

The Position of Informed Consent Between Midwives and Patients in Childbirth According to Law Number 17 of 2023 Concerning Health

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ABSTRACT

Medical procedures carried out by midwives often entail uncertainties and unpredictabilities, such as postpartum hemorrhage, shock, or neonatal asphyxia. Patient consent for each medical procedure is an absolute necessity, except in emergency situations. This study aims to analyze the legal relationship between midwives and patients during childbirth and examine the role of informed consent for medical procedures between them in accordance with Law No. 17 of 2023 concerning Health. The research adopts a normative juridical approach, which involves examining legal norms present in legislation, court rulings, and societal legal standards. The data collection method utilized is library research, which involves seeking theoretical foundations and research inquiries. The data includes primary legal materials obtained from Law No. 17 of 2023 concerning Health and other relevant legislation, secondary legal materials sourced from books, documents, legal scholarly works, and the internet, as well as tertiary legal materials providing clarifications regarding primary and secondary legal sources. Justice is the fundamental principle requiring equitable and unbiased information dissemination to all patients. Midwives are expected to refrain from discrimination and provide suitable explanations to every individual. In the realm of justice, healthcare providers hold the

responsibility to ensure fair treatment for every patient, irrespective of their social, economic, or cultural backgrounds. Every individual possesses the right to receive clear and comprehensive explanations regarding the forthcoming medical procedures.

Keywords: Informed Consent, Midwife, Patient, Childbirth

INTRODUCTION

Medical interventions conducted by midwives often encounter varying degrees of uncertainty and unpredictability, encompassing scenarios such as postpartum hemorrhage, shock, or neonatal asphyxia, all of which can significantly influence the outcomes of these interventions. Regrettably, midwives frequently find themselves grappling with limited control over these critical factors (Benita, et al., 2021). Securing patient consent for each medical procedure is an imperative, barring emergency situations necessitating immediate action. This foundational concept of consent is encapsulated in the notion of informed consent (Salamah, 2023). Informed consent transcends mere procedural formality; rather, it constitutes a profound communication process between healthcare providers and patients. The crux of the informed consent process lies in the mutual agreement forged between healthcare providers and their clients, with consent forms serving merely as documentation of this accord (Dwi, et al.,

2022). Informed consent operates within two distinct dimensions: the legal dimension, which serves to safeguard patients from coercive practices by midwives, emphasizing the transparency of information exchange between midwives and patients to ensure patient comprehension and facilitate optimal care, and the ethical dimension, which embodies values such as upholding patient autonomy and refraining from intervention unless solicited or imperative (Antari et al., 2023).

The information imparted during the informed consent process spans crucial aspects including diagnosis, therapy, mechanisms of action, associated risks, potential discomfort, and therapeutic benefits. Within a consent framework, understanding the four essential components is paramount, with information being one pivotal element. Insufficient comprehension may render patients incapable of making informed decisions. The healthcare code of ethics underscores the necessity of comprehensive information provision to enable patients to make informed choices. Failure to adequately convey information or discuss the risks and side effects of medical procedures can engender confusion and anxiety among patients (Delfi et al., 2023). Fundamentally, the midwifery profession is deeply intertwined with community engagement, particularly focusing on the well-being of women and mothers (Delfi et al., 2023). Within the healthcare landscape of Indonesia, midwifery plays a pivotal and strategic role (Mardhiyati, 2020). To fulfill this role effectively, midwives go beyond mere technical skills, incorporating social, cultural, ethical, legal, and religious values into their practice. They uphold the belief that every individual deserves access to safe and culturally sensitive healthcare services that cater to the diverse needs of humanity. The principles of individual autonomy, access to adequate information, and active participation in healthcare decision-making are considered fundamental tenets of holistic healthcare.

As outlined in Law No. 17 of 2023 concerning Health, informed consent must encompass essential elements such as diagnosis, treatment rationale, potential risks and complications, alternative options and their associated risks, potential consequences of non-action, and post-treatment prognosis (Delfi et al., 2023). From a legal standpoint, informed consent is a subjective requirement for establishing a binding relationship between midwives and patients, predicated on the fundamental rights to information and self-determination.

However, the practical implementation of informed consent in medical procedures often faces challenges, including issues with incomplete consent forms, patient comprehension gaps due to insufficient knowledge, and occasional lapses by midwives in adequately informing patients about their consent rights. In cases of service errors, patients have the right to seek compensation, and midwives may be held accountable under Articles 305, 308, and 310 of Law No. 17 of 2023. Article 305 empowers patients or their families affected by adverse outcomes to file complaints, while Article 308 mandates that medical personnel accountable for actions harming patients civilly must seek recommendations. Article 310 emphasizes the resolution of disputes arising from professional mistakes through alternative dispute resolution mechanisms before resorting to legal proceedings.

Incorporating both legal and ethical dimensions, informed consent assumes a pivotal role in mitigating ethical conflicts. However, its efficacy does not extend to resolving all conceivable issues. Given the unpredictable nature of certain situations, midwives are perpetually tasked with delivering optimal care to their patients, drawing upon their professional expertise and capabilities (Permatasari et al., 2022).

Hence, the research problem is formulated as follows:

1. What constitutes the legal relationship between midwives and patients during childbirth?

2. How is the status of informed consent (consent for medical procedures) delineated between midwives and patients during childbirth in accordance with Law No. 17 of 2023 concerning Health?

RESEARCH METHODOLOGY

The research methodology employed in this legal discourse is normative juridical research, focusing on legal norms delineated in statutes, judicial decisions, and societal legal conventions (Ali, 2021). The data gathering approach adopted is library research, entailing the exploration of theoretical underpinnings and research inquiries (Ngani: 2015).

Various types of legal data are utilized, including primary, secondary, and tertiary legal materials. Primary legal materials comprise information sourced from the Republic of Indonesia Law No. 17 of 2023 concerning Health and associated legislative texts relevant to the research scope. Secondary legal materials encompass data extracted from literature, documents, legal treatises, and online resources. Tertiary legal materials entail sources offering insights and clarifications on primary and secondary legal materials (Bahder, 2015).

RESULTS AND DISCUSSION

Analysis of the Legal Relationship Between Midwives and Patients During Childbirth.

As per Article 199 Paragraph 4 of Law No. 17 of 2023, healthcare professionals categorized under midwifery, as outlined in paragraph (1) letter c, encompass vocational midwives and professional midwives. Medical Personnel or Healthcare Workers, as defined in paragraph (1), include nurses or midwives providing medical and/or pharmaceutical services within specified limits, as detailed in Article 286 Paragraph 3 (b) (Abdul Rahman: 2024).

Article 273 Paragraphs 1 and 2 delineate the rights and responsibilities of Medical Personnel and Healthcare Workers. In Paragraph 1, during their practice, they have the entitlement to: (a) legal protection when adhering to professional standards, service

criteria, operational protocols, professional ethics, and patient healthcare requirements; (b) receive comprehensive and accurate information from patients or their families; (c) receive fair remuneration, service fees, and performance incentives as per legal provisions; (d) be safeguarded concerning safety, occupational health, and security; (e) access health and employment insurance in accordance with statutory regulations; (f) be shielded from treatment contradicting human dignity, moral and ethical principles, and socio-cultural norms; (g) receive acknowledgment according to legal stipulations; (h) opportunities for professional growth through competence enhancement, knowledge acquisition, and career advancement; (i) decline patient or third-party requests conflicting with professional standards, service criteria, operational protocols, code of ethics, or statutory provisions; and (j) avail other entitlements in line with legal provisions. Paragraph 2 emphasizes that Medical Personnel and Healthcare Workers reserve the right to terminate healthcare services when subjected to treatment inconsistent with human dignity, morality, ethics, and socio-cultural values as mentioned in paragraph (1) letter f, encompassing acts such as violence, abuse, and discrimination. The rights and obligations of Medical Personnel and Healthcare Workers are delineated in Law No. 17 of 2023, specifically in Articles 274 and 275. Article 274 mandates that Medical Personnel and Healthcare Workers, in the course of their practice, must: (a) deliver healthcare services in adherence to professional standards, service protocols, operational procedures, ethical standards, and the healthcare needs of patients; (b) obtain consent from patients or their families for proposed interventions; (c) uphold patient confidentiality; (d) maintain records or documents of examinations, care procedures, and interventions; and (e) refer patients to other Medical Personnel or Healthcare Workers possessing the requisite competence and authority. Meanwhile, Article 275 Paragraph (1) requires that

Medical Personnel and Healthcare Workers stationed in Healthcare Facilities provide first aid to patients during emergencies or disasters. Paragraph (2) exempts Medical Personnel and Healthcare Workers providing life-saving or disability-preventing healthcare services during emergencies or disasters from liability for compensation claims.

Article 1 Paragraph 23 of Law No. 17 of 2023 defines a Patient as any individual receiving healthcare services from Medical Personnel and/or Healthcare Workers. The rights and obligations of patients are outlined in Articles 276 and 277 of the same law. Article 276 enumerates patients' rights, including: (a) receiving information regarding their health status; (b) receiving comprehensive explanations about the healthcare services they receive; (c) accessing healthcare services in accordance with medical necessities, professional standards, and quality service; (d) providing consent for or refusing medical procedures, except in cases essential for preventing infectious diseases or managing Extraordinary Events or outbreaks; (e) accessing information contained in medical records; (f) seeking opinions from other Medical Personnel or Healthcare Workers; and (g) exercising other rights as per statutory provisions. Article 277 outlines patients' obligations, such as: (a) providing complete and truthful information about their health conditions; (b) adhering to the advice and instructions of Medical Personnel and Healthcare Workers; (c) complying with the regulations applicable in Healthcare Facilities; and (d) remunerating received services.

According to the World Health Organization (WHO), normal childbirth entails spontaneous labor onset with low initial risk, remaining low throughout, resulting in spontaneous cephalic birth between 37 and 42 completed weeks of gestation, with both mother and baby in good health post-delivery (Purwoastuti, 2016). As per Regulation of the Minister of Health of the Republic of Indonesia Number 21 of 2021 Article 1,

Maternity Healthcare Services encompass activities or series of activities directed at mothers from the onset of labor until 6 (six) hours post-delivery. Childbirth represents a dynamic process wherein a mother delivers her baby. While 85% of childbirths proceed without complications, challenges may arise during the childbirth process.

The rights and responsibilities of Midwives and Patients are meticulously governed by Law No. 17 of 2023 Concerning Health. For instance, Article 40 Paragraph 1 underscores the significance of maternal health in ensuring the delivery of healthy, intellectually sound, and high-quality offspring, while concurrently mitigating maternal mortality rates.

Furthermore, Law No. 17 of 2023 Article 54 Paragraph 2 ensures the safeguarding of reproductive health concerns in mothers throughout various stages, including pre-pregnancy, pregnancy, childbirth, and the postpartum period. The pivotal role of midwives, particularly during these pivotal junctures, is explicitly delineated within the legislation. Such assurance enshrined by the law delineates the parity of roles between mothers and midwives in facilitating the birth of healthy offspring. This principle is underscored in Paragraph (3), affirming the entitlement of every mother to access Healthcare Facilities and services that adhere to standards, ensuring safety, high quality, and affordability.

Additionally, the legislation underscores the role of both central and regional governments in fostering a conducive healthcare environment, as outlined in Paragraph (4). Here, it mandates the Central Government and Regional Governments to provide maternal healthcare services that adhere to established standards, ensuring safety, quality, and affordability.

Analysis of the Position of Informed Consent (Consent for Medical Procedures) Between Midwives and Patients During Childbirth According to Law No. 17 of 2023 Concerning Health

Informed consent has long been recognized as a cornerstone in healthcare, serving as a

crucial step in navigating ethical complexities. It stems from the amalgamation of "informed," signifying understanding, and "consent," indicating approval. In essence, it pertains to consent given by patients only after comprehending clear information regarding proposed medical interventions for diagnostic and/or therapeutic purposes.

As stipulated in Article 293 of Law No. 17 of 2023, medical procedure consent, commonly known as Informed Consent, entails patients or their immediate family members granting consent for procedures following thorough explanations about the medical or dental interventions to be performed. This explanation must cover key aspects such as diagnosis, indications, purposes of healthcare services, potential risks and complications, alternative options and their associated risks, consequences of non-action, and post-procedure prognosis, presented either verbally or in writing. Primarily, the right to consent rests with the concerned patient. However, if the patient is incapacitated or under guardianship, consent or refusal of healthcare services can be provided by their closest family members, including spouses, biological parents, biological children, or adult biological siblings. Notably, in emergency situations aimed at preserving the patient's life, consent is not mandated.

In its essence, informed consent is governed by contractual and civil law principles, closely tied to professional duties regarding treatment and therapeutic agreements. The civil law dimension of informed consent, when associated with Contract Law as outlined in Civil Code Article 1320, encompasses conditions for agreement validity. These conditions include mutual agreement between parties, absence of coercion, mistake, or fraud, legal competence of the parties, existence of a lawful, justified reason, compliance with statutory regulations, and a reasonable cause for fulfillment. Of paramount importance is the agreement between healthcare personnel and patients, necessitating transparent

communication of patient complaints from both parties. Healthcare personnel must receive honest patient complaint information, while patients must receive information regarding diagnosis and therapy. Several guiding principles, such as refraining from deception, coercion, or inducing fear (Gita, et al., 2018), must be adhered to in preparing and providing informed consent to ensure its legal validity.

In obstetric care, every childbirth procedure overseen by midwives requires therapeutic communication with the patient, fostering a relational bond. The legal relationship between midwives and patients is established through agreements or laws, as outlined in Article 1233 of the Civil Code. This consent agreement between midwives and laboring patients is termed medical procedure consent, or Informed Consent. Midwives play a crucial role in facilitating patient choices amidst various societal challenges and limitations in available service facilities. Consequently, ensuring the safety, security, and welfare of women and their babies remains the primary concern for midwives, who must provide patients with accurate information and appropriate service options for their welfare (Arimbi, 2014).

The principle of informed consent between midwives and patients is governed by Law No. 17 of 2023 concerning Health. This legislation aims to safeguard patients' rights, including their entitlement to transparent and sufficient information prior to undergoing medical procedures. Within this framework, patients are recognized as individuals with rights and responsibilities in matters concerning their health. The law mandates that every patient is entitled to receive comprehensive, easily understandable information before consenting to medical interventions. As outlined in Article 4 paragraph 1 (j) of Law No. 17 of 2023, which states; "Every individual has the right to access information regarding their health data, including the actions and treatments they have received or will receive from Medical Personnel and/or Health Personnel."

Moreover, Law No. 17 of 2023 asserts that each patient has the right to receive accurate, clear, and understandable information about their health status. It is the responsibility of midwives to communicate this information to patients prior to conducting medical procedures or specific interventions. In the context of informed consent, it is not merely about formal authorization but also about comprehending the implications, risks, and potential alternatives, as articulated in Law Article 4 paragraph 1 (k), which emphasizes that; "Every individual has the right to be protected from health risks." This encompasses details such as diagnosis, prognosis, treatment options, associated risks, benefits, and potential outcomes of the proposed medical procedures. Additionally, midwives are obligated to uphold patient confidentiality, as mandated by Law No. 17 of 2023 concerning Health, Article 177 paragraph 1, which stipulates that "Every Health Service Facility must safeguard the personal health information of patients." Patients also have the right to be informed about the qualifications of healthcare providers who will be involved in their care. Healthcare professionals are required to provide explanations to patients actively, both verbally and in writing. In situations where patients may have difficulty understanding the provided information, healthcare providers are obliged to engage the patient's family or legal guardian to aid in decision-making. Furthermore, Law No. 17 of 2023 concerning Health ensures that patients have the autonomy to decline certain medical procedures or treatments, as well as access their medical records. These rights empower patients to make decisions that align with their values, beliefs, and personal preferences. This is reiterated in the same law, Article 4 paragraph 1 (h), which affirms that "Every individual (patient) has the right to accept or refuse some or all of the assistance offered to them after receiving and comprehending complete information about the procedures."

In the realm of healthcare services, informed consent is not just a legal requirement; it

serves as a crucial reflection of ethical principles that midwives must adhere to, while also constituting a fundamental right for patients (Salamah, 2022). When healthcare providers seek consent from patients, it goes beyond legal obligations to encompass honoring human dignity and ensuring adequate protection for individuals undergoing treatment.

The ethical principles underlying informed consent between midwives and patients are enshrined in Law Number 17 of 2023 concerning Health Services. Justice, as the cornerstone principle, demands that information provided during the informed consent process is fair and equitable for all patients, regardless of their background (Pujiastuti & Kristiana, 2020). Furthermore, midwives are expected to avoid discrimination and provide appropriate explanations to every individual. Within the framework of justice, healthcare providers have the responsibility of ensuring that every patient is treated fairly, without any form of discrimination (Abdul Rahman: 2024). This includes providing uniform information to all patients, irrespective of their social, economic, or cultural contexts. Every individual is entitled to receive clear and comprehensive explanations regarding the medical procedures to be undertaken (Busro, 2018).

Informed consent embodies respect for human rights, affirming every individual's entitlement to be respected and shielded from potentially harmful actions. By seeking informed consent, healthcare providers acknowledge that each patient is an individual vested with the right to safeguard their privacy, physical integrity, and personal decisions.

Central to upholding the ethics and integrity of healthcare services, informed consent transcends being a mere procedural formality; it signifies a commitment to the moral principles underpinning the relationship between healthcare providers and patients. By upholding justice, patient autonomy, and respect for human rights, informed consent forms a robust foundation

for fostering trust and collaboration between midwives and patients, thereby cultivating a healthcare environment characterized by mutual respect and concerted efforts toward achieving optimal outcomes for patient welfare.

Another aspect to understand is that informed consent between midwives and patients is an integral part of medical records. These medical records must include comprehensive notes regarding consent to medical procedures (Soepardan & Hadi, 2015). The legal aspects of medical records and informed consent hold significant legal value because their content provides legal certainty based on principles of justice in law enforcement efforts and the provision of evidence to support the justice process. Medical records serve as the primary written evidence, benefiting legal problem resolution, discipline, and medical ethics (Mughtar, 2016). Informed consent is used as the basis for accountability and reporting by medical personnel in the event of legal claims from patients or their families (Chintia & Kusumaningrum, 2020). The information provided must be explained using simple language to be understood by the patient or their family. The information conveyed to the patient or their family includes the risks inherent in the procedure, possible side effects, alternative options (if any) besides the proposed procedure, and potential consequences if the procedure is not performed.

The position of informed consent between midwives and patients in the context of childbirth is an important aspect of healthcare practice. Although midwives interact directly with patients more than doctors do, ethical and legal considerations regarding the process of informed consent remain paramount. First and foremost, it is important to understand that in this context, midwives have a professional responsibility to clearly and comprehensively convey information to patients about the childbirth procedure to be performed.

Patients have the right to understand the childbirth procedure thoroughly before

giving consent. This includes understanding the risks, benefits, alternatives, and consequences of the medical actions to be taken. In this context, midwives play a crucial role as reliable conveyors of information that can be understood by patients, enabling them to make informed decisions that align with their needs and personal values.

Article 1320 of the Civil Code states that the Consent of Action in childbirth is based on the agreement between the parties, in this case, the midwife as a healthcare professional and the patient or the patient's family. The parties have agreed to the childbirth procedure to be carried out as the basis for providing the best healthcare service for the patient.

The aspect of trust and interpersonal relationship between midwives and patients also plays a crucial role in the process of obtaining informed consent. Openness, empathy, and a willingness to actively listen from the midwife's side can help build a strong relationship between midwives and patients, which, in turn, can enhance the quality of the informed consent process. This can also help ensure that patients feel supported and valued in making decisions regarding their childbirth.

Communication between midwives and patients is also a critical factor in ensuring an accurate understanding of the childbirth procedure. Midwives should be ready to address patients' questions or concerns whenever needed and ensure that information is conveyed in a way that is easily understandable by the patient. This creates an environment where patients feel they have control over the informed consent process and can effectively participate in decisions related to their health and the upcoming birth of their baby.

Each childbirth situation has its own unique context, and the approach to the informed consent process should be tailored to the needs and preferences of individual patients. This means that midwives must consider patients' needs holistically, including cultural considerations, language, and personal

values, to ensure that the informed consent process runs as smoothly as possible. Analyzing the position of informed consent between midwives and patients in childbirth is a complex and multidimensional process that requires a deep understanding of ethical principles and effective communication.

CONCLUSION

First, the legal relationship between midwives and patients in childbirth emphasizes the necessity of cooperation and effective communication to ensure optimal maternal care. This relationship is grounded in principles of medical ethics, patient rights, and the professional responsibilities of midwives. Midwives are obliged to offer clear and precise information to patients, while also honoring patients' decisions concerning their care. Patients are entitled to comprehend procedures and actively participate in decision-making. Effective collaboration between midwives and patients encompasses not only medical considerations but also ethical and legal aspects that promote safety, comfort, and well-being throughout the childbirth process. Second, according to Law No. 17 of 2023 concerning Health, the significance of informed consent (consent for medical procedures) between midwives and patients in childbirth underscores the need for transparent communication and mutual understanding. This legislation underscores the patient's entitlement to sufficient information about the medical procedures to be conducted, particularly in the context of childbirth involving midwives. Midwives bear the responsibility of providing thorough explanations to patients, ensuring their comprehension of the risks and benefits associated with the medical procedures. This aims to uphold patient autonomy and establish a robust legal foundation for safeguarding patient rights in childbirth, fostering a trusting relationship between midwives and patients in making well-informed medical decisions.

SUGGESTIONS

First, it is advisable to conduct a comprehensive analysis of the legal relationship between midwives and patients in the context of childbirth. Understanding and evaluating the legal regulations that govern the responsibilities and obligations of midwives throughout the childbirth process, including providing information to patients, obtaining medical consent, and addressing emergency situations, are crucial. Further research is needed to determine the extent of midwives' responsibility for ensuring patient safety and well-being, as well as how the legal framework supports or regulates potential conflicts in this domain. This approach will provide a clearer understanding of how to strengthen and protect patient rights while offering comprehensive guidance for midwives to deliver high-quality care in compliance with relevant laws.

Second, examining the position of informed consent (consent for medical procedures) between midwives and patients in childbirth in accordance with Law No. 17 of 2023 concerning Health requires a profound understanding of the legal and ethical dimensions outlined in the legislation. Midwives should effectively explain the medical procedures involved in childbirth to patients, ensuring their comprehension of this information and obtaining consent voluntarily. It is imperative to intensify efforts to enhance patient awareness regarding their rights in medical decision-making, in alignment with the principles of informed consent. Additionally, attention should be given to fostering effective communication between midwives and patients to create a trusting and supportive environment for making decisions concerning childbirth care. Consequently, the implementation of informed consent in midwifery practice can uphold respect for patient rights and adherence to pertinent laws.

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