

Medical Malpractice in Childbirth Using the *Water Birth* Method

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Abstract- Tort is a form of act against the law, whether conducted intentionally or due to negligence, which may cause damages to another person. This research uses the normative empirical research method, by applying the case study approach and by interviewing a gynecologist, which is then analyzed by the author using the qualitative method. Pursuant to this research result, it can be understood that the labor process with the water birth method is not recommended in Indonesia and it has not been regulated, however, there are still quite a lot of mother-to-be who choose to use this labor method and are assisted by the medical personnel. Even so, within this case, a form of medical malpractice conducted by a doctor to his patient resulting in death of the patient's baby has been found. From this research, it can be concluded that the regulation concerning the water birth labor method is crucial to be regulated within Indonesia to prevent future fatalities. The author suggests that the regulation to prohibit the water birth labor method shall be regulated in Indonesia in the near future and all the doctors as well as other medical personnel shall be even more cautious when assisting patients within a labor process.

Keywords : patient protection, medical malpractice, water birth.

I. INTRODUCTION

Medical malpractice can be defined as an act of negligence done by health care professionals due to using their skillsets in a way that deviates from their professional standards which resulted in injury, disabilities, or even death of the patient . Cases of medical malpractice can be commonly found nowadays and one of the cases of medical malpractice that the author found in Indonesia is related to the process of childbirth using the water birth method.

Previously, the concept of water birth was first introduced in the 1960s by a Russian scientist, Igor Charkovsky. The development of this method continued and began to be given specific medical control in 1991 in Monadnock Community Hospital, New Hampshire, United States.

In Indonesia, the method itself was first implemented by Liz Adianti and her husband who intended to deliver their child using the water birth method after learning about the method from several books and videos about water birth. The idea is approved by the leaders of the maternity hospital. With the help from doctor Otamar Samsudin, gynecologist degree and his wife dr. Keumala Pringgadini, pediatrician degree, Liz Adianti successfully deliver her child and proceed to become the first mother to deliver her child using the water birth method in Indonesia. The labor process was done in the Sam Marie Family Health Care, South Jakarta. Two days later, this method was used again by Fenny Juliantini after being recommended by Dr. Otamar . In Bali, the practice of water.

birth can be found since 2003. Robin Lim from the Bumi Sehat Desa Nyuh Kuning Clinic Foundation, Ubud-Bali has been performing more than 400 cases of water birth every year, with one of his patient named Oppie Andaresta (20 Juli 2007). Meanwhile, the first hospital in Bali that offers water birth option for childbirth is Harapan Bunda–Maternity Hospital in Denpasar-Bali.

Water birth then started to be used more frequently in Indonesia. The cases that the author found implies that there is evidence of medical malpractice done by healthcare professionals, as they assisted in the labor process of their patient who was using the childbirth method called water birth although it there was no law and regulations that governed the medical practices. In the case, the medical malpractice led to the death of the patient's first-born child.

The final verdict from the judges in regards to this case was unclear if the practice of water birth was completely forbid or not. It was only stated that the water birth method is not recommended to be performed,

and up until now, there are still no definite law that regulates this method of childbirth. The uncertainties surrounding the applicability of childbirth using water birth method may raise questions and cause doubts in the community especially among soon-to-be mothers. Therefore, this paper was developed with the hope to be able to provide certainty regarding the subject of water birth in Indonesia.

II. LITERATURE REVIEW

2.1 Understanding the Rights of Patient

According to Act Number 29 of 2004 about the Practice of Medicine, which later on was referred to as Practice of Medicine Law, it is stated that every individual who asked for consultation relating to their health issues are entitled to receive the required healthcare services either directly or indirectly from doctors or dentists. The patient himself also has rights and responsibilities. In this paper, the focus will be on the rights of the patient only. The rights of the patient are regulated by several constitutions, namely Act Number 36 of 2009 about Law on Health, which will be referred to as Law on Health later on, and Act Number 44 of 2009 about the hospital, which will be referred to as Hospital Law later on.

Similarly, Article 4 Law on Health stated that every individual has the right for healthcare. Moreover, it was also mentioned in Law on Health that every individual has the right to receive healthcare services that was safe, qualified, and affordable as well as having the right to be educated and receive equal, honest, and reliable information regarding their health. Furthermore, in Article 52 Practice of Medicine that governed the rights and obligations of patient, it is notably stated that every patient is subjected to receive honest and detailed explanation regarding the medical practices that were about to be conducted on them, whether it is the diagnosis, the procedure for medical action, the purpose of the medical action, other alternative procedures and the risks, the risks and complications that may occur, and the prognosis for the action taken.

Furthermore, the rights of the patient that was regulated in the Article 32 Hospital Law explained in general that every patient has the right to receive the highest healthcare services quality from the hospital, receive effective and efficient healthcare services to prevent physical and financial damage to the patient, receive detailed explanation regarding medical procedure, as well as having the right to sue the hospital through both civil and criminal law if it is proven that they perform medical practices that do not follow the professional medical standards.

2.2 The Duties of Doctors in the Medical Profession

According to Article 51 Practice of Medicine Law, healthcare professionals such as doctors or dentists has the responsibility to provide healthcare services that is in accordance with the standard of the profession as well as the Standard Operational Procedures (SOP). Moreover, doctors and dentists are obliged to fulfil the medical needs of the patient. If they do not able to perform the required treatment, they are obliged to refer the patient to another doctors or dentists that have similar or even better qualifications and skills. Moreover, doctors have to respect their patients' medical information and keep it confidential even after the patient's death. They also have to be ready to perform emergency treatment unless there are other doctors in duty that are able to perform the necessary medical actions. The constitution also stated that doctors have to continuously learn and inform with the current development and trend in the medicine field.

On top of that, there are other category of duties of healthcare professionals according to the Code of Medical Ethics. Code of Medical Ethics acted as a guideline that was developed to regulate the actions taken by doctors so that they follow the ethical and moral principles of the medical profession when interacting with colleagues, patients, patient's families, the community and with partners in the medical profession. This Code of Medical Ethics is formulated together by professional medical organization as well as the government and goes by the name Kode Etik Kedokteran Indonesia (KODEKI).

According to Kode Etik Kedokteran Indonesia (2002), the duties of doctors can be classified into four categories, which are: general duties, duties towards patient, duties toward colleagues, and duties toward themselves.

The most important duties of doctors in medical professions are:

1. Duty to Comply to Professional Medical Standards

A doctor whose actions deviate from the Professional Medical Standards can be said to have committed an act of negligence, and it can be one of the constituents for medical malpractice if the negligence was found to be intentional (*dolus*) and cause damages to the patient.

2. Duty to Provide Information Regarding the Medical Action That Will be Performed on the Patient

This duty is based on medical constitutions which stated that every patient has the right to know every necessary medical information so that he or she able to decide with the medical actions that were proposed by

the doctor to be performed in his or her body. In some circumstances, a doctor is allowed to withhold certain information if the information can deteriorate the patient's mental or physical condition.

3. Duty to Keep Work and Patient's Information Confidential

According to the Government Law 1966 Number 10 about Duty to Keep Medicine Information Confidential, failure to comply to this law resulted in the wrongdoer being subjected to the Article 112 and 322 of Penal Code as well as receiving administrative sanction from the Minister of Health. Based on the Civil Law, Article 1365 of Civil Code can be implemented. Regarding the Medicine Secrecy law, it has been explained in the medical profession part that states the rights of patient. In some circumstances, this duty can be exempt, such as:

- a. Regulated in a specific act e.g Contagious Diseases Act
- b. The patient receives special social rights e.g financial compensation for healthcare
- c. The patient himself verbally or in written agrees to allow their medical information to be shared
- d. The patient shows that he or she preferred to share their medical information e.g by bringing companions into the medical practitioner's room.
- e. For public interests or greater importance e.g announcing the illness of a state officer.

4. Duty to Help Patient Who needs Emergency Treatment

Duty to help others especially in an emergency is actually the duty of everyone. However, this duty becomes more crucial for doctors as they have more knowledge and qualification regarding human body and their health. For instances, in the case of emergency where a patient is unconscious and there is no relatives around that the doctor can asked for permission to perform an emergency medical treatment, the doctor can act without the consent of the patient. In this scenario, the patient has no right to sue the doctor even though the doctor acts without the patient's permission.

2.3 Professional Medical Standards and Informed Consent

Professional Medical Standards is important as it can protect the patient from undesirable outcomes such as damages that are caused by the act of negligence by the doctors or healthcare professionals. The Professional Medical Standards itself refers to the minimum level of knowledge, skill, and professional attitude that a doctor has to possess in performing its professional duties for the public and society.

Professional Medical Standards functioned as a measurement to determine certain medical action or healthcare services as right or wrong. Moreover, it is used to prove if there are violation in a medical practice or not. Professional Medical Standards can be used to evaluate the action performed by a doctor which was brought to the court. Based on the Professional Medical Standards, the medical practice can be decided if it follows or violates the Professional Medical Standards and Standard Operational Procedure (SOP).

The Professional Medical Standards of a doctor can be referred to the Article 50 Act 29 of 2009 about Practice of Medicine, in which in this article, it was explained that if a doctor or dentist who performed the medical practice has followed the Professional Medical Standards and Standard Operational Procedure (SOP), the doctor or dentist has the right to be protected by the law. Professional Medical Standards is a law that act as a guidance that was developed previously by a professional organization that concern this specific profession. At the end, a doctor is demanded to always provide detail explanation and ensure that the patient able to understand the medical information that was provided to them. The patient must be competent enough to make a voluntary decision based on the information given by the professionals. In medical term, this is called informed consent.

The definition of Informed Consent can be found in Article 1 Section 1 Permenkes Number 290/MENKES/PER/III/2008 about Medical Action Agreement, where it is stated that the final agreement for a medical practice to be performed was in the power of the patient or their close family, not the doctors. The patient should decide after being well-informed about the medical treatments, actions, and practices that are about to be performed by the doctor towards the patient. According to Article 45 Section 3 in Practice of Medicine, the explanation of the medical practice at the very least should cover the diagnosis, the procedure for medical treatment, the purpose of the medical action taken, other alternative measures and their risks, the risks and complications that may occur, and the prognosis for the action taken.

2.4 Medical Malpractice

In etymology, the word "malpractice" came from the word malpractice which mean a method of treatment that is wrong or an action that is wrong. Malpractice in professional settings can be defined as a professional action that is wrong or a failure by the workers in applying their skills. Therefore, medical malpractice can be understood as an action that was performed by a medical professional that is wrong and caused losses to the patient.

There are two terms that are commonly mentioned together when discussing about malpractice which are negligence and the word malpractice itself. Malpractice is not the same as negligence. Malpractice is highly

specific and is related to the professionalism of the service provider and the Professional Medical Standards. Negligence, on the other hand, is a part of the word malpractice, but action that is considered as a malpractice does not necessarily mean that it was caused by a negligence. The term malpractice is broader than negligence as not only it includes the term negligence in it, but it also covers the actions that are done intentionally (criminal malpractice) and that which violates the constitution. The word intentional further implies that there is a motive (guilty mind) which therefore the nature of the charges can be either civil or criminal.

Therefore, a conclusion can be drawn that malpractice refers to:

1. The act of performing an action by a healthcare professional that should not have been done in the first place
2. Inability to perform an action at the standard service quality or neglect their responsibilities and duties (negligence); and
3. Violation of a law in the constitution.

2.5 Definition of Tort

Based on the law in Indonesia, tort was regulated in Article 1365 of Civil Code, it is stated that every action that is against the law which resulted in losses of others means that the responsible person can be prosecuted that is not in default against the contract, or is in default against a trust obligation, or is in default on other equity obligations.

1. A loss that is not caused by default against the contract is considered to be an action that violates the rights of other people that is created by law which does not stem from a contractual relationship.
2. An action or non-action that is against the law means that it violates the rights of other people, hence a plea for compensation can be issued by the plaintiff.
3. A tort is not a contract, similar to that chemistry is not physics or mathematics.

Therefore, it can be concluded that a tort is an action or behaviour that is performed by an individual to another person that are against the law which cause losses to others regardless if its intentional or a negligence and therefore the individual that cause the damages need to compensate the damaged party.

2.6 Water Birth

2.6.1 Definition of Water Birth

Before defining what water birth is, the author will start by explaining first what labor is. Labor or childbirth is the process of delivering the product of conception through a mother's birth canal or other alternative routes so that the fetus or baby can live in the outside world. Water birth can be defined as the process of delivering a baby from the mother's womb to outside world by using water that has a temperature of the mother's body temperature (usually around 37 degree Celsius). There are two methods of water birth, which are:

- 1) Natural Water Birth, which is a method of water birth in which the mother who is in the 'dilation 6' phase gets into a pool that is filled with warm water until the labor process begin.
- 2) Water Birth Emulsion, which is a method of water birth where the mother will only be in the childbirth pool until the end of the contraction phase. The labor process will still be conducted on a bed.

In principle, water birth does not differ much compare to the natural method of childbirth that is done on the bed. The only obvious difference is that in the water birth method, the labor process is done in water, whereas a natural childbirth is done on a bed. Another important difference to be pinpointed is the degree of pain felt by the mother when giving birth, in which the mother will feel more pain in giving birth using the normal method compare to when using the water birth method.

The purpose of the water birth method is to provide comfort and sense of safeness as well as relieving the feeling of anxious and tense during childbirth. This is because water birth uses warm water which helps tremendously in reducing pain from giving birth. Furthermore, the mass of the water can support the body of the pregnant woman and allows her to move more lightly. Simultaneously, the baby will benefit as well as he or she will not experience a sudden shock to changes in the environment as he or she has previously lived-in amniotic fluid inside his or her mother's womb.

2.6.2 Benefits of Water Birth

It is understood that water birth can help reduce the amount of pain from giving birth as it uses warm water that has a temperature similar to the body temperature of the patient. There are some more benefits of using the water birth method, such as:

1. The mother will be able to determine the position she is comfortable the most. She will feel that her body becomes lighter while inside the water as she floats. This helps the mother to move more easily

and find her best position to give birth. However, it is important to note that the mother's knee has to be below her hips.

2. The mother can feel more relax. Upon entering into the pool fill with warm water, the mother will feel a sense of relaxation which eases her muscles. This calms the mother and helps her to breath more evenly which then helps in mitigating the pain while contracting.
3. Eases the overall labor process. Delivering a baby inside the water will be much more easier due to the gravitational pull inside the water which allows the mother to push the baby in a sitting or squatting position, resulting in the labor process to be done significantly faster. This method also helps mother who has physical limitations for childbirth to deliver her baby more comfortably.
4. The mother will be able to concentrate better. Being inside the water allows the mother to feel in control

of her body. The mother will also be able to create her own and private settings that suit her preferences through dimming the lights or keeping the room as quiet as possible to help her concentrate while giving birth.

Apart from the benefits that the mother will and can receive from giving birth using the water birth method, this method will also provide benefits for the baby, such as:

- a) Water shields the baby from the impact of loud noises and noisy surroundings.
- b) Water reduces the impact of lighting which usually seen by the baby immediately after getting out from his or her mother's womb and throughout the labor process.
- c) Warm water calms and relaxes the baby.
- d) Smooth transition between the baby exiting the mother's womb to the outside environment.

2.6.3 The Disadvantages of Water Birth

Despite all the benefits, childbirth using the water birth method possesses some risks as well. Some obstetricians stated that the risk of giving birth using the water birth method is similar to the risk of giving birth using the conventional method, which means that the risk of water birth is not necessarily higher. Some people concerned the possibility of the baby inhaling or ingesting water after getting out from the mother's womb.

Another risk is the possibility of hypothermia, where the body temperature of the baby falls way below the normal body temperature, which happens due to the childbirth process went longer than expected. There is also a risk that the baby might experience a temperature shock if the temperature of the water is not the same as the temperature inside the mother's womb which is at 27 degree Celsius.

There are other disadvantages from using water birth method for childbirth, such as:

- a. If the baby is brought to the surface and then back to under water, there is a likely chance of aspiration to occur. There is no danger for this when the baby is first born underwater, because the baby will not breathe until his face is exposed to air.
- b. Some obstetricians fear that some pregnant mothers might suffer from Amniotic Fluid Embolism (AFE), where the Amniotic Fluid enters the blood stream of the mother, although this incident is very rare to happen.
- c. If not carefully dealt with, in the case of a short umbilical cord, the umbilical cord may break spontaneously when the baby is lifted to the surface

III. METHOD

This study used the normative and empirical approach in which the research was conducted by using literatures to analyse the problem that was discussed in this paper. Observation was done by interviewing relevant sources which allow the author to collect information that are important in developing this paper.

Secondary data are mainly used for this paper with support from primary data. The secondary data that were collected are Primary Legal Materials, Secondary Legal Materials, and Tertiary Legal Materials. The source of data collection for this research is through literature and quantitative study, namely interview. The interview was done online and in unstructured manner.

The research writing method for the research is literature study in which the author used in this paper as well. The source of data collection for this research is through obtaining information from various resources such as books, journals, articles, and other reading resources that discuss about the same topic and issue of this paper. The approach taken in this research is through a legal systematic approach in which the author will use legal materials that are relevant to the topic being discussed in this paper, namely legal materials that are related to the rights of patient, doctors, and obligations of hospitals. Next, the researcher will use real legal cases, namely

Putusan Putusan Pengadilan Negeri Nomor 312/Pdt.G/2014/PN.JKT.Sel, Putusan Pengadilan Tinggi No. 240/PDT/2016 /PT.DKI, and Putusan Mahkamah Agung Nomor 3695 K/Pdt/2016 as the foundation of the issue discussed in this paper.

Socio-legal research has an emphasis on purpose and utilization, in terms of its objectives, this research is to find facts (fact-finding). Then proceed to find a problem (problem finding), then this research develops into a problem identification research (problem identification), and in the end, research is conducted to overcome the problem (problem-solution).

The law is to Use Available Data (even tombstones are considered data). So, quoting of SoerjonoSoekanto's opinion, the Law grows and develops from the community. As we know, the Legal System consists of Substance, System, and Culture, so one of the interviewees agreed that research was activity but the scope depends on the problem. For example, interviews whose purpose is not to seek answer but only parameters, such as interviews with economists are only parameters and supporters.

The research data is collected and analysed using the qualitative method, where the author understood the social issue beforehand then analyse it and provide a detailed and written conclusion which will be presented in the form of a journal article.

IV. RESULT AND DISCUSSION

B.1 Laws on Childbirth Using the Water Birth Method

In the case used by the author for this paper, the plaintiff stated that the doctor does not provide the correct and detailed information regarding the process of childbirth using water birth method. The plaintiff further mentioned that the doctor in charge also does not mentioned whether the water birth method has been approved and legalized by Indonesian Collegium of Obstetrics and Gynaecology or not. The doctor argued that it is incorrect that conventional and water birth method for childbirth has not been recognized yet by Indonesian Medicine Association (IDI) or by the Indonesian Association for Obstetrics and Gynaecology (POGI).

It is true that water birth offers benefits to both the mother as well as the baby such as giving the mother more comforts, reducing pain, and helping the baby to settle more comfortably with changes in environment and conditions upon getting out from the mother's womb. However, according to the interview with Bima Ananta, an obstetrician, reducing or eliminating pain can be done by using anaesthesia or specific medical drugs. Therefore, it can be understood that the reasoning for using the water birth method for childbirth to reduce pain is not justifiable. This is because even when giving birth using the Sectio Secaria method, the feeling of pain and discomfort can be reduced or eliminated by using anaesthesia or specific medical drugs.

Secondly, another reason why water birth method is not recommended is because there is no way to guarantee the hygiene level of the water used in the water birth method. If the water turns out to be septic or not sterile, it can cause infection to the baby. Furthermore, if the baby is experiencing stress in the birth canal or if the umbilical cord becomes kinked or twisted, there is a risk that the baby might gasp for air with the possibility of inhaling water.

It is then understood that despite the benefits, the risks and danger of using the water birth method for childbirth are more critical. According to the cases found in District Court Verdict Number 312/Pdt.G/2014/PN.JKT. Sel, Superior Court Verdict Number. 240/PDT/2016/PT.DKI, as well as Supreme Court Verdict Number 3695 K/Pdt/2016, it was clearly indicated that Indonesian Association for Obstetrics and Gynaecology (POGI) did not authorize the process of giving birth using the water birth method. Similarly, Indonesian Collegium for Obstetrics and Gynaecology have yet to recognize the water birth method as a method for childbirth. Furthermore, HKFMI or Indonesian Fetomaternal Medical Association has openly stated that they do not recommend the water birth method as another practice for childbirth. However, HKFMI does not completely forbid the practice and allow the services of water birth by instances who provide such services as long as it is done by following the principles and procedures of childbirth and adhering to the medical ethics (*lege artis*).

Moreover, based on the research done by obstetricians or doctors who specialize in pregnancy and childbirth, it is understood that childbirth using the water birth method is banned in Indonesia. Based on the research that was done together with Bima Ananta, he stated that Indonesia Medical Association (IDI) prohibited obstetricians to help patients who intended to give birth using the water birth method. Midwives were given similar instruction when the Indonesian Midwives Association released a Circular Letter Number 2177/PPIBI/VI/2015 which was applied to all midwives in Indonesia starting on 26th June 2015. The letter was available in the Indonesian Midwives Association's website and has been circulated to several districts in Indonesia. Additionally, according to Dr. Eni Gustina, MPH, the directorate Minister of Health, while attending the "Protect Pregnancy for a Healthier Future Generation" in Jakarta, she mentioned that the Minister

of Health does not recommend the water birth method for childbirth as well and has contacted the instances who stated otherwise.

Therefore, it can be concluded that the Minister of Health, Indonesian Medical Association (IDI), and Indonesian Midwives Association (IBI) do not recommend and even prohibit the water birth method to be performed for childbirth in Indonesia. Water birth indeed provides several benefits such as providing sense of comfort, reduce stress, and reduce the level of shock experienced by the baby after being released from the mother's womb. However, the risks and harm it can cause to the mother and the baby are greater than the benefits.

B.2 Analysing the Form of Malpractice in the Labor Process Using the Water Birth Method

Malpractice can be defined as an action that is committed by a professional either intentionally or a negligence in his or her part and it causes harm to others in the form of violation towards the existing laws and regulations, fail to perform his obligation which then violate the rights of others, or performing actions that are against the Professional Medical Standard.

In this case, the defendant has committed an act that is against the law which is a medical malpractice that caused the death of the first-born child of the plaintiff. The death of the child can be caused by either an act of negligent or an act on purpose by the doctor or could also be a medical risk that was carried by default from the medical procedure.

Based on the result of a research that the author conducted with dr. Cepi Teguh Pramayadi, SpOG, the researcher stated that malpractice at its most basic definition means a medical practice that is wrong or is not in accordance with the required standard procedure. This is different from medical risk, as the latter means that the doctor has done the best he or she could but complication within the patient occurs. An action can be defined as a malpractice if it is done incorrectly, performed by a professional who has inadequate skillsets, or is illegal or done in an inappropriate quantity. In this case, the death of the victim's child was caused by an act of negligence from the involved doctor, not due to a medical risk. The evidence of medical malpractice that was done by the doctor during the labor process using the water birth method will be elaborated in the next paragraph.

The first evidence of medical malpractice found in this case of childbirth using the water birth method is that the doctor suggested a method that is not recognized and regulated by any constitution in Indonesia. The doctor suggested the water birth method to the patient and did not provide honest and complete information regarding the method. The doctor did not explain that this method of childbirth was not authorized to be practiced in Indonesia and what were the risks carried by the patient if she decided to use this method of childbirth. These actions itself has deviate from the duties of a healthcare professional, which is to provide the patient with detailed information regarding the medical practice that the doctor intended to perform to the patient as well as not following the Professional Medical Standard when performing the medical practices. Professional Medical Standard can be referred to Article 50 in the Practice of Medicine Law, in which in the article it was explained that if a doctor or dentist who carry out the medical practice has followed the Professional Standard or Standard Operational Procedure (SOP), the doctor or dentist has the right to be protected by the law.

In this case, there are yet any law that regulates the method of childbirth using the water birth method in Indonesia. Therefore, it can be concluded that there is also no legitimate Standard Operating Procedure (SOP) relating to this method of childbirth. A doctor who is about to perform a medical practice has to base his or her action on a Professional Medical Standard and Standard Operating Procedure (SOP). Therefore, any doctor and midwives who assisted in the labor process using this method can be concluded to have performed a medical practice without referencing to any Standard Operating Procedure (SOP). In other words, they have violated the Professional Medical Standard. Additionally, the hospital is also considered to perform an act of negligence as well as they promoted a method of childbirth that does not have a clear regulation in Indonesia. Moreover, the hospital even allowed the doctor and incompetent healthcare workers to assist in the patient's labor process. Most importantly, the facility that was offered by the hospital to the patient who used the water birth method was inadequate. It is understood that in labor process using the water birth method, the hygiene level of the water used for the childbirth should be supervised strictly and needs to be in a sterile condition. However, in this case, the patient who is giving birth by using the water birth method were joined by other patient who was giving birth that used similar method. The benefits promised prior by the doctor for using the water birth method is to make the patient to feel more comfortable while giving birth. Yet, in this situation where the patient shares her space with other patients resulted in the patient to feel pressured and therefore unable to concentrate fully during the labor process.

Based on the interviews done by the author with some obstetricians, namely Cepi Teguh Pramayadi, Ananto Pratikno, DS, and Bima Ananta, their views regarding room sharing between patients who are about to give birth with similar method were varied. According to DS, Bima Ananta, and Ananto Pratikno, it is acceptable to have more than one patient in one room. However, Cepi Teguh Pramayadi disagree and stated that childbirth process especially the one that uses the water birth method should not be performed together in the same room with other patients as there is a potential risk of the patient getting infected by other patients that were in the

same room. The room used for childbirth should be kept as clean and as sterile as possible to protect the mother and baby from infections. Additionally, if there is more than one childbirth patient in the same room and uses the same method of labor, which is the water birth method, then the benefits of providing comfort for the patient that was promised earlier by the doctor will not be achieved.

Secondly, another medical malpractice that was found in this case of childbirth using the water birth method is that the doctor uses excessive doses of induction into the patient. The total amount of Cytotec, a medical drug specifically used for medical induction of labor, that was given by the doctor was 8 times in 4 days. Result of consideration of MKDKI based on Jurisprudence of MKDKI from Case Verdict Number. 10/P/MKDKI/V/2012 on 2013, 23rd July stated that ingesting Cytotec into the patient's body for 8 times in 4 days is beyond the acceptable quantity. According to the standard procedure, if Cytotec induction has been done for 3 times and there is still no contraction, then the doctor should suggest the patient to give birth using the Sectio Secaria method. However, in this case, the doctor and his healthcare assistants stick with the water birth method. Based on the research done by a gynaecologist that goes by the initial DS, the researcher stated that inducing Cytotec to pregnant patient can help in the labor process and there is no right or wrong indication for the right number of doses for each patient as it depends on their health condition. This is because, according to the researcher, inducing labor using Cytotec helps in stimulating more contraction. However, the wrong dosage of Cytotec may harm both the mother and baby. Furthermore, dr. Cepi Teguh Pramayadi who is also a gynaecologist stated that excessive doses of cytotec/misoprostol should be used carefully regardless of the method of childbirth. Incorrect usage of misoprostol may cause abdominal pain, nausea, vomiting, and can even ruptured the uterine.

In conclusion, giving excessive dosage of induction to a pregnant woman can be fatal to both the mother and her unborn child. Moreover, the doctor in this case also did not provide clear explanation for the reasoning behind the excessive dosage that were injected to the patient and does not present it in the form of a written informed consent.

V. CONCLUSION

Childbirth using the water birth method is in demand back then and the labor process itself was aided by obstetricians and midwives. Giving birth using the water birth method is said to provide comfort, reduce pain, and reduce stress for both the mother and baby. In the present, childbirth using the water birth method is no longer performed and recommended by the Indonesia's Minister of Health, Indonesian Medical Association (IDI), Indonesian Medicine Collegium, Indonesian Association for Obstetrics and Gynaecology (POGI), as well as the Indonesian Midwives Association (IBI). Indonesian Midwives Association (IBI) has issued a Circular Letter Number 2177/PPIBI/VI/2015 to all midwives in Indonesia which stated that childbirth using the water birth method is not recommended in Indonesia due to the risks it possess which can endangered the overall labor process and therefore jeopardize both the mother and the baby. One of the risks include the risk of infection in the baby due to the unhygienic water and risk of the baby accidentally inhaling or ingesting the water. Therefore, childbirth using the water birth method is not recommended although there is still no specific law that regulates the method.

The form of malpractice that was found in the childbirth process using the water birth method lies in the involvement of the obstetrician who assisted in the victim's childbirth process. This is because the obstetricians fail to apply the principle of prudence and fail to carry out its obligations in accordance with the Professional Medical Standards. The doctor did not provide clear and detailed information regarding the process of the water birth method and its legitimacy status in Indonesia. Similarly, the obstetrician did not put the act of giving induction into a written informed consent. The doctor involved has also been proven to carry out a medical practice by applying knowledge, skills, or technology that was not accepted as a proper medical practice procedure. As a result of this negligence by the involved healthcare professionals, the plaintiff suffered an unbearable loss to which is the death of their first-born child. Therefore, the act of negligence by the involved doctor who carried out the labor process using the water birth method can be categorized to be an act of medical malpractice.

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REFERENCES

- [1.] Achadiat, Chrisdiono M. *Dinamika Etika dan Hukum Kedokteran dalam Tantangan Zaman*. Jakarta: EGC, 2006.
- [2.] Ake, Julianus. *Malpraktik dalam Keperawatan*. Jakarta: EGC, 2002.
- [3.] Anggraeni, Suci. *Water Birth, Melahirkan Menyenangkan dengan Metode Water Birth*. Yogyakarta: ANDI, 2012.
- [4.] Aprillia, Yessi. *Art of Water Birth, Indahnya Melahirkan Dalam Air*. Jakarta: Gramedia, 2013.
- [5.] Astuti, Hj. Endang Kusuma. *Transaksi Terapeutik dalam Upaya Pelayanan Medis di Rumah Sakit*. Bandung: Citra Aditya Bakti, 2009.
- [6.] Budianto, Agus dan Gwendolyn Ingrid Utama. *Aspek Jasa Pelayanan Kesehatan dalam Prerspektif Perlindungan Pasien*. Bandung: Karya Putra Darwati, 2010.
- [7.] Chazawi, H. Adami . *Mapraktik Kedokteran Tinjauan Norma dan Doktrin Hukum*, Malang: Bayumedia, 2007.
- [8.] Naviri, Tim. *Buku Pintar Ibu Hamil*. Jakarta: PT Elex Media Komputindo, 2011.
- [9.] Purba, Sukarman dkk. *Etika Profesi: Membangun Profesionalisme Diri*. Medan: Yayasan Kita Menulis, 2020.
- [10.] Setyawan, Febri Endra Budi. *Pendekatan Pelayanan Kesehatan Dokter Keluarga (Pendekatan Holistik Komprehensif)*, Malang: Zifatama Jawara, 2019.
- [11.] Syah, Mudakir Iskandar. *Tuntutan Hukum Malapraktik Medis*. Jakarta: Bhuana Ilmu Populer, 2019.
- [12.] Wibisono, Hermawan & Ayu Bulan Febry Kurnia Dewi. *Solusi Sehat Seputar Kehamilan*. Jakarta: AgroMedia Pustaka, 2008.
- [13.] Yulianti, Nila Trisna dan Karnilan Lestari Ningsi Sam, *Asuhan Kebidanan Persalinan dan Bayi Baru Lahir*. Bandung: Cendekia Publisher, 2019.
- [14.] Undang-Undang Nomor 29 Tahun 2004 tentang Praktik Kedokteran. Lembaran Negara Republik Indonesia Nomor 116 Tahun 2004, Tambahan Lembaran Negara Republik Indonesia Nomor 4431 Tahun 2004.
- [15.] *Putusan Pengadilan Negeri Nomor 312/Pdt.G/2014/PN.JKT. Sel*
- [16.] *Putusan Pengadilan Tinggi No. 240/PDT/2016/PT.DKI*
- [17.] *Putusan Mahkamah Agung Nomor 3695 K/Pdt/2016*
- [18.] Budianto, Agus. "Legal Research Methodology Reposition in Research on Social Science", International Journal of Criminology and Sociology, 2020, Vol. 9, 07 November 2020. <https://doi.org/10.6000/1929-4409.2020.09.154>
- [19.] Association, American Pregnancy .Water Births. <https://americanpregnancy.org/labor-and-birth/water-births-658> , (diakses 25 April 2017).
- [20.] Halodoc, Redaksi. Melahirkan dalam Air, Kenali Keuntungan & Resiko Water Birth. <https://www.halodoc.com/artikel/melahirkan-dalam-air-kenali-keuntungan---risiko-water-birth> (diakses 24 November 2017).
- [21.] Putra, Lutfy Marizal. Beresiko, Kemenkes Tidak Sarankan "Water Birth". <https://www.google.co.id/amp/s/amp.kompas.com/sains/read/2017/12/15/213000723/berisiko-kemenkes-tidak-sarankan-water-birth> (diakses Jumat, 15 desember 2017).
- [22.] Syarifah, Fitri. IBI Serukan Larangan Persalinan dalam Air. <https://m.liputan6.com/health/read/2402782/ibi-serukan-larangan-persalinan-dalam-air> (diakses 02 Januari 2016).
- [23.] Surat Edaran Nomor 2177/PP/IBI/VI/2015 tentang Persalinan Dalam Air (*Waterbirth*)
- [24.] Interview with gynecologist, dr. Ananto Pratikno, SpOG via email on Friday, 6 November 2020
- [25.] Interview with gynecologist, dr. Bima Ananta, SpOG via GrabHealth on Saturday, 24 October 2020.
- [26.] Interview with gynecologist, dr. Cepi Teguh Pramayadi, SpOG via whatsapp on Thursday , 5 November 2020.
- [27.] Interview with gynecologist , dr. DS, SpOG via GrabHealth on Thursday, 29 October 2020.