

REVIEW OF THE SHARIA MAQASHID ON PROVISIONS OF THE MIDWIFE PROFESSIONAL SELF PRACTICE

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Abstract

Midwife is a profession obtained by someone who has completed midwifery education and is officially recognized, and has the competence to carry out practice. Midwifery Law number 4 of 2019, philosophically aims to provide goodness to midwives and the community. This study aims to explain the provisions of independent practice for midwives using the maqashid shari'ah review. The maqashid shari'ah itself is one of the methods contained in the philosophy of Islamic law. Therefore, the data used is in the form of literature, in the form of Law Number 4 of 2019 concerning Midwifery, as well as supporting library references. Based on the description of the analysis, it was found that there was a separation of practice authority between vocational midwives and professional midwives. Professional midwives can practice independently, while vocational midwives are not allowed to open independent practice. Based on the maqashid shari'ah review, the maintenance of religion, reason, soul, property, and offspring, seeks to provide protection and benefit both to clients and to midwives. The results of the study concluded that the Midwifery Law provides a separation of authority for practice aimed at providing a stimulus so that midwives increase their knowledge and abilities. The review of maqashid shari'ah provides an overview of the new midwifery law that provides benefits to clients and midwives..

Keywords— Midwifery Law, Maqasid Syariah, Independent Practice, Masalah

PRELIMINARY

Based on Law Number 4 of 2019 concerning Midwifery, Article 4 explains the level of education for the midwife profession, which consists of three levels of education, namely academic, vocational and professional. These three levels of education are different, as explained in Article 5 that what is meant by academic education for midwifery is bachelor, master and doctorate. In Article 6, what is called Vocational Education is a three midwifery diploma program. Article 7 explains that professional education is a continuation of an education program equivalent to a bachelor's degree or an undergraduate program. Thus, based on the law, vocational education is the lowest level of education for the midwifery profession (Midwifery Law Number 4 of 2019, 2019).

Different levels of education provide different practice rights for the midwife profession. As explained in Article 43, between vocational midwives and the midwife profession, they have the right to carry out different practices. Midwives with diploma education have limitations to practice only in health care facilities. This is different from midwives who have professional education graduates who have a wider practice area both in health services and in independent practice (PR, Midwifery Law Number 4 of 2019, 2019).

This provision automatically narrows the scope of practice for midwives, especially midwives with diploma education as the lowest level, so that they only obtain a license to practice in health care facilities, and cannot practice independently. In fact, when referring to Kep. Minister of Health RI No.900/MENKES/SK/VII/2002, called a midwife is a woman who has

attended the midwife education program and passed the exam in accordance with applicable requirements. Wahyuningsih, in (Tresnawati, 2013) midwives can practice as long as they have obtained a license.

The Midwifery Law philosophically aims to provide benefits, through improving the quality of education and services, as well as providing legal protection to both midwives and clients, and no less important is to improve the health status of the community. However, it is important that the existence of the Midwifery Law be studied intensively and comprehensively. This study will provide an in-depth and complete understanding, especially regarding Article 21 whose existence is very crucial in relation to policies that are not impartial to vocational midwives. The existence of Article 21 has the opportunity to cause problems, both for vocational midwives and for vocational midwifery education institutions.

The role of midwives is very large in the community, especially in suburban areas. In the old paradigm, it was explained that the role of midwives in the community was not only to provide health services as trained personnel, but also to increase public health knowledge, increase acceptance of the family planning movement, and provide education and knowledge of traditional birth attendants and improve the referral system (Rahmawati, 2012).

Under the old regulations, midwives who graduated from vocational education, as long as they obtained a permit, could open their own practice, and until now, of course, there are quite a lot of them. The community has also accepted the existence of midwives because of their great contribution through health services. The problem is what about the existence of vocational midwives who have been practicing independently for a long time, and the community has put great trust in the contribution that midwives have made so far if the new Midwifery Law is implemented into the Midwifery Law?

But on the other hand, the drafting of the Midwifery Law has gone through an in-depth study in the social field, which is the party entitled to receive quality health services. The social aspect also influences the philosophical aspect of the drafting of the Midwifery Law, which substantially not only aims to improve the level of public service but also aims to provide great benefits to the midwife herself.

It is important to conduct a comprehensive review of the Midwifery Law, because it does not only concern the juridical, psychological, and sociological aspects of vocational midwives, and what should not be left behind is the philosophical aspect to explain the purpose of the Midwifery Law. In this case, the review of maqashid shari'ah will provide a comprehensive view in conducting a study of the Midwifery Law.

Maqashid shari'ah is an important concept, especially in the formulation of Islamic law, with efforts to bring benefits and keep away harm (damage) both in this world and in the hereafter. The teleological concept contained in the maqashid shari'ah is comprehensive, and doctrinally the goal to provide benefits for humans is proclaimed in three different and complementary priorities, al-dharuriyyat, al-hajiyyat, and al-tahsiniyyat.

Wahyudi elaborated the three priorities above, where al-dharuriyyat as primary goals that must be fulfilled, al-hajiyyat as secondary goals needed by humans to facilitate obtaining primary goals (al-dharuriyyat). Meanwhile, al-tahsiniyyat is defined as tertiary goals, although its existence is neither a necessity nor a necessity, but it is to beautify the realization of al-dharuriyyat and al-hajiyyat (Wahyudi, 2006). Borrowing Djamil, the use of maqashid shari'ah in reviewing the Draft Law on Midwifery is in order to solve contemporary legal problems whose existence is related to problems of the wider community, and the case is not explicitly regulated in the Qur'an or in the hadith (Djamil, 1999).

Based on these considerations, this research will conduct a review of the Draft Midwifery Law through a review of maqashid shari'ah to find the philosophical aspects contained in it.

RESEARCH METHODS

Research on the review of maqashid shari'ah on the provisions of the independent practice of the midwife profession Article 21 and Article 22 of the Midwifery Law is a type of bibliographic research, or library research (library research). Data retrieval is obtained from the library as the main source of research, namely the Midwifery Law, research or supporting books that examine maqashid shari'ah as an analytical tool, as well as other supporting works related to research.

Because this study examines the law in terms of maqashid shari'ah, the approach taken is to use a philosophical approach. The doctrinal approach is used to examine the article that regulates the independent practice of the midwife profession, while the philosophical approach is used to examine the purpose of setting independent practice standards regulated in the article of the Midwifery Law through maqashid shari'ah which is one of the *istinbath* methods of Islamic law. By using these two approaches, the doctrinal meaning as well as the *istinbath* method will be revealed in establishing Article 21 which regulates independent practice for the midwife profession.

RESULTS AND DISCUSSION

Based on an in-depth study of Law Number 4 of 2019, the following results were obtained.

A. Provisions for independent practice for the midwife profession according to Law Number 4 of 2019 concerning Midwifery

Based on the provisions regulated in Article 22, the midwives' practice authority is separated. The authority is based on the level of education. The details are as follows:

1. Vocational midwife, is the lowest level of midwifery education, with a diploma education strata. Because the level of midwifery education is the lowest, the practice of midwifery is only limited to health service institutions or places, such as maternity hospitals (RB), hospitals, health centers, or other health care places. Of course, in its implementation, vocational midwives are required to meet the requirements as set out. Among other things, must have a midwifery diploma issued by a university that has a midwifery study program. In addition, must have evidence of having passed the competency test. Because they cannot be called professional midwives, they are not allowed to practice independently. However, if you want to get permission to open an independent practice, you are required to take midwifery professional education.
2. Educational midwives are graduates of midwifery education with a bachelor's or master's degree. Even though the level of education is high, it is not allowed to practice independently. Therefore, educational midwives who wish to apply for independent practice are required to take midwifery professional education.
3. Professional midwives are midwives who have completed professional program studies. It also means that they have been recognized as professional midwives who are allowed to practice independently. Even though they have been declared as professional midwives, they are still required to pass the competency test. So that when carrying out the practice, they really have competence in the field of midwifery.

B. Review of maqashid shari'ah on the provisions of independent practice according to the Midwifery Law

1. Religion (Hifzh al-Din)

Maintaining religion is absolutely legal. Therefore, the religious dimension is a dimension that connects humans with their God. The maintenance of this religion is the spirit for the protection of the other four elements contained in the maqashid shari'ah.

In Islam, the concept of human creation is as a servant ('abd) and caliph. The role of servant ('abd) has the meaning of worship and obedience. This obedience is seen as holistically covering all aspects of life, both those that are directly related to worship and the dimensions of muamalah. This is illustrated in QS. Adz-Dzariyat: 56,

And I did not create the jinn and mankind except that they might worship Me. (Qur'an 51:56)

Based on QS. Adz-Dzariyat: 56, that running the midwifery profession is also part of serving and worshipping Allah SWT, and not only worldly activities. In a secular view, worldly activities have nothing to do with the issue of obedience and piety to Allah SWT, but from a religious perspective, all worldly activities as long as they are intended to worship Allah SWT, are also part of worship.

Likewise with the midwifery profession, in simple terms it is a profession that is occupied, and professionally it will bring income for those who do it. However, if this is done as part of worship, of course it will not only bring material income, it will also bring rewards for those who carry it out.

While the caliph has the meaning as a leader or a substitute in acting as a guardian and preserver of life on earth. This role as caliph is given to humans who are considered capable of maintaining the survival of creatures on earth. The role as caliph also applies in carrying out professions, including the midwifery profession.

In fulfilling religion, educational qualifications as referred to in the Midwifery Law are important. In a hadith it is explained:

"If the matter is handed over to someone who is not an expert, then wait for the Hour." (Narrated by Al-Bukhari).

Midwifery requires special skills. One of her duties is to assist with childbirth. To assist with childbirth, certain educational qualifications are required as stipulated in the law, which includes the authority and licensing of practice between professional midwives and vocational midwives. Thus, the distinction contained in the Midwifery Law does not intend to narrow the practice space for midwives. However, to increase the experience, knowledge of midwives through new regulations, so that only professional midwives get permission to open an independent practice.

Then, to support this argument, in the rules of Usul Fiqh, it reads:

"Rejecting harm is more important than gaining benefits."

Educational qualifications affect the knowledge of midwives in carrying out their duties to provide midwifery services. Previously, vocational midwives had permission to open independent practice, but in the Midwifery Law only professional midwives have permission to open independent practice. Philosophically, it has a goal to reduce the harm that will occur. The higher the educational qualifications of the midwife, the more the risk will be reduced, both for the midwife and the client. According to the above principles, the virtue of refusing or at least reducing adversity (difficulty) takes precedence over

prioritizing the benefits obtained through the contribution of midwives in the field of health services without limiting the requirements for independent practice.

2. Soul (Hifzh al-Nafs)

In the general provisions of the Midwifery Law it is explained, Midwifery is the activity of providing care to women throughout the reproductive cycle and after menopause, infants, children aged less than 5 (five) years and families with high knowledge and skills, as well as continuous love. While midwifery care is a series of midwifery services based on the decision-making process and actions taken by midwives in accordance with the authority and scope of practice based on midwifery knowledge and tips.

The difference between the practice of professional and vocational midwives for clients is to provide life protection. Professional midwives with a higher educational background coupled with a professional certificate guarantee services based on more knowledge than vocational midwives whose education level is at the diploma level.

Vocational midwives who can only practice midwifery in health care facilities can actually carry out their duties well, because in health care facilities there are other health workers who have the competence to practice. Thus, there will be collaborative practices that can provide good service to clients, so that their souls are protected.

3. Intellect (Hifzh al-'Aql)

According to Hori, reason in the Indonesian context is associated with thinking activities and refers to understanding and communication skills. Especially professions related to the provision of social services to the community, one of which is the midwife profession, which requires critical thinking skills, good understanding skills, and the ability to communicate between those concerned and the community, especially the clients they face (Hodri, 2013).

Excellent service that can provide benefits and provide satisfaction to clients is needed. On the other hand, poor service due to inability to think critically, lack of understanding, and difficulty in communicating can cause problems. In fact, the client's right to obtain good service is not fulfilled. As a result, at least it will return to the midwife concerned, it can even potentially harm the existence of other midwives. In the perspective of maqashid shari'ah, protection against will (Hifzh al-'Aql) is important. Its position is no less important than protection against other elements.

In terms of protection of reason (Hifzh al-'Aql), the Midwifery Law is more oriented to midwives who carry out practice. This is explained in Article 4 regarding the educational qualifications of midwives, namely:

In point b of Article 4, vocational education is a midwifery diploma program and is the lowest level for midwifery education. Then, in Article 5, it is explained about academic education which consists of a bachelor's program in midwifery, a master's degree in midwifery, and a doctoral program in midwifery. In Article 5 paragraph (2) professional education is an educational qualification that is carried out after graduating from the academic education of the midwifery degree program.

The difference in practice authority regulated in Article 21 philosophically invites midwives, especially vocational ones, to increase their knowledge and level of education. Education is an effort to develop the latent potentials of individuals so that they are actualized and contribute to individuals and society. Every profession, including midwife, has potential and ability in its field, especially professions that are directly related to the

community, efforts to increase capacity are highly emphasized. Through midwifery education, which is arranged in such a way, it aims to increase the knowledge and abilities of midwives. Thus, the educational qualifications stipulated in the Midwifery Law are not only aimed at the interests of the individual midwife, but also provide benefits for the community.

Education can be measured from two points of view, both individual and community perspectives. This illustrates that the role of education is very central for the development of individuals, both knowledge and skills, while from the community's point of view, by increasing the level of education that will provide knowledge and skills, it will further increase people's expectations. Especially for the midwifery profession, with opportunities that are widely opened for the development of midwives, it will increase the quality of midwifery services for the community.

This is in line with the provisions of studying in Islam, as explained in a hadith, seeking legal knowledge is obligatory. In the hadith it is not limited to the science in question, it certainly implies all knowledge. Especially for the midwifery profession that is directly related to the safety of the client's soul, midwifery staff are expected to continuously improve their abilities and knowledge.

Efforts to increase knowledge and abilities provide other benefits to increase the submission and obedience of a midwife and other professionals in carrying out their duties, so that there are no deviations. As a normative basis contained in the QS. Fatir: 28.

"Indeed, those who fear Allah among His servants are only scholars. Indeed, Allah is Mighty, Most Forgiving." (Surat Fatir: 28).

The verse above does not explicitly mention the midwifery profession. There are two key words, namely *yakhsya* which means fear, and *ulama* which is the plural form of the term *'alim*, which means knowledgeable person. In general it is understood as a person who has religious knowledge who has a high quality of faith and obedience.

The term *'alim* or *ulama* above does not explicitly refer to midwives. However, an increase in the knowledge and abilities of midwives through the development of soft skills as well as the formation of educational levels will further enhance the abilities and knowledge of midwives. Increased knowledge and ability for midwives will further foster awareness, compliance, and submission in carrying out their profession. Therefore, the more professional a person is, the more obedience and submission to the rules will increase, because it is supported by increased knowledge and abilities. Conversely, the lower a person's knowledge and ability in carrying out his profession, deviations and non-compliance are prone to occur. Thus, the development and improvement of knowledge and abilities of midwives through the field of midwife qualifications in the Midwifery Law fulfills the protection of reason as emphasized in *maqashid shari'ah*.

4. Descendants (Hifzh al-Nasl)

Protection of offspring is an important element that is not inferior to protection of other elements. In Awaliyah's research, a term in the Qur'an which means offspring is *zurriyah* which means children, grandchildren, and descendants (33). Maintenance of offspring as referred to in *maqashid shari'ah* must be seen widely. It aims to provide a comprehensive perspective or point of view, so that the results do not come out of the context of being passed down by *shari'ah* to humans, especially in dissecting the content of protection for offspring in the new Midwifery Law.

One of the midwifery care is assisting childbirth, of course this is related to maintaining offspring as referred to in maqashid shari'ah. While midwifery care is a series of midwifery services based on the decision-making process and actions taken by midwives in accordance with the authority and scope of practice based on midwifery knowledge and tips.

One data mentions that the number of infant mortality rates is still high, especially in Central Java Province, so that a Governor's Decree is issued regarding the prohibition for midwives to practice independently. By increasing education, efforts to maintain offspring will be achieved. The maintenance of offspring in question does not only stop at the process of assisting childbirth, but also lies in the success of midwives in providing assistance to clients and the community to improve healthy living standards as described in health sciences.

As a plus, in QS. Al-Maidah: 32 explained:

"And whoever preserves human life, it is as if he brings them all to life" (Surah Al-Maidah: 32).

The verse above explains the parable of a health worker, a midwife in it who is able to realize the maintenance of human life, including offspring so that it is likened to being able to maintain the lives of all humans. This implies the virtues obtained for midwives who are able to realize human life.

5. Treasure (Hifzh al-Mal)

According to Rizal, fiqh experts define property as something of value that can be controlled and taken advantage of, even subject to sanctions to replace it if someone destroys it (Rizal, 2015).

Thus, as stated by Rizal, property can be defined in two ways, first, it can be controlled (hiyazah). Something that cannot be controlled is not categorized as a treasure. For example, free air, glory, hot sun, etc. Second, property in general can be taken advantage of, for example food, vehicles, etc. While something that is not useful such as carrion, poisonous food is not categorized as a treasure (Rizal, 2015). Thus, it is clear that what is categorized as property here is something that can provide benefits, because basically property contains the purpose of benefiting those who control it.

While the definition of benefit itself, according to Iswandi is an effort to take the values of benefit and reject the values of damage, while benefit and damage are intermediaries for the enforcement of maqashid shari'ah to meet human needs both in the world and in the hereafter (Iswandi, 2014).

Maintenance of property as intended by maqashid shari'ah is property owned by the client, where the client can use his wealth to obtain good health services. Health services are obtained, of course, by using assets without spending them excessively, so that it seems to be wasting their wealth. Therefore, in the Qur'an itself there is a prohibition on exaggeration, including the use of property.

Verily, the spenders are the brothers of Satan and the devil is very disbeliever in his Lord. (Surat al-Isra ': 27)

Selective use of property is necessary. To avoid wasteful behavior is not only imposed on the client alone. Health workers who in this context are midwives must also consider these efforts, namely by trying to provide good and correct midwifery services.

On the other hand, preventing wastage in the use of client assets does not mean that midwifery services are provided minimally. But the services provided are still as much as possible with reference to the standards and procedures set.

Thus, the distinction between the status of midwives and the jurisdiction of granting licenses to practice midwifery as regulated in the new Midwifery Law implicitly aims to provide protection for assets as intended in maqashid shari'ah. Because the Act indirectly motivates midwives to increase their knowledge and abilities, both cognitive and soft skills, so that they will be able to provide increased midwifery services to the community in general and clients in particular.

On the other hand, the absence of rules that distinguish the status of midwives and educational standards will not motivate midwives to increase their knowledge and abilities adequately. As a result, the midwifery services provided to the community and especially clients will not be maximized. In fact, the need for midwifery services is increasing. An increase in the need for midwifery services that is not matched by adequate knowledge and skills of midwives is actually counter-productive to the objectives of midwifery services.

In conclusion, inappropriate midwifery services have the potential to force clients to incur additional costs to obtain health services elsewhere, and contribute to the waste of assets. Of course, this waste is absolutely avoided.

CONCLUSION

Based on the description in the previous chapter, this research can be concluded as follows:

- A. Based on the provisions of Article 21 independent practice and in health services are given to professional midwives, while for vocational midwives practice is only given to health services. Provisions for practice in health services for vocational midwives are contained in Article 21 of the 2019 Midwifery Law.
- B. Based on a review of the maqashid shari'ah philosophy, the provisions for the practice of midwives contained in Article 21 are as follows:
 1. Maintenance of Religion

Differentiation of practice provisions for professional and vocational midwives aims to avoid harm. This is based on higher educational qualifications.

2. Soul Nurturing

The maintenance of the soul is obtained through the differentiation of authority given to midwives in carrying out their profession. The soul in question is the client, because to provide midwifery services, professional midwives can do it independently because they have these qualifications, while vocational midwives are only given to health services so they need assistance for certain cases. Thus, the soul of the client will be maintained.

3. Mindfulness

Maintenance will be oriented to midwives in order to increase knowledge and education level. Increasing the level of education will have a positive impact on other maintenance efforts, both religion, soul, lineage, and property for clients. Meanwhile, to maintain the mind is more oriented to the midwife.

4. Offspring

Efforts to increase the level of education give hope that the knowledge of midwives will increase so that they are able to provide good and appropriate services. Especially in dealing with cases of childbirth, skilled obstetricians are needed. By increasing education and knowledge the infant mortality rate will be reduced.

5. Property Maintenance

The right midwifery service will give good results, especially for the client. With the right service, the client will not be harmed so that he has to spend a lot of money to get good service elsewhere.

SUGGESTION

This research has the significance of providing philosophical knowledge of the Midwifery Act. This knowledge includes the mashlahah to be achieved in the formulation of the law. As a further step, it is also important to conduct research that aims to determine the implementation of the law.

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