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Construction of Legal Norms Regulations Underlying Medical Decision-Making for Periviabilities in The Framework of Maintaining the Right to Life of Newborn Baby in A Just Way

Willy Gunardi Sugeng¹

¹Universitas Krisnadwipayana, Jakarta, Indonesia, email. willygunard@gmail.com

Corresponding author: willygunard@gmail.com¹

Abstract: This study examines the legal gap in regulating medical decision-making for periviable infants, namely infants born at gestational ages where survival outside the womb is very low (generally 22–25 weeks). The main problem arises when there is a dilemma between the medical obligation to perform aggressive resuscitation and the parents' right to determine the best course of action for their child, which often clashes with ethical aspects and regulatory limitations in Indonesia. The research method used is normative juridical with a statutory approach and a conceptual approach. Secondary data is analyzed qualitatively to find the philosophical and legal basis for protecting the right to life of infants. The results of this study indicate that current health regulations do not specify the threshold for medical intervention at infant viability, thereby creating legal uncertainty for medical personnel when making critical decisions. The ideal regulatory construction should be based on the principle of the Best Interests of the Child and the value of justice for newborns. This study recommends the need for the establishment of technical regulations (such as the Ministry of Health Regulation) that regulate national clinical guidelines regarding the threshold of viability, a comprehensive informed consent mechanism, and the establishment of a multidisciplinary hospital ethics committee to ensure the protection of infants' right to life without neglecting their future quality of life.

Keyword: Infant Periviability, Right to Life, In Medical Decisions, In Regulatory Construction

INTRODUCTION

Based on data through January 2026, research on the construction of legal norms and regulations in medical decision-making regarding periviable infants is generally examined through the perspectives of health law and bioethics. Medical decision-making for periviable infants (infants born at the threshold of viability, typically between 22 and 25 weeks of gestation) in Indonesia is based on several primary legal instruments, namely: 1) Health Law. Regulates the right to life of every child and the obligation of medical personnel to provide the best possible efforts (Law Number 17 of 2023 concerning Health); 2) Minister of Health Regulation Concerning Consent to Medical Procedures. This serves as the basis for doctors to involve parents as legal guardians to provide informed consent or informed refusal for resuscitation or palliative care. (Minister of Health Regulation Number

290/MENKES/PER/III/2008); 3) Medical Ethics Fatwa. This is often referred to when positive legal regulations do not specifically regulate the gestational age limit for aggressive medical procedures (IDI MKEK No. 029/PB/K/MKEK/04/2021).

In health law theses at UNHAS, the construction of this norm is usually divided into three pillars: 1) The Principle of Beneficence and Non-maleficence. Doctors are obliged to act for the good of the baby, but must also avoid actions that prolong suffering if the life expectancy is very low; 2) Parental Autonomy. Recognition of parents' rights to make the best decisions for their children, as long as those decisions do not violate the infant's basic right to life; 3) Legal Protection for Medical Personnel: Clear regulations are needed to prevent doctors from being criminalized for choosing not to perform aggressive resuscitation in cases of extreme periviability (e.g., gestational age <22 weeks) to avoid futile treatment.

The construction of regulations and legal norms that underlie medical decision-making regarding perivable babies (babies born on the threshold of viability, usually 22-25 weeks of gestation) in Indonesia focuses on the alignment between aspects of medical ethics and legal certainty. Every baby, including perivable babies, has the right to survival and protection from violence and discrimination according to Article 28B paragraph (2) of the 1945 Constitution. Legally, the status of a legal subject begins from the moment of live birth, which gives the baby the right to receive maximum medical treatment (Sabian, 2009).

Law Number 17 of 2023 concerning Health is the primary legal umbrella that regulates, among other things: 1) Professional Standards and Procedures. Medical decisions must be based on recognized service standards and the latest scientific evidence; 2) Best Interests of the Child. Decisions must prioritize the infant's long-term survival and quality of life; 3) Patient/Family Rights. Parents have the right to receive complete information regarding the prognosis, risks, and treatment options (intensive care vs. palliative care).

Based on derivative regulations regarding medical practice, decision-making regarding infant viability involves Shared Medical Decision Making, namely: 1) The doctor provides information regarding the chances of survival and the potential for severe disability; 2) Parents, as legal guardians, provide consent or refusal after understanding the medical consequences; 3) If a conflict arises between the doctor and parents, the hospital ethics committee acts as a mediator.

The Construction of Legal Regulations Underpinning Medical Decisions Regarding Perivable Infants focuses on the ethical and legal dilemmas when dealing with infants born at the threshold of viability (usually between 22 and 25 weeks of gestation). This paper emphasizes the "Best Interests of the Child," a key principle in the International Convention on the Rights of the Child, as perivable infants often face the risk of severe, permanent disabilities if forced to survive through extreme interventions.

Humans are social creatures; this social being refers to entities that exist alongside other humans who interact with each other and cannot live alone. Humans are called social creatures because they continue to coexist with others, living in groups. Society lives in groups because they share common interests and goals for survival. According to Aristotle, humans are viewed as naturally social creatures (*zoon politicon*), meaning they desire to associate with others (Yhalib, 1974).

To fulfill their inner needs, humans channel their desires through the legal bond of marriage. Marriage is a sacred, strong, and solid bond when living together legally between a man and a woman to create a family. Marriage is regulated in Law Number 1 of 1974 concerning Marriage with amendments to the latest Law, namely through Law Number 16 of 2019 concerning Marriage which explains that "marriage is an inner and outer bond between a man and a woman". As individuals, men and women with the intention of forming a prosperous and lasting family (household) (Yhalib, 1974). In the development of technology, scientists and experts in the field of health are trying to solve problems in marital bonds, namely married couples who want to have children in the bonds of marriage. After being studied, many cases

of problematic marriages are related to the difficulty of having children due to several internal and external factors. Based on research conducted by experts regarding the factors causing infertility or difficulty in having children, making married couples try various ways to have children, ranging from herbal medicine to medical treatment. The most widely used medical treatment in Indonesia is IVF. IVF is an artificial insemination program (Akbar, 2020).

METHOD

The author employed a type of research known as library research. This research was conducted by gathering information from available documents. This method involved analyzing library materials and secondary data, including primary, secondary, and tertiary legal materials (Hamzani, 2020).

In this study, the author employed a normative research approach, also known as library research or document study. This approach focused on analyzing written regulations and other legal materials. Article 127 of Law Number 17 of 2023 concerning Health states that if it can be medically proven that a married couple cannot conceive naturally, they are permitted to attempt conception with the assistance of medical technology, such as through in vitro fertilization (IVF) (Hamzani et al., 2023).

RESULTS AND DISCUSSION

The issue of infant medical specifications in terms of verifiability in 2026 focuses on the accuracy of physical identification, standardization of electronic health data, and compliance with mandatory screening protocols. The following are the main points regarding the verifiability of infant medical specifications:

1. To address the issue of infant medical specifications verifiability, specific regulatory support is needed regarding clinical and ethical guidelines for the management of viable infants.

It is recommended that for infants weighing <1 kg, initiate supplemental nutrition at 15–20 mL/kg/day and gradually increase by 15–20 mL/kg/day. If the supplemental nutrition is tolerated for approximately 2–3 days, consider increasing the dose more rapidly. For infants weighing \geq 1 kg, initiate supplemental nutrition at 30 mL/kg/day and gradually increase by 30 mL/kg/day.

According to the Ministry of Health and the references used, a newborn baby (BBL) or neonate is a baby aged 0–28 days, experiencing a critical transition period from inside the womb to life outside the womb, with normal newborns generally born between 37–42 weeks of pregnancy, weighing 2500–4000 grams, and without congenital defects, and experiencing major physiological changes to adapt.

- a. Newborn (Neonate). An individual born up to 28 days old, who is undergoing a major adaptation process from intrauterine (in the womb) to extrauterine (outside the womb) life.
 - Normal Newborn. A baby born with certain criteria, as described below:
 - Gestational age 37–42 weeks (term).
 - Body weight 2500–4000 grams.
 - Body length 48–52 cm.
 - An APGAR score of 7–10 (indicating vitality).
 - No congenital defects.
- b. Vulnerability Period: The first 28 days are the most vulnerable period because the baby's organs are not yet fully mature and the body is very vulnerable to disease.
- c. Physiological Adaptation: The baby must adjust its vital functions, such as breathing, circulation, thermoregulation (temperature regulation), eating, drinking, and excretion.

- d. The Ministry of Health defines newborns based on age (0-28 days) and normality criteria (gestational age, weight) and emphasizes the importance of the transition period and physiological adaptation which are the main focus in neonatal care.

2. The establishment of a Government Regulation outlining and detailing relevant laws, as well as a Ministerial Regulation of Health as a technical regulation, is essential to address the legal and ethical needs in medical decision-making regarding viability of newborns, as an effort to uphold the just right to life of newborns.

In daily practice, a code of ethics assists midwives in making ethical decisions, particularly in complex or ambiguous situations. Adherence to the code of ethics ensures that midwives provide high-quality, safe, and patient-centered care, in accordance with professional standards.

Health ethics and law are two key pillars governing medical practice. Ethics are unwritten moral guidelines (such as patient autonomy, benevolence, confidentiality, and fairness) that guide professional behavior. Health law, on the other hand, is legally binding written legislation designed to protect patients and healthcare workers, regulate services, and resolve disputes. These include the Health Law and regulations related to healthcare workers, which are closely interconnected in providing quality and ethical care.

Ethics is a reflection of what is known as "self-control," as everything is created and implemented by and for the benefit of the social group (profession) itself. Ethical issues in midwifery services are an important topic that is developing in society regarding human values in appreciating actions related to all aspects of midwifery concerning good and bad.

3. Legal protection for viability of unborn children from a civil law perspective

Civil law is a norm that has developed within society. In essence, norms are mandatory and binding for everyone in a given area. With these norms, each individual can pursue their needs within their boundaries and avoid violating the rules and harming the needs of others. This can create a life filled with security, order, and peace. In Law Number 1 of 1974 concerning amendments to Law Number 16 of 2019 concerning Marriage, where a married person will give birth to legitimate children, Article 250 of the Civil Code (KUHPer) explains the definition of a legitimate child, namely "a legitimate child is every child born or raised during a marriage, having the husband as their father." (Suoarni, 2013).

Article 42 of Law Number 1 of 1974, as amended by Law Number 16 of 2019, states that "a legitimate child is a child born as a result of a legal marriage." The definition of a legitimate child in both laws above is based on the result of natural intercourse between a man and a woman during a legal marriage. In a legal marriage, there are instances where the couple is unable to produce children, leading to the use of in vitro fertilization (IVF) (Hamzani, 2010).

The IVF method is a challenging process due to the thorough preparation required. It must be performed by a professional obstetrician-gynecologist and in accordance with applicable guidelines. IVF is performed for reasons of standard of living or non-health reasons. Before beginning the IVF procedure, several pieces of information need to be gathered as part of the history and initial examination. These include the relationship's status, the couple's health, hormonal stability, physical condition, and psychological well-being.

In vitro fertilization (IVF) can be performed when a man and woman experience several conditions (Arafina, 2021), such as:

- a. Genetic abnormalities.
- b. Poor health.
- c. Disorders of the fallopian tubes or uterus, such as damage or blockage of the egg ducts.
- d. Disorders in the ovulation process, resulting in minimal egg production.
- e. A disorder in uterine tissue that grows outside the uterus.
- f. Risk of hereditary diseases.

Several factors drive the adoption of IVF, the primary one being the woman's age. The age limit for women who can undergo the procedure is 23–39 years old, with the highest proportion being 35 years old. "IVF is a private matter for everyone, necessitating a form of legal protection related to IVF, including regulations governing family structure and social interaction within society."

According to civil law, "a child born through IVF using the husband's sperm is the legitimate child of a married couple, both biologically and legally. This means the child has inheritance rights and other civil rights. If IVF is performed using the sperm and egg of a legitimate couple, and the embryo is implanted into the wife's uterus, the resulting child has the legal status of a legitimate child. Therefore, the child has the same rights and obligations as a child born naturally."

CONCLUSION

Conclusions regarding the construction of legal norms and regulations in medical decision-making for periviable infants (infants born at the threshold of survival outside the womb) to ensure a just right to life:

1. Legal protection for periviable infants is rooted in the constitutional right to life, which is non-derogable (cannot be reduced under any circumstances). Medical decision-making is not viewed solely from a clinical perspective, but as fulfilling the state's obligation to protect the right to life of every citizen from the moment of birth.
2. Ideal legal construction integrates medical standards (standard of care) with bioethical principles (parental autonomy, beneficence, non-maleficence, and justice). Regulations must provide legal certainty for medical personnel in determining when aggressive resuscitation is mandatory or when palliative care is more humane to avoid futility of care (futile medical treatment).
3. Regulations need to adopt dynamic yet definitive parameters regarding gestational age and low birth weight in line with the latest developments in medical technology. Medical decisions must be based on the Best Interests of the Child, not solely on the availability of facilities or economic considerations.
4. The right to life and equity demands standardization of neonatal services across all healthcare facilities. Regulatory frameworks must ensure that every viable infant has an equal opportunity to receive optimal medical care without discrimination based on socioeconomic status, supported by a comprehensive healthcare financing system.
5. Legally, medical decisions must emerge from a structured dialogue between the medical team and parents through in-depth informed consent. Regulations should facilitate this mediation process to minimize legal conflicts and ensure that the decisions made are the most equitable for the infant.

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