

Legal Consequences of Negligence Committed by Traditional Health Workers

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ABSTRACT

As stated in the 1945 Constitution of the Republic of Indonesia, health is a human right and is a component of welfare that must be realized following with Pancasila and the ideals of the Indonesian nation. To be healthy, people not only trust medical health services, but also traditional medicine such as shamans, acupuncturists, healers, and others. This research is a type of normative legal research. This research collects data through relevant literature research. The Indonesian Central Statistics Agency (BPS) describes the percentage of use of traditional medicine from year to year, namely, traditional medicine used in 2011 was 23.63 percent, in 2014 was 20.99 percent and in 2023 it was 27.57 percent. This shows that public interest in traditional medicine is relatively high. The results of the discussion showed that the legal consequences obtained due to negligence committed by Traditional Health Workers in accordance with the Government Regulation of the Republic of Indonesia Number 103 of 2014 received administrative sanctions and were also based on the Criminal Code, so the negligence caused could be held accountable by the district in accordance with the provisions of Article 205 of the Criminal Code and Article 343 of Law 1/2023 Article 359 of the Criminal Code and Article 474 paragraph (3).

Keywords: Legal Consequences, Traditional Health Services, Traditional Health Workers

INTRODUCTION

The World Health Organization (WHO) states that health can be defined as a prime condition both physically, mentally and socially, not only free from disease or weakness or disability (Krishnanda et al., 2023). Health is a human right and one element of prosperity that must be realized in accordance with the ideals of the Indonesian nation as intended in Pancasila and the 1945 Constitution of the Republic of Indonesia Article 28 letter H paragraph (1) confirms that "Everyone has the right to live in prosperity physically and mentally, have a place to live and have a good and healthy living environment and have the right to receive health services," so that the right to health services is a right that should be owned by all Indonesian people (Oponu, 2023).

In the world of health, philosophers in Greece introduced the concept of healing by providing basic scientific principles in the health sector which were previously based on culture and tradition, then WHO conducted studies on several countries that used alternative

traditional medicine, such as in Asia, Africa and America. Based on this study, it was found that 80% of the country's population chose traditional treatment methods (Svenaesus, 2022). In the current development of the world of health, there has been a change in orientation, both values and thinking regarding efforts to solve health problems which are influenced by politics, economics, social culture, science and technology (Inglehart, 2020). In Indonesia, the current development of society is that the majority of people still use traditional health services, this is due to the close relationship between culture and traditional medicine (Laksono et al., 2024). Apart from that, the factor that has a big influence is the economic factor, traditional medicine can be reached by the community at a more affordable cost. compared with other commercial treatments (Odubo et al., 2024). The Indonesian Central Statistics Agency (BPS) describes the percentage of use of traditional medicine from year to year, namely, traditional medicine used in 2011 was 23.63 percent, in 2014 it was 20.99 percent and in 2023 it was 27.57 percent (Indonesia, 2011).

Traditional medicine is a collaboration of knowledge, skills and practices based on scientific theories, beliefs and experiences developed together with various cultures. Traditional medicine is one of the methods used to maintain the body's condition in prime condition by carrying out prevention, diagnosis, treatment both physically and mentally (Budiyanti & Herlambang, 2023). In Law No. 17 of 2023 Article 199 paragraph (12) states that those included in Traditional Health Workers include traditional health workers, traditional herbal health workers, traditional health workers who are traditional healers, and traditional intercontinental health workers. Law No. 17 of 2023 Article 161 paragraph (1) explains that traditional health services consist of promotive, preventive, curative, rehabilitative and/or palliative services. In the Minister of Health Regulation No. 15 of 2018 Article 9 states that Traditional Health Workers in providing services are obliged to evaluate the patient's condition, use traditional medicines that have a distribution permit or traditional medicines of their own concoction, do not take action using radiation, do not carry out invasive procedures and use medical equipment except in accordance with their competence and authority, do not sell and/or distribute self-concocted traditional medicines without permission in accordance with statutory provisions (Agustina, 2016).

Traditional Indonesian health services have been regulated in law since 2009, namely Law No. 36 of 2009 concerning Health which provides a definition of Traditional Health Services as treatment and/or care using methods and drugs that refer to experience and skills passed down from generation to generation. empiris that can be accounted for and applied in accordance with the norms applicable in society (Agustina, 2016). In Law no. 17 of 2023 is regulated in Articles 160 to Article 164 concerning Traditional Health Services, regulations regarding this are also contained in Republic of Indonesia Government Regulation Number 103 of 2014 concerning Traditional Health Services. Currently, Traditional Health workers will be trained and supervised in stages by the central government, regional governments and related sectors in accordance with Minister of Health Regulation no. 15 of 2018. The obligations carried out by Traditional Health Workers are stated in Government Regulation no. 103 of 2014 concerning Traditional Health Services in this regulation also regulates sanctions

that can be received by both health workers and traditional health service providers in the form of administrative sanctions. Sanctions related to losses experienced by patients in the form of liability for traditional health workers or traditional health service providers are not explicitly regulated either in the Law or in Government Regulations.

In relation to the explanation above, it is important to highlight and discuss the article entitled "Legal Consequences of Negligence Committed by Traditional Health Workers". With the problem formulation, namely: How are the health services provided by traditional health workers regulated? and Legal consequences for negligence committed by traditional health workers? The aim of this research is to determine the regulation of health services provided by traditional health workers and the legal consequences of negligence committed by traditional health workers.

RESEARCH METHODS

This paper uses normative legal research methods. According to Soerjono Soekanto, the normative legal research method is defined as a method that images law as a prescriptive discipline in which it only looks at law from the perspective of norms, which are of course prescriptive in nature. Normative legal research methods can be interpreted as mechanisms for obtaining legal rules and legal principles and are carried out to obtain arguments, theories or new concepts as prescriptions for solving problems (Rizkia & Fardiansyah, 2022).

In implementing norms in society, before the norms can be implemented the norms themselves can be said to be problematic due to a lack of professional ability in the formation of statutory regulations. There are also forms of norms that conflict with norms from higher levels of legislation so that their application often experiences confusion. Confusion can also occur when a norm formulation is unclear, which can lead to multiple interpretations of the same norm from various groups. In addition, due to limited predictions in the formation of statutory regulations, legal events emerge in society that have not been regulated, resulting in a vacuum of norms. So normative legal research itself is divided into several parts, namely conflict norms, unclear or vague norms, and empty norms. After studying the background and finding legal events in society that have not been regulated in statutory regulations, this journal uses a void norm approach.

The primary legal materials in this research are primary legal materials and secondary legal materials. This research uses primary legal materials in the form of legislation and court decisions. The secondary legal materials used in this research are books, legal journals and the internet relating to regulations governing traditional health as well as health workers and administrators. Techniques for collecting primary legal materials are carried out by library research on legal materials, both primary materials, secondary legal materials and tertiary legal materials. The review of legal materials is carried out by reading statutory regulations related to conflict of norms, looking for principles and theories related to the legal issues being discussed, as well as analyzing legal materials via the internet (Nurhayati et al., 2021).

The analysis used on the collected legal materials is prescriptive analysis, namely formulating guidelines and rules that must be adhered to by legal practice and is critical in

nature so that they can then be used in solving the problems faced. Analysis of legal materials is carried out by selecting secondary data or legal materials, then classifying them according to the classification of legal materials and compiling the research data systematically and logically. This means that there is a relationship between one legal material and other legal materials to get a general picture of the research results.

RESULTS AND DISCUSSION

A. Regulations Regarding Traditional Health Services

Regulation of the Minister of Health of the Republic of Indonesia Number 15 of 2018 defines Traditional Health Services as a form of health service to treat and/or provide care using methods or medicines that are based on empirically passed down experience and skills that can be accounted for and applied in accordance with applicable norms. in society. In Law Number 17 of 2023 concerning Health in Article 160 it is stated that traditional health services are divided into 2 types, namely Skilled Traditional Health Services and Herbal Traditional Health Services which are based on knowledge, expertise and/or values sourced from local wisdom.

Traditional health services, in line with the development of information and technology in providing health services to the community, have a division into the types of service implementation. However, in general, traditional health services have the principles of health services, namely promotive, preventive, curative, rehabilitative and/or palliative services. Types of traditional health services include Emperis Traditional Health Services, Complementary Traditional Health Services, Integrated Traditional Health Services (Swasthi et al., 2020). Empirical Traditional Health Services are defined as the application of traditional health services that have been empirically proven to be beneficial and safe (Budiyanti & Herlambang, 2023). Complementary Traditional Health Services is an application of traditional health that utilizes biomedical and biocultural science in its explanations and its benefits and safety are scientifically proven. Furthermore, Integrated Traditional Health Services are a form of health service that combines conventional health services with Complementary Traditional Health Services, either as a complement or a substitute. Emperis Traditional Health Services are carried out by Traditional Health Care Providers. A Traditional Health Care Provider is any person who provides Traditional Empieris Health Services whose knowledge and skills are obtained through passed down experience or non-formal education. Empieris Traditional Health Services are provided by Traditional Health Care Providers at Panti Sehat. Minister of Health Regulation Number 61 of 2016 concerning

Empieris Traditional Health Services emphasizes that every Traditional Health Care Provider who provides health services is required to have a Traditional Health Certificate (STPT) (Utami & Alawiya, 2018).

Complementary Traditional Health Services are carried out by Traditional Health Workers. By definition, traditional health workers are every person who dedicates themselves to the field of traditional health and has knowledge and/or skills through

education in the field of traditional health which for certain types requires authority to carry out traditional health efforts. Complementary Traditional Health Services are carried out by Traditional Health Workers in traditional health service facilities and are required to have a Practice License (SIP) in accordance with applicable regulations¹⁰. In the Minister of Health Regulation which regulates Integrated Traditional Health Services, these services are carried out jointly by traditional health workers and other health workers for the treatment/care of patients.

Integrated Traditional Health Services must be provided in Health Service Facilities. In Article 28 of the Government Regulation of the Republic of Indonesia Number 103 of 2014 concerning Traditional Health Services, it explains the rights and obligations of traditional health care providers, including that traditional health care providers in providing traditional empirical health services have the right to obtain complete and honest information from clients or their families, receive compensation for their services, and follow promotional training in the health sector. Furthermore, traditional health practitioners have an obligation to provide services that are safe and beneficial for health, do not endanger lives or violate morals, religious rules and belief in God Almighty, do not conflict with the norms and values that exist in society, and do not conflict with efforts to increase the level of education. public health. Providing clear and precise information to clients about the Empires Traditional Health Services treatment carried out, using tools that are safe for health and in accordance with the method/scientific method, keeping clients' health secrets, keeping records of clients' health status (Munajah, 2020).

In Article 29 of the Government Regulation of the Republic of Indonesia Number 103 of 2014 concerning Traditional Health Services, it regulates the Rights and Obligations of Traditional Health Workers in providing Traditional Health Services, including the rights obtained in the form of obtaining legal protection as long as they carry out their duties in accordance with professional standards, service standards and standard procedures. operations, obtain complete and honest information from patients/clients or their families, and receive compensation for services. Obligations that must be fulfilled include providing Complementary Traditional Health Services in accordance with professional standards, service standards, and standard operational procedures, as well as patient/client needs, referring patients/clients in life-threatening and emergency situations or other conditions that cannot be handled, keep everything he knows about patients/clients confidential, and increase knowledge and follow developments in complementary traditional health sciences. In the Government Regulation of the Republic of Indonesia Number 103 of 2014 concerning Traditional Health Services, it is explained in full regarding traditional health services. This will of course be the basis for protecting health workers and traditional health workers who provide traditional health services because this regulation will provide binding force.

B. Legal Consequences of Negligence by Traditional Health Workers

Negligence is an act that does not comply with statutory standards, and this negligence occurs due to the person's own behaviour. Negligence according to criminal

law is divided into 2 types, namely Actual Negligence and Consequential Negligence. Negligence refers to if simply carrying out the act constitutes a criminal event, then there is no need to look at the consequences arising from the act as stipulated in Article 205 of the Criminal Code and Article 343 of Law 1/2023. Meanwhile, negligence as a result is a criminal event if the result of that negligence has resulted in consequences prohibited by criminal law, for example the death of another person as regulated in Article 359 of the Criminal Code and Article 474 paragraph (3). The elements contained in negligence or what is often referred to as culpa consist of 3 elements, namely the perpetrator has committed an act that is different from what should be done according to written or unwritten law, the perpetrator has acted carelessly, was careless and did not think long enough, and The perpetrator's actions can be blamed, therefore the perpetrator must be responsible for the consequences of his actions (Suwito et al., 2020).

The legal consequences are when a person suffers a loss due to negligence, so the perpetrator must compensate for the loss. From a juridical perspective, compensation in law has two things, including the concept of compensation due to default and the concept of compensation due to obligations based on the law including unlawful acts, The loss must be proven so that someone is obliged to pay it, which in unlawful acts can be in the form of material and non-material compensation (Suwito et al., 2020). In the laws and regulations governing traditional health services in Government Regulation of the Republic of Indonesia Number 103 of 2014, traditional health workers who do not carry out their obligations or are negligent will be given sanctions in the form of administrative sanctions in the form of verbal warnings, written warnings, and/or revocation of permits as stated in Article 83. Negligent actions or actions that can lead to malpractice carried out by health workers are regulated by law in Law Number 23 of 1992 concerning Health and the applicable code of ethics. Apart from that, there are also sanctions for the actions of medical personnel who commit malpractice. What is meant are, among other things, criminal sanctions, civil sanctions, administrative sanctions and moral sanctions, where these sanctions are in the form of imprisonment, compensation, warnings, fines or suspension of permits due to negligence and violations of norms and morality (Karni et al., 2023).

Legal regulations are a basic basis for providing legal guarantees for legal certainty in order to create legal ideals, namely justice, and conversely, every violation of the law will certainly receive sanctions in accordance with applicable laws and regulations, thus every act of negligence or malpractice committed by health workers who can harm the patient or cause serious injury to the patient's body is a violation of applicable laws and regulations and a violation of the code of ethics. This can also give rise to various kinds of negative responses from the public so that it can affect public trust in health workers and health service providers.

CONCLUSION

Based on this description, the following conclusions can be drawn:

Based on the high level of public interest in traditional health services, legislation is needed that regulates traditional health services comprehensively and covers all aspects. Traditional Health Services are regulated in Law Number 17 of 2023 concerning Health, Government Regulation of the Republic of Indonesia Number 103 of 2014 concerning Traditional Health Services, Regulation of the Minister of Health Number 61 of 2016 concerning Empirical Traditional Health Services, Regulation of the Minister of Health of the Republic of Indonesia Number 15 of 2018 concerning the Implementation of Complementary Traditional Health Services, as well as Minister of Health Regulation Number 37 of 2017 concerning Integrated Traditional Health Services.

Republic of Indonesia Government Regulation Number 103 of 2014 concerning Traditional Health Services as well as the Criminal Code clearly regulates legal protection for health workers and legal sanctions against health workers themselves, therefore it is hoped that with these regulations the law will appear for the sake of protection and comfort of all parties, for this reason legal protection for patients and health workers must be truly implemented and truly provide legal certainty for anyone who feels disadvantaged, and health workers must also have the ability, expertise and extensive knowledge in the health sector so that they do not something undesirable happens. There are suggestions that can be given regarding regulations governing other sanctions such as criminal sanctions against traditional health services. In accordance with the previous explanation, legal sanctions for acts of negligence by health workers can take the form of criminal sanctions, civil sanctions, administrative sanctions and moral sanctions. In order to achieve protection and comfort for all parties.

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