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Legality of Traditional Health Service in Indonesia: Legal Pluralism Perspective

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Abstract

The purpose of this research was to identify, analyse, and elaborate the regulation regarding traditional health service based on the prevailing law and regulations in Indonesia as well as the implementation of traditional health service in Bali in the perspective of legal pluralism. This was regulating legitimate investigation utilizing statutory approach, conceptual approach, and explanatory approach. The results of the study indicated that the regulation regarding the implementation of health service in Indonesia has been regulated in several regulations inter alia 1) Government Regulation No. 103 of 2014 concerning Traditional Health Services and 2) Regulation of Minister of Health of the Republic of Indonesia No. 17 of 2021 concerning Permits and Implementation of Intercontinental Traditional Health Worker Practices, which stipulates that the implementation of traditional health worker practices must have a permit in the form of STPT, STRTKT and SIPTKT, which according to the type of traditional health worker services provided. Regulations in the Bali

Governor Regulation No. 55 of 2019 explicitly places the norms that apply in Balinese society, which are rooted in religion as the basis in the implementation of traditional medicine, which is a form of legal pluralism that is still acknowledge among the Balinese to this day

Keywords

Traditional; Health; Service; Bali; Legal Pluralism

JEL Classifications: J11, F43

Introduction

Fulfillment of health is one of the basic needs that must be fulfilled in human life. Indonesia as a state of law has regulated the fulfillment of health as a human right that must be fulfilled in accordance with the 1945 Constitution of Indonesia (*hereinafter* Constitution). This condition put health as a fundamental right, hence everyone has the right to obtain medical care, as stipulated under Article 28H paragraph 1 of the Constitution.

One of the health care methods that has been known by the society is traditional medicine. The progress of conventional pharmacy in Indonesia is influenced by the medical culture in countries, such as India, China, the Middle East (Arabic) and Europe. The development of traditional medicine is experiencing rapid development, which is marked by the proliferation of traditional medicine practices and the increasing complexity of kinds of medicines and traditional medicine methods, both derived from hereditary ingredients and ingredients developed by traditional medicine experts.

Limited cost and fear of side effects caused by prolonged chemical treatment have made some people start to abandon medical treatment. Further, all detailed and long information brings an impact on the patient's confusion due to too much information. [1] Hence, the patient decided to choose traditional medicine instead. Given the situation, the demand on traditional medicine is increasing. There are several methods in traditional medicine, for instance massage, acupuncture, and yoga. Further, the traditional medicine also uses herbal medicine, standardized herbal medicine and phytopharmacology-type traditional medicine.

Since 2019, the traditional medicine and traditional health service have been regulated under Law No. 39 of 2009 concerning Health (*hereinafter* Health Law). According to Article 1 point 16 Health Law, it is stipulated that:

"Traditional Health Service shall be healing and/or treatment by method and medication referring to experience and skill inherited through generations

empirically that may be accountable and practiced according to the norms prevailing in the community”.

According to this provision, there are several points that need to be highlighted regarding traditional health service, inter alia: there shall be healing and/or treatment by method and medication, the treatment is carried out based on experience and skill inherited through generations empirically, and the practice is in accordance with the prevailing norms in the community.

In order to ensure the safety of the traditional medicine and its practice, the government has issued several regulations concerning the implementation of traditional medicine in the national and regional scope. Regulations regarding the implementation of traditional health service in Indonesia have been regulated in several laws and regulations. Along with those regulations, Bali as one of the provinces in Indonesia also regulated the traditional health service under Bali Governor Regulation No. 55 of 2019 concerning Traditional Balinese Health Services.

Based on the abovementioned, it appears that there are problems that deserve to be studied in depth related to legal issues regarding the legality of traditional medicine with reference to the health Law and the concept of legal pluralism in the implementation of traditional health services in Indonesia, especially in Bali. This consider will talk about comprehensively the control of the execution of conventional wellbeing administrations in agreement with pertinent controls in Indonesia and the usage of conventional wellbeing administrations in Bali within the point of view of legitimate pluralism.

This research, when compared with several previous studies, has similarities in terms of topics, namely both reviewing traditional medicine but with a different focus of study. This paper will emphasize the aspects of regulating the implementation of traditional health services in accordance with applicable regulations in Indonesia and the implementation of traditional health services in Bali in the perspective of legal pluralism.

Previous study was conducted by Nurani Ajeng Tri Utami and Nayla Alawiya in 2018 concerning “*Perlindungan Hukum Terhadap Pelayanan Kesehatan Tradisional di Indonesia*”.[2] The study was focused on the legal protection on traditional health service. In 2015, Salim Ma’ruf examined “*Sanksi Pidana dalam Praktik Pelayanan Pengobatan Tradisional*”.[3] The focus of the study was the regulation concerning traditional health service as well as the criminal sanction can be imposed in the practice of traditional health service.

The purpose of this study was to identify, analyze and elaborate the regulation concerning the traditional health service according to the prevailing

law in Indonesia as well as the implementation of traditional health service in Bali in the perspective of legal pluralism. In order to carry out the research objective, this writing will discuss the subject in respective manner. First, it will discuss the regulation regarding the traditional health service based on the prevailing law in Indonesia. Second, it will examine the implementation of traditional health service in Bali in the perspective of legal pluralism.

Research Method

This writing was normative legal research using *statute approach*, *conceptual approach*, and *analytical approach*. "According to Peter Mahmud Marzuki, normative legal research is a process to examine the law and regulation, legal principles, and legal doctrine in order to find out the solution to any legal problem that happens in the society".[4]

Results and Discussion

Regulations Regarding Traditional Health Services in Indonesia

Traditional medicine, also known as traditional health care, is one of the health care methods known by the people in Indonesia. Traditional medicine is also recognized as one of the practices in public health service efforts by the World Health Organization (*hereinafter* the WHO).

Referring to the WHO, "traditional medicine is known as the sum total of the knowledge, skill, and practices based on the theories, beliefs, and experiences indigenous to different cultures, whether explicable or not, used in the maintenance of health as well as in the prevention, diagnosis, improvement, or treatment of physical and mental illness".[5] Through this definition, it can be understood that there are several points need to be highlighted regarding traditional medicines, *inter alia*: 1) the practice is based on knowledge, skill, theories, beliefs, experiences used in the maintenance of health; and 2) the practice has been passed down from generation to generation.

Normatively, the regulation of traditional health services in Indonesia has been regulated by Law Number 36 of 2009 concerning Health (*hereinafter* the health Law). Referring to the provisions in Article 1 number 16 of the health Law, it is stipulated that:

"Traditional health service shall be healing and/or treatment by method and medication referring to experience and skill inherited through generations empirically that may be accountable and practiced according to the norms prevailing in the community".

The provision reflects several points concerning traditional health service. The essential points of traditional health service are 1) there shall be healing and/or treatment; 2) the treatment is carried out based on experience and skill inherited through generation empirically and 3) the practice is in accordance with the prevailing norms in the community.[6] There are several regulations concerning traditional health service, inter alia: 1) "Government Regulation Number 103 of 2014 concerning Traditional Health Services; and 2) Regulation of the Minister of Health of the Republic of Indonesia Number 17 of 2021 concerning Permits and Implementation of Intercontinental Traditional Health Workforce Practices".

a. Setting Government Regulations on Traditional Health Services

According to the Government Regulation Number 103 of 2014 concerning Traditional Health Services (*hereinafter* PP No. 103 of 2014) there are at least 3 (three) types of traditional health services. The 3 (three) types of traditional health services include:[7]

- a. Empirical Traditional Health Service
- b. Complementary Traditional Health Service; and
- c. Integrated Traditional Health Service.

According to Article 1 point 1 of PP No. 103 of 2014, it is stipulated that: "Traditional Empirical Health Service is the application of traditional health whose benefits and safety are empirically proven".

The provision of empirical traditional health services can be carried out using one treatment method or a combination of treatment methods in one Empirical Traditional Health Service system, as specified in the provisions of Article 8 paragraph (2) PP No. 103 of 2014.[8] The treatment method that can be given is by using skills and/or potions.[9] Referring to the provisions in Article 39 paragraph (1) PP No. 103 of 2014 it is known that every traditional healer who provides Empirical Traditional Health Services is required to have a Traditional Healer Registered Letter (*hereinafter* STPT) issued by the district/city local government.[10] STPT is composed prove given to conventional healers who have enlisted to supply Experimental Conventional Wellbeing Administrations.[11]

STPT owned by each traditional healer is only given to traditional healers who perform invasive body interventions provided that one traditional healer can only have 1 (one) STPT and is only valid for 1 (one) practice. [12] The validity period of the STPT is 2 (two) years and can be renewed as long as it meets the requirements.[13]

Furthermore, in the provisions of Article 1 point 2 PP No. 103 of 2014 also determines the meaning of Complementary Traditional Health Services. Referring to this provision, it is understood that:

“Complementary Traditional Health Services is the application of traditional health that utilizes biomedical and biocultural science in its explanation and its benefits and safety are scientifically proven”.

Complementary Traditional Health Services can be implemented in Traditional Health Service Facilities. Complementary traditional health services are also carried out by means of treatment or care with skills and/or ingredients. The specific criteria that need to be highlighted in complementary traditional health services in health care facilities are as follows: [14]

1. Comply with scientific principles
2. Does not endanger the health of the patient/client
3. Continue to pay attention to the best interests of patients/clients
4. Have promotive, preventive, curative, rehabilitative potential, and improve the quality of life of patients/clients physically, mentally and socially; and
5. Performed by traditional health workers.

According to the PP No. 103 of 2014 also determined the definition of Integrated Traditional Health Services. Referring to the provisions in Article 1 point 3 of the PP it is determined that:

“Integrated Traditional Health Services is a form of health service that combines conventional health services with complementary traditional health services, either as a complement or a substitute”.

Referring to the provisions in Article 43 PP No. 103 of 2014 it is known that every traditional health worker who carries out the practice is required to have a Traditional Health Personnel Registration Certificate (*hereinafter* STRTKT) and Traditional Health Worker Practice License (*hereinafter* SIPTKT). The granting of STRTKT by the council can only be done if the health workers have met the requirements, including:

1. Have a diploma in traditional health education
2. Have a certificate of competence
3. Have a certificate of physical and mental health
4. Have a statement letter that has taken the oath/professional promise; and

5. Make a statement to comply with and implement the provisions of professional ethics.

STRTKT owned by health workers is valid for 5 (five) years and can be re-registered after meeting the requirements. The requirements for STRTKT re-registration include:

1. Have the previous STRTKT
2. Have a certificate of competence
3. Have a certificate of physical and mental health
4. Make a statement to comply with and implement the provisions of professional ethics.

Referring to the provisions in Article 45 PP No. 103 of 2014 it is determined that SIPTKT is given by the district/city government on the recommendation of the competent health officials in the district/city where the health workers practice. To obtain SIPTKT, traditional health workers must have:

1. STRTKT which is still valid; and
2. A statement letter having a place of practice or a certificate from the head of the Traditional Health Service Facility.

SIPTKT is still valid as long as the STRTKT is still valid and the place of practice is still in accordance with what is stated in the SIPTKT. In accordance with the provisions of Article 46 PP No. 103 of 2014 it is determined that each traditional health worker can only have a maximum of 2 (two) SIPTKT, each of which is only valid for 1 (one) place.

For traditional healers who do not have, do not carry out the provisions as stipulated in PP No. 103 of 2014 administrative sanctions may be imposed by authorized officials. The sanctions imposed can be in the form of verbal warnings, written warnings, cancellation of STPT, or revocation of permits.

b. Regulation of the Minister of Health of the Republic of Indonesia concerning Licensing and Implementation of Intercontinental Traditional Health Worker Practices

Regulations regarding the implementation of the practice of health workers are also regulated in "the Regulation of the Minister of Health of the Republic of Indonesia Number 17 of 2021 concerning Permits and Implementation of Intercontinental Traditional Health Worker Practices" (*hereinafter* Permenkes RI No. 17 of 2021). In the provisions of Article 1 point 1 Permenkes RI No. 17 of 2021, it is stipulated that:

“Intercontinental Traditional Health Workers, hereinafter referred to as *Intercontinental Nakestrad*, are any person who has graduated from higher education in the field of traditional medicine which includes skills and ingredients, both domestically and abroad, and is recognized by the Government in accordance with the provisions of laws and regulations.”

Referring to the provisions of Article 3 paragraph 1 of the Minister of Health of the Republic of Indonesia No. 17 of 2021 it is understood that every *Intercontinental Nakestrad* must have an Intercontinental STRTKT and SIPTKT in practicing. The *Intercontinental Nakestrad* can only have a maximum of 2 (two) Intercontinental SIPTKT.

Foreigners who practice *Intercontinental Nakestrad* in Indonesia are required to have a Temporary STR for *Intercontinental Nakestrad*. In order to obtain the Temporary STR, the foreign national *Intercontinental Nakestrad* must have a competency certificate or professional certificate and other requirements in accordance with the provisions of the legislation. The validity period of this Intercontinental Nakestrad Temporary STR is for 1 (one) year and can be extended only for the next 1 (one) year.

Based on the abovementioned, it appears that the regulation regarding the implementation of health services in Indonesia has been regulated in several regulations such as 1) Government Regulation Number 103 of 2014 concerning Traditional Health Services; and 2) Regulation of the Minister of Health of the Republic of Indonesia Number 17 of 2021 concerning Permits and Implementation of Intercontinental Traditional Health Worker Practices. In accordance with the provisions in PP No. 103 of 2014 and “the Minister of Health of the Republic of Indonesia No. 17 of 2021, the implementation of the practice of traditional health workers must have a permit which can be in the form of STPT, STRTKT and SIPTKT in accordance with the type of traditional health care services provided”.

Implementation of Traditional Health Services in Bali based on Legal Pluralism Perspective

The execution of the hone of wellbeing specialists in Bali is directed within the Representative of Bali Direction Number 55 of 2019 concerning Conventional Balinese Wellbeing Administrations (*hereinafter* Pergub Bali No. 55 of 2019). Referring to the provisions in Article 1 number 10 of the Pergub Bali No. 55 of 2019, it is stipulated that:

“Traditional Balinese Health Services are traditional health services based on the traditional Balinese medical treatment”.

The provisions in Article 1 point 10 of the Pergub Bali No. 55 of 2019 clearly shows the element of "Balinese traditional medicine" as an essential point of the practice of traditional health workers in Bali. The implementation and development of the practice of traditional health workers in Bali is closely related to traditional values, traditions, arts, culture, and local wisdom of Balinese which also known as *Krama Bali*. [15]

Traditional Balinese medicine is also seen as a legacy of Balinese ancestral medicine. [16] This treatment is seen as a method of treatment that has succeeded in bringing Balinese people to be physically, mentally, spiritually and socially healthy human beings who are in harmony between themselves (*bhuana alit*) and their environment (*bhuana agung*).

In the implementation of traditional Balinese medicine, traditional Balinese healers will refer to the traditions, experiences, and skills of the Balinese people, both those that have not been recorded and those who have been literate in lontar usada and/or education/training, and are applied in accordance with the norms prevailing in society in Bali based on religious values. *Lontar Usada* is a document that contains or contains about Traditional Balinese Medicine. [17]

In practice, Empirical Balinese Traditional Health Services are carried out by a *Pengusada*. Referring to the provisions of Article 1 number 16 of Pergub Bali No. 55 of 2019, *Pengusada* is defined as "every person who performs Empirical Traditional Health Services whose knowledge and skills are acquired through hereditary experience or non-formal education (*aguron-guron*)". *Pengusada* must have STPT. While, for Complementary Balinese Traditional Health Services must have STRTKT and SIPTKT and be carried out in health facilities that meet the requirements. Furthermore, for Integrated Balinese Traditional Health Services, they are required to have SIP in accordance with the provisions of the legislation.

Seeing the arrangements regarding the implementation of traditional medicine in Bali as regulated in the Pergub Bali No. 55 of 2019, there appears to be a synergy between the Central Government and Regional Governments wrapped in the framework of legal pluralism. Legal pluralism is understood as the legal validity of more than one legal system. [18] An understanding of the application of law in Indonesia, it is clear, in addition to applying state law called "state law", also applies folk law and religious law which is often called religious law. [18]

Legal pluralism is a condition where there is a synergy between one legal system or institution together in certain activities and relationships. [19] Synergy in legal pluralism is actually very thick with the existence of law in Indonesia, especially in Bali, namely the implementation of customary law in people's lives.

Referring to Sally Falk Moore's thinking, namely the concept of theory of "the semi-autonomous social field", which stated that "Law is the self-regulation of a semi-autonomous social field".[20] Referring to Sally Falk Moore's thoughts, it can be understood that the customary law system is in a state legal system. [18] Within the framework of legal pluralism, it is known as state legal pluralism. Pluralism of state law can be understood that state law gives recognition to legal pluralism. This indicates that customary law is within the framework of state legal pluralism.

Understanding the concept of legal pluralism in the implementation of traditional medicine in Bali can be seen from the aspect of regulation or regulation. Regulations in the Pergub Bali No. 55 of 2019 firmly places the norms that apply in Balinese society with religious roots as the foundation in the implementation of traditional medicine itself.

Courses of action for the execution of conventional pharmaceutical in Bali which are based on customary values, traditions, arts, culture, and local wisdom of Balinese or *Krama Bali* based on Religion values, which is in accordance with progressive legal theory. Referring to Satjipto Rahardjo's idea with progressive legal theory, it appears that there is a legal character that is not stagnant, but it flows according to human needs and tries to pay attention to justice in society in order to achieve human welfare.[21] Referring to the thoughts of Satjipto Rahardjo, a regulation must be studied in its contextualization with the reality of space and time. [22] Thus, law is not only a regulation but is a unity of ideas, culture and ideals that want to be realized for the welfare of mankind. [22]

The implementation of traditional medicine in Bali as regulated in the Pergub Bali No. 55 of 2019 reflects the synergy between national law and customary law as the implementation of Progressive Law theory and the concept of Legal Pluralism. Regulations in the Pergub Bali No. 55 of 2019 explicitly places the norms that apply in Balinese community which are based on religion values as the basis in the implementation of traditional medicine, which is a form of Legal Pluralism that is still growing and trusted among the Balinese people to this day.

Conclusion

Based on the abovementioned, it appears that the regulation regarding the implementation of health services in Indonesia has been regulated in several regulations such as 1) Government Regulation Number 103 of 2014 concerning Traditional Health Services; and 2) Regulation of the Minister of Health of the Republic of Indonesia Number 17 of 2021 concerning Permits and Implementation of Intercontinental Traditional Health Worker Practices. In accordance with the

provisions in PP No. 103 of 2014 and the Minister of Health of the Republic of Indonesia No. 17 of 2021, the implementation of the practice of traditional health workers must have a permit which can be in the form of STPT, STRTKT and SIPTKT in accordance with the type of traditional health care services provided. The implementation of traditional medicine in Bali as regulated in the Pergub Bali No. 55 of 2019 reflects the synergy between national law and customary law as the implementation of Progressive Law theory and the concept of Legal Pluralism. Regulations in the Pergub Bali No. 55 of 2019 explicitly places the norms that apply in Balinese community which are based on religion values as the basis in the implementation of traditional medicine, which is a form of Legal Pluralism that is still growing and trusted among the Balinese people to this day.

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