



**JURNAL
POROS HUKUM
PADJADJARAN**

P-ISSN: 2715-7202

E-ISSN: 2715-9418

Volume 4, Number 2, May 2023

Submission date:
07 March 2023

Publish date:
30 May 2023

DOI:
<https://doi.org/10.23920/jphp.v4i2.1347>

Link Publications:
<http://jurnal.fh.unpad.ac.id/index.php/JPHP/issue/archive>

Publishers:
Faculty of Law
Universitas Padjadjaran

**LEGAL LIABILITY OF ACUPUNCTURE THERAPIST
FOR PATIENT SAFETY INCIDENTS IN
TRADITIONAL MEDICINE SERVICES REVIEWED BY
HEALTH WORKERS LAW AND REGULATION OF
THE MINISTER OF HEALTH ABOUT CONCERNING
LICENSING AND IMPLEMENTATION OF
ACUPUNCTURE THERAPIST PRACTICES**

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ABSTRACT

Traditional medicine services are one of the treatments and treatment efforts other than medical science and/or nursing science which is carried out by traditional health workers. Acupuncturists are skilled traditional healers who perform invasive procedures on patients that can cause patient safety incidents or potentially result in injury to the patient. But in fact, if there is a loss due to an error in treatment, the client/patient and/or the client/patient's family do not know the legal consequences for the acupuncturist who provides their therapist services. The purpose of this study is to gain a comprehension of acupuncturist authority on the medical service and to acquire a description of acupuncturist responsibility on patient safety incident on the medical treatment. This research article was carried out using normative juridical methods with secondary data through literature studies which were analyzed qualitatively. The results showed that the authority of the acupuncturist as a traditional skilled health worker was in accordance with the standard of expertise and skills as evidenced by STPT and SIPT. If a patient safety incident occurs due to an error in medical practice, it means that the acupuncturist has committed an illegal act and is responsible for paying compensation to the patient and/or the patient's family.

Keywords: therapist acupuncture; patient safety incidents; responsibility.

INTRODUCTION

Indonesia is a legal state that is synonymous with a welfare state, as described in the formulation of the fourth paragraph of the 1945 Constitution. This form of welfare is reflected in the existence of health efforts in the form of health services. As for health efforts that can be carried out through promotive, preventive, curative and rehabilitative

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activities¹

The concept of a welfare state or welfare state assumes that every citizen has the right to physical and mental health, including facilities and services provided by the state and agencies appointed by the state for all groups of people.² Constitutionally confirmed in Article 28 H paragraph (1) of the 1945 Constitution which states that every person has the right to live in prosperity, physically and spiritually and to obtain a proper living environment and health services. Health services are any efforts that are carried out individually or jointly in an organization to improve, maintain health, prevent disease and treat disease and restore health aimed at individuals, groups or communities.³ In this regard, Article 5 (2) of Law No 36 of 2009 concerning Health emphasizes that everyone has the right to obtain safe, quality and affordable health services. In general Medicine in health is divided into two types viz:⁴

- (1) Medical treatment is treatment by means of medication related to health care and its selection by eliminating disease which is carried out by people with a profession in the medical field;
- (2) Non-medical treatment is treatment that uses traditional medicine which refers to experience, hereditary skills, or training that is applied according to the norms prevailing in society.

Men has been trying to heal the sick since the beginning of his existence. Before getting to know medical science, in ancient times humans tend to used plants and also tried to use supernatural powers. Along with the times and medical science, modern medicine emerged in European countries. In Asia, including China, developing medical science based on hereditary abilities using traditional techniques and herbs, which are known as *traditional Chinese medicine*.⁵ Along with the development of the times, traditional medicine has developed and is in demand by the community. The reason is traditional medicine tends to be cheaper, more natural and more effective.

Traditional health services are currently emerging. Offering services that offer relatively affordable prices certainly attracts the attention of the public. Traditional treatment methods using the services of therapists are a transition and the choiced of the community in an effort to seek treatment for problems suffered to address the problem

¹ Undang-Undang Nomor 36 Tahun 2009 tentang Kesehatan, Pasal 52 ayat (2).

² Kartika, Dian. (2016). "Pelayanan Kesehatan Tradisional dan Perlindungan Hukum Bagi Pasien" *SOEPRA Jurnal Hukum Kesehatan*, Vol.2, No.1, p. 2.

³ Komalawati, Veronica. (1999), *Peranan Informed Consent dalam Transaksi Teraeutetik*, Bandung: Citra Bakti, p. 77.

⁴ Setyoningsih, Ayu. (2016). "Pemilihan Penyembuhan Penyakit melalui Pengobatan Tradisional Medis dan Non Medis" *Masyarakat, Kebudayaan dan Politik*, Vol.29, No.1, p. 44-45.

⁵ Kang, Michael Ching Kwei. (2010), *Foundations of Traditional Chinese Medicine*, United Stated of America: Creat Space, p.1.

of the price of modern medicine which tends to be more expensive. Traditional health services are treatment and/or cared in ways and drugs that referring to experiences and skills passed down empirically which can be accounted for and applied according to the norms prevailing in society.⁶ Traditional medicine can be referred to as alternative medicine, because it is classified as non-medical treatment.

In Article 59 of Law No 36 of 2009 concerning Health it is emphasized that based on the method of treatment, traditional health services are divided into: traditional health services that use skills, and traditional health services that use herbs. Acupuncture is a medical science that has been known in China since 4000-5000 years ago and began to develop since the stone age by using stone needles to cure disease.⁷ However, along with its development, acupuncture is believed to be able to cure various diseases by inserting fine needles (*Hau cen*) made of stainless steel to deep points. body for energy flow and healing.⁸ However, in practice acupuncture can also cause mild side effects, such as fatigue, cases of pain, bruises, headaches, emotional outbursts to bleeding in infants and children.⁹

Case in Indonesia, experienced by Mawan Tri Atmodjo (Mawan) in Lumajang, East Java in 2010. Mawan performed acupuncture therapy as a form of traditional treatment at an acupuncture therapist where he lived. He has a history of asthma. Mawan, who worked as a security guard every day, died after an acupuncture therapist injected 12 needles into several parts of Mawan's body which made it difficult for him to breathe, had convulsions and died.¹⁰ The second case, which occurred in Spain, was a 55-year-old woman who underwent "apitherapy" treatments about once a month for two years to stretch stiff muscles and treat stress. Apitherapy is a kind of acupuncture treatment which is done by using a bee sting that works as a "needle". After taking the medication, the woman experienced shortness of breath and became unconscious, as cited by the *Journal of Investigational Allergology and Clinical Immunology*.¹¹ The woman then experienced complications several weeks after carrying out the traditional treatment. The third case was an acupuncture accident that occurred in New Zealand. A

⁶ Undang-Undang No 36 Tahun 2009 tentang Kesehatan, Pasal 1 Ayat (16).

⁷ Saputra, Koesnadi. (2017). *Akupunktur Dasar*, Surabaya: Airlangga University Press, p. 1.

⁸ Harlan, Johan. (2009). *Akupunktur kebidanan*, Depok: Gunadarma, p 10.

⁹ Tim Penulis CNN Indonesia, 5 Efek Samping Akupunktur: Kelelahan hingga Memar, <https://www.cnnindonesia.com/gaya-hidup/20200228103427-255-478996/5-efek-samping-akupunktur-kelelahan-hingga-memar>. [Accessed, April 17, 2020].

¹⁰ David Priyasidharta, Setrum Pasien Hingga Tewas, Dukun 'Akupunktur' Ditangkap, <https://nasional.tempo.co/read/278410/setrum-pasien-hingga-tewas-dukun-akupunktur-ditangkap>. [Accessed January 17, 2020].

¹¹ Gloria Setyvani Putri, (2020) Wanita ini Meninggal akibat Akupunktur lebah, pelajaran untuk kita, <https://sains.kompas.com/read/2018/03/19/170300123/wanita-ini-meninggal-akibat-akupunktur-lebah-ini-pelajaran-untuk-kita?page=all>. [Accessed January 2020].

therapist inserts acupuncture needles into his shoulder, which is known as the jian jing point and is known to be only 10-20 millimeters from the lungs. After that, he felt pain in the left chest and had difficulty breathing and felt a numb sensation. Then this woman was rushed to the hospital and diagnosed with bilateral apical pneumothorax due to the acupuncture therapist failing to apply the right treatment.¹² Invasive actions carried out by traditional health workers can cause the death of clients/patients and lead to incidents of patient/client safety. In the practice of acupuncture there are still many patients/clients or their families who do not know how legal remedies can be taken for errors or carelessness of treatment service providers, in this case acupuncturists. Basically the client or the client's family considers this to be a risk that must be accepted if the client/patient becomes a victim of acupuncture practices. This makes the acupuncturist as a provider of treatment services irresponsible for actions that harm the patient/client. That is why, patient/client safety incidents in acupuncture practice are still being questioned.

With the existence of legal uncertainty in the practice of acupuncture in connection with the occurrence of patient safety incidents, this study will discuss two issues, namely regarding the authority of the Acupuncture Therapist in the practice of acupuncture treatment services based on Law No 36 of 2014 concerning Health Workers and the legal responsibility of the Acupuncture Therapist as health workers for patient safety incidents that occur in their professional practice in terms of Regulation of the Minister of Health No 34 of 2018 Concerning Permits and Implementation of Therapeutic Acupuncture Practices.

RESEARCH METHODS

This study uses a normative juridical method, is a descriptive analytical research that focuses on secondary data obtaining through legal regulations related to laws relating to the practice of acupuncture, the responsibilities of acupuncture therapists and the law of health workers which are then analyzed qualitatively.

¹²Firdaus Anwar, (2020), Kecelakaan Akupunktur, Paru-Paru Wanita Kolaps tertusuk Jarum, <https://health.detik.com/berita-detikhealth/d-4703164/kecelakaan-akupunktur-paru-paru-wanita-ini-kolaps-tertusuk-jarum>. [Accessed April 17, 2020].

DISCUSSION

The Authority of Acupuncture Therapists in the Practice of Acupuncture Treatment Services is based on Law No 36 of 2014 concerning Health Workers

A health worker is someone who takes formal and non-formal education to prevented, maintain and improve public health.¹³ The important role of health workers is to carry out health efforts through their knowledge, skills and education according to their abilities. Health workers in carrying out their functions have the task of registering health workers, conducting educational guidance, implementing health practice standards and competencies and upholding health discipline. Treatment with methods and drugs that refer to hereditary skills empirically and can be accounted for according to the norms prevailing in society are referred to as traditional health services. From the method of treatment, traditional health services are known by using skills and using ingredients, as described in Article 59 paragraph (1) of Law No 36 of 2009 concerning Health.

In Article 11 point (13) of Law No 36 of 2014 concerning Health Workers which states that the types of health workers included in traditional health workers are divided into traditional herbal health workers and skilled traditional health workers. Meanwhile, based on Article 11 paragraph (10) of Law no 36 of 2014 concerning health workers, therapist acupuncture is a physical therapy health worker. Called a physical therapist, because in practice a acupuncture therapists have skills in using special needles as a medium in treatment.

The form of the application of knowledge and ethics from a job is implied by the existence of skills and education in a profession. Acupuncture therapists are part of a group of health workers who have knowledge and/or skills through education in the health sector. The acupuncture therapist must have education and skills in the form of knowledge, skills and professional attitude. This skill is based on the method of using needles and recognizing the body's energy or *qi* as part of the practice.¹⁴ The use of needles has been known since the stone age, namely the use of needles to heal abscesses using stone needles.¹⁵ Finally in Indonesia, acupuncture treatment was applied in several hospitals in Indonesia.¹⁶ Finally, acupuncture science education was born which

¹³ Kurniati, Anna & Effendi, Ferry. (2012). *Kajian SDM Kesehatan di Indonesia*, Jakarta: Salemba Medika, p 3.

¹⁴ Lei, Men Jiuzhang, Guo. (2009), *A General Introduction to Traditional Chinese Medicine*, Florida: Science Press, p. 2

¹⁵ Wong, Master. (2010). *9 Terapi Pengobatan Terdahsyat*, Jakarta: Penebar Plus+, p. 5.

¹⁶ Yuningsih, Rahmi. (2012). "Pengobatan Tradisional di Unit Pelayanan Kesehatan". *dalam Info Singkat Kesejahteraan Sosial*, Vol IV, No 05/I/P3DI/Maret, p. 11.

was guided by a team of doctors from the People's Republic of China at the RSCM who developed into expert doctors in the field of acupuncture.¹⁷

To qualify, an acupuncture therapist must obtain a minimum education of diploma three and obtain a competency certificate to obtain a registration certificate in the form of STRAT and a practice license in the form of SIPAT in accordance with the provisions in Article 1 paragraph (1) of Law No 36 of 2014 concerning Health Workers. Therapeutic acupuncture is included in part of physical therapy health workers and also traditional health workers who use skills that are included in traditional health services that use skills.

Acupuncture treatment is included in empirical and complementary traditional health services as confirmed in Government Regulation No 103 of 2014 concerning Traditional Health Services. As a form of traditional health care, therapist acupuncture is studied from empirical traditional health services as a traditional healer who gains knowledge through non-formal education or from generation to generation as a promotive and preventive effort in health. Therapeutic acupuncture science is based on traditional Chinese science which studies points point of the human body or based on *Traditional Chinese Medicine*¹⁸ Because the role of the acupuncture therapist is as a traditional healer, based on the knowledge and expertise gained they accept clients or people who come for treatment with acupuncture therapis

An acupuncture therapist as a traditional healer must have an STPT or Traditional Healer Registered Letter as a written form. If deep in practice, traditional healers are unable to provide services in accordance with their knowledge and expertise, so traditional healers are obliged to send clients to existing health care facilities. In providing traditional health services, an acupuncture therapist as a traditional healer has rights in accordance with Article 28 paragraph (1) Government Regulation no 103 of 2014 concerned Traditional Health Services, namely to obtain completed and honest information from clients or their families, receiving compensation for services and participates in health promotion training. An acupuncture therapist as a traditional healer also has obligations in accordance with Article 28 paragraph (2) of Government Regulation No 103 of 2014 concerning Traditional Health Services, namely to provides safe and useful services for clients, provide clear and precise information for clients, use safe tools for health according to their knowledge, keep client secrets and make notes on the client's health status.

¹⁷Budi, Haryanto. (1987). *Sejarah Perkembangan Unit Akupunktur Rumah Sakit Cipto Mangunkusumo*, Jakarta: Cermin Dunia Kedokteran, p. 6.

¹⁸Men Jiuzhang, *Op. Cit*, p. 2.

Therapist Acupuncture as a complementary traditional health service acts as a traditional health worker who gains knowledge through education at least a diploma three as a promotive, preventive, curative and rehabilitative effort. As a form of competence, an acupuncture therapist as a traditional health worker must have a competency certificate by taking a competency test in accordance with statutory provisions. So to carried out the practice, each acupuncture therapist must have STRKTKT and SIPTKT. Acupuncture Therapists as traditional health workers who are unable to provide services in accordance with their competence and authority must refer patients/clients to health care facilities or other traditional health service facilities.

The rights and obligations of acupuncture therapists as traditional health workers are regulated in Article 29 paragraph (1) and paragraph (2) of Government Regulation No 103 of 2014 concerning Traditional Health Services. As for some of the rights of the acupuncture therapist described in the article, they are to obtain legal protection as long as they carry out their duties according to competency, operational and service standards; obtain honest and complete information from clients/patients and their families and receive fees for services. Meanwhile, the acupuncture therapist's obligation is to provide services according to standard standards, refer patients/clients who experience emergencies, keep everything confidential about patients/clients and add to knowledge and the development of complementary health sciences.

Professional attitude is defined in carrying out the practice of acupuncture treatment, an acupuncture therapist must provide health services in accordance with professional standards, professional service standards, standard operating procedures and professional ethics. The professional attitude of the acupuncture therapist is also determined through the acupuncture code of ethics. Acupuncture therapists as traditional healers and traditional health workers must comply with the acupuncture code of ethics as stipulated in Article 21 and Article 22 of Government Regulation No 103 of 2014 concerning Traditional Health Services. In this case, if there is a violation, the enforcement can be carried out together with the association of traditional healers for traditional healers (hereinafter in the provisions of Article 21 paragraph (2)) and for traditional health workers together with professional organizations of traditional health workers (hereinafter referred to in the provisions of Article 22 paragraph (2)).

Health morals possessed by acupuncture therapists as a form of the basic principles of health ethics. In accordance with the principle of *autonomy*¹⁹ an acupuncture therapist is obliged to provides the best information and service for patients, so that patients have the right to get information in accordance with existing circumstances.

¹⁹James C. Thomas. (2002). "A Code of Ethics for Public Health", *American Journal of Public Health* Vol.92 No.7, p. 2.

This relates to acupuncture therapists who must reveal the truth to patients in the form of objective information or *veracity*.²⁰

For example, an acupuncture therapist must explain in detail what is the problems in the patient's body, and which parts must be treated and what procedures must be passed using sentences that are easy for the patient to understand. An acupuncture therapist must strive to provide services to improve the patient's health so that risks that may arise can be reduced resulting in the maximum possible outcome for the patient. For example, a patient has numbness in the soles of his feet, and could not move his toes, after being properly diagnosed, an acupuncture therapist inserts needles according to the points on the soles of the patient's feet, without making a decision in the form of an estimate for the patient.

Acupuncture therapist must avoid actions that are detrimental to patients by seeking unnecessary actions. In this regard, the provisions in Article 58 of Law no 36 of 2014 concerning Health Workers also state that health workers can refer patients to other places that have the appropriate competence and authority. If an acupuncture therapist is out of his will to treat, the patient can be referred to a health care facility or other traditional health care facility. In Article 28 paragraph (2) point e and Article 29 paragraph (2) point c Government Regulation no 103 of 2014 concerning Traditional Health Services, an acupuncture therapist is also required to keep patient and disease data confidential or what is commonly referred to as the patient's medical record even to the patient's no treatment. As for Article 58 of Law No 36 of 2014 concerning Health Workers which states that every health worker is obliged to maintain the confidentiality of the health of the recipient of health services. It aims to establish an ethical trust between the patient and the acupuncture therapist that forms a legal relationship.

Acupuncture therapists are also required to maintain commitments made in the form of obedience and loyalty in work aim at improving health, preventing disease, restoring health and minimizing patient suffering. An acupuncture therapist must also be able to prioritize the interests of the patient rather than personal interests. The coding of ethics for acupuncture therapists in the second chapter, in the second point, which states that in carrying out its practice, an acupuncture therapist must prioritize the patient's interests over personal interests without being affected by the patient's *social* status, religion and politics.

As for the rights and obligations of acupuncture therapists as health workers, as described in general in Articles 57 and 58 of Law No 36 of 2014 concerning Health Workers. An acupuncture therapist as a health worker must also obtain legal protection

²⁰ *Ibid*

as long as carrying out duties in accordance with professional standards, professional service standards and standard operating procedures. In this case an acupuncture therapist who has carried out his duties according to standards but received a lawsuit for his actions for his mistakes can obtained legal protection through the Indonesian acupuncture organization association or other acupuncture therapist organizations.

In medical practice, an acupuncture therapist who has obtained complete information from the patient is also obliged to obtain consent from the patient and/or family for the action to be given by signing a consent letter for the action to be performed which will be kept by the acupuncture therapist as part of the records. medical. Based on the concept of examination in the world of professional medicine, the relationship between acupuncture therapists and clients/patients is a professional relationship. This is because acupuncture therapists are health workers who have standards and qualifications in terms of education that must be taken, as well as having an acupuncture therapist code of ethics that complies with applicable morals and laws.

An acupuncture therapist in practiced performs communication techniques which are a foundation owned by acupuncture therapists with clients/patients to carry out assessments on patients which include examination by observation, patient interviews/anamnesis and palpation/examination methods by determining the problematic body part according to the acupuncturist's authority therapist as stated in Article 16 of Law No 34 of 2018 concerning Permits and Implementation of Therapeutic Acupuncture Practices. From interviews with patients, a diagnosis process will be carried out. After getting a diagnosis, an acupuncture therapist carries out an acupuncture action plan in terms of planning which part will be treated and after obtaining the patient's consent and carrying out the treatment. At this stage after the patient's consent, an acupuncture therapist can perform acupuncture treatment on the patient's body. After the patient has been treated, an evaluation and documentation will be carried out through recording the treatment. Recording of treatment is carried out routinely, before the patient seeks treatment and after so that progress can be seen.

The legal responsibility of the Therapist Acupuncture as a Health Worker for Patient Safety Incidents that Occur in their Professional Practice is Reviewed from the Regulation of the Minister of Health No 34 of 2018 concerning Permits and Implementation of Therapeutic Acupuncture Practices.

Therapeutic acupuncture is a professional health worker who has professional standards in practice. In carrying out his professional practiced, acupuncture therapists used skills, expertise and also a professional attitude as a manifestation of health efforts, an acupuncture therapist also acts as a healer who treats clients/patients. Based on Book

III of the Civil Code, it is stated that a legal relationship or what is known as an engagement can arise either because of obligations based on an agreement or obligations under the provisions of the applicable law.

Legally relations occurring due to obligations based on engagements and/or obligations based on applicable laws. If there is a violation of the obligations of an agreement, the violators must fulfill the obligations under the applicable agreement. Meanwhile, if there is an error or negligence towards the obligations determined by the applicable law, then the one who committed it has committed an unlawful act. The relationship between the acupuncture therapist and the patient is created on a relationship based on trust between the client/patient and the intended acupuncture therapist. The relationship between the acupuncture therapist and the client/patient creates a legal relationship between the two. The legal relationship gives rise to legal responsibilities that must be held tightly by the acupuncture therapist and also the client/patient, bearing in mind that there are mutually reinforcing rights and obligations. Responsibility is defined as a bond between a person and another person.²¹ Responsibility is closely related to the legal obligations that a person has.²²

The emergence of a legal relationship between the acupuncture therapist and the client/patient is due to an obligation based on the agreement between the acupuncture therapist and the client/patient. The agreement between the acupuncture therapist and the client/patient occurs when the client/patient agrees to a treatment action to be carried out by an acupuncture therapist that the acupuncture therapist can exercise its authority in the form of conducting acupuncture assessments, concludes the resulted of acupuncture assessments, planning acupuncture actions to carrying out acupuncture therapeutic actions with existing competencies and conducting evaluations and documentation for clients/patients in accordance with Article 16 of Law No 34 of 2018 concerning Permits and Implementation of Therapeutic Acupuncture Practices.

As professional health workers, acupuncture therapists must prioritize patient safety in carry out treatment in their professional practice as a manifestation of health efforts. Based on the Regulation of the Minister of Health No 11 of 2017 concerning Patient Safety, a system regarding patient safety is carried out to minimize risks and prevent injury to patients which causes an incident patient safety. The patient safety system has the goal of improving patient safety culture, avoiding unwanted events, implementing prevention programs so that unwanted incidents do not occur.

²¹ Komalawati, Veronica. (1989), *Hukum dan Etika Dalam Praktek Dokter*, Jakarta: Pustaka Sinar Harapan, p. 100.

²² Triwulan, Titik & Febrian, Shinta. (2010), *Perlindungan Hukum bagi Pasien*, Jakarta: Prestasi Pustaka, p. 48.

Patient safety can be realized if there are patient safety goals that are realized in accordance with Article 5 paragraph (4) of the Minister of Health Regulation No 11 of 2017 concerning Patient Safety through proper patient identification, improving effective communication, increasing awareness of drugs and methods performed, ensuring the location of procedures performed in treatment, minimizing the risk of infection due to health care and reducing the risk of client/patient injury. In treatment services, an acupuncture therapist must establish effective communication with clients/patients, one of which is by conducting two-way communication by listening to client/patient complaints, answering questions and explaining the existing situation, and also providing advice to clients/patients so that clients/patients can understand the procedures in the treatment to be received.

In the agreement, a client/patient has the right to obtain information about health problems experienced and can also ask questions for things that are not understood as stated in Article 20 paragraph (1) point c of Law No 34 of 2018 concerning Licenses and Implementation of Acupuncture Therapist Practices and Article 7 paragraph (2) point c of the Minister of Health Regulation No 11 of 2017 concerning Patient Safety. Meanwhile, the legal relationship due to the existence of obligations based on applicable laws is based on voluntary actions (*zaakawerning*). Voluntary actions occur indirectly when a client/patient who comes for treatment to an acupuncture therapist he trusts binds himself to the acupuncture therapist. In this case, an acupuncturist also binds obligations as a traditional health worker in performing traditional medicine services to clients/patients in their professional practice.

The rights and obligations possessed by acupuncture therapists give birth to legal responsibilities. If an acupuncture therapist commits an act that is contrary and causes harm to others, then he is responsible or obliged to compensate for the loss. Conflicting actions in this case are forms of actions that conflict with the authority, rights and obligations of acupuncture therapists as described in Article 16, Article 19 and Article 20 of Law No 34 of 2018 concerning Licenses and Implementation of Acupuncture Therapist Practices.

Patient Safety or *Keselamatan Pasien* is *freedom from accidental injury*²³ The existence of an *accidental injury* can occur due to a failed plan that causes unwanted events²⁴ In each treatment, risks in the form of potential medical errors can occur which are referred to as Near Miss or Unexpected Events (KTD).²⁵ Based on Article 1 paragraph (2) of the

²³ Kamil, Hajju. (2010). "Patient Safety", *Idea Nursing Journal* Vol 1 No 01, p. 1.

²⁴ Ismaniar, Hetty. (2015), *Keselamatan Pasien Rumah Sakit*, Yogyakarta: CV Budi Utama, p. 2.

²⁵ Cahyono, Agung. (2015). "Hubungan Karakteristik dan Tingkat Pengetahuan Perawat terhadap Pengelolaan Keselamatan Pasien di Rumah Sakit," *Jurnal Ilmiah Widya*, Vol 3 No 2, p. 97

Minister of Health Regulation No 11 of 2017 concerning Patient Safety, a patient safety incident is defined as an unintentional event and condition that results in or has the potential to result in preventable injury to a patient.

In terms of patient safety incidents, recording and reporting are things that must be done by all health workers by forming a National Patient Safety Committee as stated in Article 5 of the Minister of Health Regulation No 11 of 2017 concerning Patient Safety. An acupuncture therapist in practicing his profession is required to keep records and reports which are stored and reported periodically to the district/city Regional Government health office as stated in Article 18 of Law No 34 of 2018 concerning Permits and Implementation of Therapeutic Acupuncture Practices.

Patient safety incidents can occur due to individual characteristics of medical services, the nature of work, the physical environment, the interaction between systems and humans, organization, social environment, management.²⁶ Patient safety incidents that occur in the practice of acupuncture treatment performed by an acupuncture therapist can occur due to internal factors and external factors. Internal factors that occur in acupuncture therapists such as physical activity disorders in an acupuncture therapist, for example, there is a factor of physical fatigue so that there is weakness in the form of difficulty focusing on activities so that it can result in negligence or carelessness. In addition to these factors, external factors such as the low level of patient safety culture with the lack of socialization regarding patient safety incidents so that only a few are reported and the lack of response from the institutions involved in reporting incidents.

An acupuncture therapist has the authority and obligations that must be carried out, as stated in Article 16 and Article 20 of Law No 34 of 2018 concerning Permits and Implementation of Therapeutic Acupuncture Practices. If an acupuncture therapist commits a violation of obligations arising from an agreement that results in a patient safety incident, then an acupuncture therapist commits a mistake or negligence and is obliged to fulfill the obligations based on the agreement.

The case with Mawan's case in Lumajang, Mawan, who after received treatment from an acupuncture therapist, suffered injuries in the form of difficulty breathing, convulsions and died. It was stated that an unexpected event had occurred or an adverse event that caused a sentinel event in the patient that caused the patient to die. After further investigation, the acupuncture therapist who practices is an assistant to an acupuncture therapist who is usually trusted by the Mawan family. It turned out that

²⁶Dara T, Arfella. (2018). "Evaluasi Sistem Pelaporan Insiden Keselamatan Pasien Rumah Sakit", *Jurnal Administrasi Kesehatan*, Vol 06 No 2, p. 86.

this assistant acupuncture therapist did not have sufficient qualifications or educational standards in his practice nor did he have a license to practice. This case the perpetrator can be held accountable for the element of deliberate error as stipulated in Article 1365 of the Civil Code.

In the Mawan case, between the Mawan family (as the client/patient family) an agreement had been made with the acupuncture therapist (as a medicine) in dealing with the Mawan case. The agreement that arose resulted in a patient safety incident that was caused by an error, which Mawan should have treated with an ordinary needle, but an electromagnetic needle from an electric current was used, which was carried out by someone who did not have an Acupuncture Practice Permit, namely an Assistant Acupuncture Therapist that the Mawan family usually entrusted. .

The article 1365 of the Civil Code states that the element of intent includes awareness, the consequences of the actions committed. This is because in practice, the perpetrator has committed an element of intent, in the sense that there is awareness or state of mind of the perpetrator in carrying out his actions. The perpetrator in this case knows that the actions taken can lead to consequences. There was an act that was done intentionally, namely when treating Mawan, there was an element of error in the form of non-fulfillment of educational standards or qualifications in the field of acupuncture therapist and license to practice resulting in the death of the patient being handled who was outside of his authority and ability.

Even though a valid acupuncture therapist should have a minimum education standard of diploma three, pass a competency exam and obtain a Therapeutic Acupuncture Registration Certificate (STRAT) and A Therapeutic Acupuncture Practice License (SIPAT) which must be renewed every 5 years if you wish to continue practicing medicine.

In terms of standard procedures, standard operational practices that should be carried out in accordance with the rights and obligations of acupuncture therapists are also not well realized. This led to a causal relationship between the mistakes made by the perpetrator and the loss suffered by the family, namely the loss of Mawan's life at the hands of an acupuncture therapist who did not have the qualifications and license to practice. In this case it is in accordance with the principle of accountability based on the presence of an element of error.

If an acupuncture therapist makes a mistake or neglected an obligation determined by law, it means that he made a mistake or omission based on an illegal act. Negligence in this case is defined as not doing what should be done/lack of caution. An acupuncture therapist who practices medicine and carries out patient safety incidents due to negligence or carelessness can be held liable according to liability for unlawful acts or

onrechtmatige daad This is because it is contrary to decency and prudence and contrary to the legal rights and obligations of the offender.

This is related to the second case, namely when an acupuncture therapist inserted an acupuncture needle at a point called *jian jing* which is only 10-20 millimeters from the lung. After receiving the acupuncture treatment, the client/patient experiences left chest pain, difficulty breathing and feels numb. This causes an unexpected event that causes injury to the patient. In this case, the acupuncture therapist as a treatment has a license to practice that is recognized, meets the standards, but in practice, he commits negligence or carelessness. This negligence occurs when an acupuncture therapist inserts a needle into a point on the client's/patient's body that is not quite right, causing injury to the patient.

There are three principles of legal liability, namely based on elements of fault or *fault liability*, the presumption of always being responsible or the *rebuttable presumption of liability principle* and the principle of absolute responsibility in a state of not being blamed or *strict liability*.²⁷ From the case above, it can be analyzed that an acupuncture therapist can be held accountable for the principle of presumption to always be responsible that an acupuncture therapist must be able to prove that he or she actually made a mistake due to negligence committed with the exception of coercive circumstances in the treatment services performed. So based on the provisions of article 1366 of the Civil Code, an acupuncture therapist can be held accountable by proving that his actions are proven to have neglected something that was done, there is a precautionary duty that is being ignored, there is evidence of not carrying out the obligation to be careful, there is evidence of causing harm to other people. and also the causes and consequences of existing actions and losses.

Acupuncture therapists as a traditional medicine, have an obligations to be careful in using acupuncture needles, namely by taking into account the needles that are inserted into the patient's body and the risks that will be accepted as a form of acupuncture competence and expertise in practicing their profession. This risk should have been estimated by an acupuncture therapist, because it is an acupuncture therapist's obligation to minimize the risk of injury to patients receiving treatment. This causes harm to the patient, even though it is not fatal to death, but the patient observes an injury in the form of a *bilateral apical pneumothorax*.

An acupuncture therapist can also be hold responsible for medical services that cause patient safety incidents caused by other parties and can be in the form of goods under his supervision which are absolute responsibility (without fault) in accordance

²⁷ Muhammad, Abdulkadir. (2000). *Hukum Perdata Indonesia*, Bandung: PT Citra Aditya Bakti, p. 23.3

with Article 1367 of the Civil Code. That an acupuncture therapist who performs treatment and causes patient safety incidents must be held accountable, including for goods and services other parties under his supervision. However, if under forced circumstances an acupuncture therapist cannot be blamed. Several doctors in countries such as China, Malaysia, Thailand and other European countries have recognized the *Apitherapy* method as an acupuncture treatment.²⁸ In the case of *Apitherapy* which was previously mentioned, an acupuncture therapist performs a treatment technique using bee stings as a treatment method that is commonly practiced and has been recognized for its existence. In such cases, an acupuncture therapist who causes a patient safety incident can be held liable based on mistakes made by other parties as well as items under his control. In this case, an acupuncture therapist is responsible for the item, namely the needle used in the treatment method.

If an acupuncture therapist used acupuncture needles that are not sterile or uses the same needle for different patients and caused infections and swelling in the patient, then this is an illegal act. This is because there is an element of unlawful act committed which is contrary to the legal obligations of the acupuncture therapist in carrying out his professional practice which must comply with professional standards, standard operating procedures and professional code of ethics based on Article 20 paragraph (1) point f of Law No 34 of 2018 concerning Licensing and Implementation of Therapeutic Acupuncture Practices.

If an acupuncture therapist uses acupuncture needles that are not sterile or uses the same needle for different patients and causes infection and swelling in the patient, then this is an illegal act. This is because there is an element of unlawful act committed which is contrary to the legal obligations of the acupuncture therapist in carrying out his professional practice which must comply with professional standards, standard operating procedures and professional code of ethics based on Article 20 paragraph (1) point f of Law No 34 of 2018 concerning Licensing and Implementation of Therapeutic Acupuncture Practices.²⁹ Acupuncture therapists who carry out patient safety incidents due to elements of negligence or carelessness must pay compensation to clients/ patients or their families, as stipulated in Articles 1365, 1366, 1367 of the Civil Code. However, as part of the rights and obligations of an acupuncture therapist based on Article 19 point e of Law no 34 of 2018 concerning Permits and Implementation of Therapeutic Acupuncture Practices, an acupuncture therapist also has the right to obtain guaranteed

²⁸Fang Zhu & Siriwat. (2008). "A Brief Introduction of Apitherapy Health Care", *Journal of Thai Traditional and Alternative Medicine*, Vol 6 No 8.

²⁹Fuady, Muniar. (2010). *Perbuatan Melawan Hukum Pendekatan Kontemporer*, Bandung: PT Citra Aditya Bakti, p. 3.

protection against occupational risks related to his duties in accordance with the provisions legislation.

The acupuncture therapist professional organizationed in this cases, has the authority to carried out guidance and supervision aimed at improving the quality of acupuncture services, client/patient safety and protecting the public from all possibilities that may pose a danger to health. An acupuncture therapist who takes action in the form of a violation of the provisions for the professional practice of Therapeutic Acupuncture as outlined in Law no 34 of 2018 concerning Permits and Implementation of Acupuncture Practices.

Therapists, their actions can be given administrative action in the form of verbal warnings, written warnings and revocation of SIPAT which are carried out in accordance with the authority of each party.

CONCLUSIONS

Based on the discussion above, it can be concluded that the Authority of the Acupuncture Therapist in the practices of acupuncture treatment services is in accordance with the competency of his expertise as a traditional health worker whose skills are proven by STRAT. STRAT is obtained after obtaining a competency certificate through a competency exam so that you can have SIPAT. The existence of certification that must be carried out by an acupuncturist shows that acupuncture health workers are traditional health workers as recognized in Law No 36 of 2014 concerning Health Workers, as health workers, acupuncture therapists must comply with the acupuncture therapist code of ethics which contains professional guideline for having an Indonesian Acupuncture Therapist Council which is responsible for provides moral and behavioral guidance to acupuncture therapists.

The legal responsibility of acupuncture therapists as health workers for patient safety incidents if they cause harm, in their actions can be held accountable based on the principles of liability for mistakes as stipulated in articles 1365, 1366 and 1367 of the Civil Code concerning unlawful acts. Whereas based on Law No 34 of 2018, if there is an error resulting from the use of a tool that causes harm to the patient, the acupuncture therapist is obliged to restore the patient's condition to completion, pay compensation to the client/patient and/or the client/patient's family and also accepted sanctions administration in the form of revocation of license to practices.

It is better if there is socialization regards acupuncture treatment services to the community so that the community knows the standard of services for adequate acupuncture practices, and if an incident occurs, the community has the right to reported

to professional organizations and also be selective in choosing an acupuncture therapist who has an official and registered license to practices.

REFERENCES

Books

- Budi, Haryanto. (1987). *Sejarah Perkembangan Unit Akupunktur Rumah Sakit Cipto Mangunkusumo*, Jakarta: Cermin Dunia Kedokteran.
- Fuady, Muniar. (2010). *Perbuatan Melawan Hukum Pendekatan Kontemporer*, Bandung: PT Citra Aditya Bakti.
- Harlan, Johan. (2009). *Akupunktur Kebidanan*. Depok: Gunadarma.
- Ismaniar, Hetty. (2015). *Keselamatan Pasien Rumah Sakit*. Yogyakarta: CV Budi Utama.
- Komalawati, Veronica. (1989). *Hukum dan Etika Dalam Praktek Dokter*. Jakarta: Pustaka Sinar Harapan.
- _____. (1999). *Peranan Informed Consent dalam Transaksi Teraeupetik*. Bandung: Citra Bakti.
- Kang, Michael Ching Kwei. (2010). *Foundations of Traditional Chinese Medicine*. United Stated of America: Creat Space.
- Kurniati, Anna & Effendi, Ferry. (2012). *Kajian SDM Kesehatan di Indonesia*. Jakarta: Salemba Medika.
- Lei, Men Jiuzhang, Guo. (2009). *A General Introduction to Traditional Chinese Medicine*. Florida: Science Press.
- Muhammad, Abdulkadir. (2000). *Hukum Perdata Indonesia*, Bandung: PT Citra Aditya Bakti.
- Saputra, Koesnadi. (2017). *Akupunktur Dasar*. Surabaya: Airlangga University Press.
- Triwulan, Titik & Febrian, Shinta. (2010). *Perlindungan Hukum bagi Pasien*. Jakarta: Prestasi Pustaka.
- Wong, Master. (2010). *9 Terapi Pengobatan Terdahsyat*. Jakarta: Penebar Plus+.

Journal

- Cahyono, Agung. (2015). "Hubungan Karakteristik dan Tingkat Pengetahuan Perawat terhadap Pengelolaan Keselamatan Pasien di Rumah Sakit," *Jurnal Ilmiah Widya*, Vol 3 No 2.
- Dara T, Arfella. (2018). "Evaluasi Sistem Pelaporan Insiden Keselamatan Pasien Rumah Sakit", *Jurnal Administrasi Kesehatan*, Vol 06 No 2.
- Fang Zhu & Siriwat. (2008). "A Brief Introduction of Apitherapy Health Care", *Journal of Thai Traditional and Alternative Medicine*, Vol 6 No 8.

- Hajjul Kamil, "Patient Safety", *Idea Nursing Journal*, Vol 1 No 01. James C. Thomas. (2002). "A Code of Ethics for Public Health", *American Journal of Public Health*, Vol.92 No.7.
- Kartika, Dian. (2016). "Pelayanan Kesehatan Tradisional dan Perlindungan Hukum Bagi Pasien", *SOEPRA Jurnal Hukum Kesehatan*, Vol.2, No.1.
- Setyoningsih, Ayu. (2016). "Pemilihan Penyembuhan Penyakit melalui Pengobatan tradisional Medis dan non Medis" *Masyarakat, Kebudayaan dan Politik*, Vol.29, No.1.
- Yuningsih, Rahmi. (2012). "Pengobatan Tradisional di Unit Pelayanan kesehatan". *dalam Info Singkat Kesejahteraan Sosial*, Vol IV, No. 05/I/P3DI/Maret.

Law and Regulation

- Undang-Undang Kesehatan Nomor 36 Tahun 2009 tentang Kesehatan.
- Undang-Undang Nomor 36 tahun 2014 tentang Tenaga Kesehatan
- Peraturan Pemerintah Nomor 103 tahun 2014 tentang Pelayanan Kesehatan Tradisional.
- Peraturan Menteri Kesehatan Republik Indonesia nomor 11 tahun 2017 tentang Keselamatan Pasien.
- Peraturan Menteri Kesehatan Nomor 34 tahun 2018 tentang Izin dan Penyelenggaraan Praktik Akupunktur Terapis.

Other Resources

- David Priyasidharta, Stun the Patient to Death, Shaman 'Acupuncture' be Arrested, <https://nasional.tempo.co/read/278410/setrum-pasien-hingga-tewas-dukun-akupuntur-ditangkap>. [Accessed January 17, 2020].
- Firdaus Anwar, Acupuncture Accident, Collapsed Woman's Lung Pierced by Needle, <https://health.detik.com/berita-detikhealth/d-4703164/kecelakaan-akupuntur-paru-paru-wanita-ini-kolaps-tertusuk-jarum>. [Accessed April 17, 2020].
- Gloria Setyvani Putri, This Woman Died from Bee Acupuncture, a Lesson for Us, <https://sains.kompas.com/read/2018/03/19/170300123/wanita-ini-meninggal-akibat-akupunktur-lebah-ini-pelajaran-untuk-kita?page=all>. [Accessed January 2017, 2020].
- Tim Penulis CNN Indonesia, 5 Side Effects of Acupuncture: Fatigue to Bruises, <https://www.cnnindonesia.com/gaya-hidup/20200228103427-255-478996/5-efek-samping-akupunktur-kelelahan-hingga-memar>. [Accessed, April 17, 2020].