

# 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

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## Abstract

Health is a human right, meaning that everyone has the same rights in obtaining access to health services and professionalism from health workers. Nurses are the most numerous health workers in Indonesia. Nursing staff who perform nursing actions must be following the competence of nurses and Law Number 38 of 2014 concerning Nursing. The purpose of writing this article is to find out how the legal aspects of maternity nurses who carry out delivery assistance actions carry out the doctor's duties in the Breach delivery process. By using the normative juridical research method, it can be concluded that the competence of the maternity nurse is to assist childbirth but does not have the authority to provide delivery assistance, especially in cases with fatal risks that can cause death to the mother and fetus. When referring to the criminal provisions of Law Number 36 of 2009 concerning Health Workers, Article 84 paragraph (1), any Health Worker who commits serious negligence resulting in serious injury to the Health Service Recipient shall be sentenced to a maximum imprisonment of 3 (three) years. Then in paragraph (2), namely If the gross negligence as referred to in paragraph (1) results in death, each Health Worker shall be sentenced to a maximum imprisonment of 5 (five) years.

**Keywords:** *Legal aspects; Nurse; Authority; Breach delivery.*

## Introduction

Health is a very basic and important thing to strive for. Health is very meaningful and priceless, especially the health of mothers and children. Human life requires health aspects that are taken care of. Therefore, health is one form of human right, in this case, the right to have optimal health, and the state is obliged to fulfill this right.

The right to obtain services and protection for maternal and child health is a form of basic right that has been stated in the 1945 Constitution of the Republic of Indonesia. According to Article 23 of Law Number 36 Years 2009 concerning Health, it is stated that health workers are authorized to provide health services.

Article 28 H, Paragraph (1) "everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy environment and have the right to obtain health services". Paragraph 3 "Everyone has the right to social security that allows his full development as a dignified human being". Article 34: "The poor and neglected children are cared for by the state".

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In line with the mandate of Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, it has been emphasized that everyone has the right to obtain health services, then in Article 34 paragraph (3) it is stated that the State is responsible for the provision of adequate public service facilities. And also in Article 9 paragraph 3, Law of the Republic of Indonesia Number 39 of 1999, concerning Human Rights, as follows: "Everyone has the right to a good and healthy environment".

The form of activities and efforts to improve the degree of public health must be carried out based on professional, non-discriminatory, participatory, protective, and sustainable principles which are very important for the formation of Indonesian human resources, increasing the nation's resilience and competitiveness, as well as national development. Improving human resources in medical matters is one form of effort to improve the health of citizens.

According to Article 23 of Law Number 36 of 2009 concerning Health, it is stated that health workers are authorized to provide health services. However, in this paragraph, it is explained that the authority referred to in this paragraph is the authority granted based on education after going through the registration process and granting a permit from the government following the legislation.<sup>1</sup>

Every health worker must pay attention to the standards that apply in his profession. As one of the health workers, maternity nurses in carrying out their practice must be following the authority based on their competence. In carrying out their duties, maternity nurses must also comply with the Nursing Code of Ethics. The Nursing Code of Ethics is a comprehensive statement in the profession that guides nurses to carry out nursing practice properly, especially those related to the welfare of their family, community, colleagues, profession, and themselves.

One of the health indicators of a country is the Maternal and Child Mortality Rate. Every day in 2017 around 810,000 mothers died due to childbirth. 94 percent of all maternal deaths occur in low- and middle-income countries. Currently in Indonesia, the Maternal Mortality Rate is still quite high, Indonesia occupies the third position of the highest Maternal Mortality Rate in 2017 with 177 deaths per 100 thousand births.

Breach position is one of the causes of maternal death, where the position of the fetus is elongated with the head located in the uterine fundus and the buttocks occupy the lower part of the uterine cavity. Breach position occurs in 3-4% of deliveries in Indonesia. Perinatal mortality in Breach position is 13 times higher than perinatal mortality in cephalic presentation.<sup>2</sup>

The government has established a National Health System, one of the goals is to reduce maternal mortality, including implementing the Making Pregnancy safer (MPS) strategy or "making pregnancy safer", Placement of village maternity nurses (Contract maternity nurses), Establishment of standby villages, the establishment of village health posts and the *Jamkesmas* program.<sup>3</sup>

Based on the background that has been described, the problem in this study is how to regulate the law for maternity nurses in childbirth services. And the purpose of this study is to enforce law enforcement against violations of maternity nurses and their legal consequences because maternity nurses already have the authority and standards of nursing practice. This is done to limit the authority following applicable regulations. Maternity nurses know and can implement their responsibilities following existing regulations without exceeding authority following their competence.

## Discussion

### Obligations of Maternity Nurses in Carrying Out Labor Actions

As a part of professional health workers, maternity nurses carrying out their practice must be carried out following guidelines and authorities based on their competence. The moral responsibility of the maternity nurse is to carry out the practice following the norms contained in the maternity nursesociety so that it does not conflict with the oath that has been uttered when the maternity nurse graduates from education to be able to provide nursing care to the community. A review in terms of ethical responsibility from the duties of a maternity nurse is a form of responsibility that applies in carrying out their duties in the form of carrying out nursing activities given to provide services to the community following the code of ethics. Nurses are obliged to provide nursing services following professional standards, standards of nursing practice, code of ethics, and SOPs as well as the needs of clients or patients where professional standards, practice standards, and codes of ethics set by professional organizations are guidelines that must be followed by every nursing staff to implement the nursing practice.

Nurses who carry out their duties are required to refer clients and or patients to health care facilities that have better skills or abilities if they are unable to carry out an examination or action. This also depends on the situation, if our environment also does not allow then we as nurses can explain the right reasons. Nurses are obliged to keep everything they know about clients and/or patients confidential, except for legal purposes. This concerns the privacy of clients who are in nursing care because on the other hand nurses are also obliged to respect the rights of clients and/or patients and other professions following applicable rules and regulations. The obligations of maternity nurses themselves refer to the implementation of nursing on

the standards of nursing care for mothers and children as stated in the Regulation of the Minister of Health Number 10 of 2015 concerning Nursing Service Standards in Special Hospitals.

Article 37 of the Nursing Law states that nurses must complete nursing service facilities and infrastructure following nursing service standards, provide services, refer clients to other nurses who are appropriate according to their expertise, make documentation of nursing care, provide complete, honest, correct, clear, and easy to understand information regarding nursing actions to clients or their families following the limits of their authority, carry out acts of delegation of authority from other health workers and or medical personnel following the competence of nurses, and carry out special assignments determined by the government. With this explanation, nurses can carry out nursing service standards, which if an error occurs, can be held accountable. For this reason, nurses have rights and obligations to have a relationship with the community and are protected by law, and nurses are obliged to obey this relationship. Actually, in the obligations of the maternity nurse, it is not stated that the maternity nurse may provide delivery assistance. However, in reality, maternity nurses have competence in providing delivery assistance. Competency in delivery assistance is given to maternity clinic nurses II if there are no health workers authorized to provide delivery assistance. Health services for the community are carried out by health workers. Article 1 point 6 of Law Number 36 Years 2009 states that a health worker is every person who devotes himself to the health sector and has the knowledge and/or skills through education in the health sector which for certain types requires the authority to carry out health efforts.

The Legal Responsibility of The Maternity Nurse in Carrying Out the Act of Breach Delivery

Criminal law provides an understanding that accountability means that every individual who violates the provisions of criminal law is legally obligated to account for the actions he has committed following statutory regulations. So that in another sense every mistake will be criminally responsible following the portion of the error committed. The error must meet three elements, namely:

1. The ability to be responsible means being in good physical health.
2. Is the act a form of intentional (*dolus*) or negligence (*culpa*).
3. There are no excuses or erasers of guilt.<sup>4</sup>

Maternity nurses must carry out their responsibilities following ethics and morals. Maternity nurses in carrying out their practice must be carried out following their authority based on their competence, namely to assist in childbirth but do not have the authority to provide delivery assistance. Article 30 paragraph 1 letter g of the Nursing Law states that nurses are authorized to take action in emergency situations according to their competence. So that when in an emergency situation, maternity nurses are allowed to assist in childbirth. Directly, criminal legal responsibility will be given to the maternity nurse if the action taken is not in an emergency condition and there is a *culpa lata* or a conspicuous error and can result in permanent or non-permanent disability and also death in carrying out the delivery assistance. If during delivery assistance by the maternity nurse is not in an emergency and *culpa lata* occurs, then the criminal responsibility that can be imposed on the maternity nurse refers to the criminal provisions of the Health Personnel Law Article 84(1) Every Health Worker who commits gross negligence resulting in serious injury to the Health Service Recipient shall be sentenced to a maximum imprisonment of 3 (three) years. (2) If the gross negligence as referred to in

paragraph (1) results in death, each Health Worker shall be sentenced to a maximum imprisonment of 5 (five) years. The regulation of medical actions in general in Law No.23/1992 on Health can be seen in article 32 paragraph (4) which states that “the implementation of treatment and or care based on medical science and nursing science can only be carried out by health workers who have the expertise and authority to administer medical care and treatment. that”. These provisions are intended to protect the public from the actions of someone who does not have the expertise and authority to carry out treatment/care so that the consequences that can be detrimental or harmful to the patient’s health can be avoided, especially medical actions that contain risks. The regulation of the authority of health workers in carrying out medical actions is regulated in article 50 of Law No.23/1992 on Health which formulates that “health workers are tasked with organizing or carrying out health activities following the fields of expertise and or authority of the health workers concerned”.

Criminal acts by health workers can occur if, in the practice of health services, every person who is not a health worker or a health worker himself does things as regulated in Article 83 to Article 86 of Law Number 36 of 2014 concerning Health Workers and the types of acts that carried out as follows: 1. Everyone who is not a health worker practices as if he were a licensed health worker; 2. The health worker commits serious negligence which results in the recipient of the health service is seriously injured or dead; 3. Health workers practice without having STR; 4. Health workers of foreign nationals who intentionally provide health services without having a temporary STR; 5. Every health worker who practices without having a permit; 6. Every foreign health worker intentionally provides health services without having a SIP.<sup>5</sup>

Nurses are included in the definition of health workers as referred to in Article 1 point 6 of Law

Number 36 of 2009.<sup>6</sup>The legal review in terms of civil law, in this case, there is an agreement between the maternity nurse and the patient to assist in childbirth so that the legal relationship that arises in the therapeutic transaction between the maternity nurse and the patient can be categorized into a contractual relationship. The contractual relationship arises because there is a meeting of wills between the two. The wills between the two are not the same but are related. According to J. Guwandi, the relationship between health workers and recipients of health services is based on two characteristics, namely the existence of the agreement on the provision of services (consensual) and the existence of trust between service providers and recipients of health services.<sup>7</sup>

The patient expects that the contractual relationship between the pregnant mother and the maternity nurse will go well, but if in the state of the pregnancy process it is known that the presentation of the baby is Breach, the delivery is in a Breach location which is very risky to the health of the mother and fetus so that unexpected events can occur such as the death of the mother and fetus, in this case, the material nurse does not fulfill the agreement.

With the occurrence of default, of course, it will cause harm to the patient, therefore the patient has the right to claim compensation. The patient's right to obtain compensation for the default, in addition to being based on the provisions of the law of engagement, is also based on the provisions of the health law as regulated in Article 58 of Law no. 36 of 2009 concerning Health which stipulates that: "Everyone has the right to claim compensation for someone, a health worker who causes a loss due to an error or negligence in the health service he receives".<sup>8</sup>

The position of the fetus in the uterus depends on the process of adaptation of the fetus to space in the uterus. At approximately 32 weeks of gestation, the amount of amniotic fluid is relatively more, allowing

the fetus to move freely. Thus the fetus can place itself in a head presentation, Breach position, or transverse position. In the last trimester of pregnancy, the fetus grows rapidly and the amount of amniotic fluid is relatively reduced. Because the buttocks with both legs folded are larger than the head, the buttocks are forced to occupy a larger space in the uterine fundus, while the head is in a smaller space in the lower uterine segment.

Thus, it can be understood why in preterm pregnancies, the frequency of breach placement is higher, whereas, in term pregnancies, the fetus is mostly found in cephalic presentation. Other factors that play a role in the occurrence of breach location include multiparity, twin pregnancy, hydramnios, hydrocephalus, placenta previa, and a narrow pelvis. Sometimes the Breach position is caused by uterine abnormalities and uterine deformities. The placenta is located in the area of the uterine fundus cornu can also cause a Breach position because the placenta reduces the space in the fundus area.<sup>9</sup>

Pregnancy in a Breach position will give a poor prognosis in labor because it will increase complications for the mother and fetus. Complications that occur in the fetus cause after coming head, suffocation/aspiration, asphyxia, intracranial trauma, fracture/dislocation, brachial nerve paralysis. Meanwhile, complications that will occur in the mother are bleeding, birth canal trauma, and infection.

In pregnancy and childbirth, the Breach position often occurs with a fatal prognosis, based on the Indonesian doctor's competency standard in 2012, the incidence of Breach presentation is included in level 3 competence, which means level 3 ability is to diagnose, perform early management, and refer to a gynecologist.

If it is associated with the maternity nurse, the nurse can recommend preventing the occurrence of Breach



delivery by providing nursing care during antenatal care before 28 weeks of gestation, nurses can provide counseling to pregnant women that mothers can help change the position of the fetus by doing pregnancy exercises with routine. Pregnancy exercise is effective if it is carried out until 34 weeks of gestation (in the first pregnancy) to 36 weeks (second pregnancy and so on), if at the health service the doctor has given a diagnosis of the location of the breach, the patient must give birth at a health service place that has an obstetrician and has a more adequate equipment.

Article 30 paragraph 1 letter G of the Law of the Republic of Indonesia Number 38 of 2014 states that nurses are authorized to take action in emergency situations according to their competence. Look in the above provisions, concerning delivery assistance by maternity nurses, it can be seen that criminal legal responsibility will be given if the maternity nurse is not in an emergency and there is a culpa lata, criminal responsibility can be imposed on the maternity nurse.<sup>10</sup>

Handling the labor process in women who give birth in a Breach location is to provide delivery assistance using the Brach, classical, Loevset, Muller, and Mauriceau methods. In addition, SectioCaesaria (SC) can also be performed. During pregnancy, you should do routine prenatal care or antenatal care at least 4 times and do ultrasound to determine the state of the fetus.<sup>11</sup>

In the standard nursing code of ethics, several types of nursing ethical violations are described. One form of serious violation which includes taking nursing actions without following procedures so that the patient's suffering gets worse and even dies, giving the wrong medicine so that it is fatal to the patient, leaving the patient in a serious condition or dying without giving help, gambling or drinking alcoholic beverages until he is drunk. in the treatment room, tarnishing the honor of the patient, hitting or

violence on the patient intentionally until physical disability occurs, abusing the patient's medication for personal or group interests, and vilifying or making hoax stories about the nursing profession in other professions in forums, print media, and online media. resulting in lawsuits.<sup>12</sup>

As the competence of maternity nurses, namely to assist in childbirth but do not have the authority to provide delivery assistance, especially in cases with fatal risks that can cause death to the mother and fetus. When referring to the criminal provisions of the Health Personnel Law Article 84 paragraph (1), any Health Personnel who commits gross negligence resulting in serious injury to the Health Service Recipient shall be sentenced to a maximum imprisonment of 3 (three) years. Then in paragraph (2), namely If the gross negligence as referred to in paragraph (1) results in death, each Health Worker shall be sentenced to a maximum imprisonment of 5 (five) years.

Therefore, as regulated in Article 1 number 4 of the Law of the Republic of Indonesia Number 38 of 2014 concerning Nursing, nursing practice can only be authorized to carry out services provided by nurses in the form of nursing care, in the case of a Breach position diagnosed by a doctor, the maternity nurse can only provide nursing care then for the process of continued delivery then through a general practitioner and referred to a gynecologist in order to reduce the risk of maternal and child mortality.

Health workers have an important role in efforts to improve the quality of health services, according to the existing laws and regulations that the health workers in question are doctors, nurses, midwives, pharmacists and others, nurses in carrying out nursing practices in accordance with article 29 number (1) Law of the Republic of Indonesia Number 38 of 2014 concerning nursing, nurses have duties as implementing nursing care, providing counseling and counseling to patients, conducting research in

the field of nursing, and carrying out tasks based on delegation of authority and as executor of tasks in certain circumstances.

Then besides that nurses also have 3 functions, namely, an independent function, namely nurses take actions that are independent, which means that nurses have obtained the authority obtained through law to provide health services in terms of nursing practice, an independent function, namely nurses take collaborative actions with staff. other health services where in this case nurses together with other health workers are jointly responsible for the actions of health services provided to patients, and a dependent function, namely nurses take actions to assist doctors in providing health services in the form of medical actions that should be the authority of doctors, forms of authority This function is obtained through the delegation of authority by the doctor.<sup>13</sup>

### Conclusion

As the competence of maternity nurses, namely to assist in childbirth but do not have the authority to provide delivery assistance, especially in cases with fatal risks that can cause death to the mother and fetus. When referring to the criminal provisions of the Health Personnel Law Article 84 paragraph (1), any Health Personnel who commits gross negligence resulting in serious injury to the Health Service Recipient shall be sentenced to a maximum imprisonment of 3 (three) years. Then in paragraph (2), namely If the gross negligence as referred to in paragraph (1) results in death, each Health Worker shall be sentenced to a maximum imprisonment of 5 (five) years.

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