



RESEARCH ARTICLE

# Legality of The Use of Water Birth Methods in Childbirth Practices in Indonesia

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## Abstract

Doctors, as one of the main providers of health services to the community, play a very central role because they are directly involved in the provision of health services and the quality of those services. The main foundation for doctors to be able to perform medical procedures on patients is their knowledge, technology, and competence. The decline in public trust in doctors, as well as the increasing number of legal claims filed today, are often associated with failures in the healing efforts undertaken by doctors. These conflicts are triggered by patients' dissatisfaction with doctors in carrying out treatments or practicing their medical profession. In providing care, every doctor must uphold medical ethics, which determine the integrity of this profession. This raises the issue of the legality of using the water birth method in childbirth procedures performed by obstetricians and gynecologists in Indonesia and the role of the Medical Ethics Honorary Council (MKEK) in addressing this issue. The method used in this study is a normative method obtained through library research, supported by data from interviews with the West Jakarta IDI. The research findings indicate that the water birth method is not yet recommended for use in medical practice in Indonesia. Neither the IDI nor the Indonesian Medical College has recognized this method. When an obstetrician-gynecologist uses this method, the doctor in question may be categorized as having violated medical professional discipline and medical ethics. The Medical Ethics Council (MKEK) of the Indonesian Medical Association (IDI) will take action against any doctor found to have violated medical ethics. The enforcement of medical ethics by the MKEK IDI is more of a form of guidance for doctors to better understand and adhere to the code of medical ethics.

**Keyword:** Water Birth, Obstetrician-Gynecologist, Medical Ethics Council.

## Introduction

Health is one of the parameters for measuring the success of human development. Without health, humans will not be productive enough to live a decent economic life and receive a good education. Similarly, without a good economy, humans will not be able to obtain good health services and a good education. Without a good education, humans cannot understand health and obtain a good economy. These three parameters are interrelated and cannot be separated from one another (Siswati, 2015).

Health is one of the human rights and also one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian nation as contained in Pancasila and the 1945 Constitution of the Republic of Indonesia, and explained in Law Number 17 of 2023 concerning Health (Health Law) (Government Regulation of the Republic of Indonesia Number 28 of 2024 Concerning the Implementation Regulations of Law Number 17 of 2023 Concerning Health, 2024). Health itself is defined as a person's state of health, both physically, mentally, and socially, and is not merely limited to the absence of disease to enable them to live productively.

Therefore, in order to provide legal certainty and protection for efforts to improve public health, it is necessary

to discuss health issues through a legal instrument called Health Law (Asyhadie, 2017). Health Law, which has been developed in various parts of the world today, has actually been known since 1800 BC as the Code of Hammurabi and the Code of the Hittites. These codes of ethics later developed into various forms of doctor's oaths, but the most commonly known form is the Hippocratic Oath, which dates back to around 460-370 BC. This oath contains the obligations of doctors in their behavior and attitude, or a kind of code of conduct for doctors (Siswati, 2015).

Health law at that time was not as developed as it is today, because the relationship between doctors/health workers and their patients was paternalistic, with doctors playing a very dominant role. Doctors acted as the decision-makers for all actions taken towards their patients. Whatever the results or consequences of the doctor's actions, they had to be accepted by the patient, as if they were the patient's responsibility. Patients were asked to accept every consequence of the doctor's actions because of the assumption that the doctor had certainly determined and done what was best for the patient (Chazawi, 2017).

The paternalistic relationship pattern, which shows an imbalance between the rights and obligations of doctors and patients, is considered no longer in line with the times. Over the past half-century, legal experts and doctors have begun to develop the idea of basic human rights in the field of health, namely the right to healthcare and the right to self-determination (TROS). These fundamental rights were later accommodated in Article 25 paragraph (1) of the United Nations Universal Declaration of Human Rights 1948.

Based on this thinking, the relationship between doctors and patients has now developed into a partnership. In a partnership, the relationship between doctors and patients is

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balanced. Patients are no longer passive and leave everything to the doctor, but rather there is an active and mutually influential relationship between doctors and patients, which is why it is called a partnership (Wahyuni, 2021).

Doctors, as one of the main providers of health services to the community, have a very central role because they are directly related to the provision of health services and the quality of services provided. The main foundation for doctors to be able to perform medical procedures on patients is their knowledge, technology, and competence. All of this is obtained through education and training (Camellia & Kartika, 2024). Their knowledge must be continuously maintained and improved in line with advances in science and technology.

The decline in public trust in doctors, as well as the rise in lawsuits filed today, is often identified with the failure of doctors' attempts at healing. Conversely, when medical procedures are successful, they are considered excessive, even though doctors, with their knowledge and technology, are only trying to cure, and failure to apply medical science is not always synonymous with failure in action (Prahara, 2020).

The enactment of Law Number 29 of 2004 concerning Medical Practice is expected to provide a legal umbrella for the implementation of medical practice in Indonesia. The existence of Law Number 29 of 2004 is also intended to provide legal certainty and protection for parties involved in the implementation of medical practice.

However, since August 2023, Law Number 29 of 2004 has been revoked and replaced with Law Number 17 of 2023 concerning Health. To date, it is not uncommon to find medical disputes between doctors and patients/patients' families. A medical dispute is a disagreement between the doctor and the patient/client or their family (both referred to as the parties) during or after the doctor-patient/client relationship, which takes the form of a complaint against the doctor to a health facility, the Indonesian Medical Association (IDI), the Medical Ethics Honorary Council (MKEK), the Professional Disciplinary Council (MDP), or other courts. These conflicts are triggered by patient dissatisfaction with the doctor's treatment or practice of medicine. This dissatisfaction is due to allegations of medical errors/negligence in the practice of the profession that cause harm to the patient. This occurs when there is an assumption that the contents of the therapeutic agreement have not been fulfilled/have been violated by the doctor (Iskandar et al., 2024).

In medical practice itself, the following are some of the things that often cause disputes (A&A Law Office, 2022):

1. The content of the information (about the patient's illness) and the chosen alternative therapy is not conveyed completely;
2. When is the information conveyed (by the doctor to the patient), is it before the medical treatment is carried out? Information must be provided (by the doctor to the patient), whether requested or not (by the patient) before therapy is carried out. This is especially true if the information relates to the possibility of extending therapy;
3. Information must be conveyed verbally and completely, and provided honestly and accurately, unless the doctor assesses that conveying the information would be detrimental to the patient. The same applies to information that must be provided to the doctor by the patient;
4. The person entitled to the information is the patient concerned, and the immediate family if, in the doctor's opinion, the information provided would be detrimental to the patient, or if there is an unforeseen

extension of therapy that must be carried out to save the patient's life;

5. The person entitled to provide the information is the attending doctor or another doctor under the guidance of the attending doctor.

These various issues often occur in the practice of medicine today, which ultimately leads to medical disputes between doctors and patients/patients' families. As a result, patients/patients' families complain/sue/report the doctor concerned to seek accountability, whether administratively, civilly, or criminally.

The practice of medicine actually involves multiple aspects, meaning that the practice of medicine in Indonesia as regulated in Law Number 17 of 2023 does not only involve legal aspects, but also ethical and professional disciplinary aspects. These three aspects often arise simultaneously in a medical dispute.

From an ethical perspective, the medical profession, as the main provider of health services, is under the auspices of a professional organization, namely the Indonesian Medical Association (IDI). The IDI is a professional organization for doctors that serves to unite, nurture, and empower doctors in Indonesia (Ikatan Dokter Indonesia, 2012). As a professional organization for doctors, the IDI is responsible for the quality of service provided by Indonesian doctors who are its members. The quality of service referred to is the fulfillment of professional standards, of which ethical standards or codes of ethics are one element. In providing services, every doctor must uphold medical ethics, which determine the nobility of this profession. If medical ethics are no longer upheld by doctors as members of the IDI, then the medical profession can no longer be considered a noble profession (Achadiat, 2006).

One of the IDI organs authorized to autonomously provide guidance, implementation, and supervision of the application of medical ethics to the IDI is the MKEK. The medical ethics referred to refer to the provisions of the Indonesian Medical Code of Ethics (KODEKI) compiled by the IDI (KODEKI PB IDI, 2012).

In addition to ethics, there is also the aspect of professional discipline, which is an instrument for supervising the medical profession in the practice of medicine in Indonesia. Professional discipline for doctors is adherence to the rules and/or provisions for the application of science in the practice of medicine (Article 1 point 1 of Indonesian Medical Council Regulation Number 4 of 2011). This medical professional discipline is regulated in Indonesian Medical Council Regulation Number 4 of 2011 concerning Professional Discipline for Doctors and Dentists. In this case, the MDP is the institution authorized to determine whether a doctor has committed an error in the application of medical science and to impose sanctions.

There is a method of water birth, which is the process of giving birth in water, which has become a popular trend among pregnant women today. This method is believed to reduce the pain experienced by mothers during childbirth. Water birth was first introduced in Europe in the 1970s by countries such as Russia and France. The concept of water birth is based on the theory that babies feel more comfortable swimming after spending nine months in amniotic fluid. Thus, babies can feel more comfortable when entering the new world before they start breathing (Simatupang, 2020).

Water birth has become a common practice in many countries, including the United Kingdom, the United States, Australia, Canada, and New Zealand. This method of giving birth in water is gaining popularity and becoming a trend in the birthing process. According to a report from Water Birth International, this procedure requires the use of a special pool filled with water at a temperature ranging from 95 to 100

degrees Fahrenheit. It is recommended to avoid using bathtubs or small children's pools, as it will be difficult to maintain the correct water temperature (Nutter E, Shaw-Battista J. and Marowitz A., 2014: 350-354)

Every medical action to be taken by a doctor towards a patient must be preceded by obtaining informed consent, either from the patient or the patient's family. Informed consent is given after the patient has received a complete explanation of: (1) the diagnosis and medical procedure; (2) the purpose of the medical procedure; (3) other alternatives and their risks; (4) possible risks and complications; and (5) the prognosis for the procedure (Wahyuni, 2021).

Consent (informed consent) can be given either verbally or in writing. However, any medical procedure that carries a high risk must be given with written consent signed by the person authorized to give consent. However, there are still diverse perceptions among doctors regarding the category of "medical procedures that carry a high risk."

One example found by the author is in the practice of obstetricians and gynecologists (obgyns) (Komalawati & Triswandi, 2022). Obstetrics is a branch of science related to the human reproductive system and, as a result, is always a subject of contemporary relevance.

This specialization promotes the health and well-being of pregnant women and their fetuses through quality perinatal care. Such care requires knowledge and appropriate treatment of complications, supervision of labor and delivery, ensuring care for newborns, and management of the puerperium (Cunningham, 2014).

Furthermore, gynecology is the science of women, a branch of medicine that specifically studies and treats diseases of the female reproductive system (Virginia, 2017). Therefore, an OB-GYN is a medical professional who has undergone specialized training in obstetrics (monitoring pregnancy, childbirth, and caring for pregnant women) and gynecology (caring for the female reproductive organs, including reproductive health issues and the prevention and treatment of diseases) (Cunningham, 2014).

In medical practice, the principle of legality plays an important role. A doctor is required to meet all the requirements that have been set beforehand. This involves completing education according to their level and obtaining a diploma, passing a competency test to obtain a competency certificate, and registering to obtain a Registration Certificate (STR) and Practice License (SIP) in accordance with Law Number 17 of 2023. Therefore, if a doctor practices medicine without a diploma/STR/SIP, their practice is considered illegal. The same applies to hospitals, which must meet the operational permit requirements in accordance with applicable laws and regulations Zabina & Budiarsih, 2024).

When reviewing the legalization of new health methods, the same procedures need to be applied to ensure their legality. This includes rigorous evaluation by competent health authorities to ensure that the methods meet relevant safety, efficacy, and ethical standards before being declared valid for use in medical practice. This process aims to protect patients and ensure that the method provides real benefits in healthcare (Girsang, 2024).

One example of a medical dispute that attracted public attention was a case of malpractice committed by an OB-GYN (Dr. TOS) in Jakarta. This case began on October 22, 2011, when a pregnant patient (MN) had her last consultation regarding her request to give birth using a cesarean section because she was afraid of seeing blood. She consulted the doctor concerned to undergo a new medical procedure in the form of a water birth. The patient (MN) had been a patient of Dr. TOS since the beginning of her first pregnancy, from March 10, 2011, to October 22, 2011, and had undergone nine

routine consultations regarding her first pregnancy (South Jakarta District Court Decision Number: 312/Pdt.G/2014: 2-3).

The doctor then recommended the water birth method because the baby was too small. However, the doctor never explained to the patient the risks and complications that could occur during the water birth process, or whether the method was legally recognized in Indonesia. On September 8, 2011, at 8:30 a.m. Western Indonesian Time, the delivery process took place with the patient continuously being given induction under the tongue. When the patient was already in the water pool, Dr. TOS was not yet at Asri Hospital and was difficult to contact (South Jakarta District Court Decision Number: 312/Pdt.G/2014: 3-5).

In the patient's delivery room, the facilities and preparations for performing medical procedures for water birth were not properly prepared. As a result, many nurses came in and out of the room, and there were even male workers who tried to take tools and water to fill the pool. In fact, because there were no other officers/nurses, the nurse asked the patient's husband, who was accompanying the patient, to guard and operate the water vacuum device. This shows that Asri Hospital did not have clear Standard Operating Procedures (SOPs) (South Jakarta District Court Decision Number: 312/Pdt.G/2014: 5-6).

On November 8, 2011, at 2:15 PM, the patient's baby (female) was successfully delivered weighing 3.45 kg, but did not cry or breathe. However, the pediatrician (Dr. KP), who is the wife of the obstetrician-gynecologist (Dr. TOS) and should have been present to handle the baby immediately after birth, was absent. As a result, the obstetrician-gynecologist handled the baby, and the patient was left alone in the delivery room. The respiratory assistance provided by the pediatric specialist and the OB/GYN to the patient's baby was performed incorrectly, resulting in the baby's death on November 8, 2011, at 11:00 p.m. (South Jakarta District Court Decision Number: 312/Pdt.G/2014: 7-9).

Following the incident, the victim reported the doctor in question to the Indonesian Medical Disciplinary Honorary Council (MKDKI) (now renamed the Professional Disciplinary Council/MDP) under Complaint Register Number 10/P/MKDKI/V/2012, and the MKDKI issued Decision Number 10/P/MKDKI/V/2012 regarding the alleged violation of Indonesian medical discipline based on the patient's complaint report. resulting in the revocation of the doctor's license and his suspension in accordance with KKI Decision Number: 27/KKI/Kep/IX/2013 (South Jakarta District Court Decision Number: 312/Pdt.G/2014: 12-16).

Feeling dissatisfied with the disciplinary sanctions imposed on him, Dr. TOS sued the MKDKI and KKI in the Jakarta Administrative Court with case number: 187/G/2013/PTUN-JKT. On the other hand, the patient (MN) also sued the doctor (Dr. TOS) at the South Jakarta District Court, using MKDKI Decision Number: 10/P/MKDKI/V/2012 and KKI Decision Number: 27/KKI/Kep/IX/2013 as evidence in his lawsuit.

From the description of the case above, it can be seen that the issue being debated is the legality of medical procedures involving water birth in Indonesia. Legality itself is the fulfillment of all previously stipulated requirements. In order to implement a new health method such as water birth, several stages of testing are required to determine whether the method is suitable for use or not.

The legality of a health process/procedure/method is very important considering that medical procedures can have fatal consequences if they are not carried out carefully and have not been tested (whether the method is safe or not). Therefore, it is mandatory for doctors to first obtain medical evidence when discovering/creating a new health method, as

well as to provide information and explanations to patients about everything related to the procedure/method, the actions to be taken, and the possible risks of an action before it is carried out.

The purpose of this study is to analyze the legality of the use of the water birth method in childbirth practices in Indonesia.

## Method

This study uses a normative legal research method (juridical normative) that focuses on the study of positive legal norms applicable in Indonesia. The approach used includes a statute approach, which examines various legal provisions governing medical practice and health services, such as Law No. 17 of 2023 on Health, Indonesian Medical Council Regulations, and ministerial regulations related to childbirth services. In addition, a conceptual approach was used, which utilized legal theories, the principle of legality, the concept of informed consent, and health law doctrine. This study also uses a case approach by examining South Jakarta District Court Decision Number 312/Pdt.G/2014 related to medical disputes over the water birth method as a case study to determine the application of law in practice.

The legal sources used include primary legal materials in the form of legislation and court decisions, secondary legal materials in the form of literature, books, journals, and expert opinions, as well as tertiary legal materials such as legal dictionaries and encyclopedias that provide additional explanations. The collection of legal materials was carried out through library research by searching for relevant legal documents and academic literature (Marzuki, 2014). All legal materials obtained were then analyzed using qualitative legal methods, namely by describing, interpreting, and linking existing legal rules with the theory and practice of water birth, so that conclusions could be drawn regarding the legality of this method in the Indonesian health law system.

## Results and Discussion

The medical profession is considered a noble profession (*officium nobile*), because it carries out the noble task of saving human lives (Triwibowo, 2014). This task is the main mission for every member of the medical profession in practicing medicine around the world. The dignity of the medical profession must be upheld as best as possible. The dignity of the profession must not be damaged/harmed/tainted by the actions of irresponsible individuals. Damage to the image of the medical profession will certainly have an impact on the erosion of public trust in this profession.

One instrument used to maintain the dignity of the medical profession is the professional code of ethics. The IDI, as the professional organization that oversees the medical profession, has a difficult task, because it must ensure that each of its members understands and implements each provision of the professional code of ethics properly and correctly.

One of the obligations in KODEKI that is the concern of the author in conducting this research is the obligation of doctors to apply new methods/technologies in medical practice. The study in this research began with a case that occurred in South Jakarta in 2011, where a doctor applied the water birth method during childbirth. This method has actually been known and applied by doctors in Europe for quite some time, but in Indonesia itself, this method is still relatively new.

This method is claimed to be able to reduce pain in patients during childbirth, thus attracting the curiosity of doctors in Indonesia to learn about it. One of the doctors who studied this method was Dr. TOS, who practiced and was registered as a member of the South Jakarta Branch of the Indonesian Medical Association (IDI).

In 2011, the doctor offered this method to his patient at Sammarie Family Healthcare. The offer was based on the consideration that the patient was carrying a small baby, so water birth was considered a method of delivery that would facilitate the delivery process.

Based on her belief in this recommendation, the patient ultimately agreed to give birth using the water birth method at Asri Hospital, which was one of the places where the doctor in question practiced. However, after the delivery was completed, the patient's baby died. The patient believed that there had been procedural errors committed by the team of doctors and the hospital. Finally, the patient sued the hospital and the doctor concerned in court to hold them accountable for their actions.

During the trial, one of the arguments put forward by the patient was that the use of the water birth method was considered a violation of medical rules/procedures. To explain this, expert witnesses from POGI, the Medical College, and IDI were presented at the trial. All of the experts presented their respective views on the water birth method used by Dr. TOS. Broadly speaking, all experts agreed that the water birth method is not yet recommended for use in childbirth practices.

To clarify this opinion, the research team attempted to hold a hearing with the professional organizations IDI and POGI. From the interviews, it was found that it is true that the water birth method is not yet recommended for use in medical childbirth, even though this method has actually been known for quite some time and has been widely used in Europe. However, considering the considerable risks associated with this method, namely the death of the baby due to respiratory failure while in the water, not to mention the possibility of complications for the mother after childbirth.

The IDI explained that for a new method to be considered legal, it must first be approved by the medical college, which will then follow up by including the method in the learning system (curriculum) at medical faculties. It should also be noted that in the process of obtaining a competency certificate, prospective doctors must meet the Indonesian Doctor Competency Standards (SKDI). The SKDI outlines the competencies that a doctor must have. According to the IDI, the water birth method is not included in the SKDI, so there is no justification for its use in childbirth practices in Indonesia. Another reason is that if the water birth method is to be legalized in Indonesia, there must be in-depth research based on the medical profession's code of ethics. However, to date, there has been insufficient research to prove the feasibility of this method because it carries high risks, which is a major challenge in legalizing it.

Once a method has been approved by the college and included in the curriculum at medical schools, the next step is to submit it to the Indonesian Food and Drug Administration (BPOM) so that the method is considered legal. This is also in line with the provisions of the Indonesian Medical Council Regulation Number 4 of 2011 concerning Professional Discipline for Doctors and Dentists, which prohibits doctors from applying knowledge, skills, or technology that has not been accepted or is outside the scope of proper medical practice (Article 3 paragraph (2) letter m). The term "proper" in this provision is interpreted to mean that the knowledge/skills/technology has been approved/recognized by the College, IDI, and BPOM.

The water birth case provides an important lesson for the development of health law in Indonesia. On the one hand, medical innovation is indeed needed to improve the quality of health services. However, such innovation must go through a strict regulatory mechanism, including clinical trials, feasibility assessments by the Medical College, and recommendations from health authorities such as the Ministry of Health and BPOM. Otherwise, the practice of innovation can endanger patient safety and lead to legal conflicts. For professional organizations such as IDI and POGI, this case emphasizes the urgency of strengthening supervision and developing official guidelines related to medical innovation. Meanwhile, for doctors, this case serves as a reminder that patient consent is not a *carte blanche* to perform medical procedures, as legality and patient safety remain the top priorities. Thus, there needs to be a balance between the spirit of innovation in healthcare and compliance with the law and professional ethics.

### Conclusion

Based on this study, it can be concluded that water birth is a method that is not yet recommended for use in childbirth practices in Indonesia, because water birth is not included in the medical school curriculum. In addition, water birth itself is not included in the SKDI (Indonesian Medical Practice Standards). In other words, water birth is still considered illegal in medical practice in Indonesia. Therefore, every doctor (especially obstetricians and gynecologists) must exercise caution when implementing new methods in medical practice in Indonesia, as the medical profession is closely tied to patient safety and well-being. Patient safety must never be compromised, as this would jeopardize the reputation of the medical profession itself in society.

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