

# The Urgency of Legal Certainty for Traditional Healthcare Who Do Not Have a Practice License

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**Abstract.** This study analyzes the importance of updating and strengthening regulations related to traditional healer practice permits in Indonesia to ensure the quality and safety of conventional health services. Normative research methods and a statute approach in this study examine existing regulations, challenges in their implementation, and the need for strict sanctions for violators of permits to protect the public from unauthorized and dangerous health practices. It highlights the importance of supervision by the Health Office and socialization to traditional healers and the public regarding licensing obligations and safety standards.

**Keywords:** Legal Certainty, Traditional Healthcare, Traditional Health Service

## 1 Introduction

Empirical traditional health services in Indonesia have experienced significant development in recent years, along with increasing public demand for traditional medicine (Diwyanto et al, 2005). It is driven by cultural factors, public trust, and the search for more affordable and safe alternative treatments. The number of traditional healers is increasing, both licensed and unlicensed, which shows the great interest of the public in this service. Empirical traditional health services contribute significantly to the Indonesian health system, not only as an alternative treatment but also as a complement to the modern health system, especially in maintaining public health in areas with limited access to conventional health facilities (Judijanto et al, 2024). Thus, the service can reduce the burden on hospitals and modern health facilities, while providing an option for people seeking treatment closer to their traditions and culture. However, the growing demand also brings regulatory challenges that, if left unaddressed, could compromise patient safety and public health.

Regulation of the Minister of Health of the Republic of Indonesia Number 61 of 2016 concerning Traditional Empirical Health Services comprehensively regulates the implementation of traditional health services based on empirically proven benefits and safety. In Article 1 Number 1, empirical traditional health services are defined as the application of traditional healing practices proven through experience and research that show safe and beneficial results for the community (Utami & Alawiya, 2018). This regulation aims to provide a clear legal basis for the implementation of traditional health services, ensuring patient protection while promoting the integration of traditional medicine into the national health system.

The main objective of this regulation, as stated in Article 2, is to realize the implementation of safe and beneficial empirical traditional health services as well as to provide guidelines to the government, local governments, and traditional healers in carrying out their practices (Kartika et al, 2016). In addition, this regulation also aims to guide the implementation of coaching and supervision by the government and related sectors in a tiered manner to ensure that applicable standards can be complied with by all parties. However, the implementation of this regulation still experiences obstacles in the field, especially related to the implementation that is not yet fully optimal. There are still many traditional healers who are not registered or do not have a practice permit as well as a lack of adequate supervision, so this regulation is not yet fully effective in ensuring the quality and safety of traditional health services in Indonesia (Arwidiana & Sudiari, 2024).

The problem of the unclear legal status of traditional healers who do not have a practice permit is one of the main challenges in implementing traditional health service regulations in Indonesia. Although the Regulation of the Minister of Health No. 61 of 2016 Article 4 paragraph (1) Traditional Healers who will carry out Empirical Traditional Health Services are required to have a Traditional Healer Registration Letter (STPT) so that this article regulates the licensing obligations for traditional healers. However, in reality, there are still many traditional healers who are not registered or do not have an official permit but continue to carry out their practices. It causes

legal uncertainty regarding their legality and responsibility in providing health services. This unregistered practice can pose a risk to patients because there is no guarantee regarding the safety standards and quality of the treatment.

In addition, regulations regarding sanctions for traditional healers who violate the provisions of the practice permit are still lowest so traditional health practices are performed without adequate supervision (Agustina, 2016). The legal vacuum regarding the responsibility of traditional healers to ensure the safety and effectiveness of treatment further exacerbates this situation. Without strict sanctions or clear regulations, patients are vulnerable to potential malpractice or health harm that can arise from the use of non-standardized traditional health services. Therefore, it is important to strengthen regulations and clarify the legal status of unregistered traditional healers to ensure adequate legal protection for patients.

Patients who choose traditional health services without a guarantee of a license or clear standards face serious risks, both in terms of health and safety (Subiyanto & Mangesti, 2024). Without adequate oversight, there is no guarantee that unlicensed traditional healers are practicing safe and effective practices. The risk of malpractice, harm to health, or even death can arise from the use of untested and unstandardized herbs or treatment methods. In this situation, patients are particularly vulnerable, as they do not have access to sufficient information about the quality and safety of the services provided, and have difficulty in obtaining legal accountability if harm occurs (Kusumawati, 2008).

The role of the state and related institutions, such as the Health Service, is very important in providing legal protection for patients who use traditional health services (Kamal, 2017). However, the limited legal means available, such as unclear regulations and strict sanctions, make it difficult to prosecute traditional healers who practice without a license. It damages public trust in traditional health services, because they feel that there is no legal guarantee that can protect them from potential losses. Therefore, the state needs to strengthen supervision and regulation, as well as provide legal mechanisms that can take action against unlicensed traditional healers, so that the public feels safer and more protected when using these services (Hasliani & Wulandari, 2023).

This study holds significant implications for policy development, regulatory practice, and public health. Its findings are expected to inform policymakers on the urgency of revising and strengthening existing regulations to ensure comprehensive legal protection for patients. Specifically, the study underscores the importance of clarifying the legal status of traditional healers, enhancing supervision, and imposing stricter sanctions on unregistered practitioners. These improvements could lead to the establishment of a more effective regulatory framework that ensures the safety and efficacy of traditional health services.

Additionally, the study aims to bridge the gap between traditional and modern healthcare by advocating for greater integration of traditional practices within Indonesia's health system under a standardized and regulated approach. This integration would not only enhance public trust but also contribute to a more holistic healthcare system, particularly in underserved regions. Ensuring the legal accountability of traditional healers and improving oversight mechanisms would ultimately reduce the risk of malpractice, safeguard patient health, and promote sustainable growth in the field of traditional medicine.

The legal theories related to the urgency of legal certainty for traditional health services without a practice license can be explained through several relevant legal theories, namely Legal Certainty Theory, Justice Theory, and Legal Protection Theory. These theories provide a conceptual foundation for understanding the importance of clear and firm regulations for traditional health services to protect patients' rights and ensure the quality and safety standards of healthcare practices.

Legal Certainty Theory emphasizes the importance of clear, consistent, and predictable laws. According to Gustav Radbruch, legal certainty is one of the primary objectives of law, alongside justice and utility. Legal certainty guarantees that individuals can understand their rights and obligations and predict the legal consequences of their actions (Leawoods, 2000). In the context of traditional health services, legal certainty is crucial to regulate the licensing of traditional healers. Without clear regulations, the existence of unlicensed healers creates legal uncertainty for both patients and practitioners. Patients are at risk of harm without adequate legal protection, while licensed practitioners feel disadvantaged when illegal practices are allowed to continue without proper sanctions.

Legal protection theory emphasizes the role of law in providing security to society and safeguarding individuals' rights from potential violations. According to Philipus M. Hadjon, legal protection for the public is divided into two types: preventive legal protection and repressive legal protection (Robian, 2024). In the context of traditional health services, preventive legal protection is implemented through regulations governing licensing, quality standards, and the supervision of traditional healers to prevent harmful practices. Repressive legal protection is enforced through legal actions and sanctions against practitioners who violate the rules, ensuring patient safety and creating a deterrent effect for violators.

Justice theory, as proposed by Aristotle and further developed by John Rawls in *A Theory of Justice*, highlights that the law must be fair and provide equal treatment for all parties (Said, 2021). In the context of traditional health services, justice requires that all healthcare practitioners be subject to the same set of rules to protect patients' rights. Allowing traditional healers to operate without a license not only creates injustice for practitioners who comply with licensing requirements but also endangers public health. Clear regulations and fair enforcement are

necessary to balance the rights of patients to receive safe services with the rights of traditional healers to practice under appropriate legal conditions.

Based on the explanation above, this study will examine the problem of legal protection for patients who use traditional healers who do not have a practice license, where patients often face health risks due to the lack of standards and supervision in the practice of such treatment. As well as an urgency to strengthen legal certainty regarding traditional healer practice licenses, which aims to ensure clear regulations and strict sanctions for unregistered traditional healers, as well as provide more effective protection for patients from potential malpractice or other losses. The urgency of strengthening regulatory frameworks and supervision in traditional health services cannot be overstated. By addressing the challenges highlighted in this study, Indonesia has the opportunity to enhance the quality of healthcare services, protect its citizens, and preserve valuable cultural heritage within a modern legal and medical framework.

## **2 Research Methodology**

The research method used in this research is a normative method with a statute approach, which focuses on the study of applicable laws and regulations (Suhaimi, 2018), especially those regulating traditional health services and licensing traditional health techniques. This method is chosen because it provides a systematic framework for studying legal norms, allowing the researcher to assess the adequacy, consistency, and effectiveness of existing regulations in ensuring legal protection for patients. By focusing on written legal sources, this method aims to identify gaps and ambiguities in current regulations and explore how these shortcomings affect the legal status of traditional healers and the safety of patients. The statute approach involves a detailed examination of key legal documents, such as the Regulation of the Minister of Health No. 61 of 2016 concerning Traditional Empirical Health Services, health-related national laws, and international conventions on patient protection and health standards. Through this approach, the research seeks to evaluate whether current regulations are aligned with public health needs and human rights principles, particularly regarding licensing obligations and the legal responsibilities of traditional healers.

In applying this method, the study will categorize relevant legal materials into primary legal materials, such as legislation and government regulations, and secondary legal materials, such as legal literature, expert opinions, and previous studies. These materials will be analyzed using qualitative legal analysis, which focuses on interpreting legal texts to understand the purpose of the regulation and identify potential gaps or inconsistencies. The research will concentrate on several key aspects, including the legal status of traditional healers, the procedures and requirements for obtaining a Traditional Healer Registration Letter (STPT), and the implications of practicing without a license. Furthermore, it will examine the effectiveness of government oversight mechanisms and sanctions imposed on unlicensed practitioners, as well as how these mechanisms ensure compliance with safety standards. Another important focus is the protection of patients, analyzing whether current regulations provide adequate legal remedies for patients in cases of malpractice or harm caused by unsafe practices. Ultimately, this method will help reveal the strengths and weaknesses of the current regulatory framework, offering practical recommendations to policymakers on how to improve the regulation of traditional health services. By addressing these gaps, this research aims to promote clearer and stronger legal standards that balance the development of traditional health practices with the need for public safety and patient protection.

## **3 Result And Discussion**

### **3.1 Legal Protection Issues for Patients Against Traditional Healers Who Do Not Have a Practice License**

Preventive legal protection for patients in empirical traditional health services who do not have a practice license is still very weak in Indonesia. Although there are regulations governing licensing obligations for traditional healers, such as the Minister of Health Regulation No. 61 of 2016, the implementation of these regulations has not been optimal. One of the main problems is the lack of socialization regarding licensing obligations and service standards for traditional healers. Many traditional healers do not understand the importance of obtaining a license or clear operational standards (Alam, 2018). It has resulted in many traditional health service practices still running without supervision or control from the authorities.

It is explained that Article 37 of the Regulation of the Minister of Health Number 61 of 2016 concerning Traditional Empirical Health Services stipulates that both traditional healers and health centers are prohibited from promoting or advertising the traditional empirical health services they offer. However, this regulation does not contain clear provisions regarding the sanctions that will be imposed on parties who violate these provisions. It raises concerns regarding the potential for misuse of advertising, especially when traditional health service advertisements claim definite results, such as promises of healing that cannot be confirmed.

Furthermore, the lack of information regarding licensing obligations and licensing procedures causes traditional healers to not feel bound or unaware of the importance of carrying out practices by applicable regulations. Without adequate education or socialization from the authorities, such as the Health Service or related institutions, traditional healers tend to ignore these obligations. As a result, patients who use their services are vulnerable to health risks because they do not know whether or not the healer meets safety standards. Therefore, preventive efforts through broader socialization and effective education are critical to reducing unlicensed practices and providing better legal protection for patients (Solehuddin, 2023).

In addition, the absence of regulations that are strong enough to prevent unlicensed practices adds to the problem of preventive legal protection. Although there are regulations regarding licensing such as Article 4 paragraph (1), Traditional Healthcare who will perform Traditional Empirical Health Services must have a STPT, sanctions or strict actions against traditional healers who violate this provision are still very minimal or unclear. It makes many unlicensed traditional healers continue to operate, because they feel that there is no major risk or legal consequence that threatens them. Therefore, there needs to be strengthening of regulations and stricter law enforcement to ensure that unqualified traditional health practices are not allowed to develop, as well as to protect patients from potential losses that may arise (Supadmo et al., 2024).

It has been explained in the Provisions of Article 4 to Article 8 of the Regulation of the Minister of Health Number 61 of 2016 that every Traditional Healer who wants to carry out Empirical Traditional Health Services must have a Traditional Healer Registration Letter (STPT). Based on Article 4, STPT can only be owned by one Traditional Healer, valid for one practice location, and given to those who do not perform invasive interventions on the body and do not conflict with the principles of empirical traditional health services.

To obtain STPT as regulated in Article 5, Traditional Healers must submit a written application to the district/city government by attaching administrative documents, such as a statement of service methods, a photocopy of their ID card, a passport photo, a certificate of practice location from the village head or village, a cover letter from the health center, and a letter of recommendation from the district/city health office and related associations. The district/city health office will conduct a technical assessment through a team consisting of community leaders, related Traditional Healer associations, and the health office, and can involve experts in traditional health. The results of this technical assessment are the basis for the district/city health office in providing recommendations for the issuance of STPT.

Article 7 stipulates that the STPT is valid for two years and can be extended. For extension, the application must be submitted no later than three months before the STPT expires, by attaching documents in the form of a photocopy of the valid STPT and a recommendation from the district/city health office after a technical assessment has been carried out. The STPT is declared invalid based on the provisions of Article 8 if: (a) it is revoked or canceled; (b) it has expired and is not extended; (c) there is a transfer of practice outside the district/city area that issued the STPT; (d) the Traditional Healer dies; or (e) there is a request from the Traditional Healer themselves.

Repressive legal protection for patients who use unlicensed traditional healer services in Indonesia is still limited, one of the reasons being the absence of clear and firm sanctions for traditional healers who operate without a permit. Although there are already regulations governing the licensing of traditional healers, such as the Regulation of the Minister of Health No. 61 of 2016, there is no mechanism or sanctions that are strong enough to take firm action against these illegal practices. The absence of effective sanctions has led many unregistered traditional healers or those who do not meet operational standards to continue operating, threatening patient safety. Without the threat of clear punishment or adequate fines, there is little incentive to encourage traditional healers to register their practices or to follow established standards.

The lack of oversight of traditional healthcare practices also exacerbates this situation. Weak oversight makes it difficult to detect many unlicensed traditional healers, even though they may provide services that do not meet safety standards or even commit malpractice (Iriansyah, 2022). Without adequate supervision, patients who use the services of these traditional healers do not receive adequate legal protection in the event of health losses or malpractice. As a result, unsafe and unqualified practices continue to thrive without any repressive measures to address the problem (Heriani & Munajah, 2019). It shows that the lack of supervision and unclear regulations lead to legal uncertainty, which in turn is detrimental to patients who are at risk of facing health problems (Hamonangan et al., 2024).

The impact on patients who use traditional health services from traditional healers who do not have a practice license is very significant, especially about the risk of malpractice and potential health hazards (Liem & Wardhani, 2020). Without clear supervision and standards, these traditional health practices can risk causing unwanted side effects or even worsening the patient's health condition (Yuningsih, 2021). Unlicensed traditional healers may not have adequate knowledge or skills in providing treatment, which can lead to misdiagnosis or inappropriate treatment. In extreme cases, the use of incorrect herbs or methods can have fatal consequences, such as poisoning or infections transmitted from unsterile equipment. It, of course, endangers the health of patients and adds to the burden on a modern health system that is already overwhelmed with patients (Rahmawati et al., 2018).

Uncertainty about the quality and safety of services provided also has serious implications for patients. Without legal assurances about the standards of care that traditional healers must follow, patients cannot be sure that they are receiving safe and effective treatment. Communities, who may not have sufficient knowledge about licensing and traditional health standards are often trapped into selecting unregistered healers for affordability reason or tradition trust. (Sampurno & Nurhayati, 2020). As a result, patients may not be adequately informed about the risks they face, and in some cases, they may not be aware that they are receiving services that are not of guaranteed quality. This uncertainty has the potential to be detrimental, especially for patients who need safe, evidence-based medical care.

### **3.2 Urgency of Strengthening Legal Certainty Regarding Traditional Healing Practice Permits**

The importance of updating and strengthening regulations related to traditional healer practice permits is necessary to ensure the safety and quality of traditional health services provided to the community. Without clear and firm regulations, unlicensed traditional healer practices can harm patients, both in terms of health and law. Regulatory updates that include easier licensing procedures, but remain strict in ensuring the qualifications and safety standards of traditional healers, can provide better protection for patients. Strengthening regulations related to sanctions for healers who violate licensing provisions will strengthen supervision and create discipline in the practice of traditional health services so that the community can benefit from safe and effective benefits (Novita et al., 2023).

It is important to establish clear and firm sanctions related to violations of practice permits and the provision of traditional health services to overcome unregistered practices or practices that violate provisions. The sanctions given, whether in the form of warnings, fines, or even license revocation, must be designed to provide a deterrent effect and encourage traditional healers to comply with existing regulations. The existence of clear sanctions will reduce the potential for malpractice and prevent the misuse of advertising or claims of healing that are not by reality. It will strengthen patient protection and create public trust in traditional health services that are guaranteed to be safe.

The development of stricter regulations is needed to update and strengthen legal provisions related to practice permits, malpractice, and publication of empirical traditional health services. In this case, legal updates are needed that include criminal sanctions for traditional healers who practice without having a Traditional Healer Registration Certificate (STPT). Criminal sanctions can be in the form of threats of imprisonment or significant fines to provide a deterrent effect, in line with efforts to protect the public from the risk of malpractice and health practices that do not meet standards. In addition, stricter regulations must also regulate the prohibition of misleading publications related to traditional healing methods or techniques without permission, accompanied by effective supervision and law enforcement by local governments through district/city health offices. Thus, the integrity of traditional health services can be maintained and public trust in these services can be increased.

Routine supervision by the Health Office is essential to ensure that the traditional health services provided meet the established safety and quality standards. This supervision includes inspections of practice facilities, traditional healers' qualifications, and implementation of practices by existing regulations. With consistent supervision, the Health Office can prevent deviations in the practice of traditional health services, as well as guide traditional healers regarding the standards that must be met (Ismedsyah & Sitanggang, 2022). This not only improves the quality of service but also provides better protection for patients who use traditional health services.

A good understanding of licensing obligations for traditional healers is essential to ensure that they are aware of the legal responsibilities they have in carrying out their practice. Socialization of regulations governing licensing can help traditional healers to comply with applicable provisions and prevent them from operating without a license, which can be detrimental to patients and violate the law. Providing clear information about registration procedures and the benefits of having a practice license can also motivate traditional healers to comply with existing regulations, to maintain professionalism and increase public trust in the services they provide.

Counseling on the importance of safety standardization in empirical traditional health practices is no less important. Traditional healers need to be given an understanding of how to ensure that the services provided are safe and do not harm patients. Education regarding good treatment procedures, the use of safe herbal ingredients, and service techniques that comply with standards can reduce health risks to patients. This counseling also helps traditional healers to realize that supervision and standardization are not only legal obligations, but also part of an effort to provide the best service and maintain their professional reputation.

Updating and strengthening regulations on practice permits, malpractice, and publication of empirical traditional health services are essential to ensure more effective legal protection for patients and the public. Clear and firm regulations will provide a strong legal basis for traditional healers to practice by established standards, while providing adequate sanctions for those who violate the terms of the permit or commit malpractice. This can also suppress the misuse of advertising or unrealistic claims, which are often a source of harm to patients. With

more detailed and firm regulations, traditional healers can better understand the applicable limitations and operate within the appropriate legal framework.

A more intensive socialization campaign for traditional healers and the public is an important step in overcoming the problem of unclear and legal vacuum related to traditional health services. Traditional healers must be educated about licensing obligations, safety standards, and the importance of maintaining transparency and ethics in providing services. In addition, the public also needs to be given an understanding of how to choose safe and trusted traditional health services. By increasing awareness of all parties, it is hoped that a more professional traditional health service ecosystem can be created, with guaranteed quality, and providing protection for patients.

The role of the Health Office is crucial in ensuring that empirical traditional health services operate by the standards set by regulations. Routine supervision and guidance of traditional healers should be performed to ensure that their practices are safe and by applicable laws and regulations. The Health Office needs to conduct regular inspections of traditional health service practices, both at the individual and institutional levels, and provide technical assistance and training to traditional healers to meet applicable requirements. With strict supervision and ongoing guidance, it can ensure the quality of services and increase public trust in traditional medicine.

Raising public awareness of the importance of choosing safe and legal traditional health services is an important step in creating a healthier health ecosystem. The community needs to be empowered to be more selective in choosing traditional healers who are registered and have valid permits. In addition, community participation in supervision can also help identify illegal practices or traditional healers who do not comply with applicable standards. Socialization and education carried out by the government and related institutions must encourage the community to report illegal or questionable practices, which can help prevent further losses and protect patients from irresponsible practices.

#### 4 Conclusion

Legal protection for patients using empirical traditional health services without a practice license in Indonesia still faces various challenges, both in terms of prevention and repression. Although there are regulations governing licensing, such as the Regulation of the Minister of Health No. 61 of 2016, the implementation of these regulations is still weak, with a lack of adequate socialization and supervision of traditional healers. This causes many unlicensed traditional healers to continue operating undetected, increasing the risk of malpractice and endangering patient health. The unclear sanctions for healers who violate licensing and advertising provisions worsen the situation, while the absence of effective supervision opens up a gap for illegal practices to thrive. As a result, patients who use traditional health services that are not guaranteed to be of good quality are at risk of various health problems, ranging from misdiagnosis to infection or poisoning. Therefore, there needs to be an update and strengthening of stricter regulations, more intensive supervision, and education for traditional healers and the community to create a safer environment and protect patients from harmful practices.

Updating and strengthening regulations related to traditional healer practice licenses in Indonesia is necessary to ensure legal protection for patients and guarantee the quality and safety of traditional health services. It can be done through clearer and more stringent regulations regarding licensing procedures, sanctions for violators, and stricter supervision by the authorities. Socialization and education of traditional healers regarding licensing obligations and safety standards, as well as providing information to the public on how to choose safe health services, are also crucial steps to create a professional and quality-assured traditional health service ecosystem. With strong regulations, ongoing supervision, and increased public awareness, traditional health practices can operate within an appropriate legal framework, reduce the risk of malpractice, and provide better protection for patients.

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