

## Analysis of Aspects of Legal Protection for Patients Regarding Traditional Medicine in Law Number 17 of 2023 Concerning Health

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### ABSTRACT

This research examines legal protection for patients who are victims of traditional medical malpractice based on Law Number 17 of 2023 concerning Health. In the context of the increasing use of traditional medicine in Indonesia, it is important to understand existing legal protection mechanisms and how effective these regulations are in protecting patients' rights. This study uses a qualitative approach with literature study methods and analysis of related laws and regulations. The research results show that Law Number 17 of 2023 has provided a clearer legal framework in regulating traditional healing practices and provides protection mechanisms for patients. However, implementation in the field still faces various challenges, including a lack of effective supervision, limited public knowledge about their rights as patients, and differences in service quality in various regions. This research also identifies the important role of local governments in supervising and coaching traditional medicine service providers, as well as the need to increase education and outreach to the community regarding patient rights. In conclusion, although Law Number 17 of 2023 has provided a significant legal basis, there is still room for improvement in the implementation of this regulation to ensure optimal protection for traditional medicine patients in Indonesia.

## **INTRODUCTION**

As time goes by until the 21st century, information technology has progressed very rapidly. This also influences increasing public awareness of the importance of health. Indonesia is a developing country that offers both conventional and traditional health services. Traditional medicine in this country originates from people's belief in mystical and supernatural practices that are rooted in animism (Utami & Alawiya, 2018). This also influences increasing public awareness of the importance of health. In everyday life, health is a basic need for humans, both physical and psychological, which supports living a productive life in society. Health is absolutely a human right obtained by humans and owned by everyone as a form of welfare that must be realized by the State in accordance with the determination of the Indonesian people as stated in the five principles of Pancasila and in Article 28 H paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states reads "everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and has the right to receive health services.". Over time, traditional health services in Indonesia have been influenced by traditions from other countries such as India, China, Arabia and Europe, which have also influenced the types of services available (Novekawati, 2019).

Health is one of the media for measuring the success of human development. Therefore, without health services, people's lives will be disrupted. However, as health costs increase every year, it becomes a dilemma for society, especially the lower middle class, which causes people to prefer to seek alternative treatment, one of which is traditional medicine, where this treatment is considered capable of treating without incurring large costs. Even though modern health facilities have developed rapidly in Indonesia, in seeking health services, some people do not only rely on conventional medical services provided by doctors. Some Indonesians still entrust healing from their illnesses to traditional medicine carried out by practitioners such as smart people, healers and shamans. Based on the Decree of the Minister of Health No: 1076/MENKES/SK/VII/2003 concerning the administration of traditional medicine, there are legal regulations that regulate the relationship between traditional healers and patients. In Article 15 paragraphs (1) and (3) it is stated that this legal relationship is civil in nature and is based on an agreement between both parties. Traditional healers are obliged to explain their treatment methods, and patients have the right to agree or reject these methods. This means that traditional healers must respect the patient's wishes. Patients must feel confident in the methods used by traditional healers, while traditional healers must listen to patient complaints to determine the appropriate course of action according to the patient's condition. Based on the National Socio-Economic Survey, in 2001, 57.7% of Indonesians took medication independently, with 31.7% of them consuming traditional herbal medicine. Three years later, in 2004, the percentage of Indonesian people who practice self-medication increased to 72.44%, with 32.87% of them continuing to consume traditional herbal medicine. In line with this, a related law was issued,

namely Law Number 17 of 2023 article 160 concerning health which states that traditional health services are categorized based on treatment methods into two types: using skills and using potions. Examples of services that use skills are acupuncture and cupping, while those that use potions include herbal medicine (Karika, 2019).

In 2014, Government Regulation (PP) Number 103 of 2014 concerning Traditional Health Services was passed, which regulates various aspects of the implementation of traditional health services. This includes the responsibilities and authorities of central and regional governments, types of traditional health services, service procedures, resources, research and development, publications and advertising, community empowerment, funding, guidance, supervision, and administrative sanctions. This regulation identifies three types of traditional medicine: empirical, complementary and integrated traditional health services. With traditional health service methods still being used by some communities, it is important to carry out further studies regarding strengthening existing legal regulations in order to create clear regulations. The legality of the role of traditional healers as health workers using traditional methods needs to be guaranteed. This is necessary so that the public, who act as patients and consumers, can have their rights protected. Strengthening legal regulations will also eliminate issues related to patient safety and security, as well as provide legal certainty for traditional healers. However, traditional healing practices do not always work as they should, and sometimes patients become victims of these practices. This raises a polemic about how the law protects patients in traditional medicine. The author wishes to conduct further research with the title "Legal Protection for Patients Who Are Victims of Traditional Medical Malpractice". Previous research states that patients do not need to prove the process of negligence, they only need to show the consequences they suffered, considering that patients generally do not understand medical science (Natntha & Darmadi, 2021). It would be very unfair if patients who were victims of negligence had to prove negligence, even though they did not know the process by which the negligence occurred, because they entrusted their lives and health to medical personnel. However, mediation agreements or malpractice compensation agreements have not been clearly regulated in the Health Law.

## LITERATURE REVIEW

### *Use of Traditional Medicine*

In carrying out traditional medicine practices, patients should get optimal results in accordance with the agreement that has been made between the patient and the traditional medicine practitioner. However, in reality, traditional healing practices do not always go according to plan, and patients often become unwanted victims of the results of these practices. Understanding of the importance of health services and the rights of the community or patients continues to increase. This makes people more aware and critical in demanding the rights they should obtain. People with a higher educational background tend to choose modern health services, while the lower middle class are more

likely to use traditional healing practices. This traditional healing practice is legal in Indonesia and is clearly regulated in law. According to research by Munajah (2020), the legality level of empirical traditional health services is lower than complementary and integrated health services. On the other hand, the use of empirical health services by the public is increasing due to high interest, easy accessibility, and the strong traditional cultural heritage in Indonesia. Problems arise when many providers of empirical traditional healing services open practices without special permits and certificates, and promise guaranteed healing results. This raises problems regarding legal protection for patients, especially if undesirable things happen.

The importance of health services related to the rights of society and patients is increasing. Thus increasing their awareness and becoming critical in defending their rights that should be taken away. Lower middle class people tend to turn to traditional medicine, while more educated groups of people will ask for more modern services. In fact, this practice is permitted in Indonesia and has clear rules for it. Under Indonesian positive law, actions carried out by someone who performs traditional medicine that cause harm to other people or patients can be held responsible if they are related to malpractice. This criminal responsibility is based on the following regulations in the Criminal Code: "Anyone who, through his negligence, causes someone to be injured or causes death, shall be punished with a maximum imprisonment of five years or a maximum imprisonment of one year." In addition, most traditional medical service providers do not administer the patients who visit their place during the procedure. Another weakness of this practice is that if patients who have received treatment feel disadvantaged at a later date, they cannot prove that they were disadvantaged because there was no clear administration during treatment (Agustina, 2009).

### ***Aspects of Legal Protection in Law Number 17 Of 2023***

Law Number 17 of 2023 concerning Health, Government Regulation (PP) Number 103 of 2014 concerning Traditional Health Services, and Minister of Health Regulation Number 61 regulate traditional health services. The Regulation on Empirical Traditional Health Services was created in 2016. This regulation regulates several matters relating to empirical traditional health services. The first to be discussed is law number 17 of 2023 concerning health which is related to traditional health services regulated in law number 17 of 2023 concerning health article 160 paragraph (1), paragraph (2), and paragraph (3). Number 1 which reads "traditional health services based on the method of treatment consisting of: (a) traditional health services that use skills: and/or, (b) traditional health services that use herbs".

Then in article 160 paragraph (2) which states "traditional health services as referred to in paragraph (1) are carried out based on knowledge, expertise and/or values originating from local wisdom. Then in article 160 paragraph (3) which states "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."

Empirical Traditional Health Services Implemented According to Article 3 of the Minister of Health Regulation Number 61 of 2016, traditional health care providers have knowledge and skills that are inherited through both formal and non-formal education. This knowledge and skills are obtained through internships with senior traditional health practitioners who have experience providing empirical traditional health services safely and beneficially for a minimum of five years. This internship experience is proven by a certificate from the internship location which shows that the experience is sufficient to practice independently (Budiyanti et al, 2023). Then, according to Minister of Health Regulation Number 61 of 2016 as stated in articles 4 to 9, traditional health practitioners who wish to provide empirical traditional health services may only practice in one location. They must also have a Traditional Health Registration Certificate carried out in one place (a healthy place). If the Regency/City Regional Government issues an STPT after receiving a recommendation from the Health Service.

Then, it is also regulated in the Minister of Health Regulation Number 61 of 2016 in article 19 which states that health institutions for both individuals and groups are not allowed to carry out inpatient treatment because the provision of empirical traditional health services has permission from the government or district. Then in article 37 of the government regulations it is stated that neither traditional health care providers nor health institutions are allowed to advertise the empirical traditional health services provided.

## **METHODOLOGY**

The writing method used in this writing is normative legal research with a statutory approach. This writing examines the legal system related to the legal issues discussed. The approach is descriptive analytical, describing statutory regulations connected to the theory and practice of implementing positive law related to the problem. This writing is a descriptive analytical research that uses a case study design with a qualitative approach. According to Zhang & Creswell (2013), case study research is a type of research in which researchers study phenomena based on certain cases and activities. This writing uses three types of legal materials: primary, secondary and tertiary. Primary legal materials include laws and regulations related to traditional health services. Secondary legal materials consist of books, journals and relevant legal articles. Tertiary legal materials include journal articles and books discussing traditional health services. The technique for collecting legal materials is carried out through document or library studies using a content identification approach.

## **RESEARCH RESULT**

Legal protection protects human rights (HAM) so that they can enjoy the rights granted by law (Raharjo, 2000). To provide legal protection, known media requires legal protection, which consists of preventive and repressive legal protection (Almaida & Imanullah, 2021). In preventive legal protection, legal subjects have the opportunity to voice their opinions before the final decision. However, the recognition and protection of human rights through

restrictions and the existence of community obligations helps protect repressive laws by resolving disputes. According to research by Sadewa (2018), only 42 percent of all traditional health services were permitted in Surakarta City in 2018 (Sukawati et al., 2018). In addition, some conventional health practitioners fail to understand the licensing obligations. This is related to a poor legal culture, which is associated with the level of legal compliance in society. This is in line with research conducted in Banyuasin Regency by Iriansyah et al. (Iriansyah, 2022).

Then, looking at the law that has just been issued by the government of the Republic of Indonesia, namely Law Number 17 of 2023 concerning health, it is contained in article 161 paragraph (1) and paragraph (2), where paragraph (1) reads "traditional health services include promotive services , preventive, curative, rehabilitative and/or palliative". Then in paragraph (2) which reads "traditional health services can be provided in independent practice places, community health centers, traditional health service facilities, hospitals and other health service facilities. It is also regulated in article 162 of law number 17 of 2023 that the central government and regional governments are responsible for the availability of traditional health services. Then in article 163 paragraph (1) and paragraph (2) of Law number 17 of 2023, paragraph 1 states that the community is given the widest possible opportunity to develop, improve and use traditional health services whose benefits and safety can be accounted for. Then, article (2) states that the central government and regional governments regulate and supervise traditional health services as referred to in paragraph (1) based on security, benefit and protection of the community. It is also stated in article 164 of law no. 17 of 2023 that further provisions regarding traditional health services are regulated by the government.

## **DISCUSSION**

Patients in the context of legal protection are an effort to protect the human rights of every person who is harmed by another party. If a patient feels that he or she has been harmed as a result of a violation committed by a provider of traditional healing services, the patient has the right to demand responsibility from the provider of treatment and seek compensation for the losses they have experienced. Article 58 of the Health Law states that "Everyone has the right to claim compensation against a person, health worker, and/or health provider who causes loss due to errors or negligence in the health services they receive." In addition, according to Article 29 of Law Number 36 of 2009 concerning Health, "In the event that health workers are suspected of committing negligence in carrying out their profession, this negligence must first be resolved through mediation." If the patient feels that the health services received from traditional healers are detrimental, the patient can file a lawsuit in court.

Apart from being regulated in the Health Law, traditional healing practices are also specifically regulated in the Republic of Indonesia Government Regulation Number 103 of 2014 concerning Traditional Health Services. This Government Regulation was made to implement the provisions

of Article 59 paragraph (3) of Law Number 36 of 2009 concerning Health. Apart from that, traditional healing practices are also regulated in the Decree of the Minister of Health of the Republic of Indonesia Number 1076/Menkes/SK/VII/2003 concerning the Implementation of Traditional Medicine, which groups treatment methods into the categories of skills, religious approaches, potions, and supernatural (Daniel & Roring, 2016).

Then the contents of UU number 17 of 2023 concerning health, apart from containing traditional health services, this law also regulates the development of traditional medicine, namely in article 325 of UU no. 17 of 2023 which contains "research and development of natural medicines which aims to: on point b, namely utilizing natural resources and traditional ingredients in a sustainable manner in improving science and providing health services. In addition, many traditional medical service providers do not record the administration of incoming patients. This is a weakness for patients if they feel they have been harmed, because it is difficult to prove without clear administrative records. This legal loophole can be exploited by traditional medicine providers to avoid responsibility, because they do not provide mandatory administrative data. As a result, the patient's position as a service user becomes weak (Alam & Syifa, 2018).

## **CONCLUSIONS AND RECOMMENDATIONS**

Based on the literature review that has been carried out regarding legal protection for patients who are victims of traditional medical malpractice, especially in the context of Law Number 17 of 2023 concerning Health, several conclusions that can be drawn are that patients who are harmed by traditional medical practices have the right to demand compensation and request responsibility of the treatment agent. Law Number 17 of 2023 provides a clearer and firmer legal framework regarding patient rights and the responsibilities of traditional health service providers. Law Number 17 of 2023 regulates in detail the types of traditional health services, the responsibilities of central and regional governments, as well as monitoring and guidance mechanisms for traditional healing practices. This regulation includes Article 160 which groups traditional health services based on treatment methods, as well as Article 162 which emphasizes the government's responsibility in providing and supervising these services. There are still many traditional medical service providers who do not record patient administration, which results in difficulties in proving if a dispute occurs. Law Number 17 of 2023 needs to be enforced more firmly to ensure that all traditional health service providers carry out adequate administrative records. Law Number 17 of 2023 emphasizes the important role of the government in supervising and developing traditional healing practices, as well as ensuring that the benefits and safety of these services can be accounted for. This is reflected in Article 163 which provides opportunities for the community to develop and use traditional health services that are safe and useful.

In line with the conclusions above, the following are several recommendations that can be taken to increase legal protection for patients in

accordance with Law Number 17 of 2023, namely that the Government needs to tighten law enforcement against traditional medicine service providers who violate regulations, especially related to the obligation to record patient administration. More intensive supervision and strict sanctions need to be implemented. Then, the public needs to be given education and socialization regarding their rights as patients and the provisions in Law Number 17 of 2023. This education is important so that the public is more critical and aware of their rights and responsibilities. in using traditional health services. In addition, central and local governments must increase supervision and guidance of traditional healing practices, ensuring that providers of these services have valid permits and certification and follow safe and responsible practice standards. Law Number 17 of 2023 needs to be supported by an effective mediation mechanism to resolve disputes between patients and providers of traditional medical services. This mediation must be carried out transparently and fairly. Traditional medicine service providers should be encouraged to obtain certification and improve their competency. The government must provide adequate training and competency testing to ensure that the services provided are safe and effective. Law Number 17 of 2023 also needs to strengthen regulations regarding advertising and promotion of traditional health services to prevent misleading claims and ensure that the information provided to the public is accurate and accountable. By implementing these recommendations, it is hoped that a better legal protection system can be created for patients, as well as improving the quality and safety of traditional medicine services in Indonesia in accordance with the provisions of Law Number 17 of 2023.

### **ADVANCED RESEARCH**

Based on the review that has been carried out regarding legal protection for patients who are victims of traditional medicine malpractice and the context of Law Number 17 of 2023 concerning Health, several areas that require further research include:

1. **Effectiveness of Implementation of Law Number 17 of 2023:** Analysis of how Law Number 17 of 2023 has been implemented in various regions and how effective this regulation is in providing legal protection to patients. This could include case studies in several provinces or large cities in Indonesia.
2. **The Role of Regional Government in Supervision and Development:** An in-depth study of the role of local governments in monitoring and fostering traditional healing practices, as well as the challenges faced in ensuring all service providers have valid permits and certification.
3. **Education and Socialization of Patient Rights:** Study of the level of knowledge and awareness of the community regarding their rights as traditional medicine patients. This research can include surveys and interviews with various levels of society to measure the effectiveness of education and outreach programs carried out by the government.

4. **Quality and Standards of Traditional Medicine Practice:** Research on practice standards and quality of traditional medicine services in Indonesia. This could include analysis of training curricula, competency testing, and certification processes for providers of traditional healing services.

With further research in these areas, it is hoped that we can provide a more comprehensive picture of legal protection for traditional medicine patients and how existing regulations can continue to be improved to provide better protection for Indonesian society.

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