

# Legal protection of patients in traditional medicine in the city of surakarta according to act no. 8 of 1999

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**Abstract :** Traditional medicine is a method of treatment or care using traditional procedures. Both rely on knowledge, experience and skills passed down from generation to generation based on local community traditions (custom). The aim of this research is to analyze consumer protection towards traditional medical practices in the city of Surakarta. This research employs empirical legal research method. The results of this research explain consumer protection in the Consumer Protection Act lies in consumer rights which must be fulfilled in the practice of traditional medicine. Apart from that, a clinical practice permit and drug distribution permit from BPOM must be in place. If there is negligence in the implementation of traditional medicine, civil legal action is taken through a lawsuit for unlawful acts or a lawsuit for default and penal legal action through a police report for alleged malpractice. Actions in the form of health services for traditional medicine must prioritize consumer protection in terms of the competence of therapists or doctors, practice permits, production permits and product distribution issued by BPOM and the Indonesian Health Service which aims to maintain patient security and safety.

**Key words:** Protection, Medication, Traditional

## 1. Introduction

Traditional medicine is a socio-cultural phenomenon that has been integrated into people's lives and is used for treating various diseases both in villages and in big cities. Traditional medicine was employed in ancient times with a variety of medicinal plants, *jampe-jampe* (spells) or prayers, *primbon* (horoscope) and many others, and for a long time the Indonesian people's medication has been popular with herbal medicine.

In the modern era, developments in technology and information have increased, including the increasing public awareness of the importance of health. Humans can live a productive life if they possess a healthy body both physically and psychologically. Health is one of the ancestral parameters that is still of great interest to the public and its variations are growing (Indarto, 2018). To measure the success of human development, without health, humans will not be productive enough to live a decent life (Siswati, 2015).

Traditional medication is a customary action that applies to society and is carried out continuously from ancestors to the next generation. This tradition is a community effort to carry out treatment to fight diseases arising in the community itself. Before

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Received: Jan 29, 2024;  
Revised: Feb 6, 2024;  
Accepted: Feb 23, 2024;  
Published: Feb 28, 2024



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people became familiar with medical science and medicine in the past, they tended to seek treatment from shamans who were believed to be able to treat illnesses both physically and spiritually through spiritual vision (Rismadona, 2018).

According to the 2008 Indonesian Health Profile, the national morbidity rate of the population was 33.24%, of this number 65.59% chose to seek treatment themselves using modern and traditional medicines (including treatment in traditional clinics), the remaining 34.41% choose to seek outpatient treatment at community health centers, doctor's offices and other health facilities. Apart from that, based on a research conducted by Gusmi, it is stated that Indonesian people have been using herbal medicine as herbal medicine for a very long time. This shows that people have a high level of respect for traditional medicine. This choice is based on the high cost of modern medicine and several other factors such as the existence of back to nature method which triggers the use of traditional health services (Gusmi, 2020).

The existence of traditional medicine today is historical evidence of health service efforts in the past, where in the past health services still used traditional tools and traditional ingredients. Even though advances in technology and science have advanced so much, it cannot be denied that the Indonesian people still give credence to traditional medication practices. Medical risks such as malpractice can occur in traditional medicine practices, even though such traditional practices have acquired official permission from the government. Moreover, if these medical risks occur in traditional medicine practices that do not have official permission from the government, it is clearly very detrimental to patients (Alam, 2018).

The government strictly regulates traditional healing practices. The purpose of this regulation is that the government can control the implementation of traditional medication practices, improve the quality of services and provide legal certainty, so that people who use traditional medication services have their rights guaranteed. It is due to traditional medication practices more often handled by traditional healers who are not qualified to be medical personnel based on their scientific education (Alam, 2018).

Legal protections of patients are essentially legal actions that aim to protect the human rights of all people who are harmed by others, especially patients. If a patient believes to be harmed due to a violation of a traditional medical service provider, then the aggrieved patient has the right to demand that the medical service provider who caused the loss be responsible and sue compensation for what the patient experienced. If it is related to an act of malpractice, in Indonesian positive law, an act committed by someone who performs traditional medicine that causes harm to another person or patient can be held criminally liable. This is suggested on the provisions in the Criminal Code which states "Whoever, through his negligence, causes someone to be injured or causes death, shall be punished with a maximum imprisonment of five years or a maximum imprisonment of one year" (Darmadi, A.A. Ngurah Bagus Agung Wira Nantha dan Yudistira, 2021).

Legal protection for traditional medicine patients really needs to be carried out and enforced in accordance with Law no. 8 of 1998. This is done as a form of urgency to protect patients regarding safety and comfort in obtaining and using these products. This patient protection is carried out to measure the extent to which Law no. 8 of 1999 provides

protection and impacts on people who practice traditional medicine on survival. This is a form of measuring how effective the arrangement is in writing and in fact.

## **2. Materials and Methods**

This research employs empirical research. Empirical legal research is legal research that will provide a complete understanding of law in the context of norms and when applied in a social context (Fajar, 2010). This research was conducted with primary data. Primary data is data obtained directly from the object being studied in the field (Noer Triyanto Rusli, dan Trihoni Nalesti Dewi, 2023). Primary data in research is employed by interviewing sources who have the competence to produce valid data. Data collection was carried out by interviewing traditional medicine clinics and patients using the interview method. This data analysis was carried out in several stages, reviewing the data that had been collected and analyzing legal issues regarding patient protection as well as obstacles in existing treatment practices in clinics and patients, which resulted in data in the form of conclusions for improving consumer protection.

## **3. Results and Discussion**

### **3.1. Legal Protection for Traditional Medicine Patients in the Perspective of Act no. 8 of 1999 on Consumer Protection**

#### **3.1.1. Community Medication Habits**

The medical system has developed rapidly in the present era and has touched almost all levels of society along with advances in science, technology, and the pharmaceutical field. The development of medical systems is always accompanied by the development of modern and traditional medical practices. Likewise, traditional medicine is still alive and is a model of alternative medicine in society. Traditional medicine is a health effort that is different from medical science. The implementation is also based on knowledge passed down orally and in writing (Mansye Estefania Fatima, Maria Heny Pratiknjo, 2023).

Surakarta City is a city located in Central Java Province. The city of Surakarta is one of the cities that still holds traditional medication. The Javanese culture of using traditional medicine for generations has made this medicine thriving in the city of Surakarta. There are licensed and unlicensed medication treatments. The provision of traditional health services is also included in the supervision of the health service in carrying out health practices. This research, which was conducted in the form of interview in one of the traditional medication treatments, resulted findings that there were several factors as the basis for patients choosing traditional treatments, including:

#### **1. Environmental Factor**

This factor plays a big role, that the environment has a role in influencing the provision of treatment information. This environment possesses a nature where the person is used to taking treatment and feels it is suitable, so they will recommend it through word of mouth.

#### **2. Media Factor**

Traditional medicine is the majority of advertising target employing 2 methods, namely electronic methods carried out by radio broadcasts and pamphlets distributed or posted. Previously, traditional medicine was very intensively applied to radio – the target of which was the elderly who were more popular with

radio and pamphlets which could be found in various places with convincing testimonials that could cure all kinds of diseases.

### 3. Psychological factors

Psychological factors also play a role. This is done because many people who have received modern medical treatment do not recover and acquired information from individuals who recommend it to these people. This changes the patient's psychology due to alternative treatments that can cure the disease.

### 4. Economic Factors

Patients choose traditional treatment with the consideration that traditional medicine is economically more affordable and with the assumption that modern medical treatment is considered more expensive and does not necessarily provide healing.

## 3.1.2. Legal Protection and Consumer Protection

Health development is aimed at increasing awareness, will and ability to live healthily for everyone in order to realize optimal health status as an element of general welfare as intended in the Preamble to the 1945 Constitution of the Republic of Indonesia – a solid philosophical foundation for the composition of a Act Number 29 of 2004 on Medical Practice. Health as a human right must be realized in the form of providing various health actions to the entire community through the implementation of quality and affordable health development for the community (Sumarwanto, 2023).

Article 28 (h) of the 1945 Constitution states that every person has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and the right to receive health services (Undang-Undang Dasar 1945, 1945). These provisions clearly stipulate that everyone has the right to live a healthy life and receive health services. Measures to meet and advance the level of health are carried out by ensuring the availability of adequate and equitable health personnel, the availability and increasing quality of health facilities including medicines and the ease with which people can access all of these (Kamal, 2017).

The state guarantees the implementation of all forms of health actions to improve the level of public health through Act no. 36 of 2009 on Health. A form of health implementation regulated in statutory regulations, namely the Health Law, one of which is traditional medicine. Traditional medicine refers to genetic experience and skills and/or education/training and is determined as appropriate in accordance with the norms applicable in society (Undang-Undang No. 36 Tahun 2009 Tentang Kesehatan, 2009).

Traditional medicine is one of the medication efforts and/or other treatment methods outside of medical science and/or nursing science which is widely applied by the community to overcome health problems. There are various types of traditional medicine, which are based on the use of plants, animals and minerals, besides that there are also therapies using spiritual and manual methods. In its application, it can stand alone or in combination (Harani Fitryan, dan Mardalena Hanifah, 2015).

One of the available medicines and treatments that is still trusted today in Indonesian society is traditional medication. Referring to article 1 point 10 of Act no. 36 of 2009 concerning Health (hereinafter referred to as the Health Act) normalized "Traditional medicines are concoctions consisting of plant ingredients, animal ingredients...". The existence of public trust in traditional medication still withstands because of its efficacy and the methods offered for healing and prevention using natural ingredients and simple methods (low cost and techniques). The availability of goods and services in the form of medicines and traditional medicine in Indonesia has existed for a long time, even before Indonesian people were aware of modern medicine. Based on the existence of traditional medicine/treatment in Indonesia, the state itself has regulated protection for consumers who feel disadvantaged specifically in the UUPK. Consumers who feel disadvantaged certainly have rights guaranteed in Act Number 8 of 1999 concerning Consumer Protection (hereinafter referred to as UUPK). The rights referred to are contained in article 4 of the UUPK in the form of the rights to use a product in the form of goods and services (Indrawati, 2021).

Minister of Health Regulation no. 1076/MENKES/SK/VII/2003 was created with the aim of providing protection to the community as an effort to improve the health status of its people. Protection of consumers who use traditional medical services is also inseparable from Act no. 8 of 1999 on Consumer Protection which regulates all protection measures to ensure legal certainty for consumers, in this case traditional medicine patients. The Consumer Protection Act also regulates the rights and obligations of consumers and business actors and the objectives of consumer protection itself. Protection of traditional medicine patients as consumers has rights which are intended to prevent consumers from losses, both personal losses and property losses and have the right to obtain appropriate solutions to the problems they face. Consumer obligations are also regulated in the Consumer Protection Law, which include reading or following information instructions and procedures for the use or use of goods and/or services, acting in good faith when carrying out transactions to purchase goods and/or services, following appropriate legal resolution efforts for consumer protection disputes, and so on (Harani Fitryan, dan Mardalena Hanifah, 2015).

In consumer protection legislation, the concept of responsibility occupies a very important position, so that the precautionary principle is needed to determine the degree of responsibility that can be borne by a legal subject if there is a violation of consumer rights. The existence of consumer legal protection and producer responsibility stems from the existence of a legal relationship between operators and consumers. The legal relationship referred to in this case is a direct relationship between the producer (treatment clinic) and the consumer by means of which both parties bind each other through an agreed agreement for the implementation of traditional medication. The types of agreements that occur here between producers and consumers include oral or written sales and purchase agreements. The types of agreements that are commonly used are usually based on the principle of freedom of contract and facts that must be taken into account in the Civil Code. An agreement entered into by both parties is a valid legal act if there are elements in the agreement in accordance with the terms of the agreement.

From the agreement above, the actions carried out by the parties fall into the trade and health categories.

The presence of Law no. 8 of 1999 concerning Consumer Protection is an achievement in improving Indonesian buyer safety regulations. It is felt that this regulation is not the first or the last, considering that there are already several definitions of buyers spread across several regulations and guidelines. This regulation directs the regulation of shopper guarantees, both in relation to material regulations and formal regulations in terms of resolving consumer disputes (Barkatulah, 2008). Currently the laws that control and protect buyers in various general regulations and guidelines whose original distribution is not planned to manage customer relationships or problems with buyer relationships and problems are contained in the climate of general regulations and public regulations (Nasution, 1995). Because the shopper's position is powerless, he must be protected by regulations. One of the attributes and legal reasons is to provide a sense of security to the local area (Shidarta, 2006).

The consumer protection law, hereinafter referred to as the UUPK, provides legal protection to consumers in the form of consumer rights which must be fulfilled by business actors through Article 4 of the UUPK which contains (Uu No. 8 Tahun 1998 Tentang Perlindungan Konsumen, 1998): The right to comfort, security and safety in consuming goods and/or services, the right to choose goods and/or services and obtain said goods and/or services in accordance with the exchange rate and conditions and guarantees promised, the right to correct, clear and honest information regarding the condition and guarantee of goods and/or services, the right to have opinions and complaints heard regarding the goods and/or services used; the right to obtain appropriate advocacy, protection and efforts to resolve consumer protection disputes, the right to receive consumer guidance and education, the right to be treated or served correctly and honestly and not in a discriminatory manner, the right to receive compensation, compensation and/or replacement, if the goods and/or services received are not in accordance with the agreement or are not as they should be, rights regulated in other statutory provisions.

With the promulgation of the UUPK, together with this, legal certainty is also created which is given specifically to consumers. Various consumer problems have been regulated in this way in this law. Even though it is suspected that there are still weaknesses or deficiencies, at least this law can be the basis for protecting the interests of stakeholders. Several legal protection routes that consumers can take, which in general are (Nur & Prabowo, 2011): Application of Product Liability Principles, Application of the Strict Product Liability Principle.

Based on this, various legal regulations will be discussed, especially outside the UUPK, which are a reflection of the principles of legal protection for consumers in Indonesia. This discussion is based on the respective principles of legal protection for consumers in Indonesia as stated in the previous chapter, namely (Miru, 2011): Principles of protecting consumer health/property, the principle of protection of goods and prices, Principles of appropriate dispute resolution.

Another legal protection for the implementation of traditional medicine is the licensing of traditional medicine clinics which must obtain operational permits from

experts who acquired competence in the field of traditional medicine. Apart from that, the product which is claimed to be a herbal medicine is basically a form of security by having a distribution permit certification and BPOM permit as a form of security protection for consumers.

Preventive measures are carried out to ensure protection for consumers so that they do not suffer losses from traditional medicines that do not meet the requirements or distribution permits can be found in BPOM regulations. The regulations referred to are contained in Article 34 section (1), section (2), and section (3) of the Food and Drug Monitoring Agency Regulation Number: HK.00.05.41.1384 concerning Criteria and Procedures for Registration of Traditional Medicines. The Food and Drug Monitoring Agency or what can be called BPOM has the right to impose administrative sanctions on perpetrators (Purwanto, 2019). Apart from the Food and Drug Monitoring Agency Regulations, there is also Presidential Decree no. 80 / 2017 concerning BPOM's competence as a supervisory institution that ensures food products in circulation meet safety standards and requirements. If a discrepancy occurs, BPOM as the authorized institution has the right to revoke/seal the distribution permit for the product (Raharjo, 2020). Business actors will be subject to criminal sanctions if they continue to distribute traditional medicines that can harm consumers. Therefore, the authors believe that in efforts to protect consumers in Indonesian positive law, it can be found that apart from the clear UUPK provisions, there are other regulations that regulate the imposition of sanctions on traditional medicine business actors whose products violate the provisions. UUPK is an instrument to prevent unauthorized use and losses resulting from consumption of traditional medicines which are permitted.

The growth of traditional medicine in the city of Surakarta is very exponential. With the large number of traditional treatments, people are given the option to choose the traditional treatment they want to undergo. Based on research research, people tend to choose traditional medicine based on various factors, including: No change after seeing doctor and taking the treatment, advice from relatives or friends to come to a traditional medicine clinic, acquiring information from radio, pamphlets distributed, therapists who go to *door to door* offering treatment, affordable prices.

The data above shows that it is still easy for people to get information about traditional medicine carried out by traditional medicine clinics. When they come to the clinic, the majority of patients do not inquire about the practice permit and legality of the clinic or what the raw materials for the drugs given to patients are. This is very jeopardous because it can lead to side effects from unlicensed medical practices, which can lead to malpractice.

From the data above, patient protection is in the following areas:

a. Civil

Legal protection is carried out by fulfilling consumer rights and complete licensing. The absence of fulfilling the consumer rights causes harm to the patient which a civil claim can be made in the case of an Unlawful Action Lawsuit and a Lawsuit for Default to provide compensation to the patient as a result of what was given by the traditional medicine clinic.

#### b. Criminal

Legal protection is provided to these patients, if during the treatment carried out, the traditional medical clinic commits a criminal act in the form of alleged malpractice, then a report can be made to the police for alleged criminal acts under Article 190 of Law no. 36 of 2009, Article 84 of Law no. 36 of 2014, Article 19 section (1) Law no. 8 of 1999, and Article 361 of the Criminal Code.

#### 4. Conclusions

Traditional medicine is treatment that is recognized by legislation, in this case it is found in Act no. 36 of 2009. Patient protection is accommodated in Act no. 8 of 1999 in Article 4 regarding consumer/patient rights that must be fulfilled. BPOM permits for medicinal products as well as having a permit certification at traditional medicine clinics from the local health service should also be fulfilled. The protection for consumers can be carried out in 2 ways, namely civil action by filing a lawsuit for an unlawful act or breach of contract to request compensation for losses and criminal action by reporting suspected malpractice committed by the clinic with unlicensed specifications regarding the clinic, its drugs and the competence of its therapists. The factors that cause patients to prefer traditional medicine are environmental factors, media factors, psychological factors and economic factors. These legal provisions serve as a reminder to traditional medicine clinics in providing traditional medicine that they must have several things, namely: a permit to establish a clinic, registration permits for therapists and healers, completeness of treatment equipment and practice premises, as well as a drug permit from BPOM. If these things are not done, civil and criminal legal consequences will impact the practice of administering traditional medicine which is related to patient protection regarding patient security, comfort and safety in using traditional medicine services.

#### References

- Alam, S. (2018). Perlindungan Hukum Bagi Pasien Terhadap Malpraktek Pada Pengobatan Tradisional,. *Media Iuris*, 1(3), 516.
- Barkatullah, A. H. (2008). *ukum Perlindungan Konsumen : Kajian Teoritis dan Perkembangan Pemikiran* (1st ed.). Nusa Media.
- Darmadi, A.A. Ngurah Bagus Agung Wira Nantha dan Yudistira, A. A. N. O. (2021). Perlindungan Hukum Terhadap Pasien Yang Menjadi Korban Malpraktik Pengobatan Tradisional. *Jurnal Kertha Wicara*, 11(1), 88.
- Fajar, M. dan Y. A. (2010). *Dualisme Penelitian Hukum Normatif Dan Empiris*. Pustaka Pelajar.
- Harani Fitriyan, dan Mardalena Hanifah, R. F. (2015). Perlindungan Konsumen Ditinjau Dari Pengobatan Tradisional Ramuan Dan Keterampilan Di Kecamatan Senapelan Kota Pekanbaru. *JOM Fakultas Hukum*, 2(1), 2.
- Indarto, A. K. (2018). Exporasi Metode Pengobatan Tradisional Oleh Para Pengobat Tradisional Di Wilayah Karesidenan Surakarta. *Jurnal Terpadu Ilmu Kesehatan*, 7(1), 76.
- Indrawati, A. A. G. K. P. dan A. A. S. (2021). Perlindungan Hukum Terhadap Konsumen Yang Dirugikan Dalam Mengonsumsi Obat Tradisional Dan Tidak Memiliki Izin Edar. *Jurnal Kertha Negara*, 9(9), 758–759.
- Kamal, U. (2017). Konstruksi Perlindungan Konsumen Jasa Pengobatan Alternatif (Studi Kasus Di Kota Semarang), *J. Ournal Of Private And Commercial Law*, 1(1), 70.
- Mansye Estefania Fatima, Maria Heny Pratiknjo, dan T. M. (2023). Pengobatan Tradisional Pusuik Takino Pada Masyarakat Desa Tolong Kecamatan Lede Kabupaten Taliabu Utara Maluku Utara. *Jurnal Holistik*, 16(4), 2.
- Miru, A. (2011). *Prinsip-Prinsip Perlindungan Hukum Bagi Konsumen Di Indonesia*. Rajawali.
- Nasution, A. (1995). *Konsumen dan Hukum : Tinjauan Sosial, Ekonomi dan Hukum pada Perlindungan Konsumen Indonesia* (1st ed.). Pustak Sinar Harapan.
- Noer Triyanto Rusli, dan Trihoni Nalesti Dewi, M. I. H. (2023). Program Kesehatan dan Keselamatan Kerja Dalam Upaya Pemenuhan Hak Perawat di Ruang Isolasi Selama Pandemi Covid-19 (Studi Kasus di Rumah Sakit Charitas Palembang).

- SOEPRA *Jurnal Hukum Kesehatan*, 9(1), 25.
- Nur, Y. H., & Prabowo, D. W. (2011). Penerapan Prinsip Tanggung Jawab Mutlak (Strict Liability) dalam Rangka Perlindungan Konsumen. *Buletin Ilmiah Litbang Perdagangan*, 5(2), 177–195.
- Purwanto, N. M. D. S. dan I. W. N. (2019). Tanggung Jawab Hukum Pelaku Usaha Online Shop Terhadap Konsumen Akibat Peredaran Produk Kosmetik Palsu. *Kertha Semaya*, 7(3), 1–7.
- Raharjo, D. B. P. dan D. (2020). Perlindungan Hukum Bagi Konsumen Terhadap Obat Tradisional Tanpa Izin Edar Di Media Online. *Jurnal Kertha Negara*, 9(9), 24.
- Rismadona. (2018). Pengobatan Tradisional Pada Masyarakat Kota Prabumulih Propinsi Sumatera Selatan. *Jurnal Penelitian Sejarah Dan Budaya*, 4(2), 1177.
- Shidarta. (2006). *Hukum Perlindungan Konsumen Indonesia* Hukum Perlindungan Konsumen Indonesia (3rd ed.). Grasindo.
- Siswati, S. (2015). *Etika dan Hukum Kesehatan Dalam Perspektif Undang- Undang Kesehatan*. PT Raja Grafindo.
- Sumarwanto, A. A. S. A. J. P. E. (2023). Perlindungan Hukum Tenaga Medis Terhadap Upaya Penyelesaian Sengketa Medis Ditinjau Dari Hukum Pidana. *SOEPRA Jurnal Hukum Kesehatan*, 9(1), 54–55.
- Undang-Undang Dasar 1945*. (1945).
- Undang-Undang No. 36 Tahun 2009 Tentang Kesehatan*. (2009).
- Undang-Undang No. 8 Tahun 1998 Tentang Perlindungan Konsumen*. (1998).