

LEGAL RESPONSIBILITY FOR MALPRACTICE COMMITTED BY TRADITIONAL HEALTH PRACTITIONERS IN THE CONTEXT OF TRADITIONAL HEALTH SERVICES

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ABSTRACT

The government of Indonesia, through various legal frameworks, including the Health Law and related regulations, plays a crucial role in supervising and fostering traditional health practices to ensure their safety and accountability. The integration between traditional medicine and conventional medical treatment has been further reinforced by regulations issued by the Ministry of Health, particularly those governing complementary and integrative traditional health services. This regulatory framework provides patients with a broader range of treatment alternatives. Furthermore, patient protection in the context of traditional health services in Indonesia is explicitly regulated under Law No. 36 of 2009 on Health, Law No. 8 of 1999 on Consumer Protection, Law No. 36 of 2014 on Health Workers, as well as the Decree of the Minister of Health of the Republic of Indonesia concerning the Development and Supervision of Traditional Health Workers.

Keywords: Legal Liability, Malpractice, Traditional Health

ABSTRAK

Pemerintah Indonesia, melalui berbagai kerangka hukum, termasuk Undang-Undang Kesehatan dan peraturan terkait, memainkan peran penting dalam mengawasi dan mendorong praktik kesehatan tradisional untuk memastikan keamanan dan pertanggungjawaban. Integrasi antara pengobatan tradisional dan pengobatan konvensional semakin diperkuat oleh peraturan yang dikeluarkan oleh Kementerian Kesehatan, khususnya yang mengatur layanan kesehatan tradisional komplementer dan integratif. Kerangka regulasi ini memberikan pasien akses ke berbagai alternatif pengobatan yang lebih luas. Selain itu, perlindungan pasien dalam konteks layanan kesehatan tradisional di Indonesia secara eksplisit diatur dalam Undang-Undang Nomor 36 Tahun 2009 tentang Kesehatan, Undang-Undang Nomor 8 Tahun 1999 tentang Perlindungan Konsumen, Undang-Undang Nomor 36 Tahun 2014 tentang Tenaga Kesehatan, serta Keputusan Menteri Kesehatan Republik Indonesia tentang Pengembangan dan Pengawasan Tenaga Kesehatan Tradisional.

Kata kunci: Tanggung Jawab Hukum, Malpraktik, Kesehatan Tradisional

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INTRODUCTION

Article 34 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia stipulates that health services are the responsibility of the state to provide, and Article 28 H Paragraph (1) specifies the right of citizens to obtain health services. These two articles embody the principles of just and civilized humanity and social justice for all Indonesian people. Healthcare providers are associated with values that uphold the dignity of the Indonesian people, while the establishment of the right to healthcare is a manifestation of the principle of social justice that represents equality.²

Health is one of the basic human needs, along with clothing, food, and shelter. Health issues are essential problems for every country, whether developed or developing. Technological advances have greatly influenced developments in the field of health. Diseases for which there were previously no cures can now be treated, thanks to technological advances. However, there are also diseases where the cure or treatment has yet not been found.³

However, in practice, there are many cases of misconduct in the provision of health services by irresponsible medical personnel. This misconduct is often referred to as malpractice, which is a failure on the part of the profession caused by a lack of knowledge and skills to provide services that have physical and material impacts on patients.

In criminal terms, malpractice by health workers is punishable under Article 359 of the Criminal Code, which states that negligence resulting in the death of another person is a criminal offense. However, if there are more specific legal provisions, the principle of *lex specialis* derogate *legi generali* will apply, whereby specific laws override general laws, so that Article 84 paragraph (2) of Law No. 36 of 2014 concerning Health Workers overrides Article 359 of the Criminal Code. Law No. 36 of 2014 is a non-criminal law that contains criminal sanctions.

In the world of health, these health services are not only provided by doctors or other health workers who are licensed and certified professionals, but there are also other health workers who do not use modern medical equipment. These other health services refer to traditional health services. In Law Number 36 of 2009 concerning Health, traditional health services are defined as “treatment and/or care using methods and medicines based on empirical knowledge and skills passed down from generation to generation, which are accountable and applied in accordance with the norms that apply in society.”

Article 191 of Law Number 36 of 2009 concerning Health states that: “Any person who, without authorization, practices traditional health services using the tools and technology referred to in Article 60(1), thereby causing property damage, serious injury, or death, shall be punished with imprisonment for a maximum of 1 (one) year and a fine of up to Rp100,000,000.00 (one hundred million rupiah).” This clarifies that traditional health services are legal under the law. Therefore, every member of the public may use these services as long as they have been duly authorized.

The proliferation of traditional health services proves that traditional health services are very popular among the community. Another issue that causes traditional medicine to still be trusted by the community is that access to official healthcare services based on medical standards is not equally available to everyone. Therefore, traditional medicine is often the choice for those with limited economic means to meet their healthcare needs, making

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traditional medicine a complementary element for the community in healthcare services alongside modern medicine.

The existence of traditional medicine today is historical evidence of healthcare efforts in the past, when healthcare services still used traditional tools and herbal remedies. Despite advances in technology and science, it cannot be denied that Indonesians still place their trust in traditional medical practices such as massage, acupressure, and other types of traditional medicine alongside official medical practices to meet their healthcare needs.⁴

Medical risks such as malpractice can occur in traditional medical practices, even though traditional medical practices have official permission from the government. This is especially true if the medical risk happens in traditional medical practices that do not have official permission from the government, which is clearly very detrimental to patients. When malpractice is indeed found to have been committed by traditional health practitioners (*tenaga kesehatan tradisional*, Indonesian), is there any protection for patients? And what is the criminal liability? Thus, the authors wish to conduct a more in-depth study in the form of a thesis on the Legal Liability for Malpractice Committed by Traditional Health Practitioners in the Context of Traditional Health Services.

PROBLEM FORMULATION

Based on the background described above, the authors focus on the following problem formulations:

1. What are the regulations governing traditional health practitioners in providing traditional health services?
2. What legal protection is available to patients for malpractice committed by traditional health practitioners in providing traditional health services?
3. To what extent are traditional health practitioners liable for harming their patients through malpractice?

RESEARCH METHOD

The type of research used in this study is empirical legal research, in which empirical legal research reveals the living law in society through the actions of the community. The research locations used in this study are several regencies or cities in Indonesia where there have been cases of malpractice committed by Traditional Health Practitioners.

RESEARCH RESULTS

1. Regulations Governing Traditional Health Practitioners in Providing Traditional Health Services

Regulations governing traditional health practitioners in providing traditional health services in Indonesia are important to ensure that practices are carried out in accordance with safety and quality standards and do not harm patients. Traditional health practitioners refer to practitioners who provide services based on traditional knowledge and skills in medicine, which differ from conventional medical services.⁵ This regulation is essential because although traditional health services have long existed and been accepted by some communities, their existence still requires legal status and supervision to protect the public from practices that do not meet standards, including potential risks to patient safety.

⁴ Syifa Alam, Perlindungan Hukum Bagi Pasien Terhadap Malpraktek Pada Pengobatan Tradisional, Jurnal: Media Iuris Vol. 1 No. 3, Oktober 2018, hlm. 516

⁵ Abdulkadir Muhammad, Hukum dan Penelitian Hukum (Bandung, 2004), hlm. 155

The Law of the Republic of Indonesia No. 36 of 2009 concerning health contains several articles that regulate traditional health services, namely articles 1, 48, 59, 60, and 61. Article 1 point 16 states that “Traditional Health Services are treatment and/or care using methods and medicines based on empirical knowledge and skills passed down from generation to generation, which are accountable and applied in accordance with the norms that apply in the community.”

Article 48 also states that traditional health services are one form of health care provision. Article 59 affirms that traditional health services are divided into two types, namely Traditional Health Services based on Skills and Traditional Health Services based on Herbal Medicine. This article also shows that all types of Traditional Health Services are supervised and monitored by the Government to ensure their benefits and safety and that they do not conflict with religious norms.

Articles 60 and 61 stipulate that individuals providing traditional health services shall comply with established regulations, and that the community is given every opportunity to develop, improve, and utilize traditional health services of which benefits and safety can be accounted for.

The authors will also explain that types of Traditional Herbal Medicine Services include: *Jamu*, *Gurah*, Homeopathy, Aromatherapy, SPA therapy, and other methods that use herbs. Meanwhile, Traditional Health Services Skills include: acupuncture, chiropractic, massage, shiatsu, bone setting, traditional birth attendants, circumcision, reflexology, acupressure, cupping, apitherapy, skin/hair beauticians, inner energy, psychics, reiki, qigong, spiritualism, and other methods that use skills.⁶

Regulations on traditional health services are also stated in Minister of Health Regulation No. 15 of 2018 concerning the Implementation of Complementary Traditional Health Services. Complementary Traditional Health Services refer to the use of traditional treatment methods that serve to complement or support conventional medical treatment. This complementary approach aims to accelerate recovery, reduce the side effects of medical treatment, and improve the quality of life of patients. In this context, traditional medicine does not replace modern medical treatment, but rather works alongside existing medical methods to improve overall treatment outcomes. The concept of complementary traditional health services encompasses various types of traditional medicine, such as acupuncture, traditional massage, herbal remedies, reflexology, and therapy with other natural ingredients that have been used for generations in various cultures. Complementary medicine is recognized as an alternative that can help manage certain disease symptoms, reduce pain, or improve the physical and mental condition of patients undergoing medical treatment.

Furthermore, traditional health services are also regulated in Regulation of the Minister of Health of the Republic of Indonesia Number 37 of 2017 concerning Integrated Traditional Health Services. Article 1 paragraph (1) explains that “Integrated Traditional Health Services are a form of health service that combines conventional health services with complementary traditional health services, either as a supplement or a substitute in certain circumstances.” Integrated Traditional Health Services refer to efforts to combine or integrate traditional medicine with modern health services or conventional medicine in a coordinated and complementary system. This concept aims to provide a wider range of treatment options tailored to patient needs, integrating conventional medical approaches with traditional treatment methods that have long been accepted in the community's

⁶ Ni Putu Sri Wahyuni, “Penyelenggaraan Pengobatan Tradisional di Indonesia”, *Jurnal Yoga Dan Kesehatan*, Vol. 4, No. 2/2021, hlm. 151

culture. This integration emphasizes the principle of diversity in health services, where both approaches can work together to improve the quality of public health.

In traditional health services, there are certainly health workers who provide these services. These service providers are referred to as Traditional Health Practitioners as mentioned in the Regulation of the Minister of Health of the Republic of Indonesia Number 15 of 2018 concerning the Implementation of Complementary Traditional Health Services. Article 1 paragraph (3) states that “Traditional Health Workers are individuals who devote themselves to the field of traditional health and possess knowledge and/or skills through education in the field of traditional health, which for certain types requires the authority to perform traditional health practices.”

2. Legal Protection for Patients Against Malpractice Committed by Traditional Health Practitioners in Traditional Health Services

The legal basis for patient protection in traditional health services in Indonesia is regulated in various regulations that aim to ensure that traditional health services provided are safe, of high quality, and in accordance with applicable ethics and laws. The following is the legal basis for patient protection in traditional health services. These include:

- a. Law Number 36 of 2009 concerning Health
- b. Law Number 8 of 1999 concerning Consumer Protection
- c. Law Number 36 of 2014 concerning Health Workers
- d. Decree of the Minister of Health of the Republic of Indonesia concerning the Development and Supervision of Traditional Health Workers.

Legally, malpractice in traditional health practices can be considered a violation of patients' rights to safe health services. In this case, the principle of consumer protection, as regulated in Law Number 8 of 1999 concerning Consumer Protection, can be applied. Article 4 of the Consumer Protection Law regulates consumer rights, including the right to obtain accurate information about the products or services received. In the context of traditional medicine, patients have the right to know clearly about the treatment methods, the ingredients used, and the potential risks that may occur. If traditional health workers do not provide adequate information or hide the risks of treatment, this can be considered a violation of consumer rights.

In the context of legal protection theory, which prioritizes the balance between individual and public interests, the law should be present to protect patients from possible dangers during treatment, while still providing space for diversity in treatment options, including traditional medicine. Patients who choose traditional medicine have the right to receive services that are not only in accordance with their medical needs, but also free from practices that endanger their safety. Patients, as the weaker party in this relationship, are entitled to legal protection in the event of harm resulting from inappropriate or unsafe treatment.

Traditional Health Practitioners who are proven to have committed malpractice can be subject to severe legal sanctions, both through criminal and civil proceedings. Criminally, if a traditional health practitioner is proven to have committed negligence that causes harm to a patient, such as serious injury or even death, then imprisonment or fines may be imposed in accordance with the provisions of applicable law. Meanwhile, if the malpractice results in material or immaterial harm to the patient, civil proceedings may be pursued to seek compensation. This demonstrates that there is a clear form of legal accountability for traditional health practitioner, with the aim of protecting patients' rights and maintaining the quality of traditional health services.

The application of these legal sanctions also has a broader purpose, namely to deter perpetrators of malpractice, so that they are more careful in carrying out their practices.

With the threat of strict sanctions, both criminal and civil, it is hoped that traditional healers will pay more attention to proper medical procedures and standards, in order to avoid potential harm to patients. Furthermore, this strict enforcement of the law also demonstrates that the legal system is not only focused on protecting patients, but also strives to maintain professionalism in the traditional health sector, so that safe and responsible practices can flourish.

In cases of malpractice by traditional health practitioners, legal protection theory recognizes that patients are entitled to compensation. This refers to the right of patients to be treated fairly and to receive compensation for losses incurred as a result of medical errors. In the Indonesian legal system, patients who have been harmed by malpractice, whether in hospitals or in traditional medical practices, can file a civil lawsuit based on Article 1365 of the Civil Code concerning unlawful acts. This article provides a legal basis for patients to claim compensation for losses incurred as a result of incorrect treatment.

In addition, it is known that legal protection theory teaches that in addition to granting legal protection rights to patients, the government and related institutions also need to increase supervision of traditional medical practices. This includes educating the public about their rights as consumers of medical treatment and the obligations of traditional health workers to follow applicable rules and standards, in order to avoid harmful malpractice.

3. Liability of Traditional Health Practitioners Who Cause Harm to Their Patients Through Malpractice

Law enforcement against malpractice in the health sector requires a firm and transparent process.⁷ Patients who suffer harm due to malpractice by traditional health practitioners have to have access to legal recourse, both criminal and civil. The state needs to provide clear channels for patients to file complaints or lawsuits, and ensure that sanctions against perpetrators of malpractice are imposed in accordance with applicable laws. This not only provides protection for patients, but also improves the quality of traditional health services. Thus, law enforcement will hold traditional health practitioners accountable for any malpractice they may commit.

Malpractice committed by traditional health practitioners has legal consequences that can vary, whether in the criminal, civil, or administrative spheres. Criminally, traditional health practitioners who are proven to have committed malpractice can be subject to sanctions based on the Health Law, the Medical Practice Law, and the Criminal Code, depending on the level of negligence and the consequences caused. If the malpractice causes injury or death to the patient, traditional health practitioners may be charged with negligence resulting in loss or even criminal charges if there is an element of intent. Actions that cause physical or mental harm to patients have the potential to fall under the category of unlawful acts.

The legal basis for the liability of traditional health practitioners in practicing medicine in Indonesia can refer to several laws and regulations governing health and consumer protection. Although the regulations related to traditional health practitioners are not as comprehensive as those for formal medical personnel (such as doctors and nurses), several regulations still provide a legal basis related to their liability, such as Article 359 of the Criminal Code, Article 360 of the Criminal Code, Article 266 of the Criminal Code, Article 1365 of the Civil Code, Article 1366 of the Civil Code, Articles 83 and 84 of Law No. 36 of 2014 concerning Health Workers, Article 58 paragraph (1) of Law No. 36 of 2009 concerning Health.

⁷ *Ibid*

Therefore, if malpractice is found to have been committed by a traditional health practitioners, he or she may be subject to criminal sanctions as a form of accountability based on articles in the Criminal Code, the Health Workers Act, and the Medical Practice Act, which regulate negligence causing injury or death as well as administrative violations. In addition, patients who have suffered harm as a result of malpractice may file a civil lawsuit based on Articles 1365 and 1366 of the Civil Code, which govern unlawful acts and claims for compensation for losses suffered by patients.

The fulfillment of responsibility for traditional health practitioners who commit malpractice can be analyzed through the theory of criminal responsibility, which refers to the principles of Indonesian criminal law. Based on the theory of criminal responsibility, there should be an element of fault and a causal relationship between the action taken and the consequences incurred.⁸ According to Soegeng Istanto, accountability means the obligation to provide answers that account for everything that has happened and the obligation to provide compensation for any losses that may have been caused.⁹ Furthermore, according to Titik Triwulan, accountability should have a basis, namely something that gives rise to the legal right of a person to sue another person and at the same time gives rise to the legal obligation of another person to be accountable.¹⁰

Based on the theory of legal liability, traditional health practitioners can be held criminally liable if he is proven to have committed negligence or error that caused harm or injury to the patient. In this case, the theory of fault is the main basis for determining whether he is criminally liable. The fault can be intentional (*dolus*) or unintentional (*culpa*). For example, if he or she acts beyond the limits of his expertise or knowledge, or if he does not comply with established medical procedures, then such actions can be considered negligence that harms the patient, so that he or she can be held criminally liable in accordance with the provisions of the Criminal Code or relevant health regulations.

Based on the theory of legal liability, a traditional health practitioner can be held criminally liable if he is proven to have committed negligence or error that caused harm or injury to the patient. In this case, the theory of fault is the main basis for determining whether he is criminally liable. The fault can be intentional (*dolus*) or unintentional (*culpa*). For example, if he acts beyond the limits of his expertise or knowledge, or if he does not comply with established medical procedures, then such actions can be considered negligence that harms the patient, so that he can be held criminally liable in accordance with the provisions of the Criminal Code or relevant health regulations.

In this case, civil liability may also apply if the patient feels aggrieved as a result of malpractice by a traditional health practitioner. Based on the theory of liability, a person can be sued for compensation for losses caused by unlawful acts, which in this case are related to his negligence or error. Article 1365 of the Civil Code provides the basis for suing for unlawful acts, which may include actions by him that do not comply with professional standards or that cause harm to patients. In this case, patients can claim compensation for physical, mental, and economic losses caused by malpractice.

The theory of legal liability also includes the principle of objective liability, which requires a traditional health practitioner to be liable for actions that harm patients even if there is no malicious intent or deliberate negligence. If his actions or negligence are

⁸Novalina Kembaren dan Tamaulina Sembiring, "Penegakan Hukum Kesehatan Terhadap Kegiatan Malpraktek Di Indonesia", Jurnal: Governance (Ilmiah Kajian Politik Lokal dan Pembangunan), Vol. 10, No. 3/2024, hlm. 110

⁹ Anonim, "Teori Pertanggungjawaban Pidana", dalam https://www.aksarahukum.com/2022/03/teori-pertanggungjawaban-pidana.html#google_vignette, diakses tanggal 29 Nopember 2024

¹⁰ Titik Triwulan dan Shinta Febrian, Perlindungan Hukum Bagi Pasien (Prestasi Pustaka, Jakarta, 2010), hlm. 48

considered contrary to applicable standards or violate his professional obligations, he may be held liable even in the absence of malicious intent. This is important in maintaining the quality of traditional health services, where he has an obligation to practice with care and in accordance with established standards.

Therefore, the fulfillment of legal responsibility for the traditional health practitioner who commits malpractice must be viewed through the theory of legal responsibility that covers both criminal and civil aspects. He can be subject to criminal sanctions if proven to have committed negligence or errors that cause harm to patients, taking into account the clear causal relationship between the act and its consequences. Meanwhile, patients who feel they have suffered losses can seek civil damages based on unlawful acts, using the relevant articles in the Civil Code. Therefore, it is important to ensure that he is held accountable for their actions in providing traditional health services, both through criminal and civil channels.

CLOSING

1. The government, through various regulations, including the Health Law and related regulations, plays a role in overseeing and fostering traditional health practices to ensure their safety and accountability. The integration of traditional medicine and conventional medicine is further strengthened by the Minister of Health Regulation governing complementary and integrated traditional health services, thus providing a wider range of treatment alternatives. Traditional Health Workers are also involved in the provision of these services, with clear provisions regarding their authority and competence, ensuring they can provide beneficial and responsible services.
2. Patient protection in traditional health services in Indonesia is regulated by Law Number 36 of 2009 concerning Health, Law Number 8 of 1999 concerning Consumer Protection, Law Number 36 of 2014 concerning Health Workers, and the Decree of the Minister of Health of the Republic of Indonesia concerning the Development and Supervision of Traditional Health Workers. Patient protection is also guaranteed through the principle of safety, the patient's right to clear information (informed consent), and oversight of traditional health practices that may involve risks. The regulations also include provisions regarding professional codes of ethics and guidance provided by the government to ensure safe services that do not harm patients.
3. A comparison of liability between Conventional and Traditional Health Workers shows similarities in provisions related to malpractice, with criminal sanctions for negligence resulting in death or serious injury. However, Traditional Health Workers are more regulated regarding permits for the use of equipment and technology, in accordance with Law No. 36 of 2009, which requires that the equipment used be safe and in accordance with cultural norms. Meanwhile, Conventional Health Workers are further regulated in Law No. 36 of 2014, which more specifically regulates gross negligence.

SUGGESTION

1. The government needs to strengthen regulations related to traditional medicine, including the creation of clear and binding standard operating procedures (SOPs) for traditional health workers. These standards must adhere to safe and scientific medical principles to protect patients from the risk of malpractice.
2. A licensing or certification system for traditional health workers, requiring them to undergo training and competency exams, is needed. This aims to ensure that only trained and competent traditional health workers are permitted to provide treatment to the public.

3. Stricter oversight of traditional health practices by authorized agencies, such as the Ministry of Health, is needed. This oversight can include routine inspections of practice sites and periodic evaluations of Nakestrad's performance to ensure no violations occur.
4. A code of ethics is needed to regulate the behavior of traditional health workers. This code of ethics serves as a guideline for carrying out their profession and ensures that they act professionally and in accordance with applicable ethical standards.

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