

Health Service Law in Remote Doctor Consultation (*Telemedicine*)

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ABSTRACT : *Telemedicine concept has been one of extremely developed health care with the existence of technology advances which make almost every people have easy access to medical service. However, with various conveniences obtained, the telemedicine concept in Indonesia is still got some problems, among others, the telemedicine concept which has not been clear yet, and none of legal basis which is comprehensive. The research method that is used is normative, focus on study concept, laws and regulations. The research result shows that telemedicine concept is a health care concept which utilizes liaison media to exchange information and consultation between the doctor and the patient. The Problem in telemedicine is a legal basis which is used, has not been comprehensive yet. This can potentially cause problem among others, supervision aspect, medical practice license, medical certificate, to the stage of medical liability.*

KEYWORDS: *Health Care, Telemedicine.*

I. INTRODUCTION

1.1 Background

Health care basically is known to have a health provider, in this case Doctor, while health receiver is a patient. In health care context, doctor as service provider, gives health care effort to patient. Furthermore, the relation between doctor and patient comes from belief, from that relation is known as therapeutic agreement (care contract). From a legal point of view, care contract is defined as legal relationship between doctor and patient in special medical care, based on competence of the medical care according to the skills and competencies of a specific patient.¹

The development of Health care has progressed very rapidly, this is due to the Industrial revolution 4.0 namely the use of internet technology base and digital database that have penetrated to the health care sector. According to a survey conducted by the Indonesian Internet Providers Association (APJII), more than half of Indonesian population is currently connected to the internet. According to a survey conducted during 2019, 132.7 million of Indonesian have been connected to the internet. Indonesia is also included in one of the five countries with the highest social media users worldwide. This encourages a digital transformation in the form of telemedicine. Telemedicine is a remote treatment system. This remote treatment system is carried out through

¹ Veronika Komalawati, 2002. *Peranan Informed Consent dalam Transaksi Terapeutik*, PT.Citra Buana, Jakarta, hlm. 1.

internet data censorship. Several cares such as e-Health, Talk to doctor, Buy medicines, Get a lab check up, Pager doctor, Detik Health , Solusi sehat (Healthy Solution), Megle, Counseling services throught Youtube and others have become common thing and can be accessed easily..²

The digital transformation of telemedicine is a new innovation in medical care sector with the characteristics of technology, proliferation of computers and automation, community involvement. It is not impossible that in the future, elderly will no longer need to come to the hospital for treatment, health care can reach out remote areas and outer islands, it is even possible to use robot to respond patient complaint and feeling, virtual reality psychotherapy..³

Although technology offers various conveniences and advantages, but it has a role like a double-edged sword that can cause harm to its users if not handled wisely. The existence of the internet allows any user to upload content and act as anyone online. Technology of course can give harm to the patient if it is not handled wisely. Various problems can come up such as the existence of a doctoroid phenomenon, clarity of therapeutic contracts, standardization of tools becomes a challenge in the use of telemedicine health care..⁴

In real life, a doctor is required to have a Registration Certificate (STR) as a sign that the doctor has been competent and has a Practice License (SIP) if he practices at a certain health facility. This is a form of protection for patient as listed in Constitution Number 29 of 2004 concerning Medical Practice. In the regulation, doctor practice location is limited to only at 3 practice places. Meanwhile, with an online practice, the place of practice becomes unlimited and cannot be determined. This case is vulnerable to cause problem due to the absence of mechanism to be able to see STR and SIP in long-distance health care (telemedicine).

This telemedicine health care also gives an influence on the doctor-patient relationship, especially regarding trust. Whereas this relationship is needed in creating therapeutic transactions or contracts that brings up to the rights and obligations of each party. In telemedicine health consulting care, sometimes a question mark appears who will be responsible if it turns out that there are things that harm the patient, such as misdiagnosis or therapeutic errors. If reviewed in Article 23 Paragraph (3) of Constitution Number 36 Year 2009 concerning Health, it is regulated that in providing health care, health workers are required to have a permit from the government. Another provision that regulates the license of health workers specifically for the medical profession is regulated in Article 36 of Constitution Number 2009 of 2004 concerning Medical Practices that every doctor and dentist who practices medicine in Indonesia isrequired to have a practice license. From this article, it can be concluded that doctors as organizers of new medical practice can obtain the authority to practice medicine based on permits that have been granted by the government, in this case the government in question is the government of the city/district health office.

Regarding the place and validity of the practice license, it is regulated in the provisions of Article 37 Paragraph (2) and Paragraph (3) of Constitution Number 2009 of 2004 concerning Medical Practices, which stipulates that the license to practice a doctor or dentist as referred to in paragraph (1) is only given for a maximum of 3 (three) places (Paragraph 2) and one practice permit is only valid for 1 (one) practice place. Enactment of Constitution No. 36 of 2009 concerning Health. This means that everyone who has a profession in the medical field and has acquired knowledge and skills through training in the medical sector must comply with this regulation. In addition, the doctorstatus includes ethically binding medical professional qualifications contained in the official oath taken upon acceptance of the assignment.

1.2. Formulation of the Problem

Based on the explanation above, there are two main formulations in this research, namely:

² Yovita Arie Mangesti, "*Konstruksi Hukum Transformasi Digital Telemedicine di Bidang Industri Kesehatan Berbasis Nilai Pancasila*", Prosiding Seminar Nasional Hukum Transendental 2019 Program Doktor Ilmu Hukum Universitas Muhammadiyah Surakarta, hlm. 157

³ *Ibid*

⁴ Rani Tiyas Budiyaniti dan Penggalih Mahardika Herlambang, "*Perlindungan Hukum Pasien Dalam Layanan Konsultasi Kesehatan Online*", Jurnal Hukum Kesehatan Indonesia, Vol. 01, No. 01, April 2021, hlm. 2

1. How is the concept of Telemedicine Health Care in Indonesia?
2. What is the legal problem of Telemedicine Health Care in Indonesia?

II. RESEARCH METHODS

This research is categorized into normative law research type, it is based on the issues and themes raised as research topics. Normative law research uses normative case study in the form of products of legal behavior, for example reviewing constitution. The research approach used is philosophical and analytical, namely research that focuses on rational, critical analytical and philosophical views, and ends with conclusions that aim to produce new findings as answers to the main problems that have been determined. And will be analyzed with prescriptive methods, namely jurisprudence that studies the purpose of law, values of justice, validity of the rule of law, legal concepts, and legal norms. As an applied science, jurisprudence establishes standard procedures, provisions, and signs in carrying out legal activities..⁵

III. RESULTS AND DISCUSSION

3.1. The concept of Telemedicine Health Care in Indonesia

Telemedicine is defined as the provision of long-distance medical health care and its use is spread throughout the worldwide. Other healthcare professionals, including nurses, can communicate more quickly and more broadly with their colleagues and patients, anytime and anywhere. Telemedicine, especially public health care, has the potential to have a greater impact in developing country such as Indonesia than in developed country. Advances in information and communication technology (ICT) are developing and becoming an integral part of the medical world..⁶

In general, telemedicine is a combination between information and communication technology and medical skills to provide medical care ranging from consultation, diagnosis, and medical practice. In order for this system to work properly, communication technology is needed that can transmit data in the form of video, audio, and images in real-time, interactively by integrating technology that supports conferencing. Assistive technology for telemedicine include image processing technologies for medical image analysis..⁷ Information of technology makes direct nursing service operations, such as billing, documentation, and reporting systems, and direct nursing service, such as dose monitoring and quantity administration, easier and more accurate. However, the reality shows that the development of telemedicine for public health care in developing country still has many weakness. This is because the program structure and other factors did not encourage independence from the start.

The goal of telemedicine is to distribute medical care evenly across the country, improve the quality of services, especially in remote and isolated areas, and reduce costs compared to conventional methods. Telemedicine also aims to reduce referrals to doctors and medical care, medical education institutions, and even emergencies in big cities. The developing benefits of telemedicine can reach foreign tourists in disaster areas, long-haul flights, and tourist attractions. Soegijardjo Soegijoko also argues, if telemedicine is an electronic device, telecommunications, information technology, information that allows the transfer (transmission and/or reception) of medical information to improve clinical cares (diagnostic)..⁸

The type of telemedicine in its implementation is applied according to two concepts: real time (synchronous) and store and word (asynchronous). Real-time telemedicine (synchronous telemedicine) can be as simple as using a telephone. Synchronous telemedicine requires both parties to be present at the same time, so a means of communication between the two is needed that can provide real-time interaction to provide health care. Another form of synchronous telemedicine is the ability to perform medical examinations interactively

⁵ Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, 2011, h. 22

⁶ Lee Seon ah. 2010. *Clinical information system quality information tool for nursing care service*. Thesis. University of Illionis at Chicago. Chicago, hlm. 53

⁷ Sri Kusumadewi, dkk, 2009, *Informatika Kesehatan*, Graha Ilmu dan Rumah Produksi Informatika, Yogyakarta, hlm. 41.

⁸ *Ibid*

using a medical device connected to a computer. An example of using this technique is a telescope that provides a means for doctors to check a patient's hearing from a long distance. Another example is the remote stethoscope which allows the doctor to remotely listen to the patient's heartbeat.⁹

Telemedicine using store and forward (asynchronous telemedicine) is the collection of medical data and sending the data to doctor (experts) in right time for offline evaluation. This type of telemedicine does not require both parties to be present at the same time. Dermatologists, radiologists, and pathologists are experts who often use asynchronous telemedicine. A well-structured medical record should be a component of this transfer.¹⁰

3.2. The Legal Problem of Telemedicine Health Care in Indonesia

Based on the experience of several countries, Malaysia is known to have enacted a telemedicine law called the Telemedicine Act 1997. India also has a telemedicine law called the Telemedicine Act 2003. On the other hand, in California, USA. After being ratified by the Governor of California Brown on 7 October 2011, the Senate ratified the Telemedicine Promotion Act 2011, which replaced the Telemedicine Development Act 1996. In Indonesia, telemedicine is stipulated in Article 1 point 1 of the Regulation of the Minister of Health Number 20 of 2019 concerning the Implementation of Telemedicine care Between Health Care Facilities ("Permenkes 20/2019") states that: Telemedicine is the provision of long-distance health care by health professionals using information and communication technology, including the exchange of information on diagnosis, treatment, disease and injury prevention, research and evaluation, and continuing education of health care providers for the benefit of improving individual and community health.

If we compare it with some of the countries mentioned above, the regulation of telemedicine in Indonesia is still weak. Empirical reality and implications of legal issues regarding telemedicine in Indonesia require national laws. Allowing changes and developments without being accompanied by adjustments to the legal regulations is the same as allowing these changes and developments in a situation of uncertainty and disorder. For this reason, it is time for Indonesia to establish telemedicine regulations to provide legal certainty for health workers and patients in using telemedicine. Legal issues include licensing, patient privacy and confidentiality of electronic patient records, clinical guidelines and procedures, and liability for patient loss. Application for telemedicine-based medical care is made primarily by non-medical professional, so it's also important to inquire about medical liability.

Furthermore, regarding a doctor's license in Telemedicine medical care that use a registration certificate issued by the medical council, registration certificate, hereinafter abbreviated as STR, is written evidence given by the Indonesian Medical Council to doctors and dentists who has been registered the using of STR as a base to do medical practice is not in accordance with its designation because basically a doctor is authorized to practice in Indonesia when the doctor has received a practice permit from the government, in this case the City/Regency Health Office, which is given to doctors to held a medical practice. The regulation regarding STR is further regulated in Article 29 of Constitution Number 29 of 2004 concerning Medical Practice: Paragraph (1), "Every doctor and dentist who does medical practice in Indonesia is required to have a doctor registration certificate and a dentist registration certificate." Paragraph (2), "Doctor registration certificate and dentist registration certificate as referred to in paragraph (1) are issued by the Indonesian Medical Council".

From the explanation of the article above, it can be said that the allotment of STR is not a basis for practicing but only an administrative requirement, only a requirement to obtain a practice permit and must be owned by every doctor who wants to practice because of STR. Given that the medical practice using Telemedicine-based medical care requires special skills and expertise, of course the doctor needs to be equipped

⁹ Barnard, A. & Sandelowski, M., 2001, *Technology and humane nursing care: Irreconcilable or invented differences?*, Journal of Advanced Nursing, 34(3), hlm. 369

¹⁰ Z. Wang, et al, 2008, A Wireless Medical Information Query System Based on Unstructured supplementary Service Data (USSD), dalam Sri Kusumadewi, 2008, *Etika dan Hukum Kesehatan*, Pustaka Book Publisher, Yogyakarta, Hlm. 142

with special knowledge and abilities in the sector of Telemedicine medical care. Mastery of minimum quality standards by health workers should be proven by a trusted certification system.

In addition, the implementation of Telemedicine-based medical care indicates a violation of the right to patient privacy which, according to the author, is a matter that has the potential to become a legal problem because in its implementation, several Telemedicine medical care applications display patient consultation history information so that it is easily accessed by unauthorized parties. For this reason, in its implementation, it is necessary to question the guarantee of security and reliability as a service that provides an electronic system in Article 15 paragraph (1) of Constitution Number 11 of 2008 concerning Electronic Information and Transactions which stipulates that: "Every Electronic System Operator must operate the electronic system reliably and safely and be responsible for the proper operation of the electronic system." In view of this provision, telemedicine-based medical care should be carried out safely and reliably, taking into account the provisions regarding the protection of patient data. This is because the service is run by professional staff, namely doctors, who in their profession attach an obligation to their patients to keep medical secrets.

Furthermore, regarding to the patient's right privacy which can be accessed by unauthorized parties, this is because the Telemedicine medical care provides or displays information to the general public without obtaining the patient's consent. It should be noted that some doctors know and some do not know that giving information to other people without the patient's consent is a violation of the law, even against the patient's family, a doctor still must ask first the patient's consent. As for the losses that come up caused by the doctor who shows the patient's secret, the basis for the claim that can be made is an act against the law.

From the explanation of the study above, it can be said that so far there are no specific rules governing Telemedicine-based medical care, neither by the central government nor local governments, so that the existence of Telemedicine-based medical care cannot automatically be equated with ordinary medical care. Besides that, professional organizations in this case the Indonesian Doctors Association must also play an active and responsive role in ethical issues that can arise from the use of telemedicine-based medical care as a form of accountability to patients, to colleagues, and to themselves.

IV. CONCLUSION

4.1. Conclusion

1. Long-distance health care (telemedicine) is generally concepts that use internet media and other media that support connecting doctors and patients indirectly. The concept of telemedicine itself uses medical actions as its service, in the form of health consultations, medical administration up to the planning stage of further medical actions. The concept of telemedicine itself is very useful for time efficiency in health care.
2. Telemedicine, in principle, has long been used in the health sector, such as Malaysia, India and the United States, which created a legal framework about 20 years ago. In Indonesia, telemedicine health care can be categorized as new because they do not have a legal basis in the form of Constitution and are only implicitly regulated in the Regulation of the Minister of Health Number 20 of 2019 concerning the Implementation of Telemedicine care between Health Care Facilities. This has the potential to cause various legal problems, including: aspects of supervision, Medical Practice Permits, Medical Certificates, to the stage of medical liability.

4.2. Recommendations

1. The concept of telemedicine services in Indonesia must be carried out in a mature, structured and responsible. This is as a result of rapid technological advances making accessibility to access telemedicine health care easily.
2. Further regulation is needed regarding telemedicine health care in the form of legislation that becomes a reference and a comprehensive legal basis

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