

LEGAL PROTECTION OF TRADITIONAL MEDICINE PRACTITIONERS IN INDONESIA

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Abstract: *One result of Indonesian culture is traditional knowledge. The activity of traditional medicine practitioners is regulated by Law No. 36 of 2009 "On Health". One of the traditional treatments is a religious approach, but it has not received full recognition because it contradicts the principles of medical science. However in everyday life, this approach is valid and proven. This study aims to determine the urgency of legal protection to protect the traditional medicine profession based on supernatural and religion. This research is a normative legal research with statutory, conceptual, and comparative approaches. The results of the study show that regulation and legal protection of traditional medicine practitioners are very important because this is an effort to improve public health according to 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 be able to participate in health care and preserve the nation's culture, the profession of traditional medicine practitioners must be enshrined in the form of legislation, such as the Law "On Health".*

Keywords: *Legal Protection, Traditional medicine practitioners, Medicines, Supernatural*

Introduction

Traditional medicines are regulated by Law No. 36 of 2009 on Health. These services are performed by traditional medicine practitioners 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 religious approach. The two traditional medicine methods are included in empirical methods of traditional medicine. Empirical medicines are regulated by Regulation of the Minister of Health No. 61 of 2016. The two types of traditional medicine methods are related to one another. Traditional medicine practitioners 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 (STPT), traditional healers who practice supernatural methods and religious approach should legally register with the City or District Health Office in Indonesia by specifying the type of medicine they provide. In such a way, a healer will have a clear legal basis for providing traditional medicines to the community.

Even though traditional medicines have been regulated by Law No. 36 of 2009 On Health. There is still a problem. This problem occurs because the law does not clearly regulate traditional medicines using supernatural methods and religious approach. The law provides only a general regulation of types of traditional medicines, 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 medicines 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 Medicines," No. 61 of 2016 (Utami and Alawiya, 2018).

Therefore, traditional medicine practitioners who practice supernatural method and religious approaches approaches belong to traditional medicine. Normatively, traditional medicine practitioners as legal subjects are unclear. Therefore, there is a risk that traditional healers can be seen as people who provide health services without a clear and valid legal ground. This lack of clarity indicates no coexistence (Collective Coexistence) between State Law, Customary Law and Religious Law, which constitute a plurality of legal orders 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 society". This is because the management of Indonesia's national health must be carried out in an integrated manner by all components of the Indonesian nation. Traditional medicines are currently growing rapidly and have become an alternative choice for the community as an effort to treat and/or care outside of medical science and treatment. Therefore, traditional medicine methods need to be screened by way of assessment, research, and/or testing. For this reason, a special institution was formed to handle this matter at the provincial level with the name Center for the Development and Application of Traditional Medicine, abbreviated as SP3T. One of the tasks of SP3T is to explore local wisdom that already has empirical evidence in overcoming health problems in the province. Local wisdom-based traditional medicine practitioners using supernatural methods and religious approach serving clients or patients without having an STPT are at risk of being categorized as committing an illegal act, namely carrying out the profession of a traditional medicine practitioners using supernatural methods and religious approach 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 Traditional types of health services using supernatural methods and religious approaches; this indicates a plurality of legal systems in Indonesia. Based on the background above, this research is focused on the

urgency of regulating traditional medicine practitioners regarding the legal protection of professions based on local wisdom.

Research method

This research is a normative juridical research. Normative juridical research is legal research that is carried out by researching literature or secondary data as basic material for research by conducting a search of regulations and literature related to the problem under study (Soekanto & Mahmudji, 2001). The approach used is the statutory approach, the philosophical approach, the conceptual approach, and comparative law. The legal materials in this study consist of primary legal materials (consisting of the 1945 Constitution, and laws and regulations related to health), secondary legal materials (consisting of journals, magazines, articles, interviews and others). 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 remains, archives, deeds, diplomas, reports, laws and regulations, diaries, personal letters, biographical notes, interviews, and other documents related to the problem studied (Prastowo, 2011). The legal materials obtained in this study used the legal substance analysis technique to analyze formulations in statutory regulations and other legal materials to find weaknesses in the regulation of legal protection for the traditional medicine practitioners profession based on local wisdom in the national health system.

Result and discussion

Traditional medicines are one of the special professions in medicines, so that their role can be equated with the medical profession. These service like a doctor, need legal protection to protect their profession. A traditional medicine practitioners are defined as a special profession in the field of traditional medicine, which can be on a par with the profession of a doctor in modern medicine because it has the following criteria:

Covering certain fields only (inspesilisasi).

Based on special expertise and skills.

It is permanent and continuous.

Prioritizing service over rewards, income or earnings.

Grouped in the organization.

Traditional medicine practitioners in the Decree of the Minister of Health No.: 1076/2003 dated 24 July 2003 mentioned that traditional medicine practitioners joined various professional organizations of similar medicines. In 2015, some traditional medicine practitioners associations used supernatural methods such as ARSI (All-Indonesian Reiki Association) and FK PPAI (Indonesian Paranormal Communication Forum and Alternative Healers), others used a religious approach, namely:

PERCHIRINDO (Indonesian Chiropractic Association).

ASPETRI (Indonesian Herb Medicine Association).

IKNI (Indonesian Naturopathic Association).

PAKSI (All Indonesian Acupuncture Association).

PERTAPI (Indonesian Paranormal and Alternative Healers Communication Forum).

IHI (Indonesian Home Opathic Association).

AP3I (Association of Indonesian Medicine Massage Practitioners).

ASTI (Indonesian Spa Therapist Association).

ABI (Indonesian Cupping Association).

IPATRI (Indonesian Traditional Medicine Association).

As a result of unclear norms in Law No. 36 of 2009 on Health, it has implications for the non-integration of traditional medicine arrangements in the statutory regulations and implementing regulations. The unclear norms protecting traditional medicine practitioners based on local wisdom with supernatural methods and religious approaches also have philosophical, theoretical and juridical impacts, namely:

Philosophical: Ontology, the state protects citizens who carry out work as traditional medicine practitioners based on local wisdom with supernatural methods and religious approach, because it is an effort to exist prosperously in society. This is in accordance with the fourth paragraph of the Preamble to the 1945 Constitution which reads: The state protects the entire nation and all of Indonesia's bloodshed, promotes the general welfare and educates the nation's life. Its constitutional foundation is set out in section 27(2) of the 1945 Constitution, which reads as follows: Every citizen has the right to work and to live decently for humanity. Epistemology, the legal provisions of Article 59 paragraph (1) of Law No. 36 of 2009 On Health do not clearly regulate traditional medicine practitioners based on local wisdom using supernatural methods and religious approach but only group them into 2 (two) groups namely: "based on For treatment, traditional medicines are divided into: Traditional medicines that use skills and use herbs. Government Regulation No. 103 of 2014 On Traditional Medicines which is an implementing regulation of Law No. 36 of 2009 On Health is also unclear in regulating traditional medicines. Furthermore, the Regulation of the Minister of Health No. 61 of 2016 dated 27 December 2016 On Empirical Traditional Medicines also does not regulate Traditional medicine practitioners based on local wisdom with supernatural methods and a religious approach. In fact, Article 45 states that it has revoked and declared the Decree of the Minister of Health No. 1076 valid. /Menkes/SK/VII/2003 dated 24 July 2003 On Implementation of Traditional Medicine. Considering that the Decree of the Minister of Health clearly regulates and protects practitioners of traditional medicine who use supernatural methods and religious approach. Axiology, as a result of the unclear regulation and protection of traditional medicine practitioners based on local wisdom with supernatural methods and religious approach in Law No. 36 of 2009, citizens who carry out jobs or professions to earn a decent living as traditional medical practitioners do not get legal protection.

Theoretical Every traditional medicine practitioners who provides empirical traditional medicines is required to have an STPT (Traditional Health Registered Certificate), as specified in Article 39 of Government Regulation No. 103 of 2014 On Traditional Medicines as implementing regulations of Law No. 36 of 2009. Since in the 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.

Juridical Traditional medicine practitioners based on local wisdom with supernatural methods and with religious approach serving clients or patients without having an STPT (Traditional Health Registered Certificate) are at risk of being categorized as committing an unlawful act, namely carrying out the profession of a traditional medicine practitioners using supernatural methods and religious approach without authority or without rights that may be categorized as without permission or without a valid legal basis.

One of the objectives of law is legal certainty, in this case for legal protection for traditional medicine practitioners based on local wisdom using supernatural methods and a religious approach in serving clients or patients. In the opinion of the author, it is necessary to carry out an in-depth study by institutions that specifically deal with this throughout Indonesia, so that traditional medicines have a clear legal formulation (Kartika et al., 2016). Health law in general is the regulation of health. Health regulations are set out in health laws, including nursing and midwives. Health law also regulates the duties of doctors, nurses and health workers by adhering to all legal aspects of health, and errors in the practice of the profession (Mudayana, 2015). The legal protection of traditional medicines must be able to cover the interests of all stakeholders, namely traditional healthcare providers and patients of traditional medicines. The government's authority to protect traditional medicine stakeholders can be viewed from the perspective of health law, local government law, consumer protection law, and criminal law. By protecting traditional medicine stakeholders, the government has the authority and obligation to make and enforce regulations regarding traditional medicines as a whole.

The government regulates traditional medicines in the Law of the Republic of Indonesia No. 36 of 2009 On Health and Government Regulation No. 103 of 2014 On Traditional Medicines. The results of the research show that the Health Law has been deregulated however has tried to be regulated and finally accommodated by Government Regulation No. 103 of 2014 On Traditional Medicines. This shows that the Health Law does not provide legal protection for traditional medicines 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 medicines that can provide legal certainty for every stakeholder of traditional medicines.

Government Regulation No. 103 of 2014 On Traditional Medicines states that traditional medicines include skills traditional medicines and traditional herbal medicines. Of these two types of traditional medicines, 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 medicines. Regency/City Regional Governments which in this case have the authority to directly regulate traditional medicines are the Health Office and the Food and Drug Supervisory Agency. The Department of Health has the authority to regulate Human Resources for Traditional Health Workers 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 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 medicines. The legal aspect in medicines means talking more to the provisions governing regulations in the health sector. Law is statutory regulations made by a power in regulating social life in society. Intercourse or living in an advanced society like today is not enough just with the customs passed down from generation to generation like before the birth of modern civilization. For this reason, community groups living in a society or state need

written rules, which are called laws (Sampurno, 2011). Even so, not all people's behavior or relationships between one another are governed by unwritten laws called: ethics, customs, traditions, beliefs and so on.

Traditional medicine practitioners based on local wisdom using supernatural methods and a religious approach can be classified as a type of paranormal spiritual medicine. Its existence in Indonesian society is real and needed by people who believe that a disease can not only be cured or restored by modern medicine however there is a belief that a disease can also be cured by traditional medicine practitioners with supernatural methods and a religious approach. Whereas according to Law No. 36 of 2009 On Health, the traditional medicine practitioners profession has not been fully absorbed to receive legal protection, both preventively and repressively, which should be the right of these traditional medicine practitioners to be legally protected.

Currently, the flow of modernization is sweeping all areas of human life, along with the progress achieved by humans in science and technology. However, traditional medicine or medicines as a tradition, including traditional medicines with supernatural methods and religious approaches still exist or are still functional in people's lives. Regulations in legal norms to protect traditional medicine practitioners with supernatural methods and religious approach, is to achieve order for the sake of justice. So in accordance with its aim to achieve order for justice, the rules of law will develop in line with the development of human social life. The development of these legal rules in practice indicates a replacement of the existing legal rules (positive law). This is because it is no longer in accordance with the needs of the community, so new legal regulations of the same type are needed. The legal rules that will replace them as long as they have not yet become positive legal rules, because they are still planned to come into 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, both in legal science are called "legal order". This legal system throughout the ages will always exist and increase as long as there is life and development of human life. This is what is then recorded as legal history (Djamal, 2005).

Setting legal norms for the protection of traditional medicine practitioners using supernatural methods and a religious approach according to Vranes (2006), norms have a fundamental function, namely obligating, prohibiting, and permitting based on the logic of deontic law. In addition, norms can be divided into norms of conduct and norms of competence. Norms can contain orders, give authority, allow or derogate. Norms containing orders can be in the form of orders to perform an action or prohibit a particular action. Norms that give authority are norms that define authority for a particular person or entity. The permitting norm means that the norm allows for an action to be performed or not to perform an action. Meanwhile, derogating norms are norms that revoke or cancel other norms. In the Republic of Indonesia, apart from being a legal ideal, Pancasila is also a fundamental state norm (*staats fundamental norm*), because of that the Pancasila precepts both individually and collectively are 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 medicine practitioners based on local wisdom using supernatural methods and a religious approach. Community culture with its institutions can create legal norms. Legal norms are social rules made by certain institutions, such as the government, so that they can strictly prohibit and force people to

behave according to the wishes of the regulators. Violation of this norm is in the form of fines and corporal punishment (Effendi et al., 2016).

The existence of legal norms as regulations or written agreements that have sanctions and enforcement tools is intended so that people obey them and feel deterred by the sanctions applied, so they do not repeat acts that violate the law. So the characteristics of legal norms here are definite (written) rules, binding on everyone, having regulatory enforcement tools, made by authorities, coercive, heavy sanctions. Legal regulations that are directly related to legal protection of traditional medicines in Indonesia today are Law No. 36 of 2009 On Health, in the norms of Article 59 it divides traditional medicine based on the method of treatment, namely skills and ingredients; Government Regulation No. 103 of 2014 On Traditional Medicines regulates empirical traditional medicines, complementary traditional medicines and integrated traditional medicines; Regulation of the Minister of Health No. 61 of 2016 On Empirical Medicines, skills are described as a thought exercise, with energy from within and outside.

The two regulations under the aforementioned law do not include protection for traditional medicine practitioners based on local wisdom using supernatural methods and a religious approach. This is understandable because traditional medicine practitioners based on local wisdom using supernatural methods and religious approaches are not listed in the norms of Law No. 36 of 2009 On Health which underlies the issuance of these two regulations. So if the two regulations include traditional healing based on local wisdom with supernatural methods and a religious approach in it, then it will not be in accordance with the legal norms that underlie the publication of the two regulations. Traditional medicine practitioners who use supernatural methods and religious approach.

Traditional medicine practitioners using supernatural methods and religious approaches can legally register themselves at the City and District Health Offices in Indonesia by specifying the types of medicines using supernatural methods and a religious approach. Obtaining a Traditional Medicine Registered Letter (STPT), so that it has a legal and clear legal basis, is also the basis for the rights according to law for traditional medicine practitioners to provide traditional medicines to the public using these two methods, because they have been regulated legally and clearly in the norms applicable law. Therefore for the future it is necessary to reformulate the norms of Law No. 36 of 2009 On Health by including traditional medicine practitioners based on local wisdom with supernatural methods and a religious approach in it. Thus there will be clear legal norms and legal certainty and harmony in laws and regulations will be achieved.

Conclusion

Based on the description above, it can be concluded that the traditional medicine practitioners based on local wisdom with supernatural methods and a religious approach, need legal protection. Because these professions is still functional. These are needed by the community. The implication of current laws and regulations in the health sector is that there is ambiguity in legal norms to provide legal protection for traditional medicine practitioners based on local wisdom using supernatural methods and a religious approach, giving rise to multiple interpretations which can result in traditional medicine practitioners based on local wisdom using supernatural methods and a religious approach. prosecuted for unlawful acts.

Amendment to Law No. 36 of 2009 On Health Requires revision of the current formulation of legal norms, in order to provide legal protection for the traditional medicine practitioners profession in the practice of medicines based on local wisdom with supernatural methods and a religious approach, both for the present and future generations. will come. That is, it is necessary to revise the legal norms of Article 59 paragraph (1) of Law No. 36 of 2009 On Health with the following proposed formulation, based on the method of treatment, traditional medicines are divided into: Traditional medicines that use skills, Traditional medicines that use herbs, traditional medicines using supernatural methods, and traditional medicines using a religious approach.

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