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Legal Protection Policy for Obstetricians-Gynecologists in Cases of Maternal, Perinatal, and Neonatal Mortality

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Abstract

Introduction to The Problem: Obstetrician-gynecologists (OB-GYNs) must be observant in diagnosing diseases suffered by patients. OB-GYNs who act based on their knowledge can certainly not be blamed if their actions are already according to the procedures. Legal policies protect OB-GYNs in the case of a patient's death.
Purpose/Objective Study: This article aims to analyze the legal protection for OB-GYNs in cases of maternal, perinatal, and neonatal mortalities.
Design/Methodology/Approach: This research was a field research with juridical-sociological method conducted in 2021. The researchers conducted interviews with four informants who experienced maternal, perinatal, or neonatal emergencies.
Findings: Conditions with a high risk of maternal, perinatal, and neonatal deaths are handled by OB-GYNs. OB-GYNs must be proficient in the standards for obstetric and neonatal emergencies. OB-GYNs who have correctly followed the processes but experienced an accident also have the right to legal protection. In providing health services, OB-GYNs do not only examine the patients, but they also make efforts to recover the patient through treatments. In health law, such efforts of recovery are known as the Therapeutic Agreement. The relationship between obstetricians and patients is bound to a therapeutic transaction. OB-GYNs have the legal obligation to make improvements in their efforts and expertise in healing patients. Legal regulations stipulated in the Indonesian Civil Law are still too general. There was one case involving dr DASP SpOG and dr HS SpOG, who were sentenced with 10 months in prison because they violated article 39 of the Indonesian Criminal Code because their patient died during the treatment. This case caused unrest among the OB-GYNs.

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Therefore, there needs to be a law that regulates the relationship between OB-GYNs and their patients. In terms of human rights in Indonesia, this particular healthcare issue is regulated in Law Number 36 of 2009 regarding Health (Indonesian Health Act). Chapter III Article 1 clause (1) and (4) specifically regulate the patients' rights. The legal and ethical responsibilities in health services observe how far the obstetricians' actions have legal implications in cases of errors or negligence in providing health treatments.
Paper Type: Research Article
Keywords: OB-GYN; Maternal Mortality; Neonatal Mortality; Perinatal Mortality; Legal Protection

Introduction

Obstetrician-gynecologists (OB-GYNs) must diagnosing diseases suffered by patients. Accuracy and observance are essential to detect the be observant in diseases people are suffering from, despite the risk of misdiagnosis. Experienced OB-GYNs might misdiagnose the diseases suffered by patients by being too hasty during assessment; thus, endangering both mothers and their babies during labor. This can negatively affects patients and may even cause death (Vincent et all., 1994).

According to the Indonesian Medical Council (Konsil Kedokteran Indonesia), the authority of OB-GYNs is to provide comprehensive and plenary health services for women related to reproduction health during nonpregnancy, pregnancy or childbirth. Both are preventive (prevention of disease), curative (healing disease) and rehabilitative (improvement of abnormalities that arise) on their reproductive organs. This council authority is based on Law Number 29 of 2004 regarding Medical Practice (Indonesian Medical Practice Act) (Pramudito & Wijaya, 2022)

OB-GYNs who acted based on their knowledge can certainly not be blamed if their actions were in accordance with the procedures. A patient's family will also come to terms with the death of their family member. Even if the patient died, the family usually will not take legal action if the doctors have acted under the procedures. The family will most likely accept the condition of the patient who was scientifically diagnosed because they believe that it was probably inevitable for the patient to pass way.

Legal policies will protect OB-GYNs in the case of a patient's death. Transparency between OB-GYNs and patients is crucial. On one hand, patients have the right to obtain the clearest information possible. On the other hand, OB-GYNs also have the right to gain the patients' trust to undergo medical actions without anyone experiencing negative effects (FIGO Committee, 2012).

This research focuses on the death of the fetus in the womb (stillbirth). The mother's pregnancy process and issues associated with the pregnancy may cause stillborn babies. In the medical field, the deaths of mothers or children are referred to as maternal, perinatal, and neonatal deaths.

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The maternal mortality rate is the annual number of maternal deaths from any cause related to or aggravated by the pregnancy or its management (excluding accidental or incidental causes) during pregnancy, childbirth, or within 42 days of termination, regardless of the length of the pregnancy or where it was conceived (World Health Organization, 2022). The perinatal mortality rate is calculated by dividing the number of pregnancies with a duration of seven or more months (all live births plus stillbirths) by the number of perinatal deaths (stillbirths and early neonatal deaths) (Legu, Debiso, & Rodamo, 2021). A neonate or a newborn is a child who is less than four weeks old. The neonatal period is the initial 4 weeks of a youngster's life (Medline Plus, 2022).

Maternal, perinatal, and neonatal deaths must be audited using what is called the maternal audit. This is carried out in every case of maternal death or illness during the pregnancy, labor, and post-partum stages. It also concerns neonates (Muliarini, 2019). The maternal perinatal audit is carried out through a profound qualitative investigation of the causes and situations of maternal and perinatal mortalities. The maternal perinatal audit or data collection is organized by teams at the city/regency and provincial levels. It functions to increase and maintain the health service quality for mothers and children (Suwanti, Wahyuni, & Rahayu, 2013).

The death of mothers (maternal mortality) and the death of babies (perinatal, neonatal mortalities) during labor shall receive legal protection. This legal protection is especially crucial for mothers who gave birth successfully and those who gave birth and died. Legal protection is provided in the form of a maternal audit for cases of maternal, perinatal, and neonatal mortalities during labor. The audit functions to determine the causes of death, whether it is caused by unwanted events or due to the negligence or malpractice of medical providers, including obstetricians, gynecologists, general practitioners, nurses, and/or other health workers (Fahmi, 2017).

According to the Indonesian Health Profile, there is generally a decreasing trend of maternal deaths from 1991 to 2015, from 390 to 305 deaths per 100.000 live births. Unfortunately, the lowering rate of maternal deaths did not succeed in achieving the target of the Millennium Development Goals (MDGs), namely 102 deaths per 100.000 live births. In 2030, the target of the Sustainable Development Goals (SDGs) is to drop the maternal mortality ratio to less than 70 deaths per 100.000 live births. Based on the data from the Ministry of Health's Family Health Program in 2020, it was shown that there were 4.627 maternal deaths in Indonesia. This rate showed an increase from 2019 when there were 4.221 cases of maternal death. This means that there was a great increase during the pandemic which started in March 2020 in Indonesia. Most of the maternal deaths in 2020 were caused by bleeding (1.330 cases), hypertension during pregnancy (1.110 cases), as well as circulatory system disorders (230 cases). Similar to the rate of maternal mortality, the decreasing rate of neonatal mortality failed to reach the MDG target in 2015 (which was 23 deaths) and the SDG target in

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2030 (which is 12 deaths). During the Covid-19 pandemic, the rate of maternal and neonatal mortalities steeply increased.

The rate of maternal mortality increased from 300 cases in 2019 to around 4.400 deaths in 2020. Then, the rate of neonatal mortality in 2019 was around 26.000 cases, increasing by almost 40 percent to 44.000 deaths in 2020. The maternal mortality rate in Riau Islands Province, Indonesia, in 2018 was around 120 deaths per 100.000 live births. This was an improvement compared to the maternal mortality rate in 2017, where there were 127 deaths per 100.000 live births. The cases of maternal deaths also increased from 54 cases in 2017 to 51 cases in 2018. The number of neonatal mortalities in 2018 decreased from the previous year, from 329 to 299 cases of neonatal death. According to the report from health service facilities, especially hospitals, as well as through the Maternal Perinatal Auditing activity, it was releaved that the maternal mortality rate was 105/100.000 live births. This rate increased from the situation in 2016 when there were 97/100.000 live births. In 2017, there was a slight increase from 4.5 to 5.7 per 1.000 live births (Suci & Laga, 2022).

Cases of maternal, perinatal, and neonatal mortalities in the labor process are legal issues where the law must protect all parties. OB-GYNs who have carried out medical actions according to procedures and who were then faced with legal issues may refrain from helping the labor process in medical cases with risks of maternal, perinatal, and neonatal mortalities (Dranove & Watanabe, 2010). Based on the issues above, the research problem is: How do OB-GYNs handle maternal, perinatal and neonatal cases and how is the legal protection for OB-GYNs in cases of maternal, perinatal, and neonatal mortalities and its consequence in criminal law?

Methodology

This was a field research with juridical-sociological method (Wardiono & Dimyati, 2004). It was conducted in 2021. This was a qualitative research, where the data were obtained from interviewing post-partum women, OB-GYNs, family members of the post-partum women, and health service providers.

In this research the collected data were then analyzed using the legal and health perspectives. The authors used secondary data, including ethical codes of OB-GYNs and patients as well as the associated health laws.

Results and Discussion

OB-GYNs' Handling of Maternal, Perinatal and Neonatal Cases and its Consequence in Criminal Law

A baby's birth is highly expected by every pregnant woman. All pregnant women certainly desire normal birth. In reality, not all mothers can give birth normally, due to emergency conditions during pregnancy or labor. Conditions with a high risk of maternal, perinatal, and neonatal deaths will be handled by OB-GYNs, starting from

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the womb examination up to the giving birth process. Midwives will usually refer these pregnant women to OB-GYNs from the examination at the end of the pregnancy up to the process of giving birth (Shojai et all., 2012).

OB-GYNs must be proficient with the following standards for obstetric and neonatal emergency handling as part of the core competencies:

1. The standard for handling bleeding during pregnancy in the third trimester OB-GYNs must accurately identify the signs and symptoms of bleeding during pregnancy. They must undergo first aid before the final treatment. This standard aims to quickly and accurately identify and apply correct treatments in dealing with bleeding. With skills that adhere to this standard, it is hoped that OB-GYNs may aid mothers suffering from bleeding during third-trimester pregnancies. This aims to prevent maternal, perinatal, and neonatal deaths due to bleeding during pregnancy in the third trimester. OB-GYNs may also act as consultants for pregnant women with such risks (Geraghty, Alberdi, & O'Sullivan, 2017).
2. Handling emergencies on eclampsia
   OB-GYNs must accurately identify the symptoms of threatening eclampsia. They must provide first aid before the final treatment. The application of this standard aims to identify the signs and symptoms of severe pre-eclampsia and provide accurate and adequate treatment. OB-GYNs must administer quick and correct treatment in handling emergency conditions in the case of eclampsia. This aims to decrease the cases of eclampsia. It is expected that pregnant women with severe pre-eclampsia and eclampsia will receive the quick and correct treatment. Mothers with symptoms of light eclampsia should receive the correct treatment. The decrease in illnesses and death due to eclampsia is the aim of accurate diagnosis and handling by OB-GYNs (Imelda & Putriana, 2017).
3. Handling emergencies due to prolonged labor/failure to progress
   OB-GYNs must accurately identify the symptoms of prolonged labor/failure to progress as well as undergo the correct treatment with the available medical instruments. They must be punctual in undergoing measured medical efforts for safe labor. This aims to quickly understand the emergency condition of prolonged labor and to provide accurate treatment. The expected result is to acquire early identification of the symptoms of prolonged labor and provide the correct treatment. There must be an accurate and careful use of pathography for women in labor. This can decrease the rate of maternal, perinatal, and neonatal pain or deaths due to prolonged labor.
4. Childbirth using vacuum extraction.
   OB-GYNs must identify the correct condition and time when vacuum extractions are required. They must practice this correctly. They must provide childbirth aid by making sure of the mother's and the fetus's safety. The usage of a vacuum aims to speed the labor process in certain conditions if this treatment is believed can effectively accelerate the birth process and provides safety according to the diagnosis. The expected result is a decrease in illnesses and deaths due to

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prolonged labor. A quick emergency obstetric treatment from OB-GYNs may save the lives of mothers (Andromeda, Santoso, & Hernayanti, 2019).

5. Placental retention emergency treatment
   OB-GYNs must be able to identify placental retention and provide first and or final aid, including manual placenta and treating bleeding, according to the needs of the woman in labor. The goal is to identify and undergo the right treatments in the case of placental retention. The expected result is a decrease in placental retention cases. Mothers with placental retention should receive the quick and correct treatment. The number of mothers saved from placental retention will increase if OB-GYNs are able to accurately predict and diagnose this as a consideration for undergoing medical treatment (Budiman & Mayasari, 2017).
6. Handling primary postpartum bleeding
   OB-GYNs must be able to identify excessive bleeding during the first 24 hours of post-partum and immediately provide emergency first aid to control the bleeding. The objective is to make sure that OB-GYNs are able to perform correct emergency aid actions for mothers who suffer from primary postpartum bleeding/uterine atony. The expected results are a decrease in illnesses and deaths due to primary postpartum bleeding with accurate and suitable obstetrician services (Elmeida & Mirah, 2014).
7. Handling secondary postpartum bleeding
   OB-GYNs must be able to correctly identify the symptoms of secondary postpartum bleeding at an early stage. They must be able to perform first and or final aid to save the lives of the mother and the fetus. The goal is to determine the symptoms and signs of secondary postpartum bleeding as well as to provide the correct treatment to save the mother's life. The desired result is a decrease in deaths and illnesses due to secondary postpartum bleeding. Mothers with the risks of experiencing secondary postpartum bleeding must be discovered at an early stage. They must immediately be treated by OB-GYNs (Azza, 2011)
8. Handling puerperal sepsis
   OB-GYNs must be able to correctly handle the signs and symptoms of puerperal sepsis. They must perform treatment by immediately referring the patient. The aim is to identify the symptoms and signs of puerperal sepsis and execute the right actions. The desired result is that mothers with puerperal sepsis will receive accurate and immediate treatment. It is hoped that the rate of deaths and illnesses due to puerperal sepsis both during labor and post-partum stages will decrease (Subroto & Loehoeri, 2003)
9. Handling neonatal asphyxia
   OB-GYNs must correctly identify neonates with asphyxia. They have to take immediate action, starting from resuscitation, undertake medical treatment in emergency cases outside of health facilities, correctly handle neonates impacted, and provide accurate further treatment. The objective is to correctly identify neonates with asphyxia, perform correct actions, and provide emergency aid.
10. Handling cases with HIV-AIDS

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> OB-GYNs should handle with care patients with HIV-AIDS and prepare adequate equipment and enough information prior the process. A case like this should not be handled by midwives because midwives do not have enough competence to handle such case (Sulaeman et al, 2021).

The researchers conducted interviews with three mothers who experienced obstetric/maternal emergencies (that threatened the mother's life) or whose neonates experienced emergencies. Data showed that in 2019, Mrs. YKN suffered from a maternal emergency. Then, Mrs. AR experienced a perinatal emergency in 2020. The authors failed to find sources that experienced maternal, perinatal, or neonatal emergencies in 2018. But the researchers found a source that experienced a neonatal emergency in 2019.

Based on the interviews conducted by the researchers with Mrs. YKN, it was found that in 2019, her baby did not die during labor. However, due to a sub optimum health condition, there were no fetal heart tones since the second week of pregnancy, but it was only discovered when the pregnancy was four months old, almost reaching five months. It was discovered when Mrs. YKN underwent a pregnancy examination. She already suspected that there was a problem as her belly did not get any larger and the baby did not move in the womb. During the examination, the OB-GYN said that the fetal heart tones were undetectable and that the baby had died in the womb. In the end, Mrs. YKN had to do a curettage to get her baby out and stayed at Ponorogo Hospital, East Java Province, for only one day's treatment (YKN, personal communication, in Sambit District, Ponorogo Regency, East Java, Indonesia, July 28th, 2022). This emergency was called a maternal emergency.

Subsequently, from the start of the pregnancy up to the ninth month, Mrs. AR did not experience any maternal emergencies or pregnancy issues. She routinely underwent monthly pregnancy examinations. When her pregnancy reached the due date, she was brought to the hospital. Before labor, her amniotic fluid has already broken. Apart from that, the baby was in a breech presentation and experienced a cord accident. The midwife was afraid to assist the labor as Mrs. AR was experiencing a maternal emergency. Consequently, she must be aided by an OB-GYN. The OB-GYN arrived after an hour and Mrs. AR was treated for 16 days in a Ponorogo hospital (AR, personal communication, in Mlilir District, Madiun Regency, East Java, Indonesia, August 4th, 2022).

Due to a lack of development, Mrs. AR transferred to a Madiun hospital, in East Java Province, of her own accord. The health providers in the Madiun hospital said, "Why are you only referred to now? Your condition is already bad." The Madiun hospital healthcare providers failed to handle this due to a lack of adequate instruments to undergo surgery. She stayed in that hospital for six days. She was referred to a Surabaya hospital, in East Java Province, where she stayed for three days. But she was

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treated by medical obstetric students as opposed to obstetricians with a specialization in children.

The next day, she received a transfusion whilst waiting for her condition to improve for surgery. Unfortunately, her condition worsened. When the long needle was injected, the baby did not cry. Therefore, the medical providers took action by performing an electric shock, checking the heartbeat, etc. eventually, the baby died. The baby only survived for 25 days. This was called a perinatal emergency.

Mrs. STA routinely underwent pregnancy examinations from the start of her pregnancy up to the ninth month. There was no abnormality in the pregnancy, nor were there pregnancy emergencies. The obstetrician stated that there was no issue with her pregnancy. When she experienced contractions, her family brought her to the hospital to give birth. When she arrived at the hospital, she started to feel contractions. After a two-hour contraction, her OB-GYN arrived. Mrs. STA's amniotic fluid unknowingly broke, but she didn't know what it was.

The labor process went on for two hours. The OB-GYN diagnosed her as experiencing meconium aspiration and the amniotic fluid has started to leak. She succeeded in giving birth and the baby cried. After birth, the baby was in perfect condition. Even the baby's weight was three and a half kilograms. A few hours after birth, Mrs. STA's baby died. Mrs. STA was prohibited from going home after giving birth. She had to receive recovery treatment for three days. After that, she went home. This situation was a neonatal emergency (STA, personal communication, in Badegan District, Ponorogo Regency, East Java, Indonesia, August 14th, 2022).

A different case was experienced by Mrs. WV. She suffered from an infection that had spread all over her body. She suffered from post-partum puerperal sepsis due to unhygienic water and sanitary conditions at her home after birth. Mrs. WV was referred to another hospital and was handled by the same OB-GYN that treated her during labor. She was treated for six days. After that, her condition worsened and, in the end, she died. The family sincerely accepted Mrs. WV's death. They regarded this as a calamity and did not legally sue the hospital. According to the audit, there was already informed consent between Mrs. WV and the obstetrician concerning the conducted procedures. The procedures included antibiotic administration due to the infection of puerperal sepsis. Based on the diagnosis, this infection was caused by the streptococcus bacteria. Such procedures have already followed the health standard. This was a case of maternal mortality, as a mother experienced an unwanted accident that resulted in her death (WV, personal communication, in Dolopo District, Madiun Regency, East Java, Indonesia, August 26th, 2022).

The four informants experienced maternal, perinatal, or neonatal emergencies. An emergency is an unexpected event that suddenly happened; It is often a life-threatening situation. There are maternal, perinatal, and neonatal emergencies.

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Mrs. YKN experienced an obstetric or maternal emergency, where there were no fetal heart tones. Consequently, the baby failed to develop normally. Because of this, the baby had to be taken out. Mrs. AR experienced an obstetric emergency, where she experienced fetopelvic rupture uteri and the baby was in a breech position. This emergency happened from when the baby was born up to its death, 25 days later. Thus, it was part of the perinatal emergency. Meanwhile, Mrs. STA experienced neither obstetric nor maternal emergencies. But she experienced a post-partum emergency, as her amniotic fluid leaked until it ran out. Therefore, this caused the baby to die. The baby was less than a week old. Therefores, this was called a neonatal emergency.

Mrs. AR gave birth normally. After the baby was born, the baby experienced an emergency condition. When being transferred from a hospital in Ponorogo to hospitals in Madiun and Surabaya, the patient had to make arrangements and she must be approved by each of these hospitals. Also, in the case of the baby experiencing an emergency condition that requires a medical procedure through surgery, the family of the patient (Mrs. AR and her family) must consent to an agreement. She must agree and sign the approval of that surgery.

Death is a fate from God Almighty, who determined the life and death of each person. But in cases of death that happened due to negligence or malpractice in its treatments, the family of the patient has the right to receive legal protection (Susila, 2021). If an accident occurred (such as infant and/or maternal death) due to negligence and/or malpractice, the OB-GYN doctor must be held accountable under criminal law. Negligent OB-GYN doctors and malpractices will face prison terms.

Criminal penalties are given to OB-GYN doctors who are negligent and commit malpractice as a form of protection for patients and their families. In this case the law provides equal protection for both parties. Apart from the family and the patient, OB-GYNs who have correctly followed the processes but experienced an accident also have the right to legal protection (Domingues, Belo, Moura, & Vieira, 2015). According to Philipus M. Hadjon in his book entitled "Perlindungan Hukum Bagi Rakyat Indonesia (Legal Protection for Indonesian People)", legal protection is divided into as follows:

1. As a means of preventive legal protection
   In this preventive legal protection, legal subjects must be given the opportunity to file an objection or express their opinions before a governmental decision becomes a definitive form. The authors interpret this as follows: preventive protection is used on governmental decisions that enact a regulation. Preventive protection prevents cases of legal issues in the regulatory form. For instance, the law stipulates that in cases of accidents but the doctors or OB-GYNs have followed the procedures and processes accordingly, they can receive legal protection (such as being protected from legal punishments).
2. As a means of repressive legal protection

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Repressive legal protection aims to resolve legal disputes. In Indonesia, legal protection is handled by the Judicial Courts such as the General Court or the Administrative Court. It means that if there is a dispute that has caused material losses or death, people can submit a report to the police (for criminal cases) or file a lawsuit to the court (for civil cases).

Legal Protection for OB-Gyns in Cases of Maternal, Perinatal, and Neonatal Mortalities

In health sociology, a term that shows the contribution or the role of sociology in the health sector is called Sociology in Medicine. OB-GYNs, nurses, and other medical providers have given their best efforts in providing treatments to handle diseases. In providing health services, there is an agreement that binds OB-GYNs and patients, especially before undergoing surgery. Thus, in providing health services, OB-GYNs do not only examine the patients, but they also make efforts to ensure the patient's recovery through treatments (Howard, 2003). In health law, such efforts of recovery are known as the therapeutic agreement.

A therapeutic agreement is an agreement between OB-GYNs and patients. It is a legal relationship that results in the rights and responsibilities of both parties. Unlike other transactions commonly carried out by society, a therapeutic transaction has a special characteristic concerning the object of an agreement. The object of agreement is in the form of services or treatments to heal the patient. Therefore, a therapeutic agreement is a transaction to determine or to make efforts to seek the most suitable treatments for patients, carried out by OB-GYNs. According to Nasution quoted by Joehanto, the object of agreement in the therapeutic transaction is not the recovery of the patient, but rather the act of seeking the correct efforts to heal the patient (Joehanto, 2021).

The relationship between obstetricians and patients is bound to a therapeutic transaction. Because of that, the legal obligation or the service that must be performed by the OB-GYNs is the maximum effort, in their expertise, to heal patients. As long as the efforts carried out by the OB-GYNs are based on their skills and knowledge, their actions are deemed valid (Laros, 2005). A default or a breach of agreement only happens when OB-GYNs fail to perfom the agreed-upon service. It is also a violation if the treatment conducted by the obstetrician deviates from the applicable standard. This also applies if the OB-GYNs committed medical negligence.

The provisions stipulated in the Indonesian Civil Code are too general. Thus, there needs to be provisions that specifically regulate the relationship between OB-GYNs and patients. There are nine reasons why a regulation that governs the relationship between obstetricians and patients is crucial:

1. There is a need for expertise of medical science;
2. Good quality health services;
3. Effectiveness;

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4. Price control;
5. Public order;
6. Legal protection of patients;
7. Legal protection of health professionals;
8. Legal protection of third parties; and
9. Legal protection of legal interest.

In cases of errors by OB-GYNs, either deliberately or due to their negligence in the efforts to provide treatment or health services to the patients, the patients and their families can ask for responsibility from the OB-GYN in question. The responsibility may be in the form of civil, criminal, or administrative liability. If this liability is limited by the law between patients and obstetricians that is based on a therapeutic transaction, both are legally equal. Therefore, this responsibility is a legal responsibility.

In terms of human rights in Indonesia, this healthcare issue is regulated in Law No. 36 of 2009 concerning Health (Indonesian Health Act). Chapter III Article 1 clause (1) and (4) regulate the patients' rights. Regarding the patients' rights in health services, those rights can generally be described as follows:

1. The patients' right for treatment;
2. The patients' right to reject certain treatments;
3. The patients' right to choose the health workers and hospitals to treat them;
4. The right to information;
5. The right to reject unapproved treatments;
6. The right to a sense of safety;
7. The right for limitations on stipulations on the freedom of treatment;
8. The right to end treatments;
9. The right for twenty-for-a-day-visitor-rights*;*
10. The patients' right to sue;
11. The patients' right for legal aid; and
12. The patients' right to advises on trials by health workers or experts.

Concerning the aforementioned criminal liability in health services, the criminal law applies the principle, "There is no punishment without wrongdoings". The Indonesian criminal law also states that, "The Indonesian criminal law applies to every person that commits a criminal offense in Indonesia". The formulation of this article provides that anyone who is in the Indonesian legal territory shall be criminally liable for their wrongdoings. Based on this regulation, the obstetric profession cannot be separated from the provisions of these articles. Moreover, in undergoing their daily work, obstetricians are always involved with legally-regulated actions.

In the case of an infant and/or a maternal death, the ethics committee will examine the OB-GYN doctor who handled the case. In the event that the OB-GYN doctor commits negligence and malpractice, the doctor will undergo an ethical process from

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the health ethics committee who will provide administrative ethical sanctions such as reprimands, deactivation, revocation of practice permits and other administrative sanctions such as fines. The police can use the decision of the ethics committee as an evidence (evidence of letters from experts) to charge OB-GYN doctors who commit negligence and malpractice with criminal law and proceed to court proceedings.

The legal and ethical responsibilities in health services observe how far the obstetricians' actions have legal implications, in cases of errors or negligence in providing health treatments or facilities. Both also concern what elements are used as a measurement to determine whether or not obstetricians committed errors or negligence. This cannot be answered by only mentioning several formulations of what and how wrongdoings happen. But the assessment of this formulation must be considered from two sides. First, it must be assessed from an ethical point of view. Then, it is assessed from the legal perspective. This can be determined by conducting audits.

In health services, the issue of professional ethics has long been worked on so that it can truly develop and incorporated to the behaviors and actions of all OB-GYNs. This is because ethical codes have a great role legally. In many aspects, this is related to health law. This shows that ethical codes provide benefits for legal development. For instance, this concerns a doctor's action in issuing "medical certificates" for the requirements of a trial. In the case of a courtly examination process, medical certificates which declare that the Defendant is sick are legally accepted as expert information. It becomes a legal basis for postponing the trial. This also applies to the "*visum et repertum* from forensic doctors" that are admissible as evidence in court.

Reflecting on this, information or certificates from OB-GYNs are also expert information that are admissible in court. OB-GYNs are bound by medical ethics that have been formulated and enforced by the profession's organization. Activities that violate the ethics such as default, negligence, or even malpractice can lead to legal consequences for OB-GYNs

In health services, civil liability is the lawsuit to demand for the obstetricians' responsibility, based on two legal basis, namely: (1) based on default (contractual liability) as stipulated in Article 1239 of the Indonesian Civil Code and (2) based on law-violating actions, also known as tort, (onrechmatigedaad) according to Article 1365 of the Indonesian Civil Code as well as other criminal law violations in the Indonesian Health Act and other related laws. In health services, defaults happen when obstetricians carry out actions in the form of providing treatment services that do not adhere to what has been agreed upon. This inappropriate treatment may be in the form of malpractices or actions that are careless or negligent. Such actions violate therapeutic goals. Defaults in health services only happen when the following elements are fulfilled: (1) the relationship between the doctors and patients happens based on a therapeutic contract that failed to be performed, (2) default happened

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because OB-GYNs have committed inappropriate health services that violated the goals of the therapeutic contract, and (3) patients suffered from losses due to the actions of the OB-GYNs in question.

Law-abiding actions have different lawsuit characteristics based on the type of liability applied. Law-abiding actions can be seen from the applied liability model, which is the fault liability that rests on three principles as stipulated in Article 1366 and 1367 of the Indonesian Civil Code.

1. In every law-violating action that brings losses to others, the people at fault must bring forth and compensate for those losses.
2. Every person is not only responsible for the losses caused by his/her actions, but also for the losses caused by his/her negligence or lack of care.
3. Every person is not only responsible for the losses caused by his/her actions, but also for the losses caused by the actions of those under his/her responsibility or due to the items that are under his/her supervision.

The authors analyzed that patients make efforts to seek their well-being through OB-GYNs by receiving medical treatments. Meanwhile, OB-GYNs try to heal patients through various medical actions. There are also therapeutic agreements between OB-GYNs and patients to undergo medical actions, such as surgery or other medical actions on certain health conditions suffered by patients.

In the above examples, Mrs. YKN and Mrs. STA did not undergo surgery when giving birth. Mrs. YKN's fetus was stimulated using infusion and medicine so that it can be taken out of the womb normally. Mrs. YKN gave a normal birth. Thus, there was no need for the patient or her family to sign an informed consent approving the surgery. In the case of Mrs. WV, she gave birth normally but suffered from post-partum bacterial infection. Informed consent is one of the most important procedures to provide legal protection for OB-GYNs

Everyone shall have the right to legal protection and the state guarantees its enforcement. The guarantee for legal protection applies to both patients and OB-GYNs. This right to legal protection is also by obligations. Apart from being regulated in other laws, this legal protection is also regulated in Chapter IV, from Article 6 to 9 of the Indonesian Health Act, specifically concerning the government's roles and responsibilities. Some patients' responsibilities in health services are as follows:

1. The obligation to provide information.
2. The obligation to practice the advice of obstetricians or health workers.
3. The obligation to be thrutful in situations where issues associated with OB-GYNs or health workers arise.
4. The obligation to give agreed-upon service fees.
5. The obligation to provide compensation if the patients' actions bring loss to OB-GYNs or health workers.

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According to Hermien Hadiati Koeswadji quoted by Dewi, the professional standard is the value or good intention of doctors (or OB-GYNs) that are based on their profession's ethics. This standard is based on a benchmark that has been mutually agreed upon by groups that support the profession. The authority to determine matters that can and cannot be carried out in a professional activity is the responsibility of that profession. Guided by the formulation of the ethical code of doctors (or OB-GYNs), Hermien Hadiati Koeswadji quoted by Dewi said that OB-GYNs' general obligations can be formulated as follows:

1. Doctors (or OB-GYNs) must treat their patients based on the adequate scientific methods that they have. In that agreement, doctors (or OB-GYNs) made no promises of achieving particular *resultaat* or results, as what they carry out are their best efforts according to their knowledge. Because of that, it is not *inspanningssverbintenis* (Effort commitment). This means that doctors (or OB-GYNs) must carefully make efforts and be serious (met zorg en inspanning) in performing their job. The difference between *resultaatverbintenis* and *inspanningserbintenis* is in the existence of an error.
2. Doctors (or OB-GYNs) must carry out their tasks by themselves (in the sense that they must personally carry out the tasks and not be represented by other people) according to the agreement unless the patients agree that someone else will represent them (this is because, in their oath, doctors (or OB-GYNs) must take care of their own health).
3. Doctors (or OB-GYNs) must provide patients with information on anything that concerns the disease or the illnesses the patient is suffering from. The doctors' obligation concerning the treatment agreement (behandelingscontract) is associated with two things that are related to the patients' obligation (Dewi, 2003).

There are several factors that form the relationship between OB-GYNs and patients. For the most part, this relationship formed because the patient comes to an OB-GYN to seek help concerning their condition of pregnancy and labor. In such condition, there is an agreement of interests between the two parties. This means that each party has fully agreed to create a legal relationship. This legal relationship is based on the patient's trust towards the OB-GYN. Therefore, patients have to express their informed consent before approving any medical actions. It is the right of patients whether to accept the medical efforts that will be carried out after receiving information from the OB-GYNs on what treatment may help them. This includes receiving medical information on the patient's condition.

The Indonesian OB-GYN Ethical Code stated that OB-GYNs must always remember their obligation to protect every living being as well as use their knowledge and skills for the interest of those who are ill. If they cannot perform an examination or treatment, they must refer the patient to other OB-GYNs who are skilled in handling that illness. OB-GYNs cannot be deemed responsible for failure in healing patients if they become disabled or even died, provided that OB-GYNs have carried out all efforts according to their professional skills and capabilities.

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Based on the information above, there is a difference between good intention and irresponsible, negligent, or careless actions. It means that if OB-GYNs have carried out all efforts, according to their professional skills, capabilities, and experience, to take care patients, OB-GYNs are considered to have made good efforts. They have acted according to the OB-GYN ethical code. On the contrary, if OB-GYNs refrained from examining or assessing patients or did so carelessly or if they carry out actions that they are not supposed to do, then they have violated OB-GYNs professional standard.

Because of that, in applying the medical audit mechanism, there needs to be an operational standard to control the medical service quality. This operational standard aims to regulate the limits of legal and ethical authority and responsibility of OB-GYNs towards patients, as well as the responsibility of hospitals towards the medical staff and vice versa. This operational standard will also regulate the relationship between medical workers (including OB-GYNs) in a team as well as between medical workers and paramedics. It is essential for OB-GYNs to assess whether or not they can be deemed liable in cases where patients experienced losses.

The health service standard in hospitals is a more detailed clinical technical regulation. It follows the guidelines of the medical service standard as well as the nursing practices for the patients. The health service standard in each hospital is different. Some hospitals use the term diagnostic formulary and therapy; others call it permanent standards and procedures for medical consultation. Additionally, some hospitals use the name permanent hospital standard.

Conclusion

A term in health law for medicine, it regards the organization, values, and trust towards the practice of OB-GYNs as forms of human behavior that are within the scope of health service. OB-GYN is a specific profession within the medical industry. As a profession, OB-GYNs are entitled to receive fees for their service.

The right to be healthy and to live a proper life is a great blessing from God Almighty. The 1945 Constitution stated that every citizen has the right to a humane work and living. The Law Number 49 of 1999 regarding Human Rights regulated special protection towards reproductive health, particularly to health facilities related to women's reproductive functions, such as menstruation, pregnancy, and childbirth. OB-GYNs receive protection from Law Number 29 Year 2004 concerning Medical Practice based on formal legal documents, through informed consent or an agreement of medical actions to patients. OB-GYNs have the right to perform a specific medical action to a patient after receiving an informed consent and, at same time, legally protected if the patient experienced an accident during the medical services. The OB-GYNs will receive legal protection to perform medical services when the patient and their family had been informed about the specific service and expressed approval. This legal protection excludes malpractice and negligence. If there is any negligence or malpractice, the OB-GYN in question is criminally liable. Patients (or families in

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cases where patients need to be represented) have the full right to reject any medical action carried out by OB-GYNs. Such information can be applied in cases where OB-GYNs are sued for a patient's death although they have acted in their best possible capabilities to treat the patient.

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