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Legal Protection And Regulation Of Telemedicine Health Service Users In The Era Of Globalization

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Abstract: The purpose of this study is to explain the Legal Protection and Regulation of Telemedicine Health Service Users in the Era of Globalization. The development of technology in the global era is very influential, especially in the world of health. Health services as they are today can be helped by technological developments where they can perform services remotely (Telemedicine). Telemedicine is a technology-based health service that allows its users to consult with doctors without meeting face to face or remotely in order to provide diagnostic consultations and patient care management, but in its implementation, regulations are needed that regulate the rights and obligations of health care providers and providers. The problem that will be discussed in this study is How to protect the Legal and Regulatory Users of Telemedicine Health Services in the Era of Globalization. The research method used is a normative research method with a statute approach approach and analyzed using content analysis.

Keywords: Legal Protection, Healthcare, Telemedicine

INTRODUCTION

The development of technology in the current era is increasingly showing a very massive impact on Indonesian society. Globalization has brought changes in various fields of life, including the development of information and communication technology which plays an important role in development. The development of information technology has caused the world to become borderless and has caused significant social change to take place so quickly. Indonesian people who are familiar with the internet make it easier for the government, especially the health sector, to provide their services. Health services are a field that cannot be separated from the influence of globalization which is currently trending. The development of globalization has changed the way of life of many people and caused competition to start leaving or being abandoned by technological developments and will become weak if you are not ready to face it. This has made many organizations, including health services, to innovate in providing their services. Services that are innovative and beneficial to the community as service users will be of greater interest to the public. The development of public health services in Indonesia has succeeded in increasing health services more evenly. Advances in science and technology have resulted in an increasing number of educated and well-informed groups of people so that they can choose and demand quality health services.

Telemedicine or remote health services is nothing new in the world of health. With the development of technology, telemedicine is also developing very rapidly. In the health sector, the use of telemedicine can overcome problems that occur, such as doctors, paramedics, health services that are not proportional to the population and the uneven distribution of areas, and telemedicine is very helpful to the community. One of the applications of Telemedicine is as a media for consultation between doctors and patients. Telemedicine's goal is to seek to achieve health services evenly throughout the country's population, improve the quality of services, especially in remote areas and save costs. Telemedicine is also aimed at reducing referrals to doctors or health services in big cities, medical education facilities and for emergency cases. The expansion of telemedicine benefits can reach disaster areas, long-distance flights, and for foreign tourists who are in tourist areas. In addition, the aim of Telemedicine is to achieve health services

evenly throughout the country's population, where the condition of health services in Indonesia still needs to be improved so that it can reach people in underdeveloped areas, borders and islands. For this reason, it is necessary to increase both the quantity and quality of health facilities and the ability of health workers, especially those in rural areas.

Health services are part of the goals of national development, because health services are one of the human rights which need to get attention and be obtained equally by everyone without exception. In the Preamble to Law Number 36 concerning Health of 2009, letter a emphasizes that health is a human right and is one of the elements of well-being which needs to be realized based on the ideals of the Indonesian people and the 1945 Constitution of the Republic of Indonesia. The Indonesian Doctors Association supports online health services known as Telemedicine in the midst of soaring cases of Covid-19 in this country. Various start-ups, such as Halodoc and Alodokter, have recently reported an increase in the number of users and traffic compared to before the pandemic because of the telemedicine services they offer. Telemedicine covers many areas in the health system, such as providing consultations between health workers, patients and doctors (teleconsultation); administration of prescriptions and drugs (telepharmacy); patient referral services through the Ministry of Health's National Integrated Referral Information System (SISRUTE). Apart from being able to provide fast service to patients and provide a variety of health information, with telemedicine doctors can prevent the formation of a chain of transmission of Covid-19. The absence of physical doctor-patient meetings will prevent crowds at clinics, community health centers, and hospitals.

The presence of telemedicine certainly offers convenience for the community, especially those in areas with a limited number of doctors, to obtain health services. In addition, the more affordable prices allow more people to enjoy services through telemedicine. There are at least five main reasons to consider using Telemedicine, namely better access, cost-effectiveness, convenience, demand from millennial generation users, and reducing the absence of medical personnel for the community. Some examples of application companies in online health services in Indonesia are Halodoc, Alodokter, Dokter.id, Klikdokter, Medika App, and Homecare when they carry out their duties, especially for online health services, which are still not legally strong. However, when malpractice occurs so that the victim or patient feels disadvantaged, they can complain and sue the police or the district court as an unlawful act. However, this process does not solely directly give punishment to doctors who are suspected of committing violations. However, it will go through various investigative processes to obtain accurate information and evidence. Because after all, doctors as a profession are also legally protected as long as they follow the applicable SOPs. Unlike the case with online clinic health service providers. They are not responsible when there are doctors who do not comply with the Standard Operating Procedures. However, they still provide assistance to victims to carry out assistance.

In its implementation, legal instruments are needed that regulate the rights and obligations of application users and health services that are related to the implementation of online health services. Due to the fact that online health services have a risk of errors causing fatalities. online health services, are still the center of attention lately because in carrying out their business activities it is considered that they still do not have a definite legal umbrella, even though in a transaction it is very possible for an aggrieved party to exist. For the purpose of clarifying the position of applications that provide online health services and legal protection for service users in online-based health services. Based on the description above, the problem that will be discussed in this study is how Legal Protection and Regulation of Users of Telemedicine Health Services in the Era of Globalization.

8 RESEARCH METHODS

The research method used is a normative research method, using a statute approach related to legal protection and regulation of users of telemedicine health services in the era of globalization. The statute approach is to examine matters relating to legal principles, legal views and doctrines, and laws and regulations related to legal protection and regulation of users of telemedicine health services in the era

of globalization, with accurate data and can be accounted for. Apart from that, ² an in-depth examination of the legal facts was also carried out to then seek solutions to the problems that arise in the symptoms in question.

RESULTS AND DISCUSSION

TECHNOLOGY-BASED HEALTH SERVICES (TELEMEDICINE)

Some of the regulations governing telemedicine are insufficient and lack detail, so confusion still arises in the field. There are at least three things that need to be considered in order to optimize the telemedicine function. First, the Ministry of Health needs to formulate the next regulations in more detail. Many things are currently still "gray" or unclear enough in Telemedicine practice. For example, regarding the legal requirements for doctors and dentists for practice purposes, prescribing various types of drugs, and protection for medical personnel who perform services online. Teleconsultation and telepharmacy services via applications between patients and doctors are also still "gray". Regarding legal requirements, is it permissible for a doctor to practice online even if he does not have a Practice License (SIP) in a hospital. In the medical world there are 2 types of letters, namely Registration Certificate (STR) and Practice Permit (SIP). Without SIP, doctors cannot practice. The latest ¹⁴ Medical Council Regulation No. 74 of 2020 and the latest Minister of Health Regulation actually stipulates that doctors who practice Telemedicine must have an STR and SIP, but the context of this regulation is only within the scope of the Covid-19 pandemic emergency.

Because of this, it is necessary to further formulate the STR and SIP requirements after the pandemic so that they are no longer "gray". Then there are restrictions on drugs that can be given online (without examining the patient) or not. For example, currently a doctor can give several types of hard drug classes of antibiotics directly (such as Azithromycin and Meropenem) without examining the patient in a teleconsultation application. The Council's regulations only regulate two types of drugs that may not be prescribed online, namely narcotics and psychotropics. Other classes of hard drugs have not been regulated so they are prone to abuse. Protection or insurance for medical personnel in online practice is not yet available. For example, to protect doctors from certain lawsuits even though they have worked according to standard procedures. Apart from that, it is also necessary to consider the list of diseases or medical conditions that can be treated remotely and which cannot. Because there is no list of these diseases, there are several diseases that technically can and may be treated online, such as minor illnesses. Coughs, colds, mild nausea, vomiting, fever 1-2 days, chronic diseases that have been controlled such as controlled diabetes and controlled high blood pressure can be served online. As for diseases that cannot be treated online, such as signs of emergency, psychiatric illnesses.

Extra vigilance is needed in managing health transaction data. Hospitals, clinics, Telemedicine application managers and the Ministry of Health must ensure their platform security systems so that this information does not leak. The increasing number of health facilities and communities that utilize the telemedicine system will create a new "big data". This enormous amount of data must be kept confidential in the form of electronic medical records. Sooner or later, the medical world is entering the health 5.0 era which is marked by increasing personalization. This means that future healthcare systems will focus on each individual as a unique person. The health system also needs to guarantee comfort and safety and even improve the quality of life for everyone.

The government needs to utilize big data to support the improvement of health system services both for prevention, promotion and treatment of patients. For example, the implementation and reporting of Basic Health Research is routinely published by the Ministry of Health. In future publications, it may be necessary to consider additional data regarding the use of Telemedicine by health facilities and the community or how much influence Telemedicine has on the level of health in the population. This can enrich health research data in Indonesia and can become the basis for further decision making. Real benefits amid limited regulations Telemedicine is actually not new. The use of technology to develop

innovations in terms of health services is the main way out in providing adequate access in these difficult conditions. As explained in Article 1 Number 10 of the Health Law, health technology is all forms of tools and/or methods aimed at helping to establish the diagnosis, prevention and treatment of human health problems. Health service innovations are starting to emerge in terms of technology, one of which is online health services or better known as Telemedicine.

Telemedicine is basically an utilization of technology and communication that combines expertise in health sciences to create an online health service that consists of various features such as consultations, diagnoses and medical procedures. Referring to Article 1 point 1 Regulation of the Minister of Health No. 20/2019 provides an explanation that what is meant by telemedicine is a form of providing health services remotely by health professionals using information and communication technology, including the exchange of information on diagnosis, treatment, prevention of disease and injury, research and evaluation, and continuing education of health service providers for the benefit of improving individual and community health. Telemedicine services come with the promise of easy access for people to obtain health services online so that people do not need to spend more time, effort, or even costs like conventional health services. The existence of telemedicine services, of course, cannot be separated from the existence of a form of business providing health services to the community as a whole, even though there are several obstacles in its implementation, such as Indonesia's geographical conditions which are very broad so that internet network distribution is still not thoroughly distributed.

LEGAL PROTECTION AND REGULATION OF TELEMEDICINE HEALTH SERVICE USERS IN THE ERA OF GLOBALIZATION

Legal protection for perpetrators of malpractice committed by medical services and doctors is not strong enough. Even though there are several related laws which are the basis and legal umbrella for this malpractice act. One of them is Law 36 of 2009 concerning Health. Law Number 29 of 2004 concerning Medical Practice. Online clinical application providers legally do not have direct responsibility to malpractice patients where online clinical application providers must have assistance under the support of doctors who commit online malpractice.

As regulated in the Law of the Republic of Indonesia article 9 No. 11 of 2008 concerning information and electronic transactions which explains that business actors who provide their products from their electronic systems are required to provide information, completely and correctly regarding contract terms, manufacturers, and products provided. In Indonesia's positive law, Telemedicine refers to Law Number 29 of 2004 concerning Medical Practice and also the Health Law. Until now, there is actually no statutory regulation that directs explicitly regarding the practice of telemedicine-based health services. So far, arrangements regarding telemedicine have only been contained in Minister of Health Regulation Number 20 of 2019 concerning the Implementation of Telemedicine Services Between Health Service Facilities. Because there is no specific regulation to become an umbrella for legal protection for both doctors and patients in carrying out telemedicine practices, of course it can be said that it is still very prone to errors, mistakes, and even violations in its implementation. The next problem is regarding the protection of patients who are vulnerable to being disadvantaged due to weak regulations regarding Telemedicine-based health services. In addition to possible losses due to errors on the part of the serving doctor, losses regarding leakage of medical record data or more commonly known as patient medical records are also very prone to occur. As stated in Article 46 paragraph (1) of the Medical Practice Act, it has been emphasized that both doctors and dentists have an obligation to make medical records when carrying out medical procedures.

Legal protection for Telemedicine patients for doctors' mistakes will actually focus on the Medical Practice Law which regulates conventional medical practice procedures and operational standards, bearing in mind that there are still no statutory regulations that regulate both specifically and clearly regarding the responsibilities of doctors on the Telemedicine platform. Because basically when accessing Telemedicine services the patient will consult his health complaints with the doctor, then the doctor will provide an

explanation regarding these health complaints in the form of a diagnosis which will later be recorded in the patient's medical record which is useful as a reference for what action the doctor feels is best in supporting health patient. A form of action to request legal protection that can be taken by Telemedicine patients when they experience a loss due to a doctor's mistake in terms of negligence in providing information or health diagnoses is by submitting a complaint to the Indonesian Medical Discipline Honorary Council as explained in Article 66 of the Medical Practice Law. The form of the complaint must be based on actual events or in this case telemedicine services where the patient holds the doctor accountable. Apart from submitting a complaint to the Honorary Council of Indonesian Medicine, if a Telemedicine patient feels that the doctor treating him has committed an act or provided a medical advice beyond his control, the patient can file a lawsuit for unlawful action to the competent court institution, because basically the doctor is a profession that Noble must adhere to bioethical values in practicing medicine. The lawsuit filed was based on Article 1365 of the Civil Code where the patient must be able to truly prove that the loss suffered was purely the doctor's fault and there was a causal relationship with the loss suffered. Furthermore, the form of legal protection for Telemedicine patients can also refer to Law Number 8 of 1999 concerning Consumer Protection. The use of the Consumer Protection Act as a statutory approach is not without reason, considering that as stated in Article 1 point 5 of the Consumer Protection Act which states that service is any service in the form of work or achievements provided for the public to be utilized by consumer. Furthermore, patients, in this case as users of doctor services through the Telemedicine platform, can file lawsuits as set forth in Article 4 Number 1 of the Consumer Protection Act which states the rights of consumers who are entitled to comfort, security and safety in terms of consuming goods and/or services. . In the case of violations of consumer rights or in relation to patients who suffer losses and their rights as consumers are violated, they can apply for dispute resolution either through litigation or through non-litigation as is clearly stated in Article 47 and Article 48 of the Consumer Protection Act.

LEGAL CONSTRUCTION RELATED TO LEGAL PROTECTION FOR TELEMEDICINE USERS IN INDONESIA

The legal basis for patient legal protection in online health services is felt to be very weak when it is based on the old law. The development of law must always keep up with the times as there is an adage which states that law will always be left behind by the times. Therefore, the implementation of online health services should ideally be regulated in a special law that clearly regulates the rights and obligations of the parties and regulates how legal protection of the parties is in terms of online health services. Based on this, it is necessary to construct a law that regulates the legal protection of users of online health services in Indonesia. To fill the void in Legislation (Written Law) and the search for the meaning and significance of a statutory regulation in legal science it is known as Legal Construction and Interpretation (Legal Interpretation). Legal Construction is a way to fill the void in laws and regulations with legal principles and foundations.

The construction consists of 3 (three) forms, namely Analogy (Abstraction), Determination (Refining Law) and Argumentum A Contrario. Analogy is the application of a legal provision to a situation which is basically the same as the situation explicitly regulated by said legal provision, but the appearance or form of its embodiment (legal form) is different. Refinement of law, namely by not implementing or applying the law differently than the existing written legal provisions or treating the law in such a way (subtly) so that it seems as if no party is to blame, and a contrario argumentation which means that interpreting or explaining the law that is based on the conflict of understanding between the concrete events encountered and the events stipulated in the law.

There are three regulatory and policy instruments related to the implementation of Telemedicine services which are currently the references. First, Regulation of the Minister of Health No. 20 of 2019 concerning the Implementation of Telemedicine Services between Health Service Facilities. Second, Decree of the

Minister of Health Number HK.01.07/MENKES/4829/2021 concerning Guideline for Health Services Through Telemedicine During the Covid-19 Pandemic. This decision revokes the Circular of the Minister of Health Number HK.02.01/MENKES/303/2020 concerning the Implementation of Health Services Through Utilization of Information and Communication Technology in the Context of Preventing the Spread of Covid-19. Third, Indonesian Medical Council Regulation No. 74 of 2020 concerning Clinical Authority and Medical Practice Through Telemedicine During the Covid-19 Pandemic in Indonesia.

Regulation of the Minister of Health number 20 of 2019 is intended to improve specialist health services and the quality of services, especially for remote areas. Telemedicine services that can be carried out based on this regulation are health services between health service facilities.

Telemedicine services among these health care facilities include teleradiology, teleelectrocardiography, teleultrasonography, clinical teleconsultation, and other telemedicine services in accordance with developments in science and technology. However, this regulation does not yet regulate legal protection for parties, especially patients in the implementation of health services. The regulation also limits that health service facilities providing consultations can only be carried out by hospitals. Meanwhile, health service facilities requesting consultation can be in the form of hospitals, first level health service facilities and other health service facilities. Telemedicine services in this rule only apply to the needs of health care facilities. The Minister of Health Regulation 20/2019 does not yet regulate Telemedicine services for doctors or health service facilities with patients.

Therefore, if the regulation has not been enacted, the role of the government is needed in protecting the law through guidance and supervision related to online health services. Guidance and supervision of the implementation of Telemedicine Services is carried out by the Ministry of Health, provincial regional health offices, and district/city regional health offices based on their respective authorities in accordance with the provisions of laws and regulations. The Ministry of Health, provincial health offices, and district/city regional health offices in carrying out guidance and supervision of the implementation of Telemedicine Services can involve ministries that handle government affairs in the field of communication and information and related professional organizations, and Guidance and supervision are directed at improving service quality, safety patients, and protect the public against all possibilities that could pose a hazard to health.

The application of Telemedicine seems inevitable. The government needs to take swift steps to formulate more comprehensive arrangements. A number of laws related to public health services need to be adapted to current needs. Among them is Law No. 29 of 2004 concerning Medical Practice, Law Number. 36 of 2009 concerning Health and Law Number. 44 of 2009 concerning Hospitals. The need for adjustments to at least these three laws indicates the need for telemedicine regulation in a law. In addition, it also takes into account the scope of the regulation to meet the basic needs of the community related to health services. Telemedicine arrangements need to pay attention to the interests and safety of patients as well as protection for medical and health personnel. It is hoped that this regulation will not only provide convenience for patients in accessing health services, but also provide legal certainty and clear guidelines for medical and health personnel while maintaining the quality of services.

Some of the material in the previous instrument is still relevant to be rearranged in the instrument that needs to be formed later. Other materials that need to be regulated include telemedicine providers, rights and obligations of parties in telemedicine services, scope of telemedicine services, quality assurance aspects, service responsibilities, service management, protection and development of medical and health personnel, management of medical records, community monitoring and education.

The current development of telemedicine can be seen as an opportunity to open wide access for the public to obtain health services. On the other hand, it provides new challenges for adapting various aspects of health services for the community. Therefore, the government needs to immediately prepare a comprehensive set of regulations. Learning from other sectors, the delay in anticipation and adaptation to the rapid development of information and communication technology will lead to new, more complex problems.

CONCLUSIONS

Based on the results of research related to legal protection and regulation of users of telemedicine health services in the era of globalization. Telemedicine is the provision of health services remotely performed or carried out by doctors who utilize information and communication technology. The risk of providing health services through telemedicine is far greater than face-to-face or direct health services, so legal protection is needed for patients. Legal protection for patients in Telemedicine can be understood in the provisions in Article 3 paragraph (2) and paragraph (4), as well as Article 7 of the Medical Council Regulation Number 47 of 2020, which applies the principle of patient confidentiality, the obligation to have a Registration Certificate and Practice License, and have medical records. The prohibition for doctors to practice medicine through telemedicine is regulated in Article 9 of the Medical Council Regulation Number 47 of 2020, which is confirmed by Article 2 of the Minister of Health Regulation Number 20 of 2019. In addition, health service facilities providing and requesting consultations must register, which is submitted to The Minister of Health through the Directorate General of Health Services as stipulated in Article 13 paragraph (1) jo. Article 1 point 9 and point 10 Regulation of the Minister of Health Number 20 of 2019. The rights and obligations of patients in Telemedicine are also protected, which is explicitly stated in Article 18 paragraph (1) Regulation of the Minister of Health Number 20 of 2019. As for efforts to resolve if there is a violation of the practice a doctor through Telemedicine who causes a loss to the patient, can make a complaint to the Indonesian Medical Discipline Honorary Council, lawsuits for unlawful acts, settlements through court or out of court. Selautnya peril is a legal construction that guarantees protection for users of health services in Indonesia.

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