

THE URGENCY OF LEGAL PROTECTION OF TRADITIONAL HEALERS IN THE PRACTICE OF HEALTH SERVICES BASED ON LOCAL WISDOM USING SUPRANATURAL METHODS AND RELIGIOUS APPROACHES

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Abstract. Indonesian culture is valued for its traditional knowledge. The activity of traditional medicine practitioners are regulated by Law No. 36 “On Health” as of 2009. The traditional therapy is based on a religious approach, but it has not received full recognition because it contradicts the principles of medical science. However, this approach is valid and proven in everyday life. This study aims to determine the urgency of legal protection to advocate the traditional medicine profession relying on supernatural powers and religion. This research is a normative legal study basing on statutory, conceptual, and comparative approaches. The results of the study show that legal protection of traditional healers and regulation of the activities thereof are vital since they represent an effort to improve public health in line with the constitutional mandate and the people’s right to health. This legal protection also aims to provide full recognition to the traditional medicine as a profession and legal certainty for traditional medicine practitioners. In order to have the right to provide health care and preserve the nation’s culture, the profession of a traditional medicine practitioner should be enshrined in the legal form, notably in the Law “On Health.”

Keywords: legal protection, traditional healers, health services, supernatural

INTRODUCTION

Traditional health services are regulated by Law No. 36 of 2009 “On Health.” These services are performed by traditional medicine practitioners, also known as healers. These services use a variety of traditional therapy methods and represent one of the traditions in the culture of the Indonesian nation, as part of traditional knowledge to meet the basic needs of human life in the form of medicine and treatment, in addition to other basic needs (Agustina, 2015).

Two of the several traditional medicine methods are supernatural methods and a religious approach. They are integrated in empirical methods of traditional medicine. Empirical medicines are regulated in Regulation of the Minister of Health No. 61 of 2016. The two types of traditional medicine methods are interrelated. Traditional healers who use both methods are protected legally and clearly according to the law provided in paragraph (1) of Article 3 of Chapter III “On Registration” of the Decree of the Minister of Health “On the Implementation of Traditional Medicine,” No. 1076/Menkes/SK/VII/2003, dated July 24, 2003. In order to get Traditional Medicine Registered Certificate (TMRC), traditional healers who practice supernatural methods and religious approach methods should legally register with the City or District Health Office in Indonesia by specifying the type of health service they provide. In such a way, a healer will have a clear legal basis for providing traditional health services to the community.

Even though traditional health services have been subject to the Law No. 36 dated 2009, “On Health,” there is still a problem due to the lack of clarity in the law regulating traditional health services, which apply supernatural methods and religious approaches. The law provides only a general regulation of types of traditional health services, traditional herbal medicine, and the skills of their practitioners. Furthermore, the Decree of the Minister of Health No. 1076 of 2003, which regulated the types of traditional health services and traditional medicine methods according to the reality that existed in society, was revoked and replaced with the Regulation of the Minister of Health, “On Empirical Traditional Health Services,” No. 61 as of 2016 (Utami & Alawiya, 2018).

Therefore, traditional healers who practice supernatural methods and religious approaches belong to traditional health service. Normatively, traditional healers as legal subjects are unclear. Therefore, there is a risk that traditional healers are responsible for provision of health services without a clear and valid legal ground. This lack of clarity indicates no interrelation (Collective Coexistence) between State Law, Customary Law, and Religious Law, which constitute a plurality of legal norms in Indonesia. However, state law should be receptive to customary law and religious law as stated in the Article 18b paragraph (2) of the 1945 Constitution of the Republic of Indonesia, and the state recognizes and respects customary law community units and their traditional rights.

In addition, the Law on Judicial Power also states, “Judges and Constitutional Justices are obliged to explore, follow, and understand legal values and a sense of justice that exist in the society”. This is because the management process of Indonesia’s national health system must be carried out in an integrated manner by all strata of the Indonesian nation. Traditional health services are a rapidly growing sphere and it is an alternative choice for the community to be treated beyond the sphere of the official health care services. Therefore, traditional medicine methods need to be scrutinised by way of assessment, research, and/or testing.

For this reason, the Center for the Development and Application of Traditional Medicine, abbreviated as CDATM, was established. It is a special institution to handle this matter at the provincial level. One of the tasks of CDATM is to explore local wisdom that already has empirical evidence in overcoming health problems in the province.

Local wisdom-based traditional healers who do not have an TMRC but practice supernatural methods and religious approaches to serve clients or patients are at risk of being seen as committing an illegal act. This illegal act is categorized as carrying out the profession of a traditional healer using supernatural methods and religious approach methods without authority or permission or without a valid legal basis. Traditional types of health services using supernatural methods and religious approaches are accepted in the legal norms governing health as a form of collective coexistence between state law, customary law, and religious law. This indicates a plurality of legal systems in Indonesia. Based on the background above, this research is focused on the urgency of regulating traditional healers regarding the legal protection of professions based on local wisdom.

MATERIALS AND METHOD

This research represents a normative juridical research. Normative juridical research is a legal study carried out by reviewing literature or secondary data as the basic material for study. It also involves searching for regulations and literature related to the problem under study (Soekanto & Mahmudji, 2001). In the study the following approaches are applied, notably the statutory, philosophical, conceptual approaches, and the comparative law. The legal materials of this study base on primary legal materials (the 1945 Constitution, and laws and regulations related to health) and secondary legal materials (journals, magazines, articles, interviews, etc.). Data collection techniques were carried out through document studies and internet searching. Document study is a way of gathering information obtained from documents, namely written documents, archives, deeds, diplomas, reports, laws and regulations, diaries, personal letters, biographical notes, interviews, and other documents related to the problem studied (Prastowo, 2011). The authors of this article used the legal substance technique to analyze formulations in statutory regulations and other legal materials. This helped to reveal shortcomings in the regulation of legal protection of traditional medicine practitioners in the national health system.

RESULTS AND DISCUSSION

Since traditional medicine is one of the special professions in medicine or health services, its role can be regarded as doctor's qualification. Traditional medicine practitioners, like doctors, need legal protection to carry out their activities. A traditional healer is defined as a special profession in the field of traditional medicine which can be on par with the doctor qualification in modern medicine because it has the following criteria:

1. It covers only certain fields;
2. It is based on special expertise and skills;
3. It is permanent and continuous;
4. It prioritize service and treatment over rewards, income, or earnings;
5. It is grouped in the organization.

The Decree of the Minister of Health No. 1076/2003, "On Traditional Healers," mentioned

that traditional healers joined various professional organizations of similar health services. In 2015, some traditional healer associations used supernatural methods, such as ARSA (All-Indonesian Reiki Association) and IPCFAH (Indonesian Paranormal Communication Forum and Alternative Healers). The following traditional healer associations resorted to a religious approach:

1. PERCHIRINDO (Indonesian Chiropractic Association).
2. ASPETRI (Indonesian Herb Medicine Association).
3. IKNI (Indonesian Naturopathic Association).
4. PAKSI (All Indonesian Acupuncture Association).
5. PERTAPI (Indonesian Paranormal and Alternative Healers Communication Forum).
6. IHI (Indonesian Home Opathic Association).
7. AP3I (Association of Indonesian Medicine Massage Practitioners).
8. ASTI (Indonesian Spa Therapist Association).
9. ABI (Indonesian Cupping Association).
10. IPATRI (Indonesian Traditional Medicine Association).

Unclear provisions in Law No. 36 of 2009, “On Health,” cause the non-integration of traditional health service arrangements in the statutory regulations. The norms that protect traditional healers who rely on local wisdom and practice supernatural methods and religious approaches also give rise to the following philosophical, theoretical, and juridical impacts:

1. Philosophical

- a. Ontology. The state protects citizens who work as traditional healers based on local wisdom and practice supernatural methods and religious approaches because it is an effort to live prosperously in society. This is in accordance with the fourth paragraph of the Preamble to the 1945 Constitution which reads, that “The state protects the entire nation and all of Indonesia’s land, promotes public welfare, and educates the nation’s life.” Its constitutional basis is in paragraph (2) of Article 27 of the 1945 Constitution, which states, “Every citizen has the right to work and a decent living for humanity.”

- a. Epistemology. The legal provisions in paragraph (1) of Article 59 of Law No. 36 of 2009, “On Health,” do not clearly regulate traditional healers but categorize them into two groups. They are traditional health services that use skills and traditional health services that use herbs.

- b. Regulation No. 103 of 2014, “On Traditional Health Services,” is also unclear in regulating traditional health services. Furthermore, Regulation of the Minister of Health No. 61, “On Empirical Traditional Health Services,” also does not regulate the activity of traditional healers who rely on local wisdom and practice supernatural methods and a religious approach. Article 45 states that it has revoked and declared the Decree of the Minister of Health “On Implementation of Traditional Medicine” valid. Whereas the Decree of the Minister of Health clearly regulates and protects traditional healers who use supernatural methods and religious approaches.

- c. Axiology. Since Law No. 36 of 2009 provides for the unclear regulation and protection of traditional healers who rely on local wisdom and practice supernatural methods and religious approaches, citizens who work as traditional healers to earn a decent living do not get legal protection.

2. Theoretical

Every traditional healer who provides empirical traditional health services must have a TMRC (Traditional Health Registered Certificate), as specified in Article 39 of Government Regulation “On Traditional Health Services,” No. 103 of 2014. Since Law No. 36 of 2009, “On Health,” does not clearly regulate the activity of local-wisdom traditional healers who practice supernatural methods and a religious approach, there is no legal certainty.

3. Juridical

Local wisdom-based traditional healers who do not have an STPT but practice supernatural methods and religious approaches to serve clients or patients are at risk of being categorized as committing an illegal act. This illegal act is categorized as carrying out the profession of a traditional healer using supernatural methods and religious approach methods without authority or permission or without a valid legal basis.

One of the objectives of law is legal certainty. In this case, it is legal protection for traditional healers who practice supernatural methods and a religious approach in serving clients or patients. In the author’s opinion, institutions in Indonesia that are engaged in this specific activity should carry out an in-depth study to ensure a clear legal formulation of traditional health services (Kartika et al., 2016). Health regulations are specified in laws related to health, including nursing and midwifery. The health law also regulates the duties and responsibilities for mistakes committed by doctors, nurses, and health workers by complying with all legal aspects (Mudayana, 2015). Legal protection for traditional health services is expected to cover the interests of all stakeholders, namely traditional health workers and their patients. The government’s authority in protecting stakeholders of traditional health services can be viewed from the perspective of health law, local government law, consumer protection law, and criminal law. In order to protect stakeholders of traditional health services, the government has the authority and obligation to make and enforce regulations regarding traditional health services as a whole.

The government regulates traditional health services by Law No. 36 of 2009, “On Health,” and Government Regulation No. 103 of 2014, “On Traditional Health Services.” The results of the research show that the Law “On Health” has been deregulated and finally accommodated by Government Regulation No. 103 of 2014, “On Traditional Health Services.” This shows that the Law “On Health” does not provide legal protection for traditional health services that use supernatural methods and religious approaches. In order to create a conformity of positive law that applies in society in accordance with the hierarchy of national laws and regulations, it is necessary to establish clear legal norms regarding traditional health services that can provide legal certainty for every stakeholder of traditional health services.

Government Regulation No. 103 of 2014, “On Traditional Health Services,” states that traditional health services are divided into those that use skills and those that use herbs. Of these two types of traditional health services, the government has the authority to fully regulate the human resources for health and the fields of pharmaceutical preparations, medical devices, and food and beverages. Regency/City Regional Governments have broad and real authority in regulating traditional health services. Regency/City Regional Governments, which have the authority to regulate traditional health services, are the Health Office and the Food and Drug Supervisory Agency. The Department of Health has the

power to regulate human resources in terms of issuing licenses to practice and work permits for competent traditional health workers. Meanwhile, the Drug and Food Control Agency (BPOM) is tasked with regulating, registering and overseeing the circulation of traditional medicines that are widely circulating in society. Error problems can also be seen in making decisions or judgments. The efforts to prevent negligence and errors in health practice are put through understanding and knowledge of health law.

At present, there has been a change in legal cases in aspects that lead to a profession related to health services. The legal aspect of health services means paying more attention to the provisions governing regulations in the health sector. The traditions that are passed from generation to generation, like before modern civilization, are not enough for living in an advanced society today. For this reason, community groups living in a society or state need written rules, which are called laws (Sampurno, 2011). However, some people's behavior or relationships are governed by unwritten laws, such as ethics, customs, traditions, beliefs, etc.

It is possible to classify traditional healers who rely on local wisdom and practice supernatural methods and religious approaches as a type of paranormal, spiritual health service. Its existence is real in Indonesian society since people here believe that a disease can not be cured modern medicine only. They assume that traditional healers can cure a disease with the help of supernatural methods and a religious approach. Unfortunately, the Law "On Health" of 2009 did not fully enshrine the profession of traditional healers or their legal protection, both preventively and impressively, even though they should have the right to be legally protected.

Currently, the flow of modernization interferes with all areas of human life, along with the progress achieved by humans in science and technology. However, traditional medicine or health services as a tradition, including . health services using supernatural methods and religious approaches, still exist or impact people's lives. Regulations in legal norms aiming the protection of traditional healers are intended to regulate the norms for the sake of justice. In accordance with this aim, the rules of law should evolve in line with the development of human social life. The elaboration of these legal norms in practice evidences the replacement of the existing legal rules (positive law). The legal rules that will replace them as long as they have not yet become positive legal rules, because they are coming in force, are called planned laws (*Ius Constituendum*). The new rule of law as positive law and the rule of law, which is no longer valid, are called "legal order" in legal science. This legal system will exist throughout the ages and increase as long as there is life and development. This is what people call legal history (Djamal, 2005).

According to Vranes, legal norms designed to protect traditional healers who practice supernatural methods and religious approaches have an obligating, prohibiting, and permitting function based on the logic of deontic law (Vranes, E., 2006). In addition, the norms can be divided into those of conduct and of competence. They might contain orders, give authority, allow, or derogate. Norms containing orders can be in the form of orders to perform or prohibit a particular action. Norms that give the power define authority for a particular person or entity. The permitting norm defines whether the performance of an action is allowed or prohibited. Meanwhile, derogating norms are norms that revoke or cancel other norms. Apart from being a legal ideal, Pancasila is also a fundamental state norm in the Republic of Indonesia. The Pancasila precepts represent the basic or highest

norm for the enactment of all legal norms.

With clear norms that do not have multiple interpretations in the health law, legal certainty will be obtained in providing legal protection for traditional healers who rely on local wisdom and use supernatural methods and a religious approach. Community culture, with its institutions, is able to influence the creation legal norms. Legal norms are social rules established by certain institutions, such as the government can strictly prohibit and force people to behave according to the wishes of the regulators. Violation of this norm is punished in the form of fines and corporal punishment (Effendi et al., 2016).

Legal norms as regulations or written agreements, which have sanctions and enforcement instruments, are intended to make people obey and feel deterred by the sanctions applied. These norms should prevent people from repeating acts that violate the law. Thus, the characteristics of legal norms are definite (written) rules established by authorities that have binding power and regulatory enforcement tools, coercive, heavy sanctions. Legal regulations that are directly related to the legal protection of traditional health services in Indonesia are as follows: the Law "On Health," which divides traditional medicine based on the method of treatment; the Government Regulation "On Traditional Health Services," which regulates empirical traditional health services, complementary traditional health services, and integrated traditional health services; the Regulation of the Minister of Health "On Empirical Health Services."

The two regulations of the aforementioned law do not include protection for traditional healers who rely on local wisdom and practice supernatural methods and a religious approach. It is obvious that such traditional healers are not listed in the norms of Law "On Health," which underlies the issuance of these two regulations. Thus, in case two regulations include traditional healing based on local beliefs, supernatural methods and religious approaches integrated, it will contradict the legal norms that underlie the publication of the two regulations.

Traditional healers who practice supernatural methods and religious approaches in Indonesia are protected legally and clearly according to the law provided in paragraph (1) of Article 3 of Chapter III "On Registration" of the Decree of the Minister of Health "On the Implementation of Traditional Medicine," No. 1076/Menkes/SK/VII/2003, dated July 24, 2003. This Chapter regulates the classification of traditional health services known as traditional medicine (Batantra) into the following types: Skills Batantra, Herbal Medicine Batantra, Religious Approach Batantra, and Supernatural Batantra.

Thus, traditional healers who practice supernatural methods and religious approaches can legally register themselves at the City and District Health Offices in Indonesia by specifying the type of health services they provide. In order to have legitimate grounds traditional health services to the clients, healers should get a Traditional Medicine Registered Certificate (STPT). Therefore, it is necessary to reformulate the Law "On Health" as it includes the norms regarding traditional healers who rely on local wisdom and practice supernatural methods and religious approaches. It will help achieve harmony and certainty of laws and provide clear legal norms.

CONCLUSIONS

Based on the above, it can be concluded that legal protection is required for traditional

healers who practice supernatural methods and religious approaches. This profession is still functional, and communities need it to help realize a balance between diseases caused by personalistic or naturalistic factors and the ways of their treatment. The implication of current laws and regulations in the health sector is that there is ambiguity in legal norms providing legal protection for traditional healers. Such a situation gives rise to multiple interpretations, which might result in the prosecution of traditional healers since their activities will be considered as unlawful acts.

Amendment to the Law "On Health" requires revision of the current formulation of legal norms in order to provide legal protection for the profession and activities of traditional healers. It is therefore necessary to amend Article 59 paragraph (1) of the Law "On Health" with the following statement: "Based on the method of treatment, traditional health services are divided into traditional health services that use skills, traditional health services that use herbs, traditional health services that use supernatural methods, and traditional health services that use a religious approach."

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