, articles 55, 56, and 57 of the Criminal Code render midwives and physicians susceptible to criminal prosecution.

The delegation of authority entrusted by doctors to midwives, as stipulated in Article 55 of the Criminal Code, falls under the category of 'a person who gives an order', where in this crime there are at least two perpetrators, namely the person who gives an order and who receives an order. The person who gives an order can be subject to

Article History
Submitted 29 January 2023 - Revision Required 2 April 2023 - Accepted 23 December 2023

JURNAL HUKUM
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P-ISSN: 1412-6834
E-ISSN: 2550-0090

punishment as a person who commits a criminal offense, while the person who receives an order may not face punishment due to specific conditions that absolve them of responsibility. These conditions may include lack of sanity, coercion, an invalid official order, or being completely blameless. Referring to Article 56 of the Criminal Code, the delegation of authority by trust, as a category of accomplices, midwives may face prosecution if they commit a criminal act intentionally, while under Article 57 of the Criminal Code, the penalties for accomplices can be reduced by one-third.

These three legal provisions are applicable to criminal offenses arising from the mandated delegation of authority. It is imperative to scrutinize the criminal liability of both physicians and midwives in instances of medical malpractice resulting in harm to patients. A meticulous examination of medical records is requisite to ascertain the conformity of the midwife's actions with the prevailing standard procedures of the hospital at the time of admission. Legal accountability extends to midwives for the mandated delegation of authority by physicians. Nonetheless, physicians cannot exonerate themselves from their responsibilities when delegating authority; inaccuracies in delegating medical responsibilities to midwives may have severe consequences and prove detrimental to patient outcomes (Suryanda et al., 2018).

Article 46 of Law Number 44 of 2009 on Hospitals can be construed as a legal derivative or instantiation of the principles delineated in Article 1367(3) of the Civil Code, albeit with a specific application tailored to the context of hospitals. Alternatively, one may view Article 46 as a *lex specialis*. The provisions within this article seamlessly align with the doctrine of respondeat superior. Respondeat superior, a legal doctrine, posits that an employer, endowed with the authority to instruct and oversee the actions of subordinates, bears responsibility for both the outcomes and methodologies employed by these subordinates. This doctrine assumes particular relevance in the domain of hospitals, where the intricate landscape of health laws and advancements in medical technology underscores the imperative for hospitals to be answerable for the actions of their personnel, including medical professionals. Eschewing accountability for the work performed by employees is an untenable proposition in the contemporary milieu of healthcare regulation and technological sophistication (Nasution, 2005). In Article 340 of the Criminal Code, nowhere does it specify that a motive must be present; it is but one possibility. The motive is solely evident in the perpetrator's intent to carry out unlawful actions, as elucidated earlier – criminal acts initiate from a motive (Putri et al., 2021).

In the context of superiors' responses, the doctrine may be analogized to the professional relationship between physicians and mid-level practitioners, given the mandated delegation of authority. Nevertheless, the indiscriminate application of this doctrine is precluded, and specific prerequisites must be satisfied for its invocation. These prerequisites encompass the establishment of a functional relationship between superiors and subordinates, with subordinates demonstrating a

P-ISSN: 1412-6834
E-ISSN: 2550-0090

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comportment aligned with the prescribed scope of their assigned responsibilities. The recognition of an employment relationship hinges upon the superiors' entitlement to directly supervise and control the activities of subordinates during the discharge of their duties. In such instances, the tasks undertaken by subordinates must be characterized by adherence to directives issued by the superior (Jamillah & Yulianto, 2018).

In the realm of delegating authority within the healthcare domain, a formal written instrument is necessitated for the purpose of entrusting the responsibilities of physicians to midwives. This procedural measure is imperative to obviate any potential legal ambiguity between the roles of physicians and midwives (Gunawan & Christianto, 2020). Within the ambit of health jurisprudence, contemporary medical documentation predominantly centers on records pertaining to the procedural aspects of medical interventions administered to patients. These records are meticulously recorded by both physicians and midwives, thereby reflecting the collaborative nature of healthcare provision. Access to and knowledge of the contents of such medical records are restricted solely to the pertinent healthcare professionals, encompassing both doctors and midwives involved in the patient's medical care. However, this restricted accessibility constitutes an inherent vulnerability in the prevailing framework of medical record-keeping, warranting critical examination within the legal discourse (Susanto, 2018).

In adherence to statutory provisions and the imperative for explicit authorization in written form, the legal potency of written delegation of authority is unequivocal. This is particularly manifest in instances where medical professionals delegate authority from physicians to midwives through meticulous documentation in medical records, thereby conferring indisputable legal validity. Such documentation stands as a substantive piece of evidence in conformity with the classifications of evidence delineated in the criminal procedure law as adopted in Indonesia. Conversely, oral delegation of authority is characterized by diminished legal efficacy due to its lack of explicit regulation within the legal framework. Instances of oral delegation commonly transpire in settings under surveillance, such as rooms equipped with closed-circuit television (CCTV), or through telephonic communication. Nevertheless, the evidentiary value derived from these oral exchanges is often insufficient to attain the status of robust legal evidence. Consequently, the reliance on oral delegation of authority fails to guarantee the commensurate legal potency upheld by its written counterpart, accentuating the inherent legal frailty associated with such oral arrangements (Rafael, 2019).

Therefore, it is necessary to conduct a review of the patient's medical record to identify the source of errors, whether the midwife's execution of delegated authority complies with the hospital's standards or not, or whether the fault lies with the doctor as the provider of the delegation of authority. If it is proven that an error has occurred, leading to a potential lawsuit, both civil and criminal actions may arise due to the legal

Article History
Submitted 29 January 2023 - Revision Required 2 April 2023 - Accepted 23 December 2023

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E-ISSN: 2550-0090

relationship associated with the engagement. In addition to civil liability, doctors and midwives may also face criminal prosecution (Lastini et al., 2020).

The legal responsibility directed towards midwives and doctors, as a result of the delegation of authority, to midwives who commit negligence leading to patient losses during health services at the Puskesmas, remains in effect. Nonetheless, a review of the existing medical records is still required to determine whether the delegated actions were in accordance with standard procedures or not. The civil claims or lawsuits that can be filed (legal liability) as mentioned earlier are:

a. Liability based on default, non-performance, or breach of promise based on contractual liability as stipulated in Article 1239 of the Civil Code.
b. Liability based on unlawful acts (*onrechtmatige-daad*) as stipulated in the provisions of Articles 1365 and 1366 of the Civil Code.

As stipulated in Article 46 of Law No. 44 of 2009, which imposes responsibility on medical institutions for negligence attributable to healthcare practitioners, the civil liability pertaining to midwives arising from the delegation of authority by physicians exhibits distinctions contingent upon the setting in which such instances transpire. Notably, the legal ramifications diverge when negligence transpires within a hospital context. Conversely, should instances of negligence arise within a Puskesmas, the legal framework necessitates scrutiny due to the absence of specific provisions within the regulatory framework governing Puskesmas concerning the legal accountability of these institutions for negligence attributed to medical personnel and healthcare practitioners (Mujiwati, 2020).

The inquiry into indemnification stemming from lapses or negligence arising from the delegation of authority by physicians to midwives in a reliable fashion, with commensurate accountability ascribed to the physicians, remains the subject of ongoing scrutiny. This examination draws upon evidentiary data extracted from extant medical records, professional norms, and the standard operating procedures established at the Puskesmas. It is imperative to underscore that accountability extends not solely to the physicians but also encompasses the midwive as the executor of the actions, grounded in the doctrine of joint responsibility as articulated by the judiciary in the precedent of Pitra Azmirla and Damitri Almira (Jamillah & Yulianto, 2018).

In the perspective articulated by Satjipto Raharjo (Raharjo, 2000), legal safeguarding serves as a mechanism to shield infringed human rights, extending such protection to the broader community to facilitate the full enjoyment of rights enshrined in the legal framework. The efficacy of laws lies in their capacity to actualize protections characterized not only by adaptability and flexibility but also by a prescient and anticipatory nature. The indispensability of legal frameworks is particularly pronounced for individuals lacking societal, economic, and political strength, as they strive to attain social justice.

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Legal protection for midwives is contained in Article 60 of Law No. 4 of 2019, which states that midwives, when carrying out midwifery practice, have the following rights:

a. Obtaining legal protection as long as they carry out their duties in accordance with competence, authority, and compliance with codes of ethics, professional standards, professional service standards, and standard operating procedures;
b. Obtain accurate, clear, honest, and complete information from clients and/or their families;
c. Reject the wishes of clients or other parties that are contrary to the code of ethics, professional standards, service standards, standard operating procedures, and provisions of laws and regulations;
d. Receive remuneration for Midwifery Services that have been provided;
e. Receive work facilities according to standards; and
f. Have the opportunity to develop their profession.

The evidentiary demonstration of errors or omissions attributable to midwives constitutes a pivotal prerequisite for the elucidation of accountability in the domain of health services. The legal doctrine of *Res Ipsa Loquitur*, being inherently germane, serves as a particularly efficacious means to substantiate instances where a midwife has erred, thereby facilitating the establishment of negligence or malpractice (Mujiwati, 2020). Midwives engaging in medical practice through delegated authority from physicians may face criminal sanctions in the event of malpractice, as stipulated by Article 84 of Law 36 of 2014. This provision dictates that any health worker found culpable of gross negligence leading to severe harm to the recipient of health services may be subject to a maximum imprisonment term of three years. Should such negligence result in the death of the recipient, health workers, including midwives, could be liable for a maximum imprisonment term of five years (Setyianta, 2018).

The prosecution of malpractice offenses within the health service sector continues to be guided by the legal frameworks set forth in Law Number 29 of 2004, Law Number 44 of 2009, and Law Number 36 of 2009. However, these statutes lack explicit provisions addressing specific or undisclosed malpractice-related crimes. Nevertheless, legal provisions concerning such matters are delineated in Article 84 of Law Number 36 of 2014. This article stipulates that any health practitioner found guilty of gross negligence leading to severe harm to the recipient of health services may be subject to a maximum imprisonment term of 3 (three) years. Furthermore, in instances where such gross negligence results in the demise of the individual, each health practitioner involved may face a maximum imprisonment term of 5 (five) years.

The normative assessment of the presence or absence of negligence in the conduct of medical professionals, specifically doctors and midwives, necessitates a scrupulous and exhaustive examination on a case-specific basis. Judges, serving a pivotal function in definitively discerning adherence to professional standards as opposed to

Article History
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procedural norms, are susceptible to potential errors or omissions in this evaluative process.

The allocation of authority from physicians to midwives, whether effectuated through delegation and mandate, and its implications in cases of malpractice, transcends the singular responsibility of either the physician or the midwife. The analysis of criminal liability concerning malpractice resulting in patient harm necessitates a nuanced examination of both physicians and midwives. A comprehensive scrutiny of medical records becomes imperative to ascertain whether the midwife's actions deviate from established protocols when executing delegated authority pursuant to the physician's mandate, thereby implicating the midwife in legal culpability. However, it is imperative to underscore that the physician cannot absolve themselves of accountability when delegating authority. Errors in the delegation of medical responsibilities to midwives can precipitate grave consequences for patients. Thus, the assessment of criminal liability extends beyond the actions of the midwife alone, encompassing the judicious review of the physician's role in the delegation process.

Conclusion

In the execution of healthcare services within medical institutions, physicians possess the legal prerogative to delegate medical authority to midwives in accordance with statutory provisions. The delegation of health-related responsibilities to midwives is effectuated through both written instruments and telephonic communications. The entity accountable for such delegation is the healthcare facility, where physicians act as the delegating party, and midwives serve as the appointed executors of delegated authority. Article 46 of the Hospital Law assumes responsibility for hospital-related negligence attributed to healthcare personnel, delineating distinct civil liabilities for midwives contingent upon whether the delegation transpires within a hospital setting. However, instances of negligence in alternative healthcare facilities such as Puskesmas warrant further examination when attributable to medical practitioners or healthcare personnel, potentially culminating in both civil and criminal liabilities for physicians and midwives.

A requisite imperative involves a meticulous demarcation of the modalities of authority delegation, explicating the procedures undertaken to circumscribe the scope of a midwife's authority in the execution of assigned duties. Given the intrinsic connection between the midwifery profession and patient safety within the broader healthcare framework, it becomes imperative to promulgate legislation specific to midwifery. This legislation should not only elucidate the implementation of delegation of authority but also safeguard the practice of midwifery by providing lucidity on the parameters within which such delegations transpire.

Acknowledgement

The author would like to express gratitude to the University of Muhammadiyah Semarang for the support given to the author to conduct this research.

P-ISSN: 1412-6834
E-ISSN: 2550-0090

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Declaration

Author's contribution	: Author 1: initiator of research ideas, instrument construction, data collection, analysis, and draft writing; Author 2: revise research ideas, literature review, data presentation and analysis, and final draft.
Funding statement	: This research was not funded by any party
Conflict of interest	: The author states there is no conflict of interest.
Additional information	: No additional information is available for this paper.

Reference

Anam, K. (2018). Tanggungjawab dan Kewenangan Perawat Gigi dalam Melakukan Tindakan Medik Kedokteran Gigi. *Ajudikasi : Jurnal Ilmu Hukum*, *2*(1), 67. https://doi.org/10.30656/ajudikasi.v2i1.621

Azizah, M. (2021). Peran Negara dalam Perlindungan Konsumen Muslim di Indonesia. *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi, 4(2)*, 153–165. https://doi.org/10.24090/volksgeist.v4i2.5738

Damayanti, F. N., Absori, A., A., Wardiono, K. & Rejeki, S. (2020). The Evidence-Based Midwife Professionalism. In Indian Journal of *Forensic Medicine & Toxicology*, *14(3)*, 1913–1917. https://doi.org/10.37506/ijfmt.v14i3.10699

Damayanti, F. N., Absori, A., Wardiono, K., & Rejeki, S. (2020). Comparison of Midwives Professionalism in Indonesia and England. *Journal of South India Medicolegal Association*, *12(1)*, 4–9.

Gunawan, T. S., & Christianto, G. M. (2020). Rekam Medis/Kesehatan Elektronik (RMKE): Integrasi Sistem Kesehatan. *Jurnal Etika Kedokteran Indonesia*, *4*(1), 27. https://doi.org/10.26880/jeki.v4i1.43

Hadiwijaya, H., Widanti, A., & Rahim, A. H. (2017). Peran Bidan dalam Kewenangan Tindakan Episiotomi yang Diperluas pada Praktek Swasta Mandiri dan Klinik Bersalin. *Soepra Jurnal Hukum Kesehatan*, *2*(1), 42. https://doi.org/10.24167/shk.v2i1.808

Jamillah, S. N. A., & Yulianto, S. (2018). Pertanggungjawaban Hukum Bidan Akibat Pelimpahan Wewenang oleh Dokter dalam Pelayanan Kesehatan di Puskesmas. *Justitia Jurnal Hukum*, *2*(1). https://doi.org/10.30651/justitia.v2i1.1714

Lastini, K., Sutrisno, E., & Sugiarti, T. (2020a). Perlindungan Hukum Profesi Bidan dalam Pelimpahan Wewenang Tindakan Medis. *Mimbar Keadilan*, *13*(2), 131–140. https://doi.org/10.30996/mk.v13i2.3324

Makhfudli, Himawan, G. A., Variansyah, N. A., & Huda, M. K. (2022). Legal Aspects of Maternity Nurses Performing Childbirth Assistance Measures in the Framework of Carrying Out Doctor's Duties Against the Birth Process in Breach Locations. *Indian Journal of Forensic Medicine & Toxicology*, *16*(2), 27–34. https://doi.org/10.37506/ijfmt.v16i2.17912

Merdekawati, Y. (2021). Tanggung Jawab Pidana Perawat dalam Melakukan Tindakan Keperawatan berdasarkan Undang-Undang Nomor 36 Tahun 2009 Tentang

Article History
Submitted 29 January 2023 - Revision Required 2 April 2023 - Accepted 23 December 2023

P-ISSN: 1412-6834
E-ISSN: 2550-0090

Kesehatan (Studi di Rumah Sakit Umum Santo Antonius Pontianak). *Jurnal Nestor Magister Hukum, 53*(9), 4–6.

Moeljatno. (1985). *Delik-Delik Percobaan Delik-Delik Penyertaan*. Bina Aksara.

Mohamad, I. R. (2019). Perlindungan Hukum Atas Hak Mendapatkan Pelayanan Kesehatan Ditinjau dari Aspek Hak Asasi Manusia. *Akademika, 8*(2), 78. https://doi.org/10.31314/akademika.v8i2.401

Mujiwati. (2020). Perlindungan Hukum Terhadap Bidan yang Menerima Pelimpahan Kewenangan Tindakan Kebidanan Dihubungkan dengan Standar Profesi Bidang Kesehatan. *Aktualita, 3*(1), 5–24. https://doi.org/10.29313/aktualita.v0i0.6764
https://doi.org/10.29313/aktualita.v0i0.6764

Nasution, B. J. (2005). *Hukum Kesehatan Pertanggungjawaban Dokter*. Rineka Cipta.

Nurhalimah, S. (2017). Perlindungan Hukum Terhadap Tenaga Kerja Indonesia. *ADALAH: Buletin Hukum dan Keadilan, 1(1)*. https://doi.org/10.15408/adalah.v1i1.8200

Pramesti, A. (2013). Tanggung Jawab Hukum dalam Hubungan Dokterperawat. *E-Jurnal Medika Udayana, 1*(1), 1–11.

Putri, W. B., Widyasari, V., Musabula, J., & Hayat, M. J. (2021). Medicolegal Perspective on Physician-Induced Demand Issue. *Bestuur, 9*(1), 77–89. https://doi.org/10.20961/bestuur.v9i1.48281

Rafael, P. S. (2019). Pertanggungjawaban Pidana Tindakan Malpraktek Kedokteran dalam Kaitannya dengan Masalah Pembuktian. *Lex Crimen, 8*(8), 56–63.

Raharjo, S. (2000). *Ilmu Hukum*. PT Citra Aditya Bakti.

Ridwan. (2003). *Hukum Administrasi Negara, Cetakan II*. UII Press.

Sahari, A. (2022). Competence for Male Circumcision by Health Workers According to Health Law. *Soepra Jurnal Hukum Kesehatan, 8(2)*. https://doi.org/10.24167/shk.v8i2.4976

Saraswati, A. (2023). *Analisis Hukum Praktik Bidan Mandiri dengan Kompetensi Bidan Praktik Mandiri Berdasarkan Hukum yang Berlaku di Indonesia*. Universitas Lampung.

Saswanti, O. (2012). *Tinjauan Yuridis tentang Pendelegasian Kewenangan Dokter kepada Perawat dalam Pelayanan Kesehatan*. Universitas Jember.

Setyianta, P. T. (2018). Kajian Yuridis Pelimpahan Kewenangan Dokter Umum Kepada Bidan dalam Pelayanan Obstetri dan Neonatal Emergensi Dasar di Puskesmas Gandrungmangu Satu. *Jurnal Idea Hukum, 4*(2), 1023–1055. https://doi.org/10.20884/1.jih.2018.4.2.99

Sirait, T. M. (2016). Urgensi Perluasan Pertanggungjawaban Pidana Korporasi Sebagai Manifestasi Pengejawantahan Konstitusi. *Jurnal Konstitusi, 13*(3), 575. https://doi.org/10.31078/jk1335

Soekanto, S. (1996). *Pengantar Penelitian Hukum*. UI Press.

Soekanto, S., & Mahmudji, S. (2003). *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Raja Grafindo Persada.

P-ISSN: 1412-6834
E-ISSN: 2550-0090

JURNAL HUKUM NOVELTY
Volume 14, Issue 2, 2023, pp. 272-287

Soewono, H. (2005). *Batas Pertanggungjawaban Hukum Malpraktik Dokter dalam Transaksi Terapeutik*. Srikandi.

Suryanda, A., Wahyati Y., E., & Murni, T. W. (2018). Asas Kehati-Hatian dan Tanggung Jawab Hukum Pidana Bidan pada Kasus Angka Kematian Ibu (AKI). *Soepra Jurnal Hukum Kesehatan*, *3*(1). https://doi.org/10.24167/shk.v3i1.695

Susanto, A. (2018). Manajemen Mutu Sumber Daya Manusia di Unit Rekam Medis PKU Muhammadiyah Surakarta. *Infokes: Jurnal Ilmiah Rekam Medis dan Informatika Kesehatan*, *8*(2), 70–79. https://doi.org/10.47701/infokes.v8i2.206

Sylvana, Y., Firmansyah, Y., & Haryanto, I. (2021). Legal Delegasi (Pelimpahan Wewenang Medis) Dokter kepada Perawat Ditinjau dari Perspektif Hukum. *Cerdika: Jurnal Ilmiah Indonesia*, *1*(12), 1632–1646. https://doi.org/10.36418/cerdika.v1i12.217

Thrakul, S., Insorn, T., Chokprajakchat, S., Arpanantikul, M., & Yotawut, M. (2023). Preventive Measure of Criminal Prosecution for Nursing and Midwifery Errors: Case Studies of Public Hospitals. *International Journal of Criminal Justice Sciences*, *18*(1), 208–231.

Wila Chandrawila Supriadi. (2001). *Hukum Kedokteran*. Mandar Maju.

Zakariya, H. Z., Rudatyo, R., Ismiyanto, I., & Zanuar, K. M. Z. (2022). Aspects of Legal Protection Against Midwife Profession in Indonesia. *Journal of Midwifery and Nursing Studies*, *4*(1), 1–9. https://doi.org/10.57170/jmns.v4i1.88

Article History
Submitted 29 January 2023 - Revision Required 2 April 2023 - Accepted 23 December 2023