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# The Dilemma of Midwife Criminal Liability: Distinguishing between Malpractice due to Negligence and Medical Risk in Patient Death

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## Abstract

Midwifery services carry inherent risks, yet adverse outcomes such as maternal and neonatal deaths are often presumed to result from negligence without proper legal assessment, leading to legal uncertainty and potential criminalization of midwives. This study aims to analyze the juridical parameters that differentiate gross negligence from inherent medical risk in midwifery practice. It also examines the boundaries of midwife criminal liability according to Law Number 17 of 2023 concerning Health. The research employed normative legal methods through statute, conceptual, and limited case approaches using secondary data from laws, textbooks, and expert opinions. The findings indicated that midwife liability is based on the principle of fault. Midwives receive full legal protection when they provide services according to their competence, professional standards, standard operating procedures, and with adequate informed consent. Criminal liability only applies when there is proven gross negligence and a clear causal relationship with the patient's death. A clear distinction between gross negligence and medical risk is essential to protect midwives from unnecessary criminal charges while maintaining patient safety and service quality. This balanced approach is expected to reduce defensive medicine and improve midwifery practice in Indonesia.

## Keywords

Criminal Liability, Gross Negligence, Health Law, Medical Risk, Midwife.

## 1. Introduction

Healthcare is a human right and a constitutional right explicitly guaranteed under Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia. In its implementation, midwives play a crucial role as the frontline workers in national efforts to reduce the Maternal Mortality Rate (MMR) and Infant Mortality Rate (IMR). As professionals, midwives must provide care according to professional standards, service standards, and Standard Operating Procedures (SOP) (Hanafiah & Amir, 2008; Amir, 2015). This foundation has been strengthened by Law Number 17 of 2023 concerning Health, which replaced the previous Midwifery Law.

Midwifery services are considered a high-risk area because they deal directly with reproductive health issues involving two lives at once: the mother and the baby. Even though service quality continues to improve, complications and unexpected outcomes can still occur (Robertson & Thomson, 2016; Staunton & Chiarella, 2024). According to Guwandi (2004a), midwifery practice always carries inherent medical risks that cannot be completely eliminated. Bari (2006) also emphasizes that maternal and neonatal care remains one of the most challenging areas in healthcare.

Legal problems often arise when every adverse outcome, especially patient death, is immediately linked to midwife negligence without proper juridical analysis. This tendency creates serious challenges in the legal system. Many cases show that society tends to assume that any maternal or neonatal death must be caused by the midwife's fault. Such assumptions often ignore the element of fault (*schuld*) and the boundaries between gross negligence and unavoidable medical risk (Meln, 1991; Guwandi, 2004b; Anumba, 2021).

Previous studies on healthcare workers' liability have mostly focused on doctors and hospital institutions rather than midwives. According to Sjahdeini (2020), research specifically examining midwives' criminal liability in patient death cases remains very limited. Most existing literature discusses general normative aspects of medical law without deeply exploring the distinction between negligence (*culpa lata*) and inherent medical risks in midwifery practice. This creates a clear research gap between legal norms and their application in real midwifery cases (Machmud, 2012; Haryati & Anggraeni, 2023). The quality of midwifery services must always be maintained according to professional standards to reduce MMR and IMR in Indonesia. Midwives are expected to work based on competence, professional ethics, and applicable regulations to avoid unlawful acts. Notoatmodjo (2010) states that ethical and legal understanding is very important in health services. In line with this, Clarke (2015) highlights that midwives need strong legal knowledge to protect both patients and themselves in daily practice.

This study aims to analyze the juridical parameters that distinguish between gross negligence (*culpa lata*) and unavoidable medical risks in midwifery practice. It also seeks to examine the limits of midwives' legal liability based on Law Number 17 of 2023 concerning Health. Through this research, to provide clearer guidance for distinguishing between punishable negligence and protected medical risk. By addressing this issue, the study is expected to contribute both theoretically to health law scholarship and practically to midwives, professional organizations, and legal practitioners. It is important to establish balanced legal protection between patient rights and the rights of midwives as healthcare professionals. This research seeks to promote legal certainty in midwifery practice while maintaining high standards of maternal and neonatal care.

## 2. Methods

This study is constructed using normative legal research, also known as normative juridical research. This approach focuses on the study of legal rules, principles, and the systematic structure of positive law as the main object of analysis (Soekanto & Mamudji, 2001). It is particularly suitable for examining the boundaries of midwife criminal liability because the research aims to interpret and analyze existing legal norms rather than collecting primary data from the field (Marzuki, 2011). The method allows for a deep understanding of how legal provisions should be applied in midwifery cases involving patient death.

The problem approach used in this study is pluralistic. It combines the statute approach, the conceptual approach, and a limited case approach. Through the statute approach, the researchers analyze key regulations such as Law Number 17 of 2023 concerning Health and the new Criminal Code. The conceptual approach helps in clarifying important legal concepts like gross negligence (*culpa lata*), medical risk, fault (*schuld*), and informed consent. Meanwhile, the limited case approach is employed to support the analysis with relevant examples from court decisions or real midwifery incidents, without turning this into empirical research. This combination of approaches ensures that the study is comprehensive and academically grounded (Amiruddin & Asikin, 2012).

The data sources in this research rely entirely on secondary data obtained through library research. The data collection technique involved inventory, systematization, and a comprehensive study of three layers of legal materials. First, primary legal materials were collected, especially authoritative regulations related to health and midwifery, such as Law Number 17 of 2023 concerning Health. Second, secondary legal materials were used to explain the primary sources. These include health law textbooks, scientific journals, previous court decisions, and expert opinions. Third, tertiary legal materials such as legal dictionaries and encyclopedias were consulted to provide contextual understanding and accurate terminology.

All collected legal materials were then analyzed using qualitative-normative analysis techniques. This technique involves systematizing legal norms, evaluating their consistency, and producing prescriptive legal arguments that can be academically justified. Through this process, the researchers were able to identify the juridical parameters for distinguishing between medical negligence and medical risk, as well as to determine the limits of midwives' legal liability under the current Health Law. The entire research process was conducted carefully to maintain objectivity and relevance to the research questions.

## 3. Results

### 3.1. Juridical Parameters Distinguishing *Culpa Lata* and Medical Risk

In criminal law discourse, negligence or oversight (*culpa*) is a form of fault that can be held legally accountable as long as it fulfills the principle of *geen straf zonder schuld* (no punishment without fault). Legal doctrine classifies negligence into two gradations, namely, slight negligence (*culpa levis*) and gross negligence (*culpa lata*). In Indonesia, the offense of negligence is regulated in Article 359 of the Criminal Code concerning the death of another person, and Article 360 concerning severe injury. According to Soesilo (1991) and Moeljatno (2008), the essence of *culpa lata* is extreme carelessness or recklessness that shows a serious disregard for the safety of others. This principle becomes very important when applied to professional practices such as midwifery.

Gross negligence in midwifery is not merely a minor technical error but demonstrates an extreme disregard for the safety of the mother and fetus. Juridical parameters for identifying *culpa lata* include severe deviation from Standard Operating Procedures (SOP), such as failing to monitor fetal heart rate or maternal

vital signs during critical labor phases. The midwife may consciously ignore actions that should be taken, despite knowing the potential risks (Ilyas, 2012; Hamzah, 2014; Robson et al., 2020). This level of fault is considered intolerable by law and can lead to criminal prosecution. Tomkins (2017) further explains that such gross negligence involves a fundamental failure in professional duty that society cannot accept.

In contrast, medical risk possesses a liberating juridical dimension in midwifery practice. Based on the World Health Organization definition, medical risk refers to inherent complications that may occur during pregnancy and childbirth, even when all procedures follow established standards. Medical risk is an event beyond full human control when healthcare workers have operated according to professional standards and competence (Guwandi, 2004a; Anumba, 2021). If a midwife has provided optimal care but adverse outcomes still occur, the event is considered an unpunishable medical risk. Bari (2006) and Boyle (2024) emphasize that these risks are part of the biological complexity of obstetrics that cannot be completely eliminated.

The concept of medical risk in midwifery services holds a unique clinical and juridical position. Every midwifery action must be performed according to professional standards to minimize these risks while protecting both mother and baby. From a legal perspective, medical risk is closely related to the doctrine of professional liability and informed consent (Notoatmodjo, 2010; Griffith et al., 2010; Clarke, 2015). This concept recognizes that not every bad outcome is caused by human error. McDonald and Then (2019) state that effective communication between midwives and patients helps prevent legal conflicts by building a shared understanding of possible risks.

Informed consent plays a central role in managing medical risk in midwifery. It is not merely an administrative requirement but serves as a legal instrument for risk transfer after patients receive comprehensive information about their condition. Patients who have been properly informed and voluntarily agree to the procedure provide stronger legal protection to midwives when complications arise (Guwandi, 2004b). This doctrine becomes especially important in high-risk obstetric cases. Without adequate informed consent, even minor deviations can more easily be interpreted as negligence. To clearly distinguish between the two concepts, the following table presents the main juridical parameters:

**Table 1.** Juridical Distinction between Medical Risk and Medical Negligence

| Assessment Aspect      | Medical Risk                      | Medical Negligence ( <i>Culpa Lata</i> ) |
|------------------------|-----------------------------------|------------------------------------------|
| Nature of Condition    | Cannot be completely avoided      | Can be avoided with prudence             |
| Professional Standards | Consistent with standards and SOP | Deviation from standards                 |
| Element of Fault       | No element of legal fault         | Clear element of oversight               |
| Liability              | Legal protection for the midwife  | Can be held criminally liable            |

As shown in Table 1, the fundamental difference lies in the presence or absence of fault and compliance with professional standards. This table helps provide a clearer framework for legal analysis in midwifery cases. Prakoso (1987) and Sampurna (2005) have long warned about the difficulty in distinguishing technical errors from true malpractice. Several additional parameters further strengthen the distinction between gross negligence and medical risk. Compliance with professional standards and SOPs remains the primary benchmark in evaluation. In cases of gross negligence, the midwife ignores important protocols, while in medical risk, complications occur despite proper execution of all procedures (Sjahdeini, 2020; Thrakul et al., 2023; Kristianingrum, 2024). Foreseeability and causality analysis are also very important. Oliphant and Wright (2013) highlight that proving a direct

causal relationship between the midwife's action and the patient's death is essential in determining liability.

The duty of care and foreseeability become critical factors in midwifery liability cases. A midwife is expected to anticipate foreseeable risks based on the patient's clinical condition and take appropriate preventive actions. However, when all reasonable anticipations have been made, but the patient's biological condition still leads to complications, such events should be classified as medical risk rather than negligence (Hamzah, 2014). This careful assessment protects midwives from unfair criminalization. Syahrani (2004) stresses the importance of thorough juridical analysis before determining fault in health law cases.

Comprehensive medical documentation and proper referral systems also play a vital role in distinguishing these two concepts. Good documentation serves as strong evidence that the midwife has followed professional standards. When complications arise, complete medical records can clearly show whether the midwife acted according to protocols or not (Sjahdeini, 2020). In addition, timely referral in high-risk cases can prevent the transformation of medical risk into negligence. These elements together create a stronger legal defense for midwives when facing potential criminal charges.

### **3.2. Boundaries of Midwife Legal Liability Based on Law Number 17 of 2023**

In midwifery practice, patient fatalities remain risks that cannot be completely eliminated, especially during obstetric emergencies (Kristianingrum, 2024). The legal system, therefore, does not automatically hold midwives responsible for every adverse outcome. Law Number 17 of 2023 concerning Health provides a stronger and more comprehensive foundation for protecting healthcare workers. This law emphasizes that legal protection is granted when midwives perform their duties according to professional standards and competence. This new regulation marks a significant improvement from previous laws by clearly defining the rights and protections of healthcare professionals. It also aims to create a better balance between patient safety and fair treatment for midwives.

The boundaries of midwife legal liability are clearly determined by several key parameters under the new Health Law. First, midwives must act within their authority and professional competence. Midwives receive full legal protection when they work inside their licensed scope of practice (Machmud, 2012; Staunton & Chiarella, 2024). Performing actions beyond their competence, however, can expose them to legal risk. This principle helps maintain clear professional boundaries in midwifery services. Exceeding authority not only violates regulations but can also lead to serious legal consequences. Therefore, continuous professional training is very important to keep midwives updated with their scope of practice.

Compliance with professional standards and Standard Operating Procedures (SOPs) forms the second important boundary of liability. Full adherence to these standards provides legal immunity even if medical risks materialize (Dewangga et al., 2025). On the other hand, clear deviations from established protocols may lead to findings of negligence. Harahap and Ma (2025) note that this fault-based approach represents significant progress in Indonesian health law. Consistent SOP compliance helps create uniformity in midwifery services across different regions. It also serves as the main reference for expert witnesses when evaluating cases in court.

Informed consent continues to serve as a critical boundary in determining midwife liability. The Health Law strengthens the patient's right to receive complete information before any medical procedure (Guwandi, 2004b). When patients understand and accept the possible risks, this consent offers additional legal protection to the midwife. Proper documentation of informed consent becomes important evidence in potential legal cases. The process of obtaining informed consent should be done carefully and documented thoroughly. Good communication

during this process can significantly reduce misunderstandings that often lead to legal disputes.

The element of fault (*schuld*) remains the core requirement for imposing criminal liability on midwives. Criminal responsibility can only be applied when there is proven gross negligence and a clear causal relationship with the patient's death (Hamzah, 2014). If the death results from unavoidable pathological factors despite proper care, it is categorized as medical risk rather than criminal negligence. This principle protects midwives from being punished for outcomes they could not reasonably prevent. It also encourages a more objective and evidence-based approach in legal proceedings involving healthcare workers.

In practice, several challenges still exist in implementing these legal boundaries. Criminalization of midwives often happens because of insufficient objective assessment using professional standards (Sjahdeini, 2020). Many cases are brought to court without proper expert analysis. Robertson and Thomson (2016) highlight that unclear boundaries can create fear and lead to defensive medicine among midwives. This defensive practice may reduce the quality of care as midwives become overly cautious. Therefore, better education for law enforcement and judges regarding medical realities is urgently needed.

Strengthening medical record documentation and the role of professional organizations is essential to support fair implementation of the law (Sugiarti, 2020; Pizzuti et al., 2025). Complete and accurate records help prove that midwives have followed required procedures (Bailey et al., 2015; Jenkinson et al., 2016). The Indonesian Midwives Association (*Ikatan Bidan Indonesia/IBI*) can play an important role by providing expert testimony in legal cases. Well-maintained documentation not only serves as legal protection but also improves the overall quality of healthcare services. Collaboration between professional organizations and the justice system should be strengthened to achieve more balanced outcomes (Rudes et al., 2014; Cooper & Christens, 2019).

Muhammad et al. (2025) remind us that criminal accountability in reproductive health must be applied with great care to avoid over-criminalization. Law Number 17 of 2023 offers a more balanced approach compared to previous regulations. This law is expected to reduce unnecessary legal pressure on midwives and improve the quality of maternal and neonatal care services in Indonesia. The successful implementation of this law will depend on consistent support from all stakeholders. Future improvements should focus on clearer guidelines and better training for those involved in handling midwifery cases.

#### 4. Conclusion

This study has clarified the dilemma of midwife criminal liability by distinguishing between gross negligence (*culpa lata*) and inherent medical risk in cases of patient death. The findings show that the key difference lies in the presence or absence of fault (*schuld*), compliance with professional standards, and a clear causal relationship between the midwife's actions and the adverse outcome. When midwives act according to their competence, follow standard operating procedures, and obtain proper informed consent, patient fatalities should generally be considered unavoidable medical risks rather than punishable negligence. Law Number 17 of 2023 concerning Health strengthens this distinction by providing fault-based liability and better legal protection for midwives.

The results of this research have important implications for midwifery practice, legal enforcement, and health policy in Indonesia. This study offers practical guidance for judges, investigators, and professional organizations to make more objective decisions in midwifery cases. However, this research is limited to normative analysis and does not include empirical data from real court cases. Future studies should examine actual court decisions involving midwives and explore the

implementation challenges of Law Number 17 of 2023 in various regions. Strengthening collaboration between legal experts and health professionals is also recommended to create fairer and more effective legal protection for midwives while maintaining patient safety.

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The authors declare that there is no conflict of interest.

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### ***Data Disclosure Statement***

The data that support the findings of this study are available from the corresponding author upon reasonable request.



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