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## LEGAL PROTECTION OF OBSTETRIC AND GYNECOLOGISTS (OBGYN) USING THE HYPNOBIRTHING METHOD

**Saleh Rachmad, Warka Made, Suhartono Slamet, Mangesti Yovita Arie**

Universitas 17 Agustus 1945 Surabaya, Indonesia

\*E-mail: [rayacandi45@yahoo.com](mailto:rayacandi45@yahoo.com)

### ABSTRACT

The absence of rules that mention *hypnobirthing* as a method of treatment performed by ob-gyn doctors causes legal uncertainty which has implications for ob-gyn doctors' legal protection. It is necessary to add a new norm in the Medical Practice Act regarding the obligation to practice medicine with the consent of medical action, including consent to do *hypnobirthing*. Guidance and supervision is also needed for licensing hypnobirthing practices and certification of the competence of Obgyn doctors who carry out *hypnobirthing*. This aims to provide legal protection not only for obgyn doctors but also for patients.

### KEY WORDS

Legal protection, hypnobirthing method, medical service, hypnosis.

This basic principle is reaffirmed in Article 2 concerning the principles underlying Law Number 36 of 2009 concerning Health, which is formulated: "Health development is carried out on the principles of humanity, balance, benefits, protection, respect for rights and obligations, justice, gender and non-discrimination," and religious norms".

Hypnobirthing is the use of hypnosis for a natural, smooth natural birth process. Pregnant women enter deep relaxation and do it in a conscious state. Besides being useful for reducing pain and expediting the delivery process. Hypnobirthing or the use of hypnosis during pregnancy can prevent emotional disturbances both before and after delivery.[1]

Minister of Health Regulation Number 37 of 2017 concerning Integrated Traditional Health Services, as treatment that is given rationally by increasing self-healing abilities, and based on Minister of Health Regulation Number 15 year 2018 concerning Implementation Complementary Traditional Health Services (Permenkes 15/2018 ), in the classification of treatment with thought techniques. However, it is not explained whether hypnobirthing can be categorized as medicine as regulated in the Minister of Health Regulation. This uncertainty will have implications for legal protection and also for ob-gyn doctors who perform hypnobirthing.

This research is a normative legal research [1]. This study analyzes the problem with formulation: how are Legal Protection of Obstetricians and Gynecologists (Obgyn) in using *hypnobirthing* method?

There is no positive Indonesian law that explicitly formulates Hypnobirthing until time this legal research was conducted (vacuum of law).[3] However, based on interpretation, the interest of legality using hypnobirthing method, there are several Minister of Health Regulations that can be used as a reference, namely: Minister Health Regulation Number 37 year 2017 concerning Integrated Traditional Health Services (Permenkes 37/2017), and Regulation Minister Health Number 15 year 2018 concerning Implementation Complementary Traditional Health Services (Permenkes 15/2018).

### **Regulation Minister of Health Number 37 year 2017 concerning Integrated Traditional Health Services (Permenkes 37/2017)**

This Permenkes does not explicitly mention *hypnobirthing*. The legality of using *hypnobirthing* is based on interpretation. Article 1 paragraph (1) mentions Integration Traditional Health Services as a form of health service that combines complementary traditional health services, both complementary and substitute in certain circumstances.

Characteristics of Integration Traditional Health Services is carried out with the following procedures: holistic approach by examining the physical, mental, spiritual, social, and cultural dimensions of the patient; using relationships with effective communication between health workers and patients; given rationally; performed with consent of patient; prefer a natural approach; enhance self-healing abilities; individualized therapy.

The character of the treatment which has the characteristic of "*increasing self-healing abilities*" is similar to the *hypnobirthing* method which provides body and mind intervention so that obstetrician patients are expected to be able to use it independently (*self-healing*), to carry out self-healing. [4]

In article 11, it is regulated about the flow of patient services that must first register conventional treatment and get an examination and diagnosis from the Doctor in Charge of Service (DPJP).

To organize hypnobirthing at the health center, ob-gyn doctors must first obtain a recommendation from team formed by head district/city office.

### **Regulation Minister of Health Number 15 year 2018 concerning Implementation of Complementary Traditional Health Services (Permenkes 15/2018)**

Permenkes 15/2018 uses term Complementary Traditional Health Services, which are application of traditional health that utilizes biomedical and biocultural sciences in its explanation and has scientifically proven benefits and safety. In Article 5 paragraph (2) Minister of Health 15/2018, it is stated that concept of traditional health services includes:

- Existence individual health problems caused by an imbalance of physical, mental, spiritual, social and cultural elements;
- Humans have the ability to adapt and heal themselves (self-healing);
- Health is carried out using a holistic (comprehensive) and natural approach that aims to re-balance adaptation abilities with causes of health problems.

Forms of Complementary Traditional Health Services are classified into services with manual techniques, energy techniques, thought processing techniques (Article 6 Permenkes 15/2018). *Hypnobirthing*, which basically uses *hypnotherapy-based* thought processing techniques, is assumed to be included in Complementary Traditional Services.

If in Permenkes 37/2017 integrated traditional services are provided to hospitals and health centers, in Permenkes 15/2018 there is Griya Sehat, as one of the facilities for providing complementary traditional medicine.

The requirement to practice Complementary Traditional Health Workers is to have a Traditional Health Worker Registration Certificate (STRTKT) as proof of written authority to provide parliamentary traditional health services. This provision is used as a reason for legality of hypnobirthing carried out by ob-gyn doctors.

Guidance and supervision is carried out by District/City Health Office. Article 46 stipulates the types of administrative sanctions in the form of verbal and written warnings up to the revocation of STRTKT and SIPTKT and revocation of operating permits. This guidance and supervision is in line with the provisions in Article 50 letter (a) of Law Number 29 of 2004 concerning Medical Practice, "doctors or dentists in carrying out medical practices have the right to obtain legal protection as long as carrying out their duties in accordance with professional standards and standard operating procedures". This protection is also given to doctors who perform *hypnobirthing* as an integrated complementary medicine.

### **The Concept of Legal Protection for Obstetricians and Gynecologists Using the Hypnobirthing Method**

Legal protection for ob-gyn doctors who use the hypnobirthing method can be in the form of preventive legal protection and repressive legal protection.[5],[6] Preventive legal protection through applicable regulations. Rules in positive law should be formulated clearly, with imperative power, so as to provide legal certainty. Referring to the 8 legal principles in Lon Fuller's Morality of Law, that: A legal system consisting of regulations, not based on heretical decisions for these matters, These regulations are announced to the public, Not retroactive, because it will damage system integrity, Made in a formula that is generally

understood, There must be no conflicting regulations, Must not demand an action that exceeds what must be done, Must not be changed frequently, must be in conformity with daily implementing regulations.[7] So we need hypnobirthing rules that are easy to understand in general and in accordance with the conditions of daily implementation added a new norm in the Medical Practice Act regarding the obligation to practice medicine with the consent of medical action, including the approval of action on the latest methods of body and mind intervention.[8] Guidance and supervision is also needed for licensing hypnobirthing practices and certification of the competence of Obgyn doctors who carry out hypnobirthing. This aims to protect patients and doctors in the implementation of medical practice.

Various studies in the world of medicine have provided evidence that hypnotherapy has various benefits if implemented as a complementary action to main medical action. Among them, research from doctors at Harvard states that hypnosis is one of the most acceptable and effective healing practices for controlling all psychosomatic disorders and the results of recent studies have proven that hypnosis can induce relaxation in heart disease patients and has measurable therapeutic value so that Hypnosis therapy in America is considered a complementary medicine therapy.[9]

*Hypnobirthing* in practice is manipulating thoughts or false memories related to second indicator in category of crime, namely the existence of deviant medical treatment. The *hypnotherapy* action is expected to provide healing to the patient but if giving of suggestions has the effect of manipulating the patient's mind then this action is said to be a deviant medical treatment because it has an impact on the patient's psyche and mind. Specifically for medical profession, medical professional standards, health service standards, and standard operating procedures must receive more serious attention.[10]

Repressive legal protection through non-litigation or litigation settlement of cases. Repressive legal protection is legal protection given when the *hypnobirthing* method is carried out.

The Health Law implicitly emphasizes that need for quality medical records is proof the implementation of quality medical/health services.[11] According to Ministry Health of Republic Indonesia, medical records are good written/recorded information about patient identity, anamnesis, physical determinations, laboratories, diagnoses of all services and actions provided to patients and treatment both in outpatient, inpatient and emergency care emergency.

The medical record is a record that contains all data about the patient starting from the period before it was carried out, at birth, growing into adulthood until the end of his life. [12] This data is generated when a patient visits a health care institution either as an outpatient or inpatient. Medical records are facts related to the patient's condition, past and current medical history and treatment written by the health professional who provides services to the patient.[13]

The latest regulations regarding medical records are contained in Permenkes 24 of 2022 concerning medical records. This Permenkes was stipulated with the consideration that the development of digital technology in society has resulted in the transformation of digitization of health services so that medical records need to be stored electronically with principles in security and confidentiality of data and information. Regulation Minister of Health Number 269/MENKES/PER/III/2008 concerning Medical Records is no longer in line with developments in science and technology, the need for health services, and the legal needs of society, so it needs to be replaced.

*Hypnobirthing* carried out by doctors is only carried out after obtaining informed consent. The occurrence of an agreement *Hypnobirthing* action must contain the terms in validity agreement, namely article 1320 of the Civil Code concerning the terms of the validity of the agreement, namely the agreement of those who bind themselves, legal competence, a certain matter, and a reason that is allowed.

Agreement *Hypnobirthing* action must have an agreement between the two parties, namely the doctor and patient. With this agreement, there are rights and obligations of each party, namely the doctor and the patient. *Hypnobirthing* in the hospital. The implementation rights and obligations of doctors and patients is regulated in Based on Law Number 29 of

2004 concerning Medical Practice Article 50 and Article 51 the rights and obligations of doctors.

In the context of the doctor's right to use the hypnobirthing method, the doctor has the right to obtain legal protection as long as it is carried out in accordance with professional standards and standard operating procedures, obtains complete and honest information from patients and their families, and receives compensation for services. Obligations of ob-gyn doctors who carry out the hypnobirthing method include providing medical services according to professional standards and operational standards as well as medical needs refer patients to doctors/other health facilities who have better abilities. The doctor is also obliged to keep everything he knows about the patient confidential. If an emergency occurs, especially one that threatens the patient's safety, the doctor who performs hypnobirthing is obliged to provide emergency assistance, unless he is sure that someone else is capable of doing so. Ob-gyn doctors are obliged to follow development of science and technology, including the development of hypnobirthing method.

The Regulation of the Minister of Health on Medical Records stipulates that: Medical records are documents that contain patient identity data, examinations, treatment, actions and other services that have been provided to patients. Because currently many medical services take place in the form of telemedicine and electronic-based patient data, the Permenkes also regulates electronic medical records. *Hypnobirthing* which is done using virtual media is also subject to this [14].

In malpractice cases, the element of negligence is the theoretical basis for criminal responsibility, negligence is considered a *conduct which fails below the standard established by the law for the protection of others against in reasonable risk of harm*. [15] Thus based on criminal law, the elements that must be proven in use of hypnobirthing method are:

- *Duty of care*. A doctor is obliged to provide professional services (*with reasonable care and skill*) to patients. This obligation has immediately occurred as soon as a doctor gives an indication that he is willing to examine and serve patients. The *duty of care* is a social contract from a doctor to a patient whose basis is causality, even so a doctor's social contract can be seen when he takes the doctor's oath. To determine the extent to which the principle of *duty of care* is considered by doctors or cannot be measured by referring to the *culpa lata*.
- *Breach of Duty*. If a doctor deviates from what should be done from the standards in medical profession and competency standards, then the doctor can be blamed here in a broad sense, meaning that not every deviation can be subject to lawsuits because in the world of medicine this is not mathematical, of course the soul of a doctor is different in treat every disease but that does not mean that the doctor can deviate from the habit so this element explains that a doctor performs *culpa lata* and *culpa levis* against the service standards that must be carried out.
- *There are Harm and Damages*. To determine this element, it is necessary to prove a causal relationship which is cause in facts or proximate cause. This element is important to prove to determine unlawful nature of the act as one of the elements of a crime.

Disputes due to hypnobirthing services which basically occur in the realm of health services involving doctors, hospitals and patients. There is a lot that needs to be addressed in the context of resolving disputes over the use of hypnobirthing. Especially with regard to the doctor-hospital-patient relationship.

Hospitals as regulated in Law Number 44 year 2009 concerning health, in article 46 it is stated that hospitals compensate for losses caused by negligence of health workers. This reflects that legal protection works in two directions, protection for obgyn doctors and protection for patients.

## CONCLUSION

The absence of rules that mention *hypnobirthing* as a method of treatment performed by ob-gyn doctors causes legal uncertainty which has implications for ob-gyn doctors' legal

protection. It is necessary to add a new norm in the Medical Practice Act regarding the obligation to practice medicine with the consent of medical action, including consent to do *hypnobirthing*. Guidance and supervision is also needed for licensing hypnobirthing practices and certification of the competence of Obgyn doctors who carry out *hypnobirthing*. This aims to provide legal protection not only for obgyn doctors but also for patients.

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