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The ideal concept of telemedicine arrangements to provide legal protection for patients in Indonesia

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Abstract
This study aims to describe comprehensively the ideal arrangement, namely to describe the ideal concept of telemedicine regulation in order to provide legal protection for patients in Indonesia. The type of research in this research is normative juridical, namely the process of finding a rule of law, legal principles, and legal doctrines in order to answer the legal issues faced. The results of the study show that in terms of forming the concept of setting up telemedicine services that are oriented towards legal protection for ideal patients, the authors postulate several things including: First, establish a system to ensure measurable, certified competence in teemedicine services. Second, Clear Domain Areas, Third, Obligation of recording telemedicine service practices and protection of recordings, Fourth, Arrangements regarding Informed consent, Fifth, Contains arrangements regarding dispute resolution in the practice of health care for patients through telemedicine.

Keywords: telemedicine, patients, legal protection

Introduction

The development of telemedicine regulations in Indonesia has actually started since 2015, with the issuance of Minister of Health Regulation 409 of 2016 concerning Trial Hospitals for Video-Conference and Teleradiology-Based Telemedicine Service Programs. Then followed by Minister of Health Regulation Number 46 of 2017 concerning the National E-Health Strategy in which the e-Health Strategy is a comprehensive approach to the use of information and communication technology in the health sector nationally.

Then the implementation of telemedicine is regulated in the Regulation of the Minister of Health of the Republic of Indonesia Number 20 of 2019 concerning the Implementation of Telemedicine Services between Health Service Facilities (hereinafter referred to as Minister of Health Regulation 20/2019). The consideration of the issuance of the Minister of Health Regulation regarding telemedicine is to provide specialized health services and improve the quality of health services, especially remote areas and to realize safe, quality, anti-discriminatory and effective telemedicine services and prioritize the interests and safety of patients. However, the telemedicine arrangement in the Minister of Health Regulation 20/2019 is only carried out between health service facilities, not regarding telemedicine services between doctors and patients.

As it is known that in the state of the COVID-19 pandemic which is designated as a national disaster, telemedicine health services play a very important role for large-scale social restrictions in order to accelerate the handling of COVID-19. The existence of a legal vacuum in the implementation of health services through telemedicine between doctors and patients, the Minister of Health issued Circular Letter Number 303 of 2020 concerning the Implementation of Health Services through the Utilization of Information and Communication Technology in the context of preventing the spread of Corona Virus Disease 2019 (COVID-19). Then in an effort to strengthen the implementation of telemedicine, the Indonesian Medical Council Regulation Number 74 of 2020 concerning Clinical Authority and Medical Practice aims to provide doctors with clinical authority in running telemdicine health services. This Ministerial and Perkonsil Circular is only valid during the COVID-19 pandemic.

Actually, this online health application service has existed long before the COVID-19 pandemic. However, it has become increasingly widespread and has become the choice of the community in recent years due to the COVID-19 pandemic. This service makes it easier for people without having to go to the hospital to consult a doctor via a smartphone for example the Halodoc application, Alodokter and others. This online health application service is a form of development from telemdicine. In connection with online health application services which are in consultation between doctors and patients, limiting doctors in virtual spaces where there is a possibility of misdiagnosis that is not in accordance with the disease suffered by the patient. Based on Law Number 29 of 2004 concerning Medical Practice in Article 15 in establishing a diagnosis, doctors need to carry out amnesic-physical examinations-supporting examinations to eliminate the diagnosis of diagnosis before prescribing drugs.

There is a case of online health application services, in California in 2007, a telemedicine doctor in Calarado consulted online from a patient in California about his depression. The doctor prescribed fluoxetine, one of the antidepressants used. A few weeks later, the patient was found to have died by suicide using carbon monoxide. In his blood was found alcohol and fluoxetine. While this is possible in conventional face-to-face medical services, this risk can certainly be minimized through a comprehensive and holistic psychiatric evaluation. There is a possibility that

the patient is already at high risk for suicide during the consultation, and this can be known if the interaction is face-to-face, so that the doctor can provide a combination of psychiatric drugs, psychotherapy, inpatient advice, etc. The doctor in that case was sentenced for administering a dangerous drug without a prior physical examination

From the regulations regarding telemedicine health services in Indonesia, which so far have only been in the form of Permenkes 20/2019, in this case it can be said that it has not provided legal protection for patients. This is because the Permenkes only contains regulations regarding the implementation of telemedicine between health care facilities, not regarding telemedicine services between doctors and patients or between health services and patients. Therefore, it is important to question the legal protection of patients, it is also clear that the urgency is needed considering the various medical actions in the form of licenses or permits for doctors or medical personnel who practice telemedicine, medical service equipment, informed consent, security. and confidentiality of patient health information data (medical records), requires clear regulations. Legal policies that determine the direction, form and content of the law.

So what should be the ideal arrangement in order to build telemedicine that is able to provide legal protection for patients who use these services. In this article, the author will describe comprehensively the ideal arrangement, namely describing the "ideal concept of telemedicine regulation in order to provide legal protection for patients in Indonesia"?

Research Methods.

The type of research in this research is normative juridical, namely the process of finding a rule of law, legal principles, and legal doctrines in order to answer the legal issues faced. With regard to the normative legal research method, the technique of collecting legal materials used is document study or literature study. The approach used in this research is a statutory approach and a case approach.

Discussion

Health is the main factor for every human being to maintain the continuity of life in the world, health is very beneficial for everyone, activities that include situational factors can be achieved well if in the process health can be maintained. Situational factors include environmental factors in which humans are located or reside, both in the physical, social, cultural, economic, political, and so on. On the other hand, if in the process of situational factors a person is not able to maintain his health, then the goal in the process of these activities will be delayed and even fail, "health is a crucial issue that must be faced by every country because it is directly correlated with the development of the personal integrity of each individual in order to live with dignity."

Therefore, the development of the health sector is basically aimed at increasing awareness, willingness and ability to live healthy for everyone to realize optimal health degrees as one of the elements of welfare as mandated by the preamble to the 1945 Constitution of the Republic of Indonesia. Health as a human right (HAM)) must be realized in the form of providing various health efforts to the entire community through the implementation of quality and affordable health development by the community. Public health is a pillar of the development of a nation. Health is one of the basic human needs. So important, that it is often said that health is everything, without health everything is meaningless. Therefore, every activity and effort to improve the highest degree of public health is carried out based on non-discriminatory, participatory, protective, and sustainable principles which are very important for the formation of Indonesian human resources, increasing the nation's resilience and competitiveness, as well as national development.

As it is known that substantially human rights have been regulated in the 1945 Constitution (hereinafter referred to as the 1945 Constitution). One of the regulated human rights is the right to health. Article 28H, paragraph (1) of the 1945 Constitution, states firmly that "everyone has the right... to obtain health services". With the inclusion of the right to health in the constitution, the right to health is officially a positive legal right that is protected by the government and the government is obliged to fulfill the health rights of its citizens through real and concrete efforts..

This is in line with the objectives of the State of Indonesia as regulated in the Preamble to the 1945 Constitution, namely: "to protect the entire Indonesian nation and the entire homeland of Indonesia, promote public welfare, educate the nation's life, and participate in implementing world order based on independence, eternal peace and social justice". (Preamble of the 1945 Constitution) These objectives can be achieved in various ways, one of which is development. Development is the main requirement in a state. The community can obtain and utilize public facilities from the development so that it will indirectly have a positive impact on the community.

It is important to know that the right to health has a wider scope, it does not only concern the right to individuals an sich, but includes all factors that contribute to a healthy life (healthy self) for individuals, such as environmental issues, nutrition, housing and social security. etc. Meanwhile, the right to health and the right to medical services, which are patient rights, are a more specific part of the right to health. It has become a consensus in the Indonesian constitution that the right to health is a fundamental right for humans. The basic philosophy of guaranteeing the right to health as a human right is the raison d'etre of human dignity. Health is a fundamental right of every human being. Therefore, every individual, family and community has the right to obtain protection for their health, and the government is responsible for regulating and protecting so that the community's right to healthy life is fulfilled, including the poor who cannot afford it.

The legal umbrella regarding health is specifically regulated in Law Number 36 of 2009 concerning Health (hereinafter referred to as UUK) as the written legal basis in Indonesia. According to Article 1 point 1 of the UUK, health is a state of health, both physically, mentally, spiritually and socially that enables everyone to live socially and economically productive lives. One of the efforts to improve the quality of health, related to individuals or community associations is by providing health services. Health services are service providers in this case doctors and health efforts in this case are patients. Related to that in medical law, the subjects are doctors and patients who from the results of these relationships indirectly form medical and legal relationships. The legal relationship that occurs between doctors and patients is not specifically regulated in the Civil Code (hereinafter referred to as KUHPER). Relationships of trust

that occur in doctor-patient relationships are often called therapeutic transactions, where services are based on the patient's full trust in doctors in terms of providing help, doctors who provide assistance according to their expertise or skills in their field. Health services carried out by medical personnel or doctors must be supported by adequate equipment in carrying out health service efforts.

Advances in science at this time, especially technology that is increasingly advanced, has positive and negative consequences for the wider community, especially in the health sector. In addition to increasingly sophisticated tools that support development in the health sector, there are also online health services via the internet or online media which are often called Telemedicine or Telemedicine. Telemedicine, comes from the word "tele" which means "distance", and "medical" which means "medical". Not meeting face to face or providing services using online media as a means of providing health services is the definition of telemedical services. Telemedicine is the practice of medicine remotely where actions, diagnostic and treatment decisions, and recommendations are based on data, documents, and other information transmitted through telecommunications systems. One form is an online clinic, which is like a doctor who provides health consultations or listens to patient complaints and diagnoses patients and prescribes drugs through online media where online clinics include conducting online transactions, therefore taking legal actions in this case with computer services or electronic media connected to the internet. All payment processes ranging from services to drug payments are carried out via transfer using internet banking or mobile banking without having to meet face to face as in conventional health services..

This is considered quite appropriate and supportive in the sociological context that is considered by telemedicine technology, that based on data from the Agency for the Development and Empowerment of Health Human Resources (BPPSDM), the Ministry of Health in 2011, the number of medical personnel reached 417,832 people spread across 33 provinces in the country. The number of medical personnel reached 59,492 people, consisting of 16,836 specialist doctors, 32,492 general practitioners and 10,164 dentists. The number of nurses reached 234,176 consisting of general nurses as many as 220,575 people and dental nurses as many as 13,601 people. Meanwhile, the number of midwives is 124,164 people. The number of health workers in Indonesia continues to increase every year. Likewise with internet users. As time goes by, internet users in Indonesia are increasing day by day. Based on statistical data in December 2011 and according to Budi Setiawan (Directorate General of Postal and Information Technology Equipment Resources (SDPP) of the Ministry of Communication and Information), the number of internet users in Indonesia has now reached around 55 million people. This figure has increased by 30.9% compared to last year and Indonesia has become the largest market share for the development of information and communication technology (ICT). Meanwhile, based on Nielsen's research, Indonesia is also the highest user of mobile phone devices as much as 48%.

However, the development of health services with online media does not necessarily have a positive impact, but there is a negative impact on these developments. One of them is in terms of patient confidentiality or patient medical records are not well maintained besides that in online doctor practice in the diagnostic process not face to face as in general, which will be very risky in diagnosing errors. If a misdiagnosis occurs, the doctor must be held accountable. This concern is considered quite reasonable considering the health of the Indonesian people is one of the goals of the Indonesian government. Article 34 paragraph (1) of the 1945 Constitution which philosophically stipulates health services is the responsibility of the State. Regarding the regulation regarding citizens' rights to health services, it is stated in Article 28 H paragraph (1). The provision of health services is related to values that respect Indonesian human dignity, while the determination of the right to obtain health services is an embodiment of the precepts of social justice that creates equity. Aspects of health law itself cannot be separated from public law and private law which are aimed at the health subsystem in society.

As it is known that health law covers various legal aspects, including civil law, criminal law and state administrative law. Health law coverage of various legal aspects. Health law regulation was first regulated in 1992, Law Number 23 concerning Health, then repealed in 2009 replaced by Law no. 36/2009 concerning Health, considering that the era has become more advanced, the rules are no longer suitable to be applied so that they need to be replaced by a new Law on Health. Law No. 36/2009 on Health is more accommodating to current developments.

Health efforts are activities that are systematically, consolidated and sustainable to maintain and promote the quality of the public by monitoring the disease, promoting health, treatment and healing as stipulated in Article 1 number 12 of the UUK. Meanwhile, Law Number 29/2004 concerning Medical Practice (hereinafter referred to as UUPK) does not specifically regulate health services. But the purpose of medical practice is that patients receive protection, maintain and improve the quality provided by medical personnel, and there is legal certainty for both the community and medical personnel as stated in Article 3 of the UUPK. Regarding the regulation regarding health services through telemedicine, it is implicitly stipulated in the UUK, it is determined that before being circulated to be used for public health, technology and technology products must be researched first, health technology means all methods and medical devices that can help prevent health problems or treat health problems, and all equipment must comply with the general provisions of the relevant regulations. Further provisions regarding the regulation of telemedicine are stipulated in Article 42 of the UUK, as follows:

1. Technology and health technology products are procured, researched, circulated, developed, and utilized for public health.
2. Health technology as referred to in paragraph (1) includes all methods and tools used to prevent disease, detect disease, relieve suffering due to disease, cure, minimize complications, and restore health after illness.
3. Provisions regarding technology and health technology products as referred to in paragraph (1) must meet the standards set out in the laws and regulations.

Research and development of health science and technology is aimed at producing health information, technology, technology products, and health information technology (IT) to support health development. The development of

technology, technology products, information technology (IT) and Health Information is carried out in accordance with the provisions of intellectual property rights (IPR). Health technology as referred to in the provisions of Article 42 of the UUK is a method, method, process, or product resulting from the application and utilization of scientific disciplines in the health sector that produce value for meeting needs, continuity, and improving the quality of human life. The application in Article 42 is one of the technological products produced, namely the existence of an online clinic that helps the community in terms of providing health analysis and examinations remotely with patients and providing practical prescriptions and purchasing drugs with online media.

In this case, the author considers that the Health Law is quite responsive, considering the nature of medical practice and the function of hospitals as a form of the health industry. Hospitals develop according to civilization, transforming in the digital era in line with the demands of science and technology in their day. Factors that significantly affect hospitals are competent resources, availability of facilities and synergy with community networks as users of health services. Law Number 40 of 2004 concerning National Social Security followed by the implementation of health insurance for all Indonesian citizens, made the health care industry required to be ready to provide excellent service. Patient visits are increasing, while hospitals must keep pace with an adequate number of medical personnel. Health services in hospitals essentially rely on the implementation of medical practice, in accordance with science and technology.

Telemedicine which is currently operational is the use of System Application and Product to provide integrated health solutions for health industry companies in Indonesia. At Eka Hospital, this system is used for healthcare, logistics and financial management programs. The main objective of this project is to be able to serve patients optimally, and at the same time, streamline all back-office processes so that frontliners activities are integrated. The same is also used by Mitra Keluarga Hospital which implements an integrated system of Electronic Medical Records and Business Process Management. For a health industry that is not a hospital or clinic, including the pharmaceutical and medical device industry, you can use this digital system as an efficiency and activity option to market goods and services, because the system is also integrated in finance, procurement, inventory, patient management, billing. and electronic medical records (Electronic Medical Records).

Based on the author's explanation above, the description of the practice of implementing the use of telemedicine has implications for legal issues, namely the need for a conception of telemedicine regulation in Indonesia that can protect the interests of various stakeholders in the health industry, especially patients. Where the arrangement of the author's intent here is an arrangement that can function as a means of protection (legal protection) for health service providers and patients as recipients of health services. So far, based on the Minister of Health Regulation 20/2019, which the author has described previously, telemedicine arrangements tend to be lacking in the aspect of protection for patients as recipients of health services, here the authors conduct a study to be able to provide input related to the concept of an ideal Indonesian telemedicine arrangement in the future.

Establish a system to ensure measurable, certified competencies in teemedicine services.

Based on Article 2 of Law Number 29 of 2004 concerning Medical Practice (hereinafter referred to as the PK Law), it is stated that medical practice is carried out based on Pancasila and is based on scientific values, benefits, justice, humanity, balance, and patient protection and safety in Article 3 affirmed that medical practice aims to provide protection to patients; maintain and improve the quality of medical services provided by doctors and dentists; and provide legal certainty to the public, doctors and dentists. The scientific value of medical practice is obtained through the educational process, which must be possessed by a doctor and dentist. This long and expensive educational process is often faced with the exclusivity of medical services, so that public service products in the health world become expensive which then has implications for the values of justice, humanity, and balance. However, if examined further, medical practice is not easy to achieve this value, because medical practice is a complex action, starting from history taking, physical examination, supporting examinations, diagnosis, to holistic and comprehensive management, which is carried out collaboratively with staff. other medical.

Telemedicine is an alternative choice for economical and practical considerations because patients do not have to come to the hospital and meet physically. But this does not answer the needs of patients in real medical services. Good health services include holistic and comprehensive care. namely: covering the patient's entire physical and spiritual body (whole body system) including nutrition, not only organ oriented but patient and family oriented and views humans as bio-psychosocial beings in their ecosystem. Comprehensive means not only curative but also prevention-oriented including health promotion, specific protection (primary), early case detection, prompt treatment (secondary) and disability limitation/rehabilitation (tertiary). Conventional medical services are indeed in a diametrical position with telemedicine. In telemedicine, the patient will assume that the doctor is a great and competent person because he can treat from afar without the need for a supporting diagnosis. This success is closely correlated with whether the patient can describe in detail the symptoms or pain he is suffering from, or whether he can take photos of the physical symptoms of pain, which of course cannot be ascertained with accuracy. This will obscure the identity of medical practice which is based on human values and justice.

The next issue is about authority. In Article 35 paragraph (1) of the PK Law, the authorized doctor is a doctor who has a Registration Certificate (STR). On the basis of STR, doctors have the authority to practice medicine in accordance with their education and competencies, which consist of: interviewing patients; examine the patient's physical and mental; determine the supporting examination; establish a diagnosis; determine the management and treatment of patients; perform medical or dental procedures; write prescriptions for drugs and medical devices; issue a doctor's or dentist's certificate; store drugs in permitted quantities and types; and dispensing and dispensing drugs to patients, for those who practice in remote areas where there are no pharmacies. There are 10 (ten) kinds of doctor's authority, which, if examined carefully, are overlooked in telemedicine, especially in establishing a diagnosis.

The steps in establishing a diagnosis are history taking, physical examination, supporting examination and diagnosis, so the factors that influence misdiagnosis can be started with a wrong history. A doctor will be able to direct the possibility of diagnosis in a patient through a good history. A good history must refer to systematic questions, which are guided by four main points (The Fundamental Four) which include: History of Present Disease (RPS), History of Past Diseases (RPD), Family Health History, Social and Economic History; and Seven Pearls of History (The Sacred Seven), namely the allocation of complaints, quality, quantity, time (onset, duration, frequency, and chronology), aggravating factors, mitigating factors, and accompanying complaints.

Humans are multidimensional beings. The existence of humans both as soul and body is strung together in a historical record. To be able to instantly collect a complete medical history is certainly not possible. This stage is very important as the first step to understand and understand the patient. It could be from daily experience dealing with patients or because of their seniority, a doctor can use a brief history obtained through interviews, either written or oral as initial data to conclude the patient's illness.

The implementation of medical practice is regulated in articles 36-38, as follows: Article 36 states that every doctor and dentist who practices medicine in Indonesia is required to have a practice license. Article 37, that:

a. The practice permit as referred to in Article 36 is issued by the competent health official in the district/city where the practice of medicine or dentistry is carried out;
b. The license to practice a doctor or dentist as referred to in paragraph (1) is only granted for a maximum of 3 (three) places;
c. One practice permit is only valid for 1 (one) practice place

Furthermore, Article 38 paragraph (1): In order to obtain a license to practice a doctor or dentist, one must: have a doctor's registration certificate or a valid dentist's registration certificate; have a place of practice; and has a recommendation from a professional organization. The interpretation of the legal norms in these articles is as follows:

a. With regard to paragraphs (1), (2), (3) of Article 36 of the Law on Medical Practice, it means that the authority of a doctor is only given to practice in one to three places, of course with a clear domicile. The law does not mention the world of the internet. This article does not necessarily mean that at the domicile it is possible to conduct therapeutic contract transactions via the internet. The requirements of the next article are clear, that the law has not provided protection for telemedicine. A place that is protected as a place to practice medicine is a real place, a domicile address, not a domain on the internet.
b. From the point of view of contract law, therapeutic contracts that occur between doctors and patients are different from transactions in named contracts (agreements) as regulated in civil law. Therapeutic contracts in telemedicine also cannot be equated with e-commerce. The core problem is that the object of the contract in the therapeutic contract is a whole human (monodual creature, body and soul) while in e-commerce the object is an object (zaak) both tangible and intangible. The understanding that humans are not objects relates to legal protection in the event of a dispute. Patients are not consumers. Patients are active actors who decide for themselves as legal subjects who make rules for themselves. In this context, patients cannot sue doctors on the basis of consumer protection law. Patients are legal subjects with the same position and balance as doctors, who both make agreements. Events of injury in a therapeutic contract that give rise to this dispute must also be placed in the terminology of the business agreement (inspaning verbintenis).
c. a hospital as an entity (corporate, corporate) providing medical practice services, from a formal juridical perspective, can be established in several forms of business entity. Based on Law Number 44 of 2009 concerning Hospitals, there are various forms of hospitals, namely public hospitals and private hospitals. Public hospitals can be managed by the Government, Regional Governments, and non-profit legal entities. Public hospitals managed by the Government and Regional Governments are organized under the management of the Public Service Agency or Regional Public Service Agency in accordance with the provisions of the legislation. Public hospitals managed by the government and local governments cannot be converted into private hospitals. While the Private Hospital is managed by a legal entity with the aim of profit, in the form of a Limited Liability Company or Persero (article 21).

The form of a private hospital managed by a legal entity with the aim of profit, usually already uses a digital system in administrative services and the use of medical equipment. This separation of hospital ownership has an impact on the emergence of various creativity and innovations in the field of medical services. The demand for excellent service quality has also become an atmosphere that surrounds the resources in it, including doctors. At this termination level, where telemedicine offers an efficient and economical form, then telemedicine is the preferred choice. Telemedicine is carried out by doctors (including other health workers) either individually, together with certain community of doctors, as well as institutional hospitals or other health care units as one of the marketable medical service methods.

It is in this context that the author's intention is to build a clear system in the provision of telemedicine services to provide protection for patients in the form of standardizing the competence of a telemedicine health facility, so far in Permenkes 20/2019 there is only one Article (to be precise in Article 13) which regulates the problem. This is also at the regulatory level regarding the registration of Health Facilities Facilities, where a. Each Consulting Health Facilities and Consultation Requesting Health Facilities that have met the requirements must be registered. b. The registration as referred to in paragraph (1) is submitted to the Minister through the Director General. c. The registration application as referred to in paragraph (2) is accompanied by attaching documents for fulfilling the requirements and/or the application used.

Clear Domain Area.

In this case, as the author explained earlier that the implementation of medical practice is regulated in articles

36-38 of the PK Law, as follows: Article 36 states that every doctor and dentist who practices medicine in Indonesia is required to have a practice license. Article 37, that:

a. The practice permit as referred to in Article 36 is issued by the competent health official in the district/city where the practice of medicine or dentistry is carried out;
b. The license to practice a doctor or dentist as referred to in paragraph (1) is only granted for a maximum of 3 (three) places;
c. One practice permit is only valid for 1 (one) practice place

Furthermore, Article 38 paragraph (1): In order to obtain a license to practice a doctor or dentist, one must: have a doctor's registration certificate or a valid dentist's registration certificate; have a place of practice; and has a recommendation from a professional organization. The domain area is an analogy that conventional medical practice is carried out on the existence of a Registration Certificate that points to a clear locus, as well as in cyberspace it is important to determine this.

Obligation to record telemedicine service practices and protection of recordings.

When viewed grammatically, the arrangements related to recording obligations in the practice of telemedicine services have been regulated in Article 14 of the Minister of Health 20/2019 related to expertise, where:

a. The Consulting Facilitator must submit the answer to the consultation and/or issue Expertise to the Consultation Requesting Health Facility.
b. The answer to the consultation as referred to in paragraph (1) is in the form of medical considerations from specialist doctors/subspecialist doctors and/or other experts related to the actions or management of patients in clinical teleconsultation services.
c. The answer to the consultation and/or issuance of Expertise as referred to in paragraph (1) must include at least the name of the requesting doctor, specialist doctor/subspecialist doctor or other expert related to the Expertise maker, patient identity data, and other required information.
d. The answer to the consultation and/or issuance of Expertise as referred to in paragraph (1) must be printable and form part of the patient's medical record.
e. In the event that the communication, writing, pictures, video, audio, or other information required is not clearly received, the specialist/subspecialist doctor or other expert providing the consultation as referred to in paragraphs (2) and (3) may request examination or re-send in accordance with need.

But the question is, can it be categorized as a medical record?. According to the nomenclature, it is stated in Article 13 Paragraph (4) of the Minister of Health Regulation 20/2019 that this is part of the medical record. If yes, then to what extent is the responsibility of health facilities and doctors in providing protection against this matter, this is important to question considering that based on the results of the author's research there is no further provision regarding the responsibility of health facilities and doctors implementing telemedicine for the medical records.

When compared with the protection of patient medical records in general, the absence of provisions for the protection of the results of the recording as part of the medical record is a mistake. In a doctor-patient relationship that contains an element of trust that the doctor is able to provide medical services and can be trusted to keep medical secrets regarding the patient's illness and other matters of a privacy nature. In this case, the doctor bears the obligation of professional ethics (Physician Profession Oath) as well as the legal obligation of the above statutory provisions to maintain the confidentiality of the contents of the Medical Records of his patients, as stipulated in Article 51 of the Medical Practice Law which contains the obligations of doctors or dentists in carrying out their practice medicine, namely:

a. provide medical services in accordance with professional standards and standard operating procedures as well as the patient's medical needs;
b. refer patients to other doctors or dentists who have better skills or abilities, if they are unable to carry out an examination or treatment;
c. keep everything he knows about the patient, even after the patient's death;
d. perform emergency assistance on a humanitarian basis, unless he believes that someone else is on duty and capable of doing so; and
e. increase knowledge and keep abreast of developments in medicine or dentistry.

In point 3 (three) of Article 51 of the Medical Practice Law, it is clearly and clearly stated that doctors are obliged to keep everything they know about a patient secret even after the patient dies, this is in line with Article 47 of the Medical Practice Law which regulates medical records which states that:

a. The medical record document as referred to in Article 46 belongs to the doctor, dentist, or health service facility, while the contents of the medical record belong to the patient.
b. The medical record as referred to in paragraph (1) must be kept and kept confidential by the doctor or dentist and the head of the health service facility.
c. Provisions regarding medical records as referred to in paragraph (1) and paragraph (2) shall be regulated by a Ministerial Regulation.

So it can be said that in this section the correlation of medical records is the privacy right of the patient which must be kept confidential by the doctor or dentist, with the consequence that if this is violated, the doctor must be prepared to receive ethical sanctions based on his professional code of ethics as well as sanctions in the form of civil lawsuits. and/or penalize for the mistake. Failure to keep medical secrets may be subject to prosecution in Article 322 of the Criminal Code regarding the act of revealing position secrets, while violations of Privacy Rights cannot be criminally prosecuted but are more likely to be an Onrechmatigedaad, which can be sued through Article 1365 of the Civil Code. Therefore, based on this explanation, in the author's view, the arrangement of telemedicine services in the future in addition to recording obligations, the practice of telemedicine services must include the obligation to maintain the confidentiality of

medical records in the form of recording as a form of protection of the patient's privacy rights.

Arrangements regarding Informed consent.

Responding to the positive effects of the above regulations, all forms of health service delivery should prioritize the interests of patients. The patient's interests are actually clearly regulated in Law Number 44 of 2009 concerning Hospitals, namely in the form of the patient's constitutional rights and obligations, which are implemented by doctors (and health workers). Patients' rights (article 52 of the PK Law), are as follows:

a. get a complete explanation of the medical procedure;
b. seek the opinion of another doctor or dentist; get services according to medical needs; refuse medical treatment;
c. and get the contents of the medical record

The entire fulfillment of this patient's rights requires a medical action report document. Conditions where in telemedicine, the patient is guided through a smart phone, video call, skip, teleconference, writing on social media, or just a regular consultation without a camera, if it is not documented, it certainly does not fulfill the patient's rights completely. There is no Manual Procedure or Standard Operating Procedure (SOP) in terms of telemedicine. If this reportage document is considered to have been done through visual recording, of course this is in harmony with the provisions in the Regulation of the Minister of Health of the Republic of Indonesia No. 69 of 2014 concerning Hospital Obligations and Patient Obligations, which reads: patients, patient families, and visitors are prohibited from documenting/taking photos/recording the process of medical/nursing actions in any way and for any reason without written permission from the hospital.

In Article 53 of the PK Law, the patient's obligations are: to provide complete and honest information about their health problems; comply with the advice and instructions of a doctor or dentist; comply with applicable regulations in health care facilities; and provide compensation for services received. These rights and obligations are not fully obtained by the patient. Therefore, written informed consent which states that the patient cannot sue in the event of an error in telemedicine medical action is based on the understanding that after all, the essence of medical practice is a thorough physical examination, which cannot be replaced by intermediary media. Patient errors in illustrating or describing complaints and clinical symptoms will be fatal for the diagnosis given. This serves as legal protection for both parties.

Dispute Resolution Arrangements in the Practice of Health Services to Patients Through Telemedicine.

Providing legal protection obligations for every country for its people for countries that prioritize as a state of law. According to the law, responsibility is in carrying out an act where there is a consequence for a person's actions for freedom of action. Liability can be divided into two, namely risk and error based on civil law. There are 3 principles of responsibility, including accountability on the basis of errors and without errors which can be referred to as risk responsibility or absolute responsibility. To harm others by having made a mistake to make a party harmed then someone must be responsible for his mistake is the principle of responsibility on the basis of error. While the risk responsibility is the defendant as a producer who will be responsible for the business risk on the other hand the plaintiff's consumer is not obliged to take responsibility. C. Berkhouwer and L.D Vorstam argue that there are 3 factors of error in carrying out professional duties:

a. Inadequate or lacking expertise;
b. Experience is still very minimal, and
c. Understanding or understanding is still lacking.

When viewed from the point of view of professional ethics, especially in the health sector, high accuracy is the main requirement that is supported by special provisions or Standard Operating Procedures (SOP) for medical personnel. Making a mistake means breaking the existing rules. The mistakes of a doctor can be seen from various sides or legal aspects, namely private law and public law. The two legal aspects are interrelated. So, a doctor can be found guilty if it is studied from the initial step, namely from a therapeutic transaction, after that it is studied from the 3 legal aspects. Because doctors' legal responsibilities have not been specifically regulated, the Consumer Protection Act has temporarily become a legal umbrella for the protection of patients who feel aggrieved.

Patients as regulated in the Consumer Protection Law, namely Law Number 8/1999 (hereinafter referred to as the Consumer Protection Law) can also be referred to as consumers who use the services of doctors. Meanwhile, doctors in the service sector are said to be business actors. According to Article 19 paragraph 1 of the Consumer Protection Law, compensation can be claimed by the patient if the doctor causes a loss due to medical action. Taking money or replacing goods or providing compensation is a form of compensation that can be requested by the patient based on the applicable legislation. Article 19 paragraph 2 regulates the provisions regarding compensation.

In the event that the doctor's negligence in telemedicine is responsible for the system operator, Article 15 of the ITE Law explicitly states that the operation of the electronic system is a system whose responsibility is borne by the operator of the electronic system. Related to that, a series of activities in online buying and selling carried out by recipients and senders through the Electronic System is also referred to as the organizer of electronic transactions which is also as regulated in Article 1 paragraph 14 of Government Regulation of the Republic of Indonesia Number 82/2012 concerning Electronic System and Transaction Operations. However, textually, based on Permenkes 20/2019, it does not contain provisions regarding this, nor does it contain a dispute resolution mechanism if there is a conflict between patients and health facilities or doctors in the future. As it is known that the position of the parties in a therapeutic transaction is the same or equal, so that doctors and patients have legal liability. With the existence of this therapeutic transaction, there are not a few problems between patients and doctors. The patient's legal basis in filing a lawsuit is to ask for accountability which includes breaking promises (wanprestasi) in Article 1239 of the Civil Code and Article 1365 of the Civil Code which is the basis for breaking the law.

Medical care provided by a doctor that is not in accordance with what was promised can lead to a broken promise in health services. The doctor's actions in the event of inadvertence or due to negligence can violate therapeutic

goals. The elements of broken promises in health services are:

a. Therapeutic contract because of the bond between doctor and patient.;
b. Doctors violate the purpose of the therapeutic contract in providing health services.;
c. The doctor causes harm to the patient because of the doctor's own actions.

Online media conversations are evidence in telemedicine health services about the existence of a therapeutic contract. In the case of filing a lawsuit against the law even though there is no agreement if there are facts of unlawful acts, you can file a lawsuit based on Article 1365 of the Civil Code: a. The patient suffers from the doctor's actions. b. Error by doctor. c. There is a causal relationship with losses. d. The act is against the law.

But of course every dispute that arises in telemedicine services does not have to be resolved in these ways, this is actually an implication of not being given an instrument of dispute resolution mechanism in the regulation of telemedicine services (legal vacuum). In the context of the research that the author conducted on aspects of repressive protection for telemedicine patients in Indonesia, it is important to sort out what kind of dispute resolution model to use, given that each conflict has different complexities, what needs to be considered in conflict resolution are values. culture that grows and develops in society as a local wisdom.

Therefore, in terms of forming the concept of regulating telemedicine services that are oriented towards legal protection for ideal patients, the authors postulate several things including: First, establish a system to ensure measurable, certified competence in teemedicine services. Second, Clear Domain Areas, Third, Obligation to record telemedicine service practices and protection of recordings, Fourth, Arrangements regarding Informed consent, Fifth, Contains arrangements regarding dispute resolution in health care practices for patients through telemedicine.

Conclusion

Based on the results of the research and discussion, the authors can conclude that in terms of forming the concept of setting up telemedicine services that are oriented towards legal protection for ideal patients, the authors postulate several things including: First, establish a system to ensure measurable, certified competence in teemedicine services. Second, Clear Domain Areas, Third, Obligation to record telemedicine service practices and protection of recordings, Fourth, Arrangements regarding Informed consent, Fifth, Contains arrangements regarding dispute resolution in the practice of health care for patients through telemedicine.

References

1. Circular of the Minister of Health of the Republic of Indonesia Number 303 of 2020 concerning the Implementation of Health Services through the Utilization of Information and Communication Technology in the Context of Preventing the Spread of Corona Virus Disease 2019 (COVID-19).
2. Circular of the Minister of Health of the Republic of Indonesia Number 303 of 2020 concerning the Implementation of Health Services through the Utilization of Information and Communication Technology in the Context of Preventing the Spread of Corona Virus Disease 2019 (COVID-19)
3. Peter Mahmud Marzuki, *Penelitian Hukum, Jakarta*: Kencana Prenada Media Group. 2016,
4. Look in https://fk.uns.ac.id/static/file/Manual_Semester_II-2012.pdf, History Taking Anamnesis FK UNS, accesed on 16 May 2021
5. Kadin Sihotang. *Filsafat Manusia Upaya Membangkitkan Humanism*e. Yogyakarta: Kanisius,2009, 28-29
6. Paul Ricoeur. *Teori Interpretasi, Membelah Makna dalam Anaatomi Teks.*Yogyakarta:IRCisoD, 2014.
7. Law of the Republic of Indonesia Number 29 of 2004 concerning Medical Practice.
8. Sari, S.D., Perlindungan Hukum bagi Pengguna Klinik Kecantikan Estetika Berdasarkan Perspektif Hak Konstitusional Warga Negara, Citizenship. *Jurnal Pancasila dan Kewarganegaraan Universitas PGRI Madiun*,2018:6:2.
9. Soekidjo Notoatmojo, 2010, *Etika dan Hukum Kesehatan*, Jakarta: Rineka Cipta, 2010,
10. Titik T dan Shinta F. *Perlindungan Hukum bagi Pasien*, Jakarta: Prestasi Pustaka, 2010.
11. Bahder JN. *Hukum Kesehatan Pertanggung Jawaban Dokter*, Jakarta: Rineka Cipta, 2013.
12. Triana O. *Bunga Rampai Hukum Kedokteran,* Malang: Bayu Media Publishing, 2007.