

Review Article: Narrative Review

JURIDICAL OVERVIEW OF MEDICAL TELECONSULTATION PRACTICE DURING THE COVID-19 PANDEMIC: A NARRATIVE REVIEW

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Abstract

The mandate of the 1945 Constitution, that everyone has the right to live in physical and spiritual prosperity, to live and to have a good and healthy living environment, and the right to obtain health services while the ratio or comparison of health workers in this case doctors and the population in Indonesia is not balanced or not at the ideal number. In order to equalize the rights of citizens to obtain adequate and standard health services, the government issued a regulation on telemedicine in this case more often referred to as teleconsultation. Especially in this era of the Covid-19 pandemic, these services are very helpful for the community, so that their health conditions are monitored. It is hoped that services using information and communication technology facilities will have a good impact as well as conventional medical services and still pay attention to the rights and responsibilities of both parties and do not cause losses in their implementation, the preparation of this research uses the type of normative research. The materials for this research come from laws and regulations, regulations issued by the Minister of Health, the Civil Code, as well as other relevant sources.

Keywords: *Telemedicine, Teleconsultation, Accountability.*

INTRODUCTION

The world of Medicine and Health is currently experiencing a period of very rapid progress, this is triggered because the world is experiencing the Covid-19 outbreak. This incident indirectly forced the health world to move towards the industrial revolution 4.0, which puts forward the advancement of communication and information technology.

Based on the Constitution of the Republic of Indonesia article 1 paragraph (3) states that the Indonesian state is a state of law, then all fields of life, society, nation and state must be

in order and based on law. Likewise, when we talk about the world of health.

According to Article 28 letter (F) of the Constitution that "Everyone has the right to communicate and obtain information to develop their personal and social environment, and has the right to seek, obtain, possess, store, process and convey information by using all types of available channels". Article 28 letter (H) paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that "Everyone has the right to live in physical and spiritual prosperity, to live and to have a good and

healthy living environment, and to have the right to health services".

Based on the above regulations, that health services are evenly distributed throughout Indonesia, both using conventional methods and by using information and communication technology is a manifestation of the fulfillment of human rights.

The total population of Indonesia based on data from the Central Statistics Agency obtained from the results of the population census in 2020 is 270.20 million people. With Indonesia's land area of 1.9 million km², the population density of Indonesia is 141 people per km². If we talk about the ratio of doctors to the population of Indonesia, according to IDI (Indonesian Doctors Association), 1:1400. According to WHO, the ideal ratio is 1:1000.

One of the efforts so that all people get equal service, then in 2017, the Minister of Health Prof. Dr. Nila Djuwita Farid Anfasa Moeloek, SpM(K) issued a Decree of the Minister of Health of the Republic of Indonesia Number HK.01.07/MENKES/650/2017 concerning Hospitals and Health Centers Conducting Telemedicine Service Program Trials. This rule serves as a guideline for the implementation of telemedicine trials. The follow-up to the implementation of telemedicine is the issuance of Minister of Health Regulation Number 20 of 2019 concerning the Implementation of Telemedicine Services between Health Service Facilities.

The definition of telemedicine according to WHO (World Health Organization) is the use of information and communication technology in health services that is used for diagnosis, prevention and evaluation of the health condition of a person who is located far from a health facility. The category of telemedicine services is based on the Minister of Health Regulation Number 20 of 2019 concerning the Implementation of Telemedicine Services between Health Service Facilities, including Teleradiology, Tele-electrocardiography, Tele-ultrasonography, Teleconsultation, and other

telemedicine consulting services aimed at gaining expertise in terms of diagnosis.

There are two concepts in the implementation of telemedicine, namely real time (synchronous) and store-and-forward (asynchronous). Synchronous telemedicine or real time requires the presence of both parties during the interaction. Meanwhile, asynchronous telemedicine only requires medical data, then the doctor evaluates it offline.

Regarding this telemedicine, the Indonesian Doctors Association (IDI) explained further, namely *teleexpertise*, which connects general practitioners with specialists or between specialists, for example teleradiology; *teleconsultation*, that connects patients and doctors; *telemonitoring*, which is used by health workers to virtually request various parameters of the patient's body; *tele-assistant*, used to provide direction to patients for example in the rehabilitation process; and *tele-robotic/ tele-intervention* remotely controlling a robot in a telesurgery.

Telemedicine services are supported by the Indonesian Doctors Association (IDI) which focuses on empowering patients and improving health services but not replacing standardized health services.

The practice of telemedicine has recently mushroomed due to the Covid-19 outbreak due to restrictions on community activities. Likewise, health services are also limited in visitors and are more focused on Covid-19 patients.

One of the most widely used types of telemedicine by health services, both hospitals and private doctors, is teleconsultation. This service allows doctors to make diagnoses to remote prescribing quite easily. This is regulated in the regulation of the Minister of Health Number 20 Number 20 of 2019 concerning the Implementation of Telemedicine between Health Service Facilities, which can be done in writing, voice and/or video. This convenience often raises the question, can a doctor's diagnosis be as sharp as a direct examination? Another question is

whether the data sent by patients via whatsapp or zoom is not feared to be hacked by irresponsible parties? Then what about the approval of the medical action? (Informed Consent) considering that the relationship between doctor and patient is a therapeutic relationship. During this Covid-19 pandemic, the Indonesian Medical Council Regulation No. 74 of 2020 emerged regarding Clinical Authority and Medical Practice through Telemedicine during the Corona Virus Disease 2019 (COVID-19) Pandemic in Indonesia.

What is even more interesting is what happens if there is a loss from this teleconsultation practice, because according to article 1365 of the Civil Code it states that "every act against the law that causes harm to another person, obliges the person because of his mistake in publishing the loss, to compensate for the loss". However, if you look closely, the existing rules only regulate the procedure for its implementation. In fact, there should be a difference between the practice of medicine in telemedicine and the practice of a doctor, which is seen from the medical, ethical and legal aspects. It is hoped that the rules regarding health law, consumer protection law, civil law, and rules regarding teleconsultation are the basis for analyzing the problems in this paper.

DEVELOPMENT

The preparation of this research uses the type of normative research. The materials for this research come from laws and regulations, regulations issued by the Minister of Health, the Civil Code, as well as other relevant sources such as Google Scholar. Using library material sources from 2012 to 2022 and telemedicine, teleconsultation topic. The approach used is a statutory approach and a conceptual approach. After collecting the materials, classification is carried out for processing materials and then analysis is carried out. Analysis of legal materials uses analytical descriptive studies, namely analyzing legal concepts contained in regulations.

DISCUSSION

Responsibilities of Teleconsultation in A Civil Law Perspective

Accountability comes from the word responsibility, responsibility is the state of being obliged to bear everything, according to the Big Indonesian Dictionary (KKBI). Whereas in the legal dictionary, responsibility is a must for someone to carry out what has been ordered to him. Accountability must have a basis, namely things that cause the emergence of a legal right for someone to give accountability. The concept of responsibility was also put forward by Hans Kelsen "a person is legally responsible for a certain act or that he bears legal responsibility". Martono divides responsibility into three things that can be said to be different in terms of understanding, namely responsibility in the context of accountability, responsibility and liability. Responsibility in the context of accountability means responsibilities related to trust, for example an employee must be responsible for his financial statements. Responsibility in the context of responsibility is responsibility in the sense of public law, for example, perpetrators in criminal law cases must be held accountable for their actions. And finally, responsibility in the context of liability is responsibility in a civil sense or commonly referred to as accountability, the meaning here is the obligation to pay losses for losses for the suffering suffered by the victim.

According to Peter Mahmud Marzuki, the notion of liability is associated with accountability (aansprakelijkheid) which is a specific form of responsibility. Liability itself refers to the position of a person or legal entity that is deemed to have to pay some form of compensation or compensation after a legal event or legal action occurs.

In the context of civil law, liability is also known as liability because the scope of responsibility is the scope of private law. In article 1365 of the Civil Code it is explained "every act against the law that brings harm to another person, obliges the person because of

his mistake to issue the loss, compensate for the loss".

In health law, the sentence of responsibility is usually used when explaining disputes regarding medical crimes such as malpractice acts committed by a doctor. Meanwhile, when explaining the doctor's professional error (medical malpractice) or the hospital's responsibility for the doctor's professional error in relation to medical services, the term liability is used.

To determine the responsibility of the doctor or the responsibility of the hospital as the organizer in a case that occurs in the practice of teleconsultation, it is a casuistic matter for that we must know what the rights and obligations of each party are in the practice of teleconsultation itself. Because basically the legal relationship between doctors and hospitals arises because of a therapeutic agreement. The definition of a therapeutic agreement is an agreement made between a doctor and health worker with a patient, in the form of a legal relationship that gives birth to rights and obligations for both parties.

Responsibilities of Teleconsultation in The Perspective of Health Law

Health Law is all the legal rules and legal standing relationships that directly develop with or determine the health situation in which humans are located.

When it comes to responsibility, the applicable provisions are Article 58 of Law Number 36 of 2009 concerning Health, 1365 of the Civil Code (Article 1401 BW) regarding provisions for unlawful acts. To be able to file a lawsuit based on an unlawful act, 4 (four) conditions must be met as stated in Article 1365 of the Civil Code, the patient must suffer a loss, there are errors or omissions (besides individuals, hospitals can also be responsible for errors or omissions of their employees), there is a causal relationship between loss and error, the act is against the law.

To find out how the form of responsibility in the practice of teleconsultation based on the legal aspects of health, we must

know the rights and obligations arising from the therapeutic agreement. Articles 50 and 51 of Law Number 29 of 2004 concerning Medical Practices regulate the rights and obligations of doctors in general:

Doctors or dentists in carrying out medical practice have the right to obtain legal protection as long as carrying out duties in accordance with professional standards and standard operating procedures. Provide medical services according to professional standards and standard operating procedures. Provide medical services according to professional standards and standard operating procedures and receive service fee.

Doctors or dentists in carrying out medical practice have an obligation to provide medical services in accordance with professional standards and standard operating procedures as well as the patient's medical needs. Refer the patient to another doctor or dentist who has better skills or abilities, if unable to carry out an examination or treatment. Keep everything they know about the patient, even after the patient dies. Carry out emergency assistance on a humanitarian basis, unless he is sure that someone else is on duty and capable of doing it and increase knowledge and follow the development of medical science or dentistry.

The Indonesian Medical Code of Ethics regulates the obligations of doctors like General obligations, Obligations of doctors to patients, Obligations of doctors to colleagues and the doctor's duty to himself.

Doctors can be held accountable if the doctor has made a medical error, such as making an attempt that deviates or is not in accordance with what was promised. Hospitals as service providers in teleconsultation services also have rights and obligations in carrying out the therapeutic agreement.

In the Minister of Health Regulation Number 20 of 2019 concerning the Implementation of Telemedicine between Health Service Facilities Article 7 paragraph 1 it is stated:

The Consulting Health Service Facility as referred to in Article 5 has the following duties

like determine human resources in implementing Telemedicine Services, establish standard operating procedures for Telemedicine Services through the decision of the head/hospital director, documenting Telemedicine Services in medical records in accordance with the provisions of laws and regulations and respond to any complaints, suggestions or criticisms on Telemedicine Services from the Health Facilities Requesting Consultation.

Then it is further stated in Article 17 paragraph (2), Health Service Facilities Consultants in carrying out Telemedicine Services have an obligation delivering consultation answers and/or providing Expertise according to standards, maintain the confidentiality of patient data, provide correct, clear, accountable, and honest information regarding the results of consultations and/or expertise and provide consultation time 24 (twenty four) hours a day, 7 (seven) days a week.

In practice, the guidelines used in the implementation of teleconsultation are the Minister of Health Regulation Number 20 of 2019 concerning the Implementation of Telemedicine Services between Health Service Facilities. During the Covid-19 pandemic, the Indonesian Medical Council issued Regulation of the Indonesian Medical Council Number 74 of 2020 concerning Clinical Authority and Medical Practice through Telemedicine during the Corona Virus Disease 2019 (COVID-19) Pandemic in Indonesia. These rules contain things that should and should not be done during all types of telemedicine practices, including consultation or teleconsultation services provided by Doctors and Dentists by applying the principle of patient confidentiality. It is carried out in the form of an online mode of writing, voice and or live video to obtain the information needed in the context of establishing a diagnosis, as well as the management and treatment of patients in accordance with the provisions of laws and regulations. Doctors and Dentists who carry out Medical Practice through Telemedicine must

assess the patient's worthiness in accordance with their competence and authority. Doctors and dentists who practice medicine through telemedicine are required to make medical records. Doctors and Dentists can carry out diagnosis and management of supporting examinations in the form of laboratory, imaging/radio image, therapy, and recorded in the medical record with the exception of prescription narcotics and psychotropics. Doctors, specialist doctors, or specialist doctors, sub-specialists are obligated to gain additional knowledge through materials issued by collegiums, professional organizations, universities, and/or ministries that administer government affairs in the health sector.

Furthermore, Article 9 of Perkonsil 74 of 2020 contains several things about prohibitions that should not be carried out in the telemedicine process, namely:

Doctors and Dentists who practice Medicine through Telemedicine are prohibited from doing teleconsultation between medical personnel and patients directly without going through Health Service Facilities. Provide a dishonest, unethical, and inadequate explanation to the patient or his family. Diagnosing and treating outside of their competence. Request irrelevant supporting examination. Performing disgraceful acts, acts of intimidation or acts of violence against patients in the implementation of medical practice. Perform invasive procedures via teleconsultation. Withdraw fees other than the rates set by the Health Service Facility and/or provide a health certificate.

From some of the descriptions above, it can be said that in the perspective of health law, the practice of teleconsultation is not only responsible for the doctor as the executor, but also the teleconsultation service provider facilities can also be held responsible, considering that in the council it is stated that a doctor is prohibited from conducting teleconsultation directly to patients without going through facilities health services. So that third parties should ask for accountability when a lawsuit or complaint occurs not entirely

imposed on the doctor, but the health service facilities also take part in the responsibility. So if there is a lawsuit from the patient due to the practice of teleconsultation, the health service facility must take part in being responsible to the patient.

Responsibilities of Teleconsulting in the Legal Perspective of Consumer Protection

Patients are consumers of service users in teleconsultation services, while doctors and health care facilities can be categorized as actors in the service sector. However, this relationship cannot be equated with consumer relations and the service sector in general, because the relationship between patient and doctor is a unique relationship. In this relationship, it includes ethical relations, legal relations, economic relations, and social relations. These relationships provide a different view of the patient. According to M. Sofyan Lubis "Patients cannot legally be identified with consumers, this is because the relationship that occurs between them is not a buying and selling relationship regulated in the Civil Code and the Commercial Code, but the relationship between doctors and patients is only a form of medical engagement. , namely an "effort" agreement (inspanning verbintenis) to be precise a healing business agreement (therapeutic), not a "result" medical agreement (resultaat verbintenis), besides that the medical profession in medical ethics still adheres to the principle of "devotion and humanity", so it is difficult to equate between patients and consumers in general. Therefore, the Undnag Health uses the term patient, not consumer. Here are a few things to compare to subject (People or business entities are users of goods and/or services. While the patient is a person but not a business entity, because health cannot be represented to a business entity or other person even though both are users of goods and/or services), user (It is stated in the Consumer Protection Law that consumers are final consumers. This means that consumers do not always have to pay a certain amount of money to get certain goods and/or services. The

relationship between the two does not need to be contractual. Meanwhile, patients who are also users/users of the last goods and services in obtaining health services require an agreement called a therapeutic agreement), and Availability (Consumer Protection Law Number 8 of 1999 Article 9 paragraph (1) letter e states that the goods and/or services offered to the public must be available. But nowadays, these requirements are no longer absolutely demanded by consumers, for example, a developer company can market or conduct transactions before the building is finished. Not so with health services, these services must be available, even provided by the government. Because creating a healthy society is one of the government's programs).

The relationship between consumers and business actors in Indonesia is regulated in Law Number 8 of 1999 concerning Consumer Protection. The relationship between doctors and patients in a therapeutic agreement is the provision of services in the health sector by doctors to patients. So that in the practice of teleconsultation, there is also a relationship between consumers and business actors such as the relationship between doctors and patients in accordance with the agreement that was formed at the time of scheduling the teleconsultation practice by the health service provider.

In the Consumer Protection Act it is not clearly regulated about patients, but the existence of patients here is as a consumer. If there is a violation of the agreement that has been agreed upon by one of the parties in the legal relationship, the consumer has the right to sue for reasons of default. Likewise, the relationship between the patient and the doctor, which is a therapeutic agreement, gives birth to a mutually agreed civil relationship.

If in the implementation of the teleconsultation practice, the business actor in this case a doctor or health service facility commits a violation, the business actor has the obligation to provide compensation, compensation, and or compensation for losses due to the use, use, and utilization of traded goods and/or services as stipulated in Article 7

of Law Number 8 of 1999 concerning Consumer Protection.

Individual health services are aimed at curing disease and restoring the health of individuals and families. This is regulated in Law Number 36 of 2009 concerning Health article 53. However, if in the healing effort an error or omission occurs which causes a loss, then the injured party in this case the patient as a consumer receiving health services has the right to file a lawsuit as regulated in Article 58 of Law no. 36 of 2009 concerning Health As for the form of compensation in the form of; money refund; replacement of goods and/or services of similar or equivalent value; health care and/or the provision of compensation in accordance with the provisions of the legislation in force.

Based on the description above, the position of the patient is as a consumer, his position is the final consumer. This is emphasized on the target of protection in the Consumer Protection Act. Meanwhile, doctors and health service facilities are business actors. The doctor's position is an extension of the facility. Because a doctor is prohibited from conducting teleconsultation without health service facilities, in accordance with the Regulation of the Indonesian Medical Council Number 74 of 2020 concerning Clinical Authority and Medical Practice Through Telemedicine during the Corona Virus Disease 2019 (COVID-19) Pandemic Period in Indonesia.

Minister of Health Regulation No. 20 of 2019 concerning the Implementation of Telemedicine between Health Service Facilities, Health Service Facilities are responsible for standard telemedicine setting standard operating procedures for Telemedicine Services through decisions of the leadership of Health Service Facilities. So that the doctor's responsibility in the practice of teleconsultation in the perspective of consumer protection law is the responsibility of the Health Service Facility. Because the start of the teleconsultation practice is when there is an agreement, in this case when the patient chooses a doctor based on the application

provided by the Health Service Facility. If the Health Service Facility in question is a hospital, then Article 46 of Law no. 44 of 2009 concerning Hospitals that hospitals are legally responsible for all losses caused by negligence committed by health workers in hospitals, so that this compensation is also in accordance with existing laws and regulations so that business actors must be responsible for all losses claimed by the consumer.

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DECLARATION OF CONFLICTING INTEREST

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AUTHOR CONTRIBUTION

Vera Rimbawani Sushanty: Contribution in design perform collecting article and analyze the literature.

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