

Legal Protection of the Consumer Traditional Medicine from a Legal Perspective Civil

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Abstract

This research aims to examine the legal protection of patients in traditional medicine from the perspective of civil law in Indonesia, considering the growth and integration of traditional medicine in the national health system. With the increasing use of traditional medicine by society, an important need arises to ensure that patients receive safe, effective and quality care, as well as adequate legal protection against potentially harmful practices. This research uses normative legal research methods, with statutory, conceptual and analytical approaches to understand the applicable legal framework and its implications for patient protection. Analysis was carried out on related laws, especially Law Number 17 of 2023 concerning Health, as well as other relevant literature to identify and discuss legal protection mechanisms available to patients in the context of traditional medicine. The results of the discussion show that, although Law Number 17 of 2023 has established a strong basis for the regulation and integration of traditional medicine, there is still room for improvement, especially in terms of patient protection. This research identified several key areas for development, including the need to improve specific regulations governing practitioner qualifications, service standards and patient complaint mechanisms. It is recommended that the government increase collaboration between institutions to strengthen supervision of traditional healing practices, as well as facilitate further research to support scientific validation of traditional healing practices and products. Suggestions resulting from this research include improving regulations and more specific policies to protect patients, developing educational programs to increase public awareness of existing rights and protection mechanisms, and increasing the capacity of regulatory agencies to identify and address unsafe traditional medicine practices. It is hoped that this research can contribute to the development of traditional medicine policies and practices in Indonesia, with a focus on increasing legal protection for patients.

Keyword: Legal Protection, Patients, Traditional Medicine

1. INTRODUCTION

Traditional medicine has long been a characteristic and integral part of Indonesian society. As evidence of rich culture and traditions, traditional medicine reflects people's belief in healing methods that have been passed down from generation to generation. However, in the modern era and advances in medical science, legal protection for patients who choose traditional treatment is often a hotly debated issue. According to data from the Central Statistics Agency (BPS) in 2019, around 40% of Indonesian people have used traditional medicine as an alternative for healing diseases. From these data, it can be concluded that the existence of traditional medicine is still very relevant in society. Even so, it is not uncommon for us to hear news or stories about irresponsible traditional medicine practices, which result in patients experiencing complications or even death. The meaning of traditional medicine is stated in the Ministerial Regulation Health of the Republic of Indonesia Number 61 of 2016 concerning Empirical Traditional Health Services which replaces the Decree of the Minister of Health No. 1076/Menkes/SK/VII/2003 article (1.1) which explains that: Empirical Traditional Health Services are the application of traditional health whose benefits and safety are clearly proven. empirical. And as explained in Law Number 17 of 2023 concerning Health, Article 161 (1), *traditional health services include promotive, preventive, curative, rehabilitative and/or*

palliative services. (2) Traditional Health Services can be provided in independent practice places, Community Health Centers, traditional Health Service Facilities, Hospitals, and other Health Service Facilities. Legal protection for patients in the context of traditional medicine is very important, especially to ensure that patients get their rights as consumers in this case. The Civil Code (KUHPPerdata) explains that every individual has the right to legal protection in all aspects of their life, including in matters of health. However, the question is whether the current regulations are sufficient to protect patients who choose traditional treatment pathways? Law no. 36 of 2009 concerning Health has indeed regulated traditional medicine and its protection, but in practice, there are still many loopholes that can be found. In addition, in practice, patients often do not receive adequate information regarding the risks and benefits of the traditional treatment they will undergo. This is of course a problem in itself, where patients should have the right to obtain complete information before undergoing treatment. One case that aroused public attention was when a patient died after undergoing traditional treatment in the Central Java area in 2020. In this case, the patient's family demanded responsibility from the traditional medicine service provider who was deemed to have been negligent in providing treatment. Cases like this show that there are still weaknesses in the legal protection system for traditional medicine patients. Indonesia has a deep cultural richness, which is reflected in the healing traditions that have existed for a long time. However, in this modern era, where advances in technology and medical science are increasingly rapid, the need for legal protection for patients who choose traditional treatment is increasingly urgent. After the birth of Law No. 17 of 2023 concerning Health, attention has been paid to aspects of legal protection for patients who choose. Traditional medicine is increasing. In Part Twenty-Six of this Law, it specifically regulates Traditional Health Services. This shows the government's commitment to providing recognition and protection for traditional medicine as one of the pillars of health in Indonesia. According to Article 160, traditional health services are defined based on their methods, which include the use of skills and/or ingredients, and are recognized as part of local wisdom. This reflects the government's official recognition of the existence and contribution of traditional medicine in the national health system.

Article 160

- (1) Traditional health services based on treatment methods consist of:
 - a. Traditional health services that use skills; and/or
 - b. Traditional health services that use herbs.
- (2) Traditional health services as referred to in paragraph (1) are carried out based on knowledge, expertise and/or values originating from local wisdom.
- (3) Traditional health services as referred to in paragraph (1) are developed and supervised by the Central Government and Regional Governments so that their benefits and safety can be accounted for and do not conflict with socio-cultural norms.

The importance of the government's role in providing legal protection for traditional medicine patients is increasingly emphasized in Article 162, which states that the Central and Regional Governments are responsible for the availability of Traditional Health Services. This shows a strong commitment from the government to ensure that people have safe and quality access to traditional medicine. Dr. Siti Fatonah, a health law expert, said that with the birth of Law No. 17 of 2023, Indonesia has gone further in its efforts to ensure that people, especially those who choose traditional medicine, receive adequate legal protection. However, he also emphasized that community participation in ensuring the safety and benefits of traditional medicine is also very important. Legal protection of patients in the context of traditional medicine is not only the responsibility of the government, but also all elements of society. This is confirmed in Article 163, where the community is given the widest possible opportunity to develop, improve and use traditional health services whose benefits and safety can be accounted for. However, many questions still arise regarding how to implement the provisions of this Law in the field. Are existing regulations sufficient to protect patient rights? What needs to be done to ensure that the public receives correct and complete information regarding the risks and benefits of traditional medicine? By looking at these phenomena and questions, research on legal protection for patients in the context of traditional medicine becomes very relevant and important. Through this research, it is hoped that it can provide a clearer picture regarding the implementation and implementation of Law No. 17 of 2023 in the context of legal protection for traditional medicine patients.

2. RESEARCH METHODOLOGY

This research uses a normative juridical approach to explore legal protection for patients in traditional medicine, referring to the Civil Law and Law No. 17 of 2023 concerning Health. By collecting data through literature and legal document studies, this research aims to analyze relevant legal norms. Analysis of qualitative juridical data will help understand existing legal protections and identify the need for improvements or adjustments in regulations to optimize patient protection. Source triangulation will be used to validate the findings, ensuring that the analysis is sound accurate and reliable, with the aim of providing constructive recommendations to improve the legal protection of patients in traditional medicine.

3. RESULT AND DISCUSSION

Traditional Medicine in the world of health

Traditional medicine has long been an integral part of the health system in many societies around the world. According to the definition provided by the World Health Organization (WHO), traditional medicine includes practices, approaches, knowledge, and beliefs that involve the use of herbal, animal, and mineral medicines, as well as physical and spiritual therapies to diagnose, prevent, and treat various types of disease. In Indonesia, traditional medicine is not only accepted as part of cultural heritage, but is also recognized and regulated by law, as stated in Law Number 17 of 2023 concerning Health, which states that traditional health services include promotive, preventive, curative, rehabilitative, and/or palliative. The history of traditional medicine is rooted in ancient practices that developed along with the human need to cure disease and maintain health. In many countries, including Indonesia, traditional medicine takes unique forms, reflecting the richness of local culture and natural diversity. For example, herbal medicine in Indonesia is an example of traditional medicine that uses concoctions from various herbal plants to treat disease and improve well-being. In the context of Indonesian law, the recognition and protection of traditional medicine has been the subject of debate and discussion among legal experts. According to Prof. Dr. Bagir Manan, former Chief Justice of the Supreme Court RI, legal protection for traditional medicine is not only important for preserving cultural heritage, but also to ensure the safety and efficacy of treatment for the community. He stressed that "Fair and transparent regulation is key to integrating traditional medicine into the national health system, while ensuring high standards of quality and safety". Next, Dr. Yuliandri, SH, MH, a law lecturer at Andalas University, believes that "Traditional medicine, as part of an alternative health system, requires a clear legal framework for its operations. This not only protects practitioners and patients, but also helps in research and development further than traditional medicine itself". This opinion underscores the importance of supportive legislation, which not only regulates traditional healing practices but also facilitates research to prove their efficacy and safety. According to Prof. Dr. Siti Miriam, a public health law expert, "There is a significant gap between traditional healing practices and existing regulatory requirements. To bridge this gap, ongoing dialogue is needed between the government, traditional medicine practitioners and the academic community." He added that this collaboration is important to create a system that supports innovation in traditional medicine while ensuring that the practice is safe and effective for the community. The integration of traditional medicine into the formal health system in Indonesia, therefore, is a complex task that requires in-depth legal understanding and cooperation between various stakeholders. A multidisciplinary approach, combining legal, medical and cultural knowledge, appears to be the key to advancing traditional medicine in Indonesia.

Legal Regulations Regarding Traditional Medicine in Law Number 17 of 2023 concerning Health

In order to recognize and regulate traditional healing practices in Indonesia, the government has taken significant steps through the ratification of Law Number 17 of 2023 concerning Health. Part Twenty-Six of this law specifically regulates Traditional Health Services, which marks an important milestone in the integration of traditional medicine into the national health system. This law explicitly recognizes two main forms of traditional health services: first, services that use skills, and second, services that use herbs.

Article 160

- (1) Traditional health services based on treatment methods consist of:
 - a. Traditional health services that use skills; and/or
 - b. Traditional health services that use herbs.
- (2) Traditional health services as referred to in paragraph (1) are carried out based on knowledge,

expertise and/or values originating from local wisdom.

- (3) Traditional health services as referred to in paragraph (1) are developed and supervised by the Central Government and Regional Governments so that their benefits and safety can be accounted for and do not conflict with socio-cultural norms.

Article 161

- (1) Traditional health services include promotive, preventive, curative, rehabilitative and/or palliative services
- (2) services can be provided in independent practices, community health centers, traditional health service facilities, hospitals and other health service facilities.

Article 160 paragraph (1) states that traditional health services can be based on certain skills or the use of herbs, both of which are a rich heritage of local wisdom. Paragraph (2) of the same article emphasizes that these practices must be based on knowledge, skills and values originating from local wisdom, which reflects recognition of the importance of local traditions and culture in healing and health care. Furthermore, the law mandates that traditional health services must be fostered and supervised by the Central Government and Regional Governments (Article 160 paragraph (3)). This is intended to ensure that traditional healing practices can be accounted for in their benefits and safety and do not conflict with social and cultural norms. This oversight also aims to maintain the quality and efficacy of traditional health services, ensuring that those who choose to use this type of service receive care that is safe, effective, and in accordance with applicable ethical standards and health practices. This article (Article 161) explicitly recognizes the broad scope of traditional health services, including promotive, preventive, curative, rehabilitative and palliative aspects. This signals legislative recognition of the comprehensive role that traditional medicine can play in providing holistic health care to society. Another important point is the recognition of the various practice settings where traditional health services can be offered, including independent practices, community health centers, traditional health facilities, hospitals and other health facilities. This shows legislative efforts to ensure that traditional medicine is not only integrated into the formal health system but also easily accessible to the wider community. Thus, Law Number 17 of 2023 concerning Health reflects Indonesia's commitment to respect and preserve traditional medicine as an inseparable part of the national health system. This regulation not only recognizes traditional medicine as a vital and unique source of health care, but also as a cultural heritage that needs to be protected and developed. By providing a clear and comprehensive legal framework, this law paves the way for the further development of traditional healing practices in Indonesia, ensuring that they operate within a supportive, accountable and sustainable system.

Article 162

The Central Government and Regional Governments are responsible for the availability of traditional Health Services.

Article 163

- (1) The community is given the widest opportunity to develop, improve and use traditional health services whose benefits and safety can be accounted for
- (2) The Central Government and Regional Governments regulate and supervise traditional Health Services as intended in paragraph (1) based on safety, benefits and protection of the community.

This article (Article 162) emphasizes the responsibility of the Central and Regional Governments for the availability of traditional health services. This shows the government's commitment to supporting traditional medicine, not only in words but also in concrete actions, by ensuring that the necessary resources are provided to maintain and develop these practices. This responsibility includes the funding, regulatory and infrastructure aspects necessary to support traditional health services. Article 163, this article emphasizes the active role of the community in developing, improving and utilizing traditional health services. This reflects the principles of democracy and community participation in public health, providing space for innovation and adaptation of traditional health practices according to local needs and wisdom. Apart from that, this article also strengthens the government's role in the regulation and supervision of traditional health services, by emphasizing the importance of safety, benefits and protection of the community. This suggests a balance between the promotion of traditional medicine and the need for oversight to ensure safe and effective practice.

Legal Protection of Traditional Medicine in Perspective Civil law

Before we discuss the form of legal protection for traditional medicine from a civil law perspective, again the author would like to emphasize that traditional medicine in Indonesia, as an integral part of the national health system, has received increasingly strong legal recognition and protection, especially through the issuance of Law no. 17 of 2023 concerning Health. This law explicitly regulates traditional health services, which include skill-based services and the use of herbs, and emphasizes the importance of development, supervision and guidance by the Central and Regional Governments. This marks a step forward in recognizing and integrating traditional medicine into the national health legal framework, while ensuring safety, benefits and conformity with socio-cultural norms. Law Number 17 of 2023 concerning Health is specifically discussed in Articles 160 to Article 164. This law differentiates traditional health services based on the method of treatment and ensures that these practices are sourced from knowledge, expertise and local wisdom values. Thus, traditional medicine is not only recognized as part of cultural heritage but also as an important health practice, provided that its benefits and safety can be accounted for. Furthermore, the Regulation of the Minister of Health of the Republic of Indonesia Number 61 of 2016 concerning Empirical Traditional Health Services provides a further basis for regulating traditional healing practices. Article 1 Point 4 " *Traditional Health Care Registration Letter, hereinafter abbreviated as STPT, is written evidence given to Traditional Health Care Health Care Professionals who have registered to provide empirical traditional health services.*" This regulation sets standards for services that cover promotive, preventive, curative, rehabilitative and palliative aspects, as well as clarifying the requirements and procedures for practice in various health facilities. In doing so, this regulation strengthens the framework for supervision and guidance of traditional medicine, ensuring that these practices are effectively integrated into the national health system with clear and accountable standards.

Within the civil law framework, consumer protection for traditional medicine is regulated to ensure the safety, quality and effectiveness of the services provided to the community. The focus on civil law allows analysis of the contractual relationship between traditional medicine service providers and consumers, as well as the protection mechanisms available in the event of breach or loss. Judging from the Civil Laws and Regulations, there are several things that must be underlined:

1. Principle of Good Faith (Article 1338 of the Civil Code): This principle requires that every agreement, including traditional healing services, must be carried out in good faith. This means providers must convey honest information about the benefits and potential risks of the treatment being offered
2. Obligation to Provide Information (Article 1320 of the Civil Code): For a contract to be valid, there must be agreement from the contracting parties, which is based on sufficient and accurate information. This implies that traditional medicine providers are obliged to provide complete and accurate information about their services to consumers
3. Protection Against Unlawful Actions (Article 1365 of the Civil Code): This article provides the legal basis for compensation for losses caused by unlawful actions, including traditional healing practices that cause harm to consumers.

In the context of health law, as described in Law no. 17 2023 concerning Health and Regulation of the Minister of Health of the Republic of Indonesia Number 61 of 2016 concerning Empirical Traditional Health Services, traditional medicine that is registered and supervised by the government provides an additional layer of legal protection for consumers. This registration and supervision ensures that traditional healing practices meet the safety and efficacy standards set by the government, as well as providing a legal basis for monitoring and fostering these practices. Consumers of traditional medicine, within the framework of civil law, are protected from practices that may cause physical, psychological or economic harm. If there is a breach of contract or unlawful act, consumers have the right to file a lawsuit and ask for compensation. This protection is important to ensure that consumers can choose traditional medicine as an alternative or complement to modern medicine with a sense of security and confidence. Therefore, in the author's opinion, legal protection for consumers of traditional medicine from a civil law perspective underlines the importance of transparency, accountability and security in the provision of traditional health services. By having a strong legal basis for supervision and guidance, as well as a civil law mechanism that allows consumers to obtain compensation if losses occur, consumers are expected to feel more protected. This strengthens the position of traditional medicine in the national health system as a safe and trustworthy option for society.

4. CONCLUSION

Finally, according to the author's opinion regarding legal protection for consumers of traditional medicine from a civil law perspective, it can be concluded that the existing legal framework offers a significant mechanism to guarantee the safety and efficacy of traditional medicine. The principle of good faith, the obligation to provide adequate information, and protection against unlawful acts are all important elements in upholding consumer rights. UU no. 17 of 2023 concerning Health and Minister of Health Regulation Number 61 of 2016 have strengthened the legal basis for the regulation, supervision and guidance of traditional medicine, ensuring that this practice can be integrated into the national health system in a responsible and safe manner.

REFERENCEE

- Anonymous, Indonesian Ministry of Health, 2011, Getting to Know Traditional Health Services in Indonesia, Directorate General of Nutrition Development and KIA, Jakarta. www.gizikia.depkes.go.id downloaded June 2022.
- Asshiddiqie, Jimly. 2009. Legal Certainty: Concept and Implementation. Jakarta: Central Bureau of Statistics.
2019. "Public Consumption of Traditional Medicine".
- Dra. Eni Harmayani. 2001. Traditional Medicine in Indonesian Cultural Perspective. Yogyakarta: Gadjah Mada University Press.
- Gautama, Sudargo. 2006. Basics of Indonesian Private International Law. Bandung: Alumni.
- Jephthah, Y. (2022). Patterns of Legal Relations in Medical Services Traditional. *Pro-Law Journal: Journal of Legal Research, University of Gresik*, 11 (2), 289–302. Retrieved from
- Kompas.com. 2020. "Patient Dies After Traditional Treatment, Family Demands Responsibility". Accessed October 29, 2023.
- Law of the Republic of Indonesia no. 17 of 2023 concerning Health. Civil Law Book (Burgerlijk Wetboek voor. Indonesia
- Law of the Republic of Indonesia no. 36 of 2009 concerning Health.
- Manan, B. (2018). "Law and Traditional Medicine in Indonesia." *Indonesian Journal of Health Law*, 15(1), 8-19.
- Minister of Health Decree Number 1076/MENKES/SK/VII/2003 concerning Administration of Traditional Medicine
- Minister of Health Regulation Number 61 of 2016 concerning Empirical Traditiona Health Services
- Ministry of Health of the Republic of Indonesia. 2003. Guidelines for Implementing the Development of Traditional Medicine. Jakarta: Republic of Indonesia Ministry of Health.
- PT RajaGrafindo Persada.
- R. Soeroso. 2009. Basics of Civil Law Concerning Objects. Jakarta: Ghalia Indonesia.
- Rahardjo, Satjipto. 1986. Law and Behavior. Bandung: Alumni.
- Siti Fatonah. 2024. Traditional Medicine in the Modern Era: Challenges and Opportunities. *Indonesian Health Law Journal*, Vol. 5, no. 2.
- Siti Miriam. (2019). Integration of Traditional Medicine in the Health System Public: A Legal Analysis. *Journal of Law and Policy Studies*, 22(3), 250-265.
- Soerjono, Soekanto. 2010. Sociology of Law in Society. Jakarta: Rajawali Press.
- Subekti. 1987. Basics of Civil Law. Jakarta: Intermasa.
- Sudibyo, A. (2015). The Richness of Herbal Medicine Traditions in Indonesian Culture. *Journal of Culture*, 10(2), 123-134.
- Sudibyo, HM 2009. Traditional Medicine in a Modern Perspective. Surabaya: Airlangga University Press.
- Sumarni, S. 2011. Integration of Traditional and Modern Medicine. Bandung: Padjadjaran University Press.
- Sumarno. (2016). Legal Protection for Bicycle Buying Consumers Motor Fiduciary. *Responsive*, 2(2016). UNPAB Faculty of Law Responsive Journal.
- Supriadi. WC, 2008, Legal Aspects of Health Services, Professor of Health Law, Unika Parahyangan Bandung, Hukumkes.wordpress.com, postponed 14 February 2022.
- Suryawati, Sri. 2005. Use and Safety of Herbal Medicine. Yogyakarta: Gadjah Mada University Press.

Yuliandri. (2020). Regulation of Traditional Medicine: Challenges and Opportunities Proceedings of the National Law Seminar at Andalas University, 2, 134-145.