

THE AUTHORITY OF MIDWIVES IN COMPLEMENTARY TRADITIONAL HEALTH SERVICES REVIEWED FROM BASICS OF LEGAL CERTAINTY

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ABSTRACT

Midwifery services are the application of obstetrics science through midwifery care to clients that are the responsibility of midwives, ranging from pregnancy, childbirth, childbed, newborns, family planning, including women's reproductive health, complementary care and public health services. In this study the authors used a normative juridical approach. Research Specifications, this research is analytical descriptive. the type of data used is secondary data. Data collected through the study of literature (Library Research) of secondary data. The data obtained in this study were analyzed using qualitative normative methods. The results of this study are: First, the authority of midwives in traditional services of complementary therapy in carrying out midwifery practices both in the Midwife's Independent Practice or in other Health Care Facilities, must be carried out in according to competence and authority and adhere with ethical codes, professional standards, professional service standards and standard operating procedures.

Keywords: Authority of Midwives, Health Services, Complementary Care

ABSTRACT

Pelayanan kebidanan adalah penerapan ilmu kebidanan melalui asuhan kebidanan kepada klien yang menjadi tanggungjawab bidan, mulai dari kehamilan, persalinan, nifas, bayi baru lahir, keluarga berencana, termasuk kesehatan reproduksi wanita, asuhan komplementer dan pelayanan kesehatan masyarakat. Dalam penelitian ini penulis menggunakan metode pendekatan yuridis normatif. Spesifikasi Penelitian, penelitian ini bersifat deksriptif analitis. Jenis data yaitu data sekunder. Pengumpulan data dilakukan melalui studi kepustakaan (*Library Research*) terhadap data sekunder. Data yang diperoleh dalam penelitian ini dianalisis dengan menggunakan metode normatif kualitatif. Hasil dari penelitian ini adalah: *Pertama*, Kewenangan bidan dalam pelayanan tradisional terapi komplementer dalam menjalankan praktik kebidanan baik di tempat Praktik Mandiri Bidan atau di Fasilitas Pelayanan Kesehatan lainnya, dilakukan sesuai dengan kompetensi dan kewenangan serta mematuhi kode etik, standar profesi, standar pelayanan profesi dan standar prosedur operasional.

Kata Kunci : kanker, tanggung jawab, hak wanita

A. INTRODUCTION

In Law Number 36 of 2014 concerning Health Workers, it is stated that health workers are everyone who devotes themselves to the health sector and has knowledge and / or skills through education in the health sector which for certain types requires authority to carry out health efforts. Midwives are one type of health worker who provides maternal and child health services by paying attention to aspects of quality services so that they can contribute to reducing maternal and infant mortality.¹ According to ICM (*International Confederation Of Midwives*), a midwife is someone who has attended a midwife education program recognized in his country, has graduated from the education, and meets the qualifications to be registered (register) and / or has a valid permit (license) to practice midwifery. Midwives are one of the health workers who have an important position, especially in reducing Maternal Mortality Rate (MMR) and Infant Mortality Rate (AKB).² Midwives are recognized as responsible and accountable professionals, who work as women's partners to provide support, care and advice during pregnancy, childbirth and postpartum, lead childbirth on their own responsibility and provide care to newborns and infants. This care includes prevention efforts, promotion of normal childbirth, detection of complications in mother and child and access to medical assistance or other appropriate assistance and carrying out emergency measures.³

Midwifery services are the application of midwifery science through midwifery care to clients who are the responsibility of midwives, ranging from pregnancy, childbirth, postpartum, newborns, family planning, including women's reproductive health and public health services. Midwifery services are an integral part of the health service system provided by registered midwives that can be done independently, in collaboration or referral.⁴ The quality of midwifery services is oriented towards the application of codes of ethics and midwifery service standards, as well as satisfaction which refers to the implementation of all midwifery service requirements. Of the two dimensions of midwifery service quality, the final goal is patient satisfaction served by midwives. Each health care profession in carrying out its duties in an institution has a clear limit of authority that has been approved by the inter-profession and is a list of authorities that have been written. Midwives as one of the health workers providing

¹ Purwoastuti, 2015, *Reproductive Health and Family Planning*, Yogyakarta: Pustaka Baru, pp. 4-5

² Muchtar, 2016, *Professional Ethics and Health Law*, Yogyakarta: Pustaka Baru Press, 2016, p. 14

³ Decree of the Minister of Health of the Republic of Indonesia no 369 / menkes / SK / III / 2007 concerning Midwife Professional Standards

⁴Rita Yulifah, et al, 2014, *Midwifery Concept*, Jakarta: salemba medika publisher, 2014, p.11

services to the community must provide the best service to support government programs for domestic development, one of which is in the health aspect.

According to Law of the Republic of Indonesia No. 36 of 2009 concerning Health explains that the purpose of health development is to increase awareness, willingness and ability to live a healthy life for every Indonesian citizen through promotive, preventive, curative and rehabilitative efforts as an effort to increase quality human resources. With the flow of globalization, one of the main focuses in order to be able to have competitiveness is how to improve the quality of human resources. The quality of human resources is formed from the fetus in the womb, the period of birth and infancy as well as the growth and development of toddlers. Only qualified human resources, who have the knowledge and ability so that they can survive and are able to anticipate changes and be able to compete. The current paradigm of midwifery services has shifted. For the past decade, midwifery care has combined conventional midwifery services and complementary traditional health services, and has become an important part of midwifery practice.⁵

In Indonesia there is no legislation that specifically regulates the implementation of complementary traditional health services in midwifery, but there is Government Regulation number 103 of 2014 concerning Traditional Health Services, where in article 2 it is stated that the purpose of this Government Regulation is to build a traditional health service system that synergizes with conventional health services and it is also mentioned that with the Regulation This government aims to provide legal certainty for users and providers of traditional health services. However, the implementation of complementary traditional health services in general has been regulated in the Regulation of the Minister of Health of the Republic of Indonesia number 15 of 2018 concerning the Implementation of Complementary Traditional Health Services, where in article 3 paragraph (1) it is stated that complementary traditional health services are carried out by Traditional Health Workers in traditional health service facilities.⁶

Based on the mode of treatment, complementary traditional health services are carried out using skills, herbs and or combinations by combining skills and potions. Midwives in an effort to support the improvement of maternal and infant health, carry out one of the traditional health services in the form of skills, including maternal massage, baby massage, accupresure based on midwifery evidence base. Along with the development of science and technology,

⁵ Harding, Debble & Foureur, Maralyn. 2009. New Zealand and Canadian *Midwives' Use of Complementary and Alternative Therapy: New Zealand College of Midwives*, Journal 40, Ed: April 2009

⁶ Regulation of the Minister of Health of the Republic of Indonesia Number 15 of 2018 concerning the Implementation of Complementary Traditional Health Services, Article 3 paragraph (1)

experts have proven that touch therapy and massage in infants produce beneficial physiological changes in the form of increased growth, increased endurance and better emotional intelligence.⁷ Likewise in mothers who do oxy massage, Through massage or stimulation of the spine, neurotransmitters will stimulate the medulla oblongata directly send messages to the hypothalamus in the posterior hypophyse to secrete oxytocin causing the breasts to secrete milk. With massage in the spinal area will also relax tension and relieve stress and so the hormone oxytosoin comes out and will help the release of breast milk, assisted by sucking the baby on the nipple at the time immediately after the baby is born with a normal baby condition.⁸

Meanwhile, in the Midwifery Law number 4 of 2019 concerning Midwifery and Regulation of the Minister of Health of the Republic of Indonesia Number 28 of 2017 concerning Licensing and Implementation of Midwife Practice, there is no mention of the authority of Midwives in carrying out complementary traditional health services. Meanwhile, the application of complementary traditional health services in midwifery is very influential in efforts to improve maternal and infant health. The rights and obligations of patients as consumers of health services are based on the legal relationship between patients and health service providers, in this case midwives. The relationship between patients and midwives is known as an engagement. The basis of the engagement formed between the midwife and the patient is usually an agreement, but it may be formed by law.⁹

If it is proven that a health worker committed malpractice that is fatal to the patient, of course, it is necessary to study whether there are crimes that can be applied to the profession.¹⁰ The law distinguishes from health practitioners, the obligation to disclose and inform three fundamental subjects of treatment / treatment, namely *Procedur* (procedure), explaining the diagnosis and procedures and actions carried out, *Alternative* (alternative actions), *Risk* (risks when done and if not done).¹¹

Traditional complementary health services have many benefits for mothers and babies, but if the massage technique is wrong, it can actually harm the mother or baby, even cause death. As happened at Saardjito Hospital Yogyakarta, at least for the last 5 years 6 babies have died due to brain hemorrhage due to a wrong baby massage carried out by a baby shaman.

⁷ Roesli, Utami.2001. *Babies are healthy thanks to exclusive breastfeeding*. Jakarta; PT Elex Komputindo.2001

⁸ Guyton, Arthur C.2007. *Textbook of Physiological Medicine*. Jakarta. EGC.2007

⁹ Suriani and Fatimah. *Legal protection for patients victims of malpractice for medical personnel according to Law No.8 of 1999 concerning Consumer Protection*. UNS. Volume 8 No 4.Solo. p 5

¹⁰ Isfandyarie, Anny. *Malpracticalities and Risks of MEDik In Criminal Studies*. Jakarta. Library Performance.2005.P. 46-48

¹¹ S.YTan MDJD, *Medical Practice, Understanding The Law, Managing The Risk*. World Scientific Publishing. Co.Pte.Ltd. Singapore. 2006.Hlm 89

While those who experience Cerebral Palsy or disruption of brain function and nerve tissue are much more.¹² Although until now there have been no cases of death due to complementary traditional health services carried out by Midwives, it does not rule out the possibility of these incidents happening to Midwives. So there needs to be legal certainty for Midwives in carrying out traditional health services.

Therefore, medical personnel, especially midwives, in order to carry out their profession must be in accordance with the standards of the midwifery code of ethics and their authority in order to avoid legal action that must be held accountable¹³. Legal consequences will occur if the authority deviates or due to negligence. In Article 58 paragraph (1) of Law Number 36 of 2009 concerning Health, namely: Health workers who commit mistakes or omissions in carrying out their profession may be subject to disciplinary action. Furthermore, from the article also that disciplinary action is in the form of administrative action. The responsibility of midwives based on laws and regulations as legal responsibility can be seen from aspects of civil law, administrative law and aspects of professional ethics.¹⁴

B. METHODS

According to Peter Mahmud Marzuki, there are several approaches to legal research. These approaches include legal approach (statute approach), case approach, historical approach, comparative approach (comparative approach) and conceptual approach.¹⁵ The specification of research in this study is normative legal research, namely legal research conducted by examining library materials or secondary data.¹⁶ As supporting material for this writing, secondary data is needed, namely library material data in the form of information that is indirectly obtained through literature studies. Primary legal materials are legal materials issued by the government and are binding in the form of laws and regulations, which in this case are in the form of Law Number 4 of 2019 concerning Midwifery, Law Number 36 of 2014 concerning Health Workers, Government Regulation Number 103 of 2014 concerning Traditional Health Services, Decree of the Minister of Health of the Republic of Indonesia Number 369 / MENKES / SK / III / 2007 concerning Midwife Professional Standards, Regulation of the Minister of Health of the Republic of Indonesia Number 15 of 2018

¹²Gandang Sajarwo, *One Baby Massage Can Cause Brain Hemorrhage*, <https://lifestyle.kompas.com>, retrieved April 5, 2019 at 22.45 WIB

¹³ Nurdin M. *Legal Protection for patients for victims of medical malpractice*. Journal of Ocean Law Keadailan. Vol.10 No. 01. Langsa Aceh. p 107

¹⁴ Law No.36 of 2009. About Health. Article 58

¹⁵ Peter Mahmud Marzuki. *Legal Research*. Prenada Media.,Jakarta : 2005.

¹⁶ Soerjono Soekanto and Sri Mamudji. *Normative Legal Research: A Brief Review*. PT. RajaGrafindo Persada Jakarta, 2007.

concerning Complementary Traditional Health Services and Regulation of the Minister of Health of the Republic of Indonesia Number 28 of 2017 concerning Licensing and Implementation of Midwife Practice. Secondary Legal Materials materials that provide explanations of primary legal materials, such as scholars' scientific results, research results, books, newspapers, magazines, related documents, the internet, national and international journals, and papers related to traditional health services and midwifery services. The activities carried out in collecting data in this study are literature studies by identifying contents. Data collection by identifying the content of secondary data obtained by reading, reviewing, and studying library materials in the form of laws and regulations, articles from the internet, national seminar papers, journals, documents, and other data related to the problems studied regarding the legal rules of traditional health services and midwifery services. Data analysis is the next step to process research results into a report, so that the collected data can be accounted for and can produce the right answer to a problem, it is necessary to have the right data analysis technique. Data analysis techniques are the process of organizing and sorting data into patterns, categories and pattern units so that they can be determined by theme and can be formulated working hypotheses as suggested by the data.¹⁷ The data analysis technique used in this legal research uses a deductive mindset, which is to draw conclusions from general things into individual cases (Writing Systematics).¹⁸

C. RESULTS AND DISCUSSION

Traditional Complementary Health Services are performed by Traditional Health Workers in traditional health care facilities. In addition to being carried out in traditional health care facilities, Complementary Traditional Health Services can be carried out by Traditional Health Workers in other health care facilities in the form of integrated Traditional Health Services in accordance with the provisions of laws and regulations. Traditional Complementary Health Services must meet the following criteria: It can be accounted for its safety and benefits following quality scientific principles and used rationally and not contrary to religious norms and norms that apply in society; (a) not contrary to religious norms is in the form of not providing services in the form of mystical / occult, and / or using the help of supernatural beings. (b) not contrary to the norms prevailing in society is in the form of not violating the values of decency, decency, law, and culture. Every action in complementary midwifery services must be safety and evidence-based. So that it can help improve the health

¹⁷ Soerjono Soekanto.. *Introduction to Legal Research*. University of Indonesia (UI-Press). Jakarta : 2007

¹⁸ Johnny Ibrahim.. *Theory and Methodology of Normative Legal Research*. Bayumedia Publishing, Malang, 2006,

status of service users. Keeping clients' best interests in mind, Every action in midwifery services is tailored to the needs of clients, so that what is carried out can be efficient and effective. It has the potential of disease prevention, health improvement, healing, health recovery, and improving the quality of life of clients physically, mentally, and socially. Complementary midwifery services assist clients in improving their health both physically, mentally, and socially, so that clients can carry out optimal care for their children.

Traditional Complementary Health Services have the following characteristics:

1. Traditional Health Care Concepts;

- a. The existence of individual health disorders is caused by an imbalance of physical, mental, spiritual, social, and cultural elements.
- b. Humans have the ability to adapt and self-healing; and
- c. Health is carried out with a holistic and natural approach that aims to rebalance the ability to adapt to the causes of health problems.

2. Culture-based;

Culture-based as meant means that Complementary Traditional Health Services come from cultural traditions that have been passed down from a particular community.

3. The procedure for establishing the state of health of the individual (diagnosis procedure);

The procedure for determining individual health conditions (diagnosis procedures) above means that the procedures for screening Complementary Traditional Health Services are based on interview, sight, hearing, smell, and touch skills and can be assisted by tools and technology that work in accordance with traditional health concepts.

4. Determination of the state of health of the individual (diagnosis); and

The determination of individual health conditions as referred to in is carried out based on conclusions obtained through procedures for determining individual health conditions and emic concepts, namely statements of individual health conditions based on the Client's subjective experience and public views on the health disorder.

5. Management of treatment.

The management of treatment as referred to above means that treatment / treatment is carried out using natural materials, manual techniques, thought techniques, and energy techniques and can use tools and technology in accordance with traditional health characteristics.

Without legal certainty, people do not know what to do and eventually unrest arises. But too much emphasis on legal certainty, too strict to obey legal regulations as a result of being rigid and will cause a sense of unfairness.

The existence of legal certainty is a hope for justice seekers against arbitrary actions from law enforcement officials who sometimes always arrogance in carrying out their duties as law enforcers. Because with legal certainty, people will know the clarity of rights and obligations according to law.

Without legal certainty, people will not know what to do, do not know what to do right or wrong, prohibited or not prohibited by law. This legal certainty can be realized through good and clear explanations in a law and it will also be clear to the applicant.

In other words, legal certainty means the exact law, its subject and object and the threat of punishment. However, legal certainty should probably not be regarded as an element that absolutely exists at all times, but the means used in accordance with situations and conditions with regard to the principles of benefit and efficiency.

Legal certainty is something that can only be answered normatively based on applicable laws and regulations, not sociological, but normative legal certainty is when a regulation is made and promulgated with certainty because it regulates clearly and logically which means it does not cause doubts (multi-interpretation) and logical in the sense of being a norm system with other norms so that it does not clash or cause norm conflicts arising from Uncertainty. Legal certainty is a condition where the behavior of individuals, groups and organizations is bound and within the corridors outlined by the rule of law.¹⁹

Based on the method of Treatment, Traditional Complementary Health Services are carried out using:

1. Skills;

Traditional Complementary Health Services that use skill means can be classified into:

- a. technical manual;

Manual techniques as referred to are treatment techniques based on manipulation and movement of one or several parts of the body.

- b. energy therapy; and

Energy therapy as referred to is a treatment technique / treatment using energy fields both from outside and from within the body itself.

- c. thought therapy.

Thought therapy as referred to in Article 6 paragraph (2) letter c is a treatment technique that aims to utilize the ability of the mind to improve body functions.

¹⁹ Rahman Amin, *Philosophy of Justice, Legal Certainty and Law Enforcement*, rahmanamin1984.blogspot.com/2014/search?q=kepastian+hukum. Retrieved January 20, 2020 at 1:01 PM

2. Herb; or

Complementary Traditional Health Services that use the herb method as referred to in paragraph (1) letter b can use Traditional Medicine.

3. Combination by combining skills and potions.

Complementary Traditional Health Services that use a combination method by combining skills and ingredients as referred to in paragraph (1) letter c are combinations of Traditional Health Services that have similarity, harmony, and compatibility which is a unity of the traditional health science system.

In practice, sometimes there are laws that are mostly obeyed and some laws that are not obeyed. If this happens, then the legal system will obviously collapse if everyone does not obey the law and the law will lose its meaning. While the effectiveness of the law tends to affect the timing, attitude and quantity of non-compliance and has a real effect on legal behavior, including the behavior of lawbreakers. This condition will affect law enforcement that ensures certainty and justice in society.

Legal certainty can be seen from two angles, namely certainty in the law itself and certainty due to law. Certainty in law means that each legal norm must be able to be formulated in sentences in it does not contain different interpretations. As a result, it will bring obedient behavior or non-compliance with the law. In practice, many legal events arise, where when faced with the substance of the legal norms that govern them, sometimes unclear or imperfect so that different interpretations arise which consequently will lead to legal uncertainty.

While certainty because of law means that because of the law itself there is certainty. However, if the law is identified with legislation, then one of the consequences can be felt is that if there are areas of life that have not been regulated in the legislation, then it is said that the law is left behind by the development of society. Likewise, legal certainty is not synonymous with legal certainty. If legal certainty is identified with legal certainty, then the law enforcement process is carried out without regard to the applicable legal reality (Werkelijkheid).

According to Sudikno Mertokusumo, legal certainty is a guarantee that the law must be carried out in a good way. Legal certainty requires legal regulation efforts in legislation made by authorized and authoritative parties, so that these rules have a juridical aspect that can guarantee certainty that the law functions as a regulation that must be obeyed.²⁰

²⁰ Sudikno Mertokusumo, *Knowing the Law of Atma*, Jaya Yogyakarta, Yogyakarta, 2010

D. CONCLUSIONS

The authority of midwives in traditional complementary therapy services to carry out midwifery practice either in the place of Midwife Independent Practice or in other Health Care Facilities may be carried out. In Law number 4 of 2019 concerning Midwifery, it does not explicitly mention the implementation of complementary traditional services, but as long as the Midwife has the competencies obtained after conducting complementary traditional health service training and obtaining a certificate, complementary traditional health services in midwifery may be carried out by Midwives. Midwives provide health services in accordance with professional standards, standard operational procedures and codes of ethics in accordance with applicable laws and regulations. Midwives in providing traditional complementary midwifery health services must first attend training in complementary midwifery traditional health services and get a certificate, so as to improve the degree of maternal and child health.

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