

Original Research Paper

Analysis of the Juridical Protection of the Most Traditional Health Laws in the Perspective of the Law of the Republic of Indonesia Number 36 of 2009 Concerning Health

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Abstract: In accordance with the ideals of the Indonesian people as referred to in Pancasila and the Preamble of the 1945 Constitution of the Republic of Indonesia that health is a human right and one of the elements of welfare that the state must realize. The government as the holder of the highest power has the authority to achieve the highest possible health status for the community by carrying out comprehensive integrated health efforts. The results showed that Law Number 36 Year 2009 concerning Health has not fully provided legal protection for traditional health service business actors, namely traditional health workers and for traditional health service consumers, namely patients / clients. The hope is that the government should does special legislation regulating traditional health services specifically because traditional health services are currently increasingly diverse in treatment techniques and the more trusted by the Indonesian people.

Keywords: Juridical Protection, Perspective of Law, Traditional Health.



1. Introduction

Health is a human right and one of the elements of well-being that should be embodied state in accordance with the ideals of the nation of Indonesia as referred to in Pancasila and the Preamble to the constitution of the Republic of Indonesia Year 1945. National development should be based on the health insights that national development itself should pay attention to the health of the community. If there is one thing that causes health problems in people of Indonesia will certainly cause huge economic losses for the country, but on the other hand the success of any efforts to increase public health degree will increase the investment for the development of the country. Therefore, all parties, both the government and the community are responsible in paying attention to the health of the community. As the holder of the supreme power, the State is responsible in regulating every effort to increase the health of the community.

On the basis that the State form of the Legislation of the Republic of Indonesia Number 36 Year 2009 on Health for regulating the health sector in Indonesia.

“The efforts of the health of any activity and/or series of activities carried out in an integrated manner, integrated and sustainable manner to maintain and improve the health of the community in the form of disease prevention, health improvement, disease treatment and health recovery by the government and/or society” [1].

In Indonesian society, known for 2 (two) treatment techniques, namely conventional medicine and traditional medicine. Conventional treatment is a technique modern treatment performed by a doctor. While traditional medicine is the treatment and/or care by the way, the drug and pengobatnya which refers to the experiences, skills handed down, and / or education/training, and applied in accordance with the norms prevailing in the community [2]. The techniques of treatment that can be grouped into two types of health services that [3]:

1. Health services conventional or modern healthcare is the treatment performed by a doctor with the ways of the modern/scientific or has been tested with a study and can be accounted for.
2. Services health traditional medicine and/or treatment with the means and drugs that draws on the experience and skills handed down empirically that can be accounted for and applied in accordance with the norms prevailing in the society.

Health services have traditionally been known in advance rather than health services conventional. The existence of health services conventional arises after services health traditional in the 19th century. Just because the method used is scientific and proven to make health services conventional are more trusted by the community. But it turns out that in its development, health services traditional are generally widely available in rural society began to pull back the confidence of the urban community to the health services of the traditional. Malpractice health services conventional make people open up back on the health services of a traditional concept of back to the nature and even the possibility of recovery from a disease that has not found a cure in the medical world.

The decision of the Minister of Health of the Republic of Indonesia No. 1076/MENKES/SK/VII/2003 states that the classification of traditional medicine has a treatment technique that is as diverse as the engineering skills treatment, treatment techniques potions, treatment techniques through a religious approach and treatment techniques through the approach of the supernatural. While in Government Regulation No. 103 Year 2014 about the Services Health Traditional, these Kinds of Health Services-the Traditional covering [4]:

1. Health Services Traditional Empirical
Health services Traditional Empirical is the application of traditional health benefits and its safety is proven empirically.
2. Health Services Traditional Complementary
Health services Traditional Complementary is the application of traditional health that utilizes the biomedical sciences and biokultural in the explanation as well as the benefits and safety proven scientifically.
3. Health Services Traditional Integration
Health services Traditional Integration is a form of health care that combines the service of conventional health Services Health Traditional Complementary, both as a complement or replacement.

Based on the way of its treatment, Health Services Traditional Empirical and Services Health Traditional Complementary divided into [5]:

1. Services using the skills; and
2. Service using the herb.

Health care workers who perform services health traditional terms and different competencies in performing the service to the public. To ensure the health of the empirical, the most health called power health traditional. The requirements to become a power health traditional must have the skills and has the Registered Letter Power health Traditional (STPT) issued by the local Health Department. To ensure a complementary health, most health called the most traditional health. The requirements to be a health personnel's traditional process is not as easy as power health traditional. The most traditional health must have the skills of high school specific, equivalent to D3 and must also have a Letter of Registration the Most Traditional Health (STRTKT) and Permit the Practice of Health Workers, Traditional (SIPTKT) issued by the local government [6] [7]. The government has full authority to set and enforce regulations in overseeing the distribution of traditional medicine. The government needs to act decisively in regulating the circulation of traditional medicine circulating in the community. Many outstanding traditional medicine that is not listed even contain chemicals that can harm the society. Not to mention the health services of the traditional approach to religion and the approach of the supernatural that is felt there has been no clear arrangement of the government [8].

Previously it was said that the health service was traditional treatment techniques with the means and drugs that draws on the experience and skills handed down empirically that can be accounted for and applied in accordance with the norms prevailing in the community, the experience and skill of generations that can be accounted for and applied is an important element in conducting a health services traditional [9] [10]. The experience and skills of health services traditionally have to be proven as something that is useful for society, it is safe to do and can certainly improve the health of high. In the community, health services this traditional growing and diverse forms in the community [11]. The government needs to set up expressly for health services traditional it so not out of line with the goals of health itself, namely to improve the health of high-height. Need the legal protection of the health service of traditional aims to protect the health of both traditional and users of health services traditional it's own [12] [13].

The government as the highest authority and the owner the authority to regulate the health sector has a responsibility to fulfil the right to health which is one of human rights and one of the elements of well-being that must be realized to achieve the ideals of the Indonesian nation [14] [15] [16]. Indonesia as a country that adheres to the concept of the welfare state, as expressed Jimly Asshiddiqie quoted by W.R. Tjandra is required to expand his responsibilities to the problems faced by many people [17]. The function of the state was expanded to include social services to individuals and families in special things, such as 'social security', health, social welfare, education and training, and housing [18] [19].

The level of public health will greatly affect the level of welfare of society and are highly correlated with poverty. Level kemiskinanpun will be associated with the level of well-being. Health is a major factor in improving the welfare of the community, then the health is always a major concern of the government as public service providers. The government should guarantee the right of people to healthy with providing health services in a fair, equitable, adequate, affordable, and quality [20]. Because without fulfilling the right to health, then the welfare state will not be realized [4].

Therefore, as bearers of the mandate for the welfare of society, then the state is obliged to respect, protect and fulfill the rights of such health. The obligation to respect it as creating equal access to health services, prevention of actions that can decrease the health status of the community, perform the steps of legislation that can ensure the protection of public health, making health policy, provision of adequate budget, the provision of healthcare services traditional worthy and adequate for the entire community. Based on the foregoing, Researchers examined by the Analysis of the Juridical Protection of the Law the Most Traditional Health in the Perspective of the Law of the Republic of Indonesia Number 36 Year 2009 on Health [21].

2. Research Methods

This research is a normative legal research that focuses on the study with regard to the law as a system of intact which includes a set of principles, norms, and the rule of law both written and unwritten. The approach used in this study namely:

1. The approach of Legislation that is done by reviewing all Laws and regulations associated with

- the health services traditional
2. The conceptual approach that is done by reviewing the theories, principles, and particular definition used as the foundation of healthcare associated traditional.

The technique of collecting legal materials used in this study through the study of literature that study the Laws and regulations relevant books or reading materials and scientific works of the law. The analysis used is qualitative analysis that gives an overview of descriptive about the issues discussed.

3. Discussion

The Analysis of the Juridical Protection of the Law the Most Traditional Health in the Perspective of the Law of the Republic of Indonesia Number 36 Year 2009 on Health:

The legal protection of the health services traditional must include the interests of all stakeholders, namely the most traditional health and patient services health traditional. The authority of the government in protecting stakeholders "services health traditional can be reviewed in terms of the health law, the law of local government, consumer protection law, and also of criminal law. In protecting the stakeholders" services health traditional government authorities and is obliged to make and enforce regulations for health services traditional it thoroughly so that it can protect all stakeholders.

The government set about the services health traditional in the Legislation of the Republic of Indonesia No. 36 Year 2009 on Health and Government Regulation No. 103 Year 2014 about the Services Health Traditional. Government regulation governing health services traditionally more detailed and thorough when compared with Health Legislation which only set in some of the articles, namely Article 1 of Figure 9, Article 1 of Figure 16, Article 48, Article 48, Article 59, Article 60 and Article 61.

The results showed that the Health Legislation has undergone deregulation because many found a legal vacuum that eventually accommodated by Government Regulation No. 103 Year 2014 about the Services Health Traditional. This suggests that the Health Legislation does not provide protection of the law against services health traditional as more set of things that are principle or fundamental refers to the purpose of the activities of health services which is expected to increase the highest level of health. In order to create a suitability of positive law applicable in the community in accordance with the hierarchy of national Legislation is necessary to set up a Law about services health traditional can provide legal certainty for stakeholders, the public health service traditional.

Government Regulation No. 103 Year 2014 about the Health Services of the Traditional mention that the service of traditional health includes health services traditional skills and services health traditional herb. Of the second type of health service this traditional, the government has the authority to regulate in full in the Field of Human Resources for Health and the Field of Pharmaceutical Preparations, medical devices, and Food and Beverage. Local governments have the authority area and arrange services health traditional. The government of Regency/City in that it has the authority to set direct health services is the Department of Health and the national Agency of Drug and Food. The department of Health has the authority to regulate the Human Resources for Health Traditional in terms of issuance of the permit practice and work permits to the most traditional health competent. While the FDA is tasked with arranging register and overseeing the distribution of traditional medicine which is widespread in the community.

The purpose of the establishment of the Health Legislation is for the welfare of the public which in this case is the health of the community. In order to improve public health degree as high as possible, then carried out a variety of health efforts to improve the health itself. In Law regulated Health 17 form health efforts that are expected to increase the degree of health as high as possible. The ideals that supported also by the method of approach to health care that aims to change the paradigm of the public about health. At first health services within the pursuit of the nature of the curative treatment that treat or cure the sick. Then from it to create services health traditional ideal required four methods of health are related to each other, namely the approach of promotive, preventative approach and the approach of the curative approach and rehabilitative.

Approach promotive is one approach to health is a promotion where when done in a health care traditionally, patients feel more healthy when using health services can promote the benefits of health

services traditional it is to the other members of the community so that users of health services traditional can be increased. A preventive approach set toward the prevention of a disease. Health

services traditionally intended to prevent the occurrence of a disease. Health services traditional empirical organized by using the second method of this approach promotive and preventative approach.

Health services traditional complementary organized by using all approach to health care. To create a legal protection that is ideal to health services traditional it required the cooperation of each of the stakeholders associated with the health services traditional. The entire community must understand the concept of equality contained in the Laws of Health.

In The Law No. 23 Year 2014 on Regional Government mentioned that the Affairs of Government is the power of government under the authority of the President of the implementation is done by the ministry of state and the organizer of the Local Government to protect, serve, empower, and welfare of the community. In this case, the local government has the authority to regulate health services traditional service functions traditional health can protect, serve, empower, and welfare of the community. Protect function is carried out towards the making of a special Law regulating the health services traditional. Health legislation does not accommodate the full interests of the stakeholders ' services health traditional. Therefore, the government should establish a special Law that can do the setting of health services traditional it thoroughly. So the Laws of Health Services can be a rule that provides legal certainty and legal protection for every stakeholders ' services health traditional. In it need to be listed the various regulations that are scattered in the PP. 103 the Year of 2014 and a variety of decree of the minister of health services of the traditional and the circulation of traditional medicine given the service of traditional health can not be separated with the use of traditional medicine. With the formation of the Laws of health services traditionally set with full service traditional health will certainly necessarily protect the health services traditional it's own because of the setting by the Legislation of the special will give the strength of binding.

In the function of serving, Government authorities set standards for health services traditional. Starting from standard education and competencies that should be possessed by power health traditional and most traditional health. In addition, other standards that need to be determined by the government is the standard place of service such as the building and the room is adequately regulated by the PP. 103 about the Services Health Traditional. The function of serving can be also applied in the process of the granting of permission by the government to power health traditional and most traditional health, the government needs to make a licensing system that is more effective and efficient so that it can develop health services traditionally been a form of business health.

Function empower is addressed to the function of government to develop the health service itself. The government should be able to set up even accommodate in order to increase kederajatan a ministry of traditional health. For example in the health service empirically, the government needs to consider to make your school or place of education to increase the degree of health services empirically. Empower also directs people to trust and use of health services of the traditional, more and more people who use health services will lead to public health degree is increasing.

The last function is a function welfare, this function contains the government's authority to regulate welfare services health traditional and the patient or client services health traditional. The government has the authority to adjust the size of the remuneration for the services for the health services traditional so as not too cheap not too expensive like most of the health services conventional. The government has the authority to regulate so that health services can be a quality health services for the community and can help people get the best health services. A healthy society will provide health human resources and quality for national development.

4. Conclusion

Health legislation regulating the field of health thoroughly but not specific in regulating services health traditional. Settings that are more specifically set forth in regulation No. 103 year 2014 about the Services Health Traditional as implementing regulations Health Legislation in the PP. 103 year 2014 about the Services Health Traditional mentioned clearly setting for health services traditionally started from the definition, the terms, rights and obligations of the patient, the rights and obligations of power health traditional, the rights and obligations of health workers traditionally, registration, licensing, the terms of a place of health services and sanctions PP. 103 year 2014 about the Services Health Traditional set of services health traditional with more clear so it can be said PP. 103 year 2014 about the Services Health Traditional is to provide legal protection for health services traditional. While the authority of the government in terms of implementation is directed to the implementation of health

services traditional it's own. For example in the granting of the permit practice services health traditional to the most traditional health. The system of registration which is done by power health traditional not guarantee legal certainty and protect the public health service users traditional. This is because in the system of registration, the government only recognizes the existence of health services traditional while in the licensing system there is an element of recognition of the government and the granting of authority by the government to be traditional health. Health legislation does not accommodate the full interests of the stakeholder's services health traditional. Therefore, the government should establish a special Law that can do the setting of health services traditional it thoroughly. Permit system also is protect by law for health workers in performing services health traditional that most traditional health does not doubt his ability because it has permission practices. People will certainly feel safe and comfortable with the most traditional health clear have permission practices.

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