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CIVIL LIABILITY OF BUSINESS OPERATORS IN TRADITIONAL HEALTH SERVICES THAT CAUSE HARM TO CLIENTS

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Abstract

Traditional health services are increasingly sought by the public as an alternative or complement to modern medical treatment. Although these practices are recognized within Indonesia's national legal system, existing regulations remain incomplete, particularly concerning civil law liability when harm occurs to clients. This study analyzes the forms of liability borne by business actors, including liability arising from tort and default, as well as mechanisms for dispute resolution and compensation. Employing a normative juridical method, this research integrates statutory, conceptual, and case approaches. Data were collected through literature studies and analyzed qualitatively. The findings indicate that business actors may be held legally accountable under Article 1365 and Article 1239 of the Indonesian Civil Code. Liability may result in both material and immaterial compensation, provided in accordance with applicable positive law in Indonesia. Strengthening regulations on traditional health services is therefore essential to ensure legal certainty and protection for consumers while maintaining professional accountability.

Keywords: ***Civil Law, Client Detriment, Traditional Health***

INTRODUCTION

The right to health is an integral dimension of human rights guaranteed in the Pancasila doctrine and the 1945 Constitution of the Republic of Indonesia. As a consequence of the welfare state doctrine, the state is required to strive to protect the physical and mental health of all its citizens through the provision of adequate medical services and health infrastructure (Rani & Herlambang, 2023). The implementation of these rights covers every individual from all walks of life, whether financially capable or not, with a focus on disease prevention, treatment, and the process of restoring health. Health services can include both modern and traditional medicine, both of which play an important role in the national health system (Abdurrahman et al., 2025). The existence of traditional medicine in Indonesia has become part of the cultural heritage that has been passed down from generation to generation. However, this practice also poses challenges in terms of regulation, service standards, and patient protection. Therefore, attention to legal aspects in the implementation of traditional medicine is an issue that cannot be ignored.

Traditional medicine is highly relevant in many countries. WHO data (2019) shows that 30–50% of the population in China, 60% of the population in several African countries such as Ghana, Zambia, Nigeria, and Mali, and 50% of the population in Europe and North America still use traditional health services (Rimbawan, 2020). In fact, in major cities such as San Francisco and London, the usage rate reaches 75%. In Indonesia, the 2018 Indonesian Health Profile reports that 33.24% of the population experiences illness, with 65.59% of them choosing self-medication using modern or traditional medicines (Widiastuti & Ropii, 2024). This fact confirms that traditional medicine remains in demand and has the potential to develop as part of national health services. The increasing frequency of use should be balanced with regulatory governance and proportional legal instruments to ensure patient safety.State authorities have ratified regulatory instruments to regulate traditional medicine practices, one of which is contained in Law No. 17 of 2023 concerning Health. Article 160 of this law explicitly focuses on traditional medicine activities by traditional healers, with the aim of providing legal protection to patients while ensuring responsible practices (Purba & Sidi, 2023). Since this law does not specify the definition of traditional health services, reference is made to Minister of Health Regulation No. 15 of 2018, which defines traditional medicine as care based on accountable empirical experience passed down from generation to generation. This regulation is expected to regulate and develop the potential of traditional medicine safely (Abdurrahman et al., 2025). However, the implementation of this regulation often faces obstacles, including limited supervision and a lack of compliance

from traditional medicine practitioners (Panggabean et al., 2024). Although the legal framework is in place, its implementation still faces various challenges. Many traditional medicine practices are not registered or officially licensed, posing a risk of harm to patients (Heriani & Munajah, 2019). Public awareness of their rights as health service users is also low, so they are often unaware of the safety standards or procedures that should apply. This results in patients being vulnerable to malpractice or the use of hazardous materials. The government, through the Ministry of Health, has attempted to address this issue by requiring Traditional Healer Registration Certificates (STPT) and providing guidance and supervision through regulations, cross-sector partnerships, and the utilization of P3T Centers (Jaury & Handoyo, 2024). However, the effectiveness of the legal protection promised by these regulations still requires further evaluation.

Previous studies have extensively reviewed the effectiveness of traditional medicine from medical and cultural perspectives, but few have specifically discussed the application of Article 160 of Law Number 17 of 2023 in the context of civil law protection for patients (Partama et al., 2025). Some studies emphasize the need for stricter regulations on traditional medicine practices to prevent health risks, such as the side effects of traditional medicines containing hazardous chemicals or treatment procedures that do not meet standards (Anisah et al., 2023). A research gap is evident in the lack of studies assessing the extent to which existing regulations actually protect patients, especially in the resolution of legal disputes. This condition indicates the need for research focusing on the legal responsibility of traditional medicine practitioners.

The urgency of this research lies in the importance of ensuring effective legal protection for patients who use traditional medicine services. Without adequate supervision, traditional medicine practices have the potential to cause physical and psychological effects, even death, as well as material losses due to the use of services or products that do not meet standards. Research on the implementation of Article 160 of Law No. 17 of 2023 will provide an overview of the effectiveness of this regulation, while identifying obstacles and opportunities in its implementation. The results of this research are expected to form the basis for policy improvements and regulatory strengthening in the future. Based on this background, this research focuses on "Civil Liability of Business Operators in Traditional Health Services that Cause Harm to Clients."

LITERATURE REVIEW

Because of their strong cultural roots and growing significance in contemporary healthcare systems, traditional health services have long attracted scholarly attention. According to earlier research (Rani & Herlambang, 2023; Wardhana & Budiarsih, 2024), traditional medicine in Indonesia serves as a complementary medical practice as well as a part of the country's cultural legacy. These pieces do, however, also draw attention to the lack of thorough legal procedures that govern culpability in cases where clients suffer injury as a result of traditional treatment. In the context of Indonesian civil law, this regulatory gap has made it difficult to determine liability, particularly with regard to tort and contractual responsibilities.

Numerous academics have studied the legal standing of practitioners of traditional medicine, with an emphasis on how the 1945 Constitution's protections of the right to health might be expanded to cover traditional treatments. According to Hasliani & Wulandari (2023), the legal integration of traditional health services into the national health system with the passing of Law No. 17 of 2023 represents a paradigm change. The importance of Government Regulation No. 28 of 2024, which establishes certification requirements, safety standards, and supervisory methods, is covered by Anisah et al., (2023) and Partama et al., (2025). Despite these advancements, the literature shows that overlapping authorities and a lack of harmonization between national and regional legislation continue to cause inconsistent legal enforcement.

The theoretical underpinnings of this study are based on the civil law doctrines of default (Article 1239) and tort (Article 1365 of the Civil Code), which together provide the framework for responsibility and damages. However, the civil liability factor has been understudied in previous research since it has tended to concentrate more on the administrative or ethical aspects of conventional health practices. Furthermore, there aren't many studies that offer a comprehensive examination of dispute resolution and compensation procedures for patients who suffer harm or loss as a result of conventional medical care. The literature review is a critical component of your research paper, providing a comprehensive overview of existing research and theoretical frameworks related to your topic. This section serves to establish the context of your study by summarizing and synthesizing relevant literature, highlighting key findings, methodologies, and gaps in current knowledge. The theoretical underpinnings of this study are based on the civil law doctrines of default (Article 1239) and tort (Article 1365 of the Civil Code), which together provide the framework for responsibility and damages. However, the civil liability factor has been understudied in previous research since it has tended to concentrate more on the administrative or ethical aspects of conventional health

practices. Furthermore, there aren't many studies that offer a comprehensive examination of dispute resolution and compensation procedures for patients who suffer harm or loss as a result of conventional medical care.

METHOD

This research is placed in the realm of normative legal research by adopting a statute approach and a conceptual approach. Through the statute approach, the analysis focuses on the applicable legal instruments, particularly Law No. 17 of 2023 concerning Health and derivative provisions governing traditional health services. Meanwhile, the conceptual approach is used to reveal the conceptual construction and theories related to legal protection for patients, including the civil liability dimension of traditional health service providers. The population of this study consists of positive legal norms, doctrines, and literature related to legal protection in traditional health service practices. Sample selection was carried out using purposive sampling based on the level of relevance of the source to the focus of analysis, including legislation, jurisprudence, and scientific works. The data collection technique was carried out through literature research, including the inventory of normative regulations, court decision searches, and the collection of secondary legal references in the form of books, articles, academic journals, and research reports. The data was then processed through qualitative analysis with an emphasis on description, interpretation, and conceptual construction to find answers to the research questions. The results of the analysis were then linked to patient protection law theory and the principles of civil liability, in order to produce conclusions relevant to the research objectives.

RESULTS AND DISCUSSION

Legal Regulations Governing Traditional Health Service Providers in Indonesia

Traditional health practices occupy a significant position in the health service structure in Indonesia, with a long historical development and its position as a manifestation of cultural values and local wisdom of the community (Hasliani & Wulandari, 2023). The development of the times, legal requirements, and protection of the community have encouraged the government to provide clear regulations for businesses and personnel engaged in traditional health services. This legal framework has been developed gradually, starting from the highest level, namely the Constitution, Laws, Government Regulations, Presidential Regulations, to technical regulations at the Ministry of Health level and even Local Regulations. Through this hierarchy, traditional health services have a legal umbrella that can guarantee safety, benefits, and supervision in their implementation. The following is a summary of the legal sources that regulate traditional health services in Indonesia.

Table 1. Summary of Legal Sources Related to Traditional Health Services

Legal Level	Regulation	Main Provisions
Constitution	1945 Constitution of the Republic of Indonesia	Guarantees the right to health (Articles 28H and 34) without specific reference to traditional health services
Law (Act)	Law No. 17 of 2023	Defines scope, government responsibilities, development, and supervision of traditional health services
Government Regulation	Government Regulation No. 28 of 2024	Regulates certification of traditional practitioners, service integration, safety standards, and professional guidance
Presidential Regulation	—	No specific Presidential Regulation governing traditional health services has been issued
Minister of Health Regulation	Regulations No. 61/2016, 37/2017, and 15/2018	Technical provisions on empirical, integrative, and complementary traditional health services
Regional Regulation	West Java No. 13/2018, Bali No. 11/2019, Yogyakarta No. 2/2009, Gianyar No. 8/2016	Operational arrangements at the local level, including registration and supervision mechanisms

As the supreme law of the land, the 1945 Constitution of the Republic of Indonesia provides the foundational legal basis for all subsequent health-related regulations, including those concerning traditional health services. Although it does not explicitly address traditional medicine, Article 28H paragraph (1) guarantees every individual's right to physical and spiritual well-being, adequate living conditions, a healthy environment, and access to health

services. Similarly, Article 34 paragraph (3) mandates the state to ensure the availability of proper healthcare facilities and public services (Rani & Herlambang, 2023). These constitutional provisions form the normative framework for later technical regulations. Academic discourse further recognizes the Constitution as the juridical foundation for protecting the right to health as part of human rights, containing open-ended norms that can adapt to evolving health service modalities, including traditional medicine (Wardhana & Budiarsih, 2024).

In implementing the constitutional mandate, Law No. 17 of 2023 on Health replaces Law No. 36 of 2009, establishing a more integrated and comprehensive health system (Hasliani & Wulandari, 2023). For the first time, the law provides explicit legal recognition of traditional health services, elevating them from informal or complementary practices to legitimate forms of care within the national health system. Article 160 classifies traditional services into skill-based practices, such as acupuncture, massage, and movement therapy, and herbal-based treatments grounded in local wisdom. Article 161 extends this regulation to all aspects of healthcare, encompassing promotive, preventive, curative, rehabilitative, and palliative dimensions, which may be delivered through independent practices or health facilities such as community health centers and hospitals. Furthermore, Articles 162–163 obligate both central and local governments to ensure resource availability, facility provision, supervision, and community participation in developing traditional health services, provided they meet safety and efficacy standards. This legal framework reflects the state's progressive effort to integrate local knowledge into formal legal structures while maintaining accountability and cultural integrity (Harahap & Chrisanta, 2023).

To operationalize the law, the government enacted Government Regulation No. 28 of 2024, replacing Government Regulation No. 103 of 2014 on Traditional Health Services. This regulation plays a crucial role in providing detailed procedures for certification, registration, and quality control of traditional health practitioners, addressing long-standing concerns about professional legitimacy and patient safety. It also outlines mechanisms for integrating traditional services into official healthcare facilities such as community clinics and hospitals (Partama et al., 2025). The regulation promotes collaborative oversight between central and regional governments, establishing supervision, reporting, and administrative sanction mechanisms. Moreover, it emphasizes harmonization between local wisdom and state regulation, allowing indigenous and community-based practitioners to continue their traditions within the framework of safety and legal compliance (Anisah et al., 2023).

At present, there is no specific Presidential Regulation governing traditional health services. However, this absence does not imply neglect by the state. In Indonesia's regulatory hierarchy, a Presidential Regulation is typically reserved for cross-sectoral policy coordination or institutional formation rather than technical service regulation, which is sufficiently covered by laws, government regulations, and ministerial decrees. Thus, the implementation of traditional health services remains legally valid and enforceable through the existing framework (Panggabean et al., 2024). At the ministerial level, several Regulations of the Minister of Health serve as the technical foundation for operationalizing traditional health services. Regulation No. 61 of 2016 governs empirical traditional practices based on long-standing community use, such as massage, herbal medicine, and local remedies, providing legal legitimacy and competency standards. Regulation No. 37 of 2017 covers integrated traditional services delivered in formal healthcare facilities, ensuring broader yet supervised public access. Meanwhile, Regulation No. 15 of 2018 governs complementary traditional practices that have undergone scientific validation, including medical acupuncture and standardized herbal medicine (Anisah et al., 2023). These regulations collectively clarify operational standards, ensure safety, and protect consumers, though they now require harmonization with Law No. 17 of 2023 and Government Regulation No. 28 of 2024 (Rani & Herlambang, 2023).

Finally, Regional Regulations embody Indonesia's decentralized governance principle, empowering local governments to adapt traditional health service management to regional characteristics. Examples include West Java Regulation No. 13 of 2018, Bali Regulation No. 11 of 2019 on *Usadha Bali* herbal medicine, Yogyakarta Regulation No. 2 of 2009, and Gianyar Regulation No. 8 of 2016. These laws regulate practitioner registration, facility requirements, supervision mechanisms, and protection of indigenous medical knowledge (Wardhana & Budiarsih, 2024). Regional regulations thus serve as vital instruments for harmonizing national norms with local contexts, ensuring that traditional health services remain safe, culturally grounded, and legally accountable across Indonesia.

Civil Liability of Traditional Health Service Providers Who Cause Harm to Clients

In the Indonesian civil law system, the relationship between traditional health service providers and clients is based on the principle of legal liability for losses arising from the actions of the provider. Although traditional health services have gained legal recognition through a number of regulations, including Law No. 17 of 2023 concerning Health and Government Regulation No. 28 of 2024, the aspect of civil liability for damages is still regulated in the general provisions contained in the Civil Code (KUH Perdata). This reflects that even though the

practice has cultural roots, when it enters into a legal relationship between service providers and consumers, it must comply with the rules of legal responsibility that apply universally (Partama et al., 2025). Formal recognition of traditional health services in national regulations does not eliminate civil liability for the adverse effects caused to clients (Rani & Herlambang, 2023). Therefore, the principles of consumer protection and professional responsibility must still be applied.

The basis for civil liability in this case is derived from Article 1365 of the Civil Code concerning unlawful acts or acts against the law (Lilis, 2019). This article stipulates that any action that violates the law and causes harm to another party obligates the perpetrator to provide compensation for the consequences caused. In practice, this can include actions by traditional health practitioners who provide herbal remedies without safety testing, perform therapy without adequate competence, or even fail to provide information about the risks of the service. All of these are considered forms of negligence or professional misconduct that can cause physical or psychological harm to clients. The elements that must be proven include the existence of an act that is contrary to the law, a fault that can be attributed to the perpetrator, actual damages, and a causal link between the act committed and the consequences caused. In civil law, the proof of liability is not only based on malicious intent, but also on professional negligence in meeting the standard of care. The use of Article 1365 is generally relevant when there is no formal contractual relationship between the perpetrator and the client, but there are acts that violate norms of propriety, law, or principles of professional prudence that cause harm (Abdurrahman et al., 2025). Unlawful acts can be active or passive (negligence), so their scope is broad and flexible, including in the context of incorrect traditional therapy (Widiastuti & Ropii, 2024).

In addition, in a contractual context, liability can also be based on breach of contract as stipulated in Article 1239 of the Civil Code. In traditional health services, the relationship between business operators and clients often takes the form of a service agreement, either written or verbal. Promises or statements made by business operators, such as guaranteeing treatment results or the use of certain natural ingredients, can be considered part of the contract that must be fulfilled. When these promises are not kept, or the services do not meet the promised standards, the client has the right to claim compensation on the basis of breach of contract. Failure to fulfill the agreement is not only economically detrimental, but also psychologically and physically detrimental to the client. In this context, the court will assess the completeness of the agreement, service records, and the extent to which the promise or commitment has been proven to be unfulfilled. Article 1239 of the Civil Code is appropriately used when there is a clear legal bond between the business operator and the client, whether written or unwritten, and when it is proven that the business operator has failed to fulfill their obligations or promises. Breach of contract not only includes explicit non-compliance with the contract, but also failure to provide the quality of service as promised in advertisements, initial consultations, or product/service information (Anisah et al., 2023).

In terms of compensation, civil law recognizes two main forms, namely material damages and immaterial damages (Hasliani & Wulandari, 2023). Material damages include additional medical expenses, loss of employment, or expenses incurred due to physical damage suffered by the client. Meanwhile, immaterial damages can take the form of emotional distress, trauma, loss of self-confidence, or pain that cannot be measured financially. In judicial practice, proving immaterial damages is more difficult, but not impossible, especially if supported by medical or psychological expert testimony. In the context of health services, including traditional ones, non-material aspects are often more significant than financial aspects, so that the liability of business actors must cover both proportionally (Heriani & Munajah, 2019). Furthermore, it is important to understand that civil liability is not only a form of punishment or compensation, but also an educational and preventive tool for business actors. When business actors know that their mistakes or negligence can lead to legal consequences and civil lawsuits, they will be encouraged to improve their professionalism, prudence, and service standards (Abdurrahman et al., 2025). In this modern era, when traditional health services are becoming more formal and connected to the national health system, civil liability has become an important element in bridging the gap between culture-based practices and modern legal protection. Therefore, business operators are expected not only to rely on trust or hereditary experience, but also to understand that their practices are subject to a legal regime that strictly regulates legal relationships with patients.

Civil Law Settlement Between Traditional Health Practitioners and Clients Who Have Suffered Losses Due to Traditional Health Services

In the legal relationship between traditional health service providers and clients, if a client suffers losses due to the services provided, the settlement mechanism is subject to civil law provisions. This settlement is carried out through a civil lawsuit aimed at obtaining compensation or restoration of rights for the client. This civil law

settlement does not preclude the possibility of criminal or administrative proceedings, but focuses specifically on the civil relationship between the service provider (business operator) and the service recipient (client).

First, the basis for civil law settlement is based on unlawful acts. Referring to Article 1365 of the Civil Code, any unlawful act that causes harm to another person obligates the perpetrator to compensate for the harm. In the practice of traditional health services, a civil lawsuit can be filed if a client suffers losses as a result of unlawful actions by a business operator, such as the use of dangerous herbs, failure to follow standard procedures, or performing actions without permission. In dispute resolution, the client as the plaintiff must prove the existence of unlawful acts, actual damages, and a causal relationship between the perpetrator's actions and the damages suffered (Widiastuti & Ropii, 2024). The judge will examine evidence such as service records, witnesses, or expert testimony to determine whether the claim for damages can be granted (Partama et al., 2025).

Second, the basis for civil law settlement is based on default or breach of contract. If there is an agreement between the business operator and the client, whether written or verbal, a civil lawsuit can be filed under Article 1239 of the Civil Code if the business operator fails to fulfill the promises or obligations in the agreement. An example of breach of contract is when a business promises certain services with certain standards or results, but fails to meet those standards, thereby causing losses to the client. In resolving breach of contract disputes, the judge will assess the content of the agreement, evidence of the service promise, and the conformity of the service implementation with the agreed agreement. Clients can demand fulfillment of the agreement, compensation, or even cancellation of the agreement accompanied by compensation (Heriani & Munajah, 2019).

Third, the form of settlement and type of compensation. In civil law, the form of settlement can be mediation, negotiation, or a lawsuit in a district court. If the lawsuit is granted, the form of compensation provided may include material compensation, such as additional medical expenses, loss of income, or property damage, as well as immaterial compensation, such as mental anguish, pain, or psychological trauma. Judges have the discretion to assess the amount of compensation based on the evidence and the impact experienced by the client. With this mechanism in place, clients have legal means to seek justice, and business operators are required to be more careful in providing traditional health services (Rimbawan, 2020).

Fourth, implications for business operators. The existence of civil law norms governing dispute resolution requires traditional health service providers to conduct their practices in accordance with safety and professional ethics standards. They must understand that any negligence or violation can result in legal liability, which implies an obligation to pay compensation to clients. This encourages business operators to maintain good records, uphold service quality, and ensure that every action or remedy used meets the established standards, as directed by specific regulations such as Law No. 17 of 2023 and Government Regulation No. 28 of 2024, which contain provisions on the guidance and supervision of traditional health services.

CONCLUSION

Based on all the research that has been conducted, both through normative studies of legislation and through analysis of related doctrines and literature, the following conclusions can be drawn. First, Indonesian law provides a strong foundation for traditional health service providers through a hierarchy of laws and regulations, starting with the 1945 Constitution, Law No. 17 of 2023 on Health, Government Regulation No. 28 of 2024, and Minister of Health Regulations and Local Regulations. These norms regulate the definition of services, scope, competency requirements for personnel, registration and certification mechanisms, government supervision, and service quality standards. Thus, normatively, business actors have clear legal certainty to carry out their practices legally. Second, civil liability currently still refers to the general provisions of the Civil Code, namely Article 1365 concerning unlawful acts and Article 1239 concerning breach of contract. If a business operator commits a mistake, negligence, or fails to fulfill a service promise, thereby causing losses, the client can claim compensation. However, because there are no specific civil regulations, proving liability is often challenging. Nevertheless, this basic principle of liability provides legal protection for clients while encouraging business operators to act carefully and professionally. Third, disputes are resolved through civil litigation mechanisms based on unlawful acts or breach of contract. This process can be through litigation in court or non-litigation such as mediation or arbitration, if available. The judge assesses the evidence of the contract, personnel certification, service records, and the resulting losses to decide on the appropriate compensation. Although this dispute resolution mechanism is available, regulatory updates and strengthening are needed to make dispute resolution more effective, faster, and more protective of patient rights without burdening businesses that have complied with regulations.

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