

THE URGENCY OF RECONSTRUCTING ACUPUNCTURE HEALTH WORKERS AS TRADITIONAL HEALTH WORKERS BASED ON THE PERSPECTIVE OF INDONESIAN HEALTH LAW

SUMINAH ¹, EDDY DAMIAN ², BERNADETHA NADEAK ³ and
BERNARD NAINGGOLAN ⁴

^{1, 2, 3, 4} Fakultas Hukum Universitas Kristen Indonesia.

Abstract

A good National Health System supports health development goals. Formal health services are all services that are part of the regular health care system, such as medical services, nursing services, and physiotherapy. Informal health services are all the concepts and rituals involved in voluntary assistance, traditional medicine, ethnic rituals and customs and alternative medicine. Acupuncture health services are included in informal health services. This type of research approach is normative juridical legal research with empirical research. The research data was obtained by interviewing sources at the Jakarta Health Office, especially the Directorate General of Public Health in charge of Traditional health workers. In qualitative data analysis, data is taken from any source with various data collection techniques (triangulation), inductive in nature, namely an analysis based on the data obtained, then developed into a hypothesis. The inductive method is used to find answers to the problems found in the Minister of Health Regulation and seen from justice as a citizen. The results of the study found that the legal theory used as a legal basis or ratio legis (the Reason and Purpose for making law) for regulating the legal reconstruction of Acupuncture Therapist Health Workers is the Theory of Justice proposed by Aristotle. The best legal principles for the implementation of legal protection for Acupuncture Therapists and Clients based on Pancasila, namely: The principle of non maleficence (no harm), Beneficence (doing something good), Confidentiality (confidentiality), Justice (fairness), and the Principle of Fidelity (respect for promises to others). The concept of regulation based on the law for Acupuncture Therapists based on Health Law, in the form of a regulation that can provide legal certainty that is fair to Acupuncture Therapists as Traditional Health Workers.

Keywords: Acupuncture, Traditional Health, Health Workers

INTRODUCTION

Health as a human right is very important, health is an indicator of quality resources, to create optimal human resources for national development (Renggong & Ruslan, 2021). Every human being expects to have a good degree of health, which can be achieved if people with free feelings can choose what treatment they will use to reduce their physical and spiritual suffering (Kaligis, 2018).

National development as an effort to improve all aspects of people's lives with the aim of improving welfare for the community. Human resources that can be a driver for development are those who are aware and have the will and ability to live healthy. Human resources are the main key in development, so human resources must be considered all their needs, especially health problems.

Article 34 paragraph (3) of the Constitution of the Republic of Indonesia states that the state is responsible for the provision of health care facilities and proper public service facilities (Indonesia, 1945). In accordance with the article, the government has an obligation to keep its people healthy, stay healthy, and heal their sick people to be healthy again. To achieve optimal health service results, efforts can be made by integrating health services that have been owned by the community for a long time into conventional health services in existing health service facilities.

Health is a state of health, both physically, mentally, spiritually and socially that allows everyone to live a productive life socially and economically (Indonesia, 2012). So what is considered healthy is someone who has a completely healthy condition. The development of physical or biological aspects of humans is one tangible form of health improvement (Notoatmodjo, 2010). Health is an investment, according to Law of the Republic of Indonesia Number 36 of 2009 concerning Health, it is said that health is a state of well-being of the body, soul, and social that allows everyone to live a socially productive life. To improve the degree of public health to be even better than before, continuous improvement must be made in the community, so that a decent life is supported by optimal health, making people able to live more productive lives (Sadi, 2015).

Health development goals are supported by a good National Health System. The definition of the health system given by WHO, namely all activities carried out with the aim of improving and maintaining health, then what is included in it are formal and non-formal health services such as traditional medicine, alternative medicine and non-prescription medicine (Rahmadani, 2021). The National Health System is health management organized by all components of the Indonesian nation in an integrated and mutually supportive manner to ensure the achievement of the highest degree of public health (Indonesia, 2012). The great role of the National Health System is used as a reference in the preparation of the Law on Health, in the preparation of various policies, guidelines and directions for the implementation of health development.

Formal health services are all services that are part of the regular healthcare system, such as medical services, nursing services, and physiotherapy. While what is meant by informal health services is all concepts and rituals involved in voluntary assistance, traditional medicine, ethnic rituals and customs and alternative medicine. Acupuncture health services, then included in informal health services (Hardini, 2022). High degree of health and beneficial for a healthy, quality society

One of the traditional medicines that has coexisted with conventional medicine in providing health services is traditional health services that use skills, namely traditional acupuncture health services (Chidi, 2006). Acupuncture is a treatment technique using acupuncture needles that are inserted at certain points on the body. Fine acupuncture needles have several sizes, and are inserted according to lines on body organs called meridians (Widiyono et al, 2022). Traditional acupuncture health services have been provided in several large hospitals, which help the treatment process for patients served in the recovery or rehabilitation period. There are also in providing health services, Traditional health workers who practice independently as a place to provide Traditional health services.

Traditional Health Workers Acupuncture Therapists in terms of services have been regulated in the Regulation of the Minister of Health of the Republic of Indonesia Number 34 of 2018 concerning the Licensing and Implementation of Acupuncture Therapist Practice. Here discussed the qualifications of acupuncture therapists, Acupuncture Therapist Practice License, Acupuncture Therapist Registration Certificate and matters related to acupuncture practice. In the implementation of safe, quality and effective Traditional health services, regulations are needed that can provide legal reference and certainty for Traditional health workers. Rules are made by the government in terms of planning, procurement, utilization, coaching, and quality control of health workers, which are addressed to all health workers, including Health Acupuncture Therapists, in an effort to organize health efforts.

Health efforts in its implementation are required to pay attention to functions, social, values, and norms of religion, socio-culture, morals and professional ethics, because health workers are professionals who in carrying out their profession always uphold morals and ethics. Health workers are grouped according to their skills, qualifications and authority based on the education they have taken through the registration process and granting permits in accordance with applicable laws and regulations in Indonesia (Siswati, 2015).

From several previous research results that have themes similar to those of the author did, namely the first journal research by Nurani Ajeng Tri Utami and Nayla Alawiya entitled "Legal Protection of Traditional Indonesian Health Services", the focus of his research was on forms of legal protection for empirical Traditional health services (NAT Utami and Nayla 2018). The second is a research journal by Ivonne Jonnathan and Dhevi Dharmawan entitled "Legal Certainty of Acupuncture Health Services in the National Health Insurance Program", the focus of his research is on the regulation of acupuncture health services in Indonesia in the National Health Insurance program (Ivonne and Dhevi 2009). The third is a research journal by Ubaidillah Kamal entitled "Construction of Consumer Protection of Alternative Medicine Services (Case Study in Semarang City)", the focus of his research is on the form of protection to consumers who use alternative health services (Ubaidillah 2017). The three research journals have a different research focus from the one to be reviewed by the author. The author of this study based on the description of the findings of the phenomenon above will examine the Urgency of Reconstructing Acupuncture Health Workers as Traditional Health Workers Based on the Perspective of Indonesian Health Law.

RESEARCH METHODS

This type of research approach is normative juridical legal research with empirical research, carried out evaluatively to assess the programs and legal rules carried out, whether they are in accordance with existing reality, where science continues to develop, as well as the level of education of acupuncture therapist health workers that continues to increase (Arikunto, 2014).

The research data was obtained by interview techniques on resource persons at the Jakarta Health Office, especially the Directorate General of Public Health which oversees Traditional health workers. The interview technique was carried out in the form of a meeting of several acupuncture therapist health workers who have skills in accordance with the Minister of

Health Regulation Number 34 of 2018, and reviewing applicable regulations. Interviews were conducted with acupuncture therapists who obtained knowledge not in college, as a comparison of how the rules apply to acupuncture health workers according to the governing health regulations.

In qualitative data analysis, data is taken from any source with various data collection techniques (triangulation), inductive in nature, namely an analysis based on the data obtained, then developed into a hypothesis. The inductive method is used to find answers to problems found in the Regulation of the Minister of Health and seen from justice as a citizen.

RESULTS AND DISCUSSION

1. The Legal Arrangement of Acupuncture Health Workers in China is known as Traditional Chinese Medicine (TCM).

Legal protection in *Traditional Chinese Medicine* (TCM) in China was rejected and revoked by the Chinese government for a long time, namely for 30 years, but in the 1960s Mao Zedong as the leader of China, again gave freedom to TCM medicine, arguing they did not want to be left behind in terms of the development of modern science which was considered more developed than TCM medicine. The freedom of TCM treatment in China began with the investigation of TCM treatment by ten of the best doctors as well as standardizing TCM treatment (Merdeka, 2012).

Traditional Chinese Medicine (TCM) is a collection of treatment procedures in the form of acupuncture, acupressure, cupping, gua sha, herbs, tuina, tai chi and moxibustion, which originated in China and until now is still maintained and even developed, because it is believed to cure various diseases. TCM as part of Traditional Knowledge which has several parts including theory, expertise and is a symbol of Traditional Chinese Medicine which has long been used as medicine in China, passed down from generation to generation and used for prevention, in medicine, and the process of healing diseases. TCM views a disease through a holistic approach, which is a presentation of the condition of the body as a whole, not just seen in damaged organs.

TCM Health Workers in China have the same position as conventional Health Workers both in terms of health services and in terms of supporting the development of science, and this has been formulated in a law and regulation that has been established.

On February 12, 2016, the "Outline of the Strategic Plan for the Development of Traditional Chinese Medicine (2016-2030)" was issued by the government which emphasized the importance of Traditional Chinese Medicine (TCM) which is carried out on an ongoing basis. TCM regulation in China is carried out with a tiered approach, with a long and quite complex process but standardized and continuous in regulation, ranging from involvement from the central government to local governments.

The State Drug Administration is responsible for various administrative affairs including pharmaceutical R&D, authorization, manufacturing, circulation and drug consumption. In 2003 the State Administration of Drugs was replaced by the State Food and Drug Administration, which was responsible for oversight of food, cosmetics and health care products. In 2008 the State Food and Drug Administration began to be headed by the Ministry of Health. In 2013 the State Food and Drug Administration and the State Food Safety Commission merged into *China Food and Drug Administration* (CFDA) headed directly by the National Health and Family Planning Commission and responsible for national Health, Health services, family planning and other public Health affairs including TCM focusing on TCM supervision in the field of diagnosis (Saisai, 2021).

Until now, research is still being carried out on chemo drugs from drug extracts that have been carried out in previous studies, considering the complexity and many combinations of ingredients and chemical constituent properties in TCM drugs both qualitatively and quantitatively both in substance and mechanism in treatment. The progress and safety of TCM drugs are closely related to the quality of therapy but still different from chemical drugs that are widely used in conventional medicine.

2. Use of Genetic Resources as Traditional Wealth without violating Human Dignity and Biotechnology.

Genetic Resources (SDG) are genetic materials of real value or potential with an important role for human life and become the foundation for the sustainability of mankind, related to aspects of life on earth. The SDGs are concerned with food security, environmental preservation and sustainable development and the economy. The use of Genetic Resources is a research activity, development activity, or continuous exploitation of Genetic Resources and/or their derivation, including biotechnology application activities.

The Convention on Biological Diversity is an agreement between nations in dealing with global problems related to biodiversity towards conservation, which began three-quarters of a century ago (Maxted, 1997) Biodiversity owned by the Indonesian state, spread across various islands, with a variety of high economic value and can be utilized including products from forests such as wood and non-timber species, wildlife species and tubers, animal species as well as medicinal plants. So important is this biodiversity protected, in the developing country of Indonesia, the dynamics of development that occur in all fields, have a very important existence to understand. The country will progress in accordance with the times, and development will run if the existing structures in various aspects, participate in the development of a country (Fadillah, 2022).

The International Treaty on Plant Genetic Resource for Food and Adriculture (ITPGRFA) describes genetic resources as the real or potential value of plants for food and agriculture. Genetic Resources are plant and animal characters that can be inherited, can be useful or have the potential to be utilized by humans, are qualified and can provide value for biodiversity components and their components. Plant genetic resources are defined as material in plants that contain units carrying hereditary traits that are actual or potential to create new strains,

clumps, or plant species. In Law Number 4 of 2006 concerning ITPGRFA (agreement on Plant Genetic Resources for Food and Agriculture), with several subject matters including:

- a. Regulation of access to genetic resources of food crops and agriculture;
- b. Preservation of plant genetic resources;
- c. Sustainable use policy and its implementation;
- d. The commitment of the parties at national and international levels;
- e. Protection of peasant rights;
- f. Multilateral systems on access and benefit sharing;
- g. Fair and equitable sharing of benefits in the multilateral system; and
- h. Institutional capacity building and human resources in the field of preservation and sustainable use of plant genetic resources. Indonesia as a ratifying country

A number of countries convened the UPOV (*Union for the Protection of New Varieties of Plants*) convention in Paris on December 2, 1961, revised in Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991, to grant and protect breeding rights in the discovery of new plant varieties for the benefit of society according to technological developments. The basic purpose of the UPOV convention is to provide and support sufficiently effective protection for plant varieties and encourage the development of new plant varieties. With the existence of the convention, it is mandatory for UPOV member states to recognize the existence of new plant varieties and grant intellectual property rights. The protection of Indonesian plant varieties refers to the UPOV convention even though Indonesia is not a member of the UPOV convention.

Article 2 of the *Convention on Biological Diversity*, SDGs can exist in ecosystems and natural habitats and in domesticated or cultivated types in environments where special traits develop (insitu) and can be outside their natural habitat. Regulated under the CBD, access to traditional knowledge innovations and practices of indigenous peoples as communal communities is subject to *Prior Informed Consent* from traditional knowledge holders. Thus, in terms of utilizing traditional knowledge, indigenous peoples have owners of these traditional knowledge.

The objectives according to Utina et al (2018) are conservation of natural resources, including the protection of living systems, preservation of genetic resources and sustainable use of flora and fauna, including by:

- a. Maintain the quality of the environment by taking into account aesthetics and recreational needs as well as the results, and
- b. Maintain the continued use of plants, animals, and other useful materials, by creating a balanced cycle between harvest and new individual growth or material renewal.

Three conservation targets according to Redi (2020) to achieve the conservation of biological natural resources and their ecosystems, namely:

1. Ensure the maintenance of ecological processes that support life support systems for the sustainability of human development and welfare (protection of life support systems);
2. Ensuring the preservation of the diversity of genetic resources and types of ecosystems so as to support development, science, and technology that enable the fulfillment of human needs that use biological natural resources for welfare (preservation of plasma nuftah sources); and
3. Controlling the ways of utilizing biological natural resources so that their sustainability is guaranteed. As a side result of unwise science and technology, the lack of harmony in the use and allocation of land and the failure of optimal conservation targets, both on land and in waters, can result in symptoms of genetic erosion, pollution, and a decrease in the potential of biological natural resources (sustainable use).

Biotechnology which in this case is the application of scientific principles and techniques to the processing of materials by biological agents to provide goods and services, then biotechnology refers to the use of biological processes, organisms, or systems to produce products that improve human life and the health of planet earth. Management of a species in relation to applying biotechnology has an important role in increasing productivity and conservation of genetic resources, the role of biotechnology, covering three areas, namely:

- a. The use of tissue culture breeding methods,
- b. The use of molecular methods.

To support breeding activities and conservation of genetic resources, superior seeds can be produced in a faster and more precise time, knowing information on the level of genetic diversity so that conservation of genetic resources can be carried out effectively and efficiently, and

- c. Genetic engineering to manufacture GMO products.

So important are genetic resources and traditional knowledge to research and industry, supplying countries and local communities holding rights to traditional knowledge, that there is a need for protection, based on moral, legal and expediency reasons. The protection in moral terms is that this protection is urgent to be carried out in relation to the fulfillment of the communal rights of local communities. What is meant by legal protection is protection carried out with an international negotiation framework related to environmental management and human rights. What is meant by expediency protection is protection carried out to create a global economic system oriented towards common welfare and to improve sustainable management of biological resources. The role of law is central to the state in creating an atmosphere in which people feel protected, in peaceful coexistence, and in maintaining existence in a recognized world, as well as genetic resources.

Economic, Social and Cultural Rights have been regulated in the constitution of the Constitution of the Republic of Indonesia Year 1945 as a legal policy that has a clear and concrete scope based on policies, budgets and implementation, in order to fulfill the rights of citizens (Hasbullah et al, 2021). Human Rights in the field of Economics are regulated on:

1. Article 27 paragraph (2) namely:
"Every citizen has the right to work and a decent living for humanity."
2. Article 28D paragraph (2) namely:
"Everyone has the right to work and to fair and decent remuneration and treatment in employment relations," and
3. Article 33 is:
 - a. The economy is structured as a joint effort based on the principle of kinship.
 - b. Those branches of production that are important to the state and that control the livelihoods of the people are controlled by the state.
 - c. Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.
 - d. The national economy is organized based on economic democracy with the principles of togetherness, equitable efficiency, sustainability, environmental insight, independence, and by maintaining a balance of progress and national economic unity.

Some International Agreements according to Kusmaningrum (2018) that provide protection for traditional medicine knowledge include:

- a. Konvensi Keanekaragaman Hayati (*Convention on Biological Diversity*).
- b. Nagoya Protocol on Access to Genetic Resources and The Fair and Equitable Sharing of Benefits Arising from Their Utilization.

So important is Traditional Knowledge in the international world and for developing countries including Indonesia, briefly the objects of Traditional Knowledge can be divided into:

1. Technical knowledge in Traditional contexts;
2. Traditional skills;
3. Innovation in Traditional contexts;
4. traditional practices;
5. Traditional Learning; and
6. Knowledge that underlies the lifestyle of indigenous people or local communities.

Traditional techniques have evolved in traditional societies, which are considered as assets that can be of economic value. This Traditional Knowledge is used to be part of the community's tradition, carried out and become part of the side of the community's life as the owner of Traditional Knowledge. Article 3 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 13 of 2017 concerning Communal Intellectual Property Data, regulates Traditional Knowledge into:

- a. Technical proficiency (*know how*);
- b. Skills;
- c. Innovation;
- d. Concept;
- e. Learning;
- f. Agricultural knowledge;
- g. Technical knowledge;
- h. Ecological knowledge;
- i. Medical knowledge including related medicine and healing method data, as well as knowledge related to genetic resources;
- j. People's customs;
- k. Rite (magical);
- l. Feasts;
- m. Traditional economic system;
- n. Social organization system;
- o. Knowledge and behavioral habits regarding nature and the universe, traditional medicine; and/or
- p. Proficiency in making traditional crafts, traditional food/drink, traditional modes of transportation.

Article 1 of the Regulation of the Minister of Health of the Republic of Indonesia Number 34 of 2018 concerning the Licensing and Implementation of Acupuncture Therapist Practice, it is stated that:

1. Health Worker Acupuncture Therapist hereinafter referred to as Acupuncture Therapist is any person who has passed higher education in Acupuncture in accordance with the provisions of laws and regulations.
2. Acupuncture services are a series of treatment actions and / or treatments that use stimulation techniques at certain points on the surface of the body for promotive, preventive, symptomatic, rehabilitative and palliative purposes.

3. Acupuncture Therapist Registration Certificate hereinafter abbreviated as STRAT is written evidence provided by the Government to Acupuncture Therapists who have a certificate of competence in accordance with the provisions of laws and regulations.
4. The License to Practice Acupuncture Therapist, hereinafter abbreviated as SIPAT, is written evidence of authorization to carry out the professional practice of Acupuncture Therapist.

This regulation is absolutely obeyed by all health workers who will practice their profession, by having a STRAT, and 1 SIPAT for 1 place, with a maximum of 2 SIPATs. Although acupuncture health is a traditional health service originating from China, it is distinguished from traditional health services obtained empirically, where in the services carried out by Acupuncture Therapist Health Workers, they obtain Acupuncture Therapist education at universities with the lowest Acupuncture Therapist education qualifications are graduates of the Acupuncture triple Acupuncture program or vocational personnel according to Article 2 of the Regulations Minister of Health of the Republic of Indonesia Number 34 of 2018 concerning Licensing and Implementation of Acupuncture Therapist Practice.

The legal basis for acupuncture therapist health workers began with the making of a Joint Decree of the Director General of Public Health Development of the Ministry of Health 365 / Binkesmas / DJ / III / 1990 and the Director General of Out-of-School Education, Youth and Sports of the Ministry of Education and Culture of the Republic of Indonesia, Kep.17 / E / L / 1990 concerning the Development of Out-of-School Education Organized by the Community and the Utilization of the Power Produced. It is explained in the regulation that acupuncture courses and the use of out-of-school education to produce acupuncture practitioners and their utilization by the Ministry of Health of the Republic of Indonesia are part of health services that can be utilized by the community in terms of preventive, promotive, curative and rehabilitative. The rules that must be obeyed by traditional health workers in providing traditional health services, in accordance with Article 9 of the Regulation of the Minister of Health of the Republic of Indonesia Number 15 of 2018, include:

1. Sorting and evaluating client conditions in Complementary Traditional Health services that can be done by Traditional Health Workers or other traditional health problems that must be referred. Traditional Health Workers can use certain medical diagnostic support tools in accordance with methods, competencies, and authorities.
2. Only use traditional medicines that have a distribution permit or traditional medicines of their own concoction, and do not provide and/or use medicinal chemicals, including over-the-counter drugs, limited over-the-counter drugs, hard drugs, narcotics, and psychotropics, and hazardous substances.
3. Do not perform actions using radiation materials.
4. Do not perform invasive actions and use medical equipment except in accordance with their competence and authority.
5. Do not sell and/or distribute traditional medicines without permission in accordance with the provisions of laws and regulations.

CONCLUSION

1. The legal theory used as a legal basis or ratio legis (the *Reason and Purpose for making law*) for the regulation of legal reconstruction of Health Workers Acupuncture Therapists is the Theory of Justice proposed by Aristotle. According to Aristotle, what is said to be fair is generally what is legally considered valid. Legal justice is equal treatment of all people according to applicable law. In Acupuncture Therapist Health Workers, the expected justice is justice in accordance with Pancasila. Indonesia as a state of law based on Pancasila as the only guideline for life and philosophy of the nation, from each precept has described an interrelated justice. The theory of justice is used as a basis for the regulation of Acupuncture Health Therapists as Traditional Health Workers based on Health Law, hoping for justice in existing legal settings, because as fellow health workers who provide health services for the cure of a disease in patients, according to scientific developments obtained in universities, Acupuncture Therapist Health Workers should have specific legal rules Although acupuncture services are a traditional health service.
2. The best legal principles for the implementation of legal protection for Acupuncture Health Workers, Therapists and Clients based on Pancasila are:
 - a. The principle of nonmaleficence (no harm)
 - b. Beneficence (doing something good)
 - c. Confidentiality
 - d. Justice
 - e. Fidelity principle (honoring promises to others)
3. The concept of regulation based on law to Acupuncture Therapist Health Workers based on Health Law, in the form of a regulation that can provide fair legal certainty for Acupuncture Therapist Health Workers as Traditional Health Workers.

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