

The Legal Protection for Independent Practicing Doctors in Providing Telemedicine Services to Patients

Perlindungan Hukum bagi Dokter Praktik Mandiri dalam Memberikan Pelayanan Telemedicine Kepada Pasien

¹ Kartika and ² Andika

email: kartika_rad@yahoo.co.id

University of Hang Tuah Surabaya

Abstract: The purpose of study were to analyze the form of legal protection for doctors for the occurrence of risks in telemedicine services to patients. A normative juridical method is used in this research in which the implementation of this method is a study of legal principles and legal systematics. This research was a normative legal research. The results showed that the form of legal protection for doctors against risks in telemedicine services to patients is in the form of preventive and repressive protection. Legal protection for doctors in therapeutic relationships of health services through electronic telemedicine media is regulated in Law Number 17 of 2023 concerning Health. Preventive legal protection is preventive in nature against disputes, where in this case the KKI organizes training and skills improvement activities for doctors in order to improve the quality of services provided to patients. On the other hand, the protection provided is repressive legal protection related to the resolution of medical disputes between medical personnel and patients.

Keywords : independent practicing doctor, telemedicine, legal protection

Abstrak: Tujuan penelitian ini adalah untuk menganalisis bentuk perlindungan hukum bagi dokter atas terjadinya risiko dalam pelayanan telemedicine kepada pasien. Penelitian ini termasuk penelitian normative yuridis. Hasil penelitian menunjukkan bahwa bentuk perlindungan hukum bagi dokter atas terjadinya risiko dalam pelayanan telemedicine kepada pasien adalah dalam bentuk perlindungan yang bersifat preventif maupun represif. Perlindungan hukum terhadap dokter dalam hubungan teraapeutik pelayanan kesehatan melalui media elektronik telemedisin diatur dalam Undang-Undang Nomor 17 Tahun 2023 Tentang Kesehatan. Perlindungan hukum preventif bersifat pencegahan atas terjadinya sengketa, dimana dalam hal ini KKI menyelenggarakan pelatihan dan kegiatan peningkatan keterampilan bagi dokter agar dapat meningkatkan mutu pelayanan yang diberikan kepada pasien. Di sisi lain perlindungan yang diberikan adalah perlindungan hukum represif yang berkaitan dengan penyelesaian sengketa medis antara tenaga medis dengan pasien

Kata kunci : dokter, praktik mandiri, perlindungan hukum dan telemedicine.

INTRODUCTION

In Indonesia, in the opening of the 1945 Constitution, the fourth paragraph has emphasized the protection of all Indonesian people as a state duty. Article 28D paragraph (1) of the 1945 Constitution also states that everyone has the right to recognition, guarantee, protection, and certainty of fair law and equal treatment before the law (equality before the law). This is explained in the provisions of Article 5 paragraph (1) of Law Number 39 of 1999 concerning Human Rights (HAM) which states that everyone is recognized as a human being who has the right to demand and obtain equal treatment and protection in accordance with his human dignity before the law. This basis encourages the state to be responsible for providing adequate health care facilities to people in need. The responsibility mandated by the

constitution is stated in Article 2 of Law Number 36 of 2009 concerning Health which states that: "Health development is carried out based on humanity, balance, benefits, protection, respect for rights and obligations, justice, gender and non-discrimination and religious norms". These health efforts are carried out by medical personnel and health workers, who until now, medical personnel and health workers have always experienced various dynamics in providing health services, including:¹

1. Minimizing the risk of medical errors by implementing clinical governance. Clinical governance is a system within the hospital work environment that aims to ensure that health workers provide medical services in accordance with established standards so that patient safety is more assured and protected.
2. Improving medical services to mitigate the risk of disease transmission requires innovation in the era of health disruption 4.0.

The development of science and electronic media technology along with human development, has now become a primary need for humans, and in its development metamorphosed into cyberspace. The rapid development of science and information technology allows the implementation of more efficient ways for the production, distribution and consumption of goods and services. In this information era, geographical distance is no longer a determining factor in relations between humans or between business institutions, so that this world becomes a global village.²

Initially, this tendency was a global market demand, but over time it has influenced people's habits to get something to meet their life needs instantly, simply and easily. The state must follow this global trend in providing public services to the community, including technology in health services. In practice, the less than optimal utilization of advances in hospital technology and digital-based health care facilities is caused by the following:

1. The legal responsibility of the government is that there is no harmonization of the Healthcare Information and Management Systems Society (HIMSS) regulations, the concept of smart e-health such as telemedicine and SIMRS (Hospital Management Information System), SISROUTE (Integrated Referral Information System), Sehatpedia application, JKN (National Health Insurance) system, and e-medical records for both Regional/District/City Governments, Provinces, and national levels are not yet optimal.
2. Unpreparedness to expand internet access and empower patients in remote areas to access quality health services.
3. There are no legal provisions in the field of health technology and provide legal certainty regarding the protection of personal data of patient health records (PHR) and big data on cloud systems from the government or data from private parties, such as health-tech companies based on information and communication.
4. Hospital openness to share data so that it can be analyzed for business evaluation and to improve the quality of public health services.³

Telemedicine service arrangements need to take into account the interests and safety of patients as well as protection for medical and health personnel. This is expected to provide

¹ Iwan Dwi, Clinical Governance: Modern Concept of Quality Health Services, Journal of Health Services Management Vol. 4 No. 4, 2001, p.1.

² Sodik Anshor, Utilization of Information and Communication Technology as Learning Media, Civic Culture Journal Vol. 1 No. 1, 2017, p. 89.

³ Hospital Readiness to Face the Era of Digitalization Towards Smart Hospital, <https://persi.or.id/white-paper-kesiapan-rumah-sakit-menghadapi-era-digitalisasi-menuju-smart-hospital-4-0/>, accessed on August 25, 2022.

convenience for patients in accessing health services, as well as provide legal certainty and clear guidelines for medical and health personnel while maintaining the quality of health services.⁴

According to Health Law Number 17 of 2023, telemedicine is a clinical service provided through digital communication and telecommunication technology. Telemedicine can be done synchronously or asynchronously. Telemedicine can be done via video or audio calls, so patients do not need to come to the hospital or clinic. Telemedicine can be done for various things, such as medical consultations, health monitoring, and health education. Based on Article 1 number 21 in conjunction with Article 25 number 3 of the Health Law, telehealth is a health technology that has a broader scope, namely consisting of the provision of clinical services and non-clinical services as well as facilitation of health services, including public health, health information services, and independent services, through telecommunications and digital communication technology. Based on Law Number 17 of 2023 concerning Health, health services that are part of the Implementation of Health Efforts can utilize information and communication technology implemented through Telehealth and Telemedicine which are integrated with the National Health Information System.

Article 172 Juncto Article 165 of Law Number 17 of 2023 concerning Health explains the implementation of services with the Telemedicine system, Health Service Facilities can do it independently or by collaborating with an electronic system provider that has been registered based on the provisions of laws and regulations covering between Health Service Facilities and between Health Service Facilities and the Community. According to Government Regulation (PP) Number 28 of 2024, telemedicine is a health service that is carried out remotely. Telemedicine is carried out using information and communication technology. Article 558 of Government Regulation No. 28 of 2024 concerning the Implementing Regulations of Law Number 17 of 2023 ("PP No. 28 of 2024") provides categories regarding the technical implementation of Telemedicine as follows:

1. The implementation of Telemedicine includes services between Health Service Facilities and between Health Service Facilities and the community;
2. The implementation between Health Service Facilities is to establish a diagnosis, clinical management, and/or prevention of disease and injury;
3. Meanwhile, the Provision of Health Service Facilities to individuals for the purposes of diagnosis, clinical management, and/or prevention of diseases and injuries;
4. In organizing Telemedicine, Health Service Facilities can independently organize Telemedicine or cooperate with registered electronic system organizers;
5. Health Service Facilities that can organize Telemedicine are Hospitals, Health Centers, Clinics, Independent Practices of Medical Personnel or Health Personnel, Health Laboratories and Pharmacies; and
6. Health Service Facilities that organize Telemedicine must meet the requirements of infrastructure, types of services, human resources and clinical standards.

This study aims to analyze, among other things, the authority of independent practicing doctors in providing telemedicine services to patients; analyze the form of legal protection for doctors against risks in providing telemedicine services to patients.

⁴ M. Nur Sholikin, The Urgency of Developing Comprehensive Telemedicine Regulations, <https://www.Hukumonline.com/berita/a/regulation-telemedicine-lt61e77813f14ea/>, accessed on September 06, 2022.

RESEARCH PROBLEM

The problems in this research included: 1) The authority of independent practicing doctors to provide telemedicine services to patients. 2) Form of legal protection for doctors against risks in providing telemedicine services to patients.

METHODS

This study used the Normative Juridical research type, the statute approach and conceptual approach. The Normative Juridical type is a process to find a legal rule, legal principles, or legal doctrines in order to answer the legal issues faced. The Statute Approach is an approach used to study and analyze the provisions of the Law related to the problem, while the conceptual approach is an approach in legal research that provides an analytical perspective on solving problems in legal research seen from the aspects of the legal concepts that underlie it.

The legal materials in writing this thesis are legal materials relating to the authority of medical personnel in providing telemedicine services from the perspective of legal protection for the community, to seek and find a concept or form of legal protection for the community related to the provision of telemedicine services to patients including primary legal materials, secondary legal materials and tertiary legal materials.

The legal material collection technique used in this study is library research. Library research or document study is an activity carried out by collecting and examining all references related to the main problem in this writing. The data source for this study uses secondary data in the form of primary and secondary legal materials.

The method of legal material analysis used is a qualitative analysis method, namely describing research data into elements through a series of words or statements descriptively. The qualitative analysis method is based on secondary data which is legislation.

DISCUSSION

A. The Potential Risks to Patients Due to Telemedicine Services

Article 7 of the Indonesian Code of Medical Ethics (KODEKI) explains that, "A doctor is obliged to only provide a certificate and opinion that has been checked for its truth by himself". The scope of Article 7 also states in paragraph (1) that, "In providing a medical/expert certificate or expert opinion, whatever the form and purpose, the doctor is obliged to base its contents on medical facts that he believes to be true in accordance with his professional responsibility as a doctor".

Based on the description of the legal norms above, there needs to be a doctor's professional belief in every diagnosis and management determination. Doctors need to be aware that telemedicine has limitations in presenting the patient's clinical condition information needs. Doctors must consider whether the incomplete information on the patient's clinical condition is sufficient to generate adequate professional belief so that it can be used to establish a diagnosis and determine management for the patient. In fact, a doctor can establish a diagnosis based only on good anamnesis skills, but a physical examination will provide 20% additional information that may be significant and even change the direction of the diagnosis.⁵

⁵ Pukovisa Prawiroharjo, et al., Telemedicine Services in Indonesia: Inevitability, Risks, and Ethical Limitations, Indonesian Journal of Medical Ethics Vol 3 No. 1 Feb 2019, p. 4.

Observational physical examinations can be facilitated through telemedicine services using video methods, but other non-observational physical examinations (palpation, percussion, auscultation) or requiring special maneuvers are not possible through telemedicine. An example of a telemedicine service using video and imaging methods is in dermatology cases, because some diagnoses can be confirmed through inspection. However, there are several things that must still be considered, such as the effect of lighting in taking pictures, as well as three-dimensional contours that are difficult to obtain from telemedicine services without direct examination. This limited information has the potential to cause medical services to be very limited or even make wrong decisions. On the other hand, this must be a consideration for applications that provide telemedicine, where the application needs to consider these limitations if it wants to integrate this telemedicine service with remote pharmacy/pharmacy services, starting from prescriptions from doctors, purchases, to delivery of drugs to patients.

Telemedicine health consultations used by patients or their families to obtain a second opinion as a comparison in a situation where the patient is being treated in a hospital, then the doctor contacted via telemedicine must consider that the modality of information obtained by him/her is not balanced compared to the integrity of the health information obtained by colleagues who are treating him/her. The doctor contacted via telemedicine needs to direct the patient and/or his/her family to ask for this information to the doctor or team of doctors who are treating him/her. The telemedicine doctor also needs to remind that it is possible that the patient or family who consulted him/her is keeping secret that the patient is actually being treated by another doctor with the intention of comparing the opinion of the telemedicine doctor with the treating doctor. Therefore, telemedicine doctors need to be very careful and distance themselves from words and opinions that discredit fellow doctors.

In a situation where a telemedicine doctor perceives that the clinical condition of the patient consulted to him/her points to a disease that requires emergency assistance, then saving lives/disabilities in the context of an emergency needs to be prioritized over existing rules. This service generally provides medical advice only and is not intended to replace real doctor-patient interaction. Doctors can use this telemedicine to provide the best advice regarding emergency first aid and recommend that the patient be taken to the nearest hospital immediately.⁶

Doctors who provide services in the world of telemedicine must be very careful in giving their medical advice as in real-world practice. Do not let this advice be in the form of advertising a particular product, or even excessively advertising themselves.⁷ Doctors must be aware of the possibility that their advice may be used by readers to diagnose themselves or even used as a “weapon” by other patients to attack other fellow doctors. Providing maximum medical services to patients is the responsibility of doctors, and doctors have the right and responsibility to obtain all information that supports their responsibilities. Medical services will not be optimal if there is related information that is not asked by the doctor, or conversely is kept secret by the patient.

Article 16 of the KODEKI explains that, "Every doctor is obliged to keep confidential everything he knows about a patient, even after the patient has died." In a face-to-face

⁶ Pukovisa Prawiroharjo, et al., Telemedicine Services in Indonesia: Inevitability, Risks, and Ethical Limitations, Indonesian Journal of Medical Ethics Vol 3 No. 1 Feb 2019, p. 4.

⁷ Prawirohardjo P, Meilia PDI. Doctors Advertising: A Review According to the Indonesian Code of Medical Ethics (KODEKI) 2012, Indonesian Journal of Medical Ethics (Jeki), 2017 Oct 11;1(1): p. 13. <https://doi.org/10.26880/jeki.v1i1.4>.

meeting between a doctor and a patient, there are only 4 parties who may know the information that may be very confidential, namely the doctor, nurses and medical staff, the patient himself, and the patient's companion (who has been approved by the patient). In addition, the information may also be written in the medical record. However, in telemedicine, there are several other parties who can know the information without the knowledge of the doctor and patient, for example the internet service provider, the intermediary server service provider, other staff from the telemedicine service including doctors and technicians, hackers, and even other people who have access to the computer, laptop, or cellphone used by the patient for the telemedicine service.

Every internet service provider and server service provider generally promises to maintain confidentiality and will not intercept data used by its clients. Moreover, considering the data they serve is very large, perhaps reaching millions of gigabytes per second, it seems impossible for them to be able to intercept patient-specific data by chance, not to mention the protection through encryption methods used by telemedicine service providers.⁸

In addition, this is easily prevented by using reputable internet service providers and server service providers who will make every effort to maintain this confidentiality because violations can result in lawsuits and loss of public trust. Likewise, each telemedicine service generally has protocols and agreements that promise data security and confidentiality, especially from internal misuse. Some telemedicine services publish answers to common health questions on their websites; of course, they must be very careful about which answers are allowed to be published and which are not, and must always hide patient identities, including patient initials, while gender and age are still allowed.

Other potential problems can be prevented by using only reputable sites. However, the problem of hackers and people who have access to telemedicine instruments without permission, such as friends or others who know the service password, is beyond the ability and responsibility of the organizer. Patients should always be reminded that patient data can be leaked from the client side, and should always try to prevent this possibility, for example by only consulting in closed and private places.

Things that patients can do to prevent this include, for example, regular system updates, installing a trusted antivirus program, and keeping service passwords secret. Another possible problem is like in telemedicine services between doctors and doctors, namely strangers who overhear telemedicine telephone conversations or happen to steal a look from behind the patient while consulting via the chat/forum feature. The difference is, telemedicine staff and doctors are experienced personnel who have been warned about patient confidentiality, even for doctors listed in the KODEKI.

Telemedicine services have the potential to become ethical issues relevant to their implementation in Indonesia, including issues of patient privacy and confidentiality and changes in face-to-face interactions between doctors and patients. Hacking of patient data confidentiality security including text, audio, and visual/video data is one of the main risks of the telemedicine system. This is very important to note, especially if there is sensitive patient data that would be very detrimental if published, such as a history of sexually transmitted diseases and mental disorders. The security of this confidential data should be maintained as much as possible, for example by ensuring that the consultation room is in a private or special room, to prevent others from hearing or seeing the consultation process, and if it is done with a chat application via a smartphone, it should use an application that has a good reputation in terms of confidentiality.

⁸ Pukovisa Prawiroharjo et al., Op. Cit., p. 6.

Meanwhile, telemedicine services also cause changes in the classic face-to-face interaction between doctors and patients. On the positive side, this interaction means that patients can access doctor services more easily, quickly and cheaply. On the negative side, the doctor's professional confidence in the patient's clinical condition is very limited as described above. This change in interaction also causes uncertainty if malpractice cases arise, because telemedicine services are not recorded by the Indonesian Doctors Association (IDI) or the government, and doctors in telemedicine services do not have a SIP for the service.

B. Forms of Legal Protection for Independent Practicing Doctors in Telemedicine Services that Harm Patients

The form of legal protection obtained by doctors in carrying out their professional duties, namely preventive legal protection and repressive legal protection. Preventive legal protection refers to Article 50 of the Medical Practice Law, while repressive legal protection refers to Article 29 of the Health Law. According to the provisions of Article 50 of Law Number 17 of 2023 concerning health, it states that:

Doctors or dentists in carrying out medical practice have the right:

- a. Obtain legal protection as long as you carry out your duties in accordance with professional standards and operational procedure standards;
- b. Providing medical services according to professional standards and standard operational procedures;
- c. Obtain complete and honest information from the patient or his/her family; and
- d. receive compensation for services.

Law 17/2023 regulates Health Human Resources including doctors, specialist doctors, and subspecialists and dentists. Then health workers include clinical psychology, nursing, midwifery, health, environment, nutrition, physical therapy, medical technical, biomedical engineering, traditional health and others.

Preventive legal protection will be obtained by doctors if they meet the requirements, namely having a STR, SIP, carrying out medical actions according to standards (professional standards, operational standards, service standards and ethical standards), there is informed consent for every medical action and all must be well documented in a document that we know as a medical record.

The form of legal protection for independent practicing doctors above can be given when the doctor carries out his duties according to professional standards and standard operating procedures. In this case, the doctor is required to work professionally accompanied by complete and honest information from the patient and his family. Doctors who have carried out their duties according to professional standards, medical service standards and standard operating procedures are entitled to legal protection. In carrying out medical practice, doctors must fulfill informed consent and medical records as evidence that may free the doctor from legal action if there is an alleged medical crime.

In medical practice, there is legal protection for doctors suspected of committing medical malpractice, including:

- a. Treatment Risks
 - 1) Inherent or attached risk; Every medical action performed by a doctor certainly contains risks, therefore doctors must carry out their profession in accordance with applicable standards. Risks that may arise include hair loss due to chemotherapy with cytostatics.

- 2) Hypersensitivity reactions; The body's excessive immune response to the entry of foreign objects (drugs) often cannot be predicted in advance.
 - 3) Complications that occur suddenly and cannot be predicted in advance; It often happens that the patient's prognosis seems good, but suddenly the patient's condition worsens or even dies without knowing the cause. For example, the occurrence of amniotic fluid embolism.⁹
- b. Medical Accident
- Medical accidents are often considered the same as medical malpractice, because these conditions cause harm to patients. These two conditions should be distinguished, because in the medical world doctors try to cure rather than harm patients. If a medical accident occurs, the doctor's liability is directed at how the accident occurred or the doctor must prove the accident occurred.¹⁰
- c. Contribution Negligence
- The doctor cannot be blamed if the doctor fails to treat the patient, if the patient does not honestly explain the history of the illness he has suffered from and the history of the drugs he has used during his illness, does not obey the doctor's instructions and instructions, or refuses the previously agreed treatment method. This is considered a patient error known as contribution negligence or the patient is also at fault. Honesty and obeying the doctor's advice and instructions are considered the patient's obligations to the doctor and to himself.¹¹
- d. Respectable Minority Rules & Errors of (in) Judgment
- The medical field is a very complex field, as in a treatment effort there can be different opinions about the appropriate therapy for a particular medical situation. The approach to a disease can be different for one doctor to another, but must still be based on scientific knowledge that can be accounted for.
- Based on the above conditions, a legal theory called the respectable minority rule emerged, namely a doctor is not considered negligent if he chooses one of the many recognized treatment methods. The doctor's mistake in choosing an alternative medical action for his patient gave rise to a new theory called error of (in) judgment, also known as medical judgment or medical error, namely the choice of medical action by a doctor that has been based on professional standards which turns out to be the wrong choice.¹²
- e. Volenti Non Fit Iniura or Assumption of Risk
- Volenti not fit* this error assumption of risk is an old doctrine in legal science that can also be used in medical law, namely an assumption that is already known in advance about the existence of a high medical risk to the patient if a medical procedure is performed on the patient. If a complete explanation has been given and it turns out that the patient or family agrees (informed consent), if a previously anticipated risk occurs, then the doctor cannot be held responsible for his medical actions. In addition, this doctrine can also be applied to cases of forced discharge (going home at the patient's own will even though the doctor has not permitted it), then such a thing frees the doctor and hospital from lawsuits.¹³

⁹ Danny Wiradharma, Lecture Guide for Medical Law, Binarupa Aksara, Jakarta, 1996, p. 107.

¹⁰ Ibid. p.108

¹¹ Syahrul Machmud, Law Enforcement and Legal Protection for Doctors Suspected of Medical Malpractice, KDP, Bandung, 2012, p. 283

¹² Ibid.p.284

¹³ Ibid. 285

f. *Res Ipsa Loquitur*

This *res ipsa loquitur* doctrine is directly related to the burden of proof (onus, burden of proof), namely the transfer of the burden of proof from the plaintiff (patient or his family) to the defendant (medical personnel). For certain negligence that is already clear and obvious so that it can be known to the general knowledge between the layperson or the medical profession or both, that the disability, wound, injury or fact is clearly evident from the result of negligent medical action, and this kind of thing does not require proof from the plaintiff but the defendant must prove that his actions are not categorized as negligent or wrong.¹⁴

While medical crime is an unlawful act that occurs as a result of a legal relationship between the user of medical services (patient) and the perpetrator of medical services (doctor) in carrying out medical practices carried out with errors (*schuld*) or negligence (*culpa*) by a person who is able to be responsible. In the field of civil law to determine the existence of an unlawful act depends on the field of administrative law.¹⁵

Fulfillment of administrative requirements by issuing a practice permit by an authorized official is a justification, so it is only natural that doctors who have obtained a practice permit, because they are considered capable of working professionally in the medical field, receive legal protection, especially from the clutches of criminal law on malpractice.

On the other hand, the protection given to independent practicing doctors in providing telemedicine services is repressive legal protection related to the resolution of medical disputes between medical personnel and patients. This repressive legal protection refers to Article 29 of the Health Law which stipulates that: "In the event that a health worker is suspected of negligence in carrying out his/her profession, such negligence must first be resolved through mediation". Mediation to resolve medical disputes between medical personnel and patients is organized by the Medical Ethics Honorary Council (MKEK).

Law Number 17 of 2023 concerning Health provides legal protection to the community through various provisions, such as rights and obligations, government responsibilities, and health service facilities. Legal protection for the community in the 2023 Health Law includes:

1. Protection of citizens' rights to live healthily
2. Protection of health workers, such as the right to wages, benefits, health insurance, and opportunities for self-development
3. Provisions regarding citizens' obligations to maintain the health of themselves and others
4. Provisions regarding the government's obligations to provide health
5. Provisions regarding health service facilities available in Indonesia

In the norms of the Medical Practice Law, legal protection has been stipulated for the community receiving health services, namely preventive legal protection that is in the nature of preventing disputes, in which case the KKI organizes training and skills improvement activities for doctors and medical personnel in order to improve the quality of services provided to patients. The KKI has a program for coaching and improving human resources for its members, as regulated in Article 8 of the Medical Practice Law which stipulates that:

¹⁴ Ibid, p. 287

¹⁵ Venny Sulistyani, Zulhasmar Syamsu, Civil Liability of a Doctor in a Medical Malpractice Case, *Lex Jurnalica*, Volume 12 Number 2, August 2015, p. 143.

Based on the provisions of Article 1 number (6) letter a of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions (hereinafter referred to as the ITE Law), it is regulated that: "Electronic system organizers are every person, state administrator, Business Entity, and community that provides, manages, and/or operates electronic systems, either individually or jointly, to users of electronic systems for their own needs and/or the needs of other parties."

From the provisions above, it can be categorized that doctors are part of the organizers of electronic systems because they fulfill the elements as a person who manages or operates electronic systems either independently or together for their own needs or the needs of other parties, then all legal consequences arising from health efforts provided to patients online (telemedicine) can be accounted for based on the provisions of the ITE Law.

The medical profession is a profession that is accompanied by morality to provide services to others in need. A doctor in providing his services is responsible to himself and the community. Responsible to himself, meaning he works because of moral, intellectual, and professional integrity as part of his life. As for being responsible to the community, it means the willingness to provide the best possible service according to his profession without distinguishing the type of service payment and producing quality services that have a positive impact on the community.¹⁶

The services provided are not solely motivated by seeking profit, but also mean daring to bear the risks arising from the service. The emergence of new risks in the use of telemedicine service technology requires precision and an attitude of moral, intellectual, and professional integrity in providing medical services. Because this service provides remote patient interaction services, it is possible for a doctor to violate ethical obligations. In the Indonesian medical code of ethics, doctors have obligations that must be fulfilled, both general obligations, towards patients and towards themselves.

In relation to the violation of the profession committed by doctors against the Indonesian medical code of ethics, it is merely an ethical violation and not a form of violation of the law because a violation of ethics does not always mean a violation of the law. On the other hand, a violation of the law is not always a violation of medical ethics, but there is also an ethical violation that is also a violation of the law.¹⁷

Therefore, it is necessary to distinguish between pure ethical violations and ethical-legal violations. Ethical violations are not always legal violations, and vice versa, legal violations do not always mean ethical violations. Pure ethical violations, for example, charging unreasonable fees from patients or charging fees from fellow doctors and dentists and their families or taking over patients without the consent of their colleagues, then the doctor's behavior cannot be prosecuted legally but needs to be reprimanded by his superiors or professional organizations.

For example, an eticolegal case where the violation is not only contrary to KODEKI, but also contrary to criminal or civil law, for example substandard medical services, issuing false certificates and leaking medical secrets. One of the legal problems that can occur in telemedicine services is leaking medical secrets, because it turns out that in the practice of telemedicine services, the history of consultations between doctors and patients is displayed so that it can be seen by other users. From the explanation above, it can be concluded that this case has violated the doctor's obligations to patients as regulated in KODEKI, where the violation is also a violation of the law (ethicolegal).

¹⁶Abdulkadir Muhammad, *Ethics of the Legal Profession*, Citra Aditya Bakti, Bandung, 2001, p. 78.

¹⁷Ibid. p.286

Ethical violations are resolved by the Medical Ethics Honorary Council (MKEK) formed by the Indonesian Doctors Association (IDI) and if necessary can be forwarded to the Medical Ethics Consideration and Development Committee (P3EK) formed by the Ministry of Health because the case is a violation of medical confidentiality which contains legal responsibility, then the violation of the law is resolved through the courts. Although the purpose of displaying the consultation history is to help provide education to other users, it does not mean that it can harm the person being helped. Because in the medical profession the Principle of *Primum Non Nocere* applies, which means that the main thing is not to harm. So the role of moral ethical awareness accompanied by legal awareness is very much needed by doctors so as not to commit ethical violations that lead to medical errors in using telemedicine services.

Based on the description above, it can be concluded that the legal responsibility of doctors in providing telemedicine services if the patient suffers a loss, either due to an error made by the doctor in a state of negligence or carelessness, then the injured party (patient) must first prove that there was an error by the doctor in providing his services. However, because the actions taken by the doctor in telemedicine services only involve online consultations, it is difficult to prove that there has been a professional error because the doctor still considers that there has been no therapeutic agreement in telemedicine services.

Legal protection for doctors in telemedicine services is guided by Law Number 17 of 2023 concerning health because doctors are human resources in telemedicine services. Therefore, Law Number 36 of 2009 concerning Health cannot be the legal basis for the legal responsibility of medical personnel in telemedicine services, but if viewed from the services provided by doctors as medical personnel in telemedicine services, including in health services regulated in the Health Law.

C. Settlement of Disputes Regarding Telemedicine Services that are Detrimental to Patients

1. Civil Settlement of Medical Disputes

In the concept of civil lawsuit settlement, the doctor's liability in medical service practice can be based on unlawful acts and can also be based on breach of contract (default). There is no fundamental difference between unlawful acts and failure to perform a contract. Because default is a genus of species of unlawful acts. Between unlawful acts and default there is no fundamental difference, because committing a breach of contract is also a violation of the rights of others.¹⁸

There is no sharp line between unlawful acts and breach of contract, although they are not mixed. Basically, the doctor's liability arises because of the loss suffered by the patient in the implementation of medical services. The loss can occur due to the doctor's own negligence, due to the negligence of health workers under the doctor's supervision, or it can also occur because the patient contributed to the loss.¹⁹

The civil mechanism for resolving medical disputes consists of:

a. Non-litigation Dispute Resolution Mechanism

1) Arbitration

According to the provisions of Article 1 number 1 of Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Arbitration is a method of resolving a civil dispute outside the general courts based on an

¹⁸ M. Zamroni, *Op.Cit*, pp. 49-50.

¹⁹ *Ibid.*289

arbitration agreement made in writing by the disputing parties. With the regulation of this legal norm, it means that not all medical disputes can be resolved through the arbitration mechanism, because only medical disputes that include a clause (choice of forum) when the patient and doctor make a therapeutic contract will resolve the dispute through arbitration.

2) Alternative Dispute Resolution

Alternative Dispute Resolution is an institution for resolving disputes or differences of opinion through procedures agreed upon by the parties, namely settlement outside the court through consultation, negotiation, mediation, conciliation, or expert assessment resolved through:

- (a) Consultation, which is a personal action between a certain party or client and another party called a consultant, who provides his opinion to the client to fulfill his needs.
- (b) Mediation is the most frequently chosen method of dispute resolution, namely through a negotiation process to obtain an agreement between the parties assisted by a Mediator (Article 1 number 1 of Perma Number 1 of 2016 concerning Mediation Procedures in Court). All civil disputes submitted to the Court must first be resolved through mediation, unless otherwise determined based on this Supreme Court Regulation. (Article 4 (1) Perma Number 1 of 2016 concerning Mediation Procedures in Court). Article 310 of Law Number 17 of 2023 states that medical personnel or health workers who are suspected of making mistakes in carrying out their profession and causing harm to patients, as well as causing disputes, must first be resolved through alternative dispute resolution outside the courts. Health Law Number 17 of 2023 Article 310 states that mediation is not the only forum for resolving disputes outside the courts and is a generally applicable binding, which regulates the resolution of disputes that cause harm to patients through alternative dispute resolution.
- (c) Conciliation is the resolution of a dispute with the intervention of a third party (conciliator), where the conciliator is more active, by taking the initiative to prepare and formulate settlement steps, which are then offered and submitted to the disputing parties. The conciliator is not authorized to make a decision, but only authorized to make recommendations, the implementation depends on the good faith of the parties.
- (d) Expert Assessment is a form of expert opinion that can be understood and accepted by the parties to the dispute, which is technical in nature according to their field of expertise.

3) Consumer Dispute Resolution Agency (BPSK)

The Consumer Dispute Resolution Agency (BPSK) is a special institution established based on Article 31 of Law Number 8 of 1999 concerning Consumer Protection, which is established in Level II Regions for dispute resolution outside the courts. Law Number 8 of 1999 concerning Consumer Protection can also be applied in the Health sector.²⁰ The enactment of this law is expected to make the position of consumers equal to that of business actors, between consumers and business actors not only have rights but also obligations. The rights of health

²⁰ Sri Siswati, *Health Ethics and Law in the Perspective of Health Law*, Rajawali, 1st Ed.- 3rd Ct., Depok, 2017, p. 152.

consumers based on Law Number 8 of 1989 are: Comfort, security, and safety; Obtaining correct, clear, and honest information, having their opinions and complaints heard, receiving advocacy, education and consumer protection, being served correctly, honestly, non-discriminatory, receiving compensation, restitution and/or replacement.

b. Litigation Dispute Resolution Mechanism Through the Civil Court Path in the General Court.

Patient rights in Law Number 17 of 2023 concerning Health include the right to sue health service providers. This law also regulates the patient's right to obtain information, services, and protection. The lawsuit that can be filed by patients who feel aggrieved by the mistakes or negligence of health workers can be in the form of a lawsuit for breach of contract or an unlawful act. The plaintiff has an obligation to prove the truth of his lawsuit. While the defendant has the right to refute what the plaintiff has put forward.

Each party actively seeks the necessary evidence. In this case, informed consent forms, medical records and other written evidence are very much needed. Regarding malpractice, negligence and responsibility are also very important.

1. Criminal Settlement of Medical Disputes Through the Police

The patient makes a report to the police that a criminal act has occurred against him, related to criminal acts in the health sector, both those regulated in the Criminal Code and outside the Criminal Code. Legal responsibility arises after the victim can prove that malpractice has occurred by health workers, which is caused by negligence or error by health workers.

The stages in resolving a criminal case in sequence are making a report or complaint about a crime, clarification, investigation process, summoning parties, making a report of the examination, and summoning witnesses. If it is concluded that there is an alleged criminal act, then the examination is upgraded to an investigation at the Police, prosecution at the Prosecutor's Office, and trial at the Court. The stages of the trial in sequence are reading the Indictment, exceptions (if any), response from the Public Prosecutor, Interim Decision by the Chief Justice of the Panel, evidence from witness examination or expert testimony, reading the charges (Requisitoir), reading the Defense (Pledoi), reading the Reply (Prosecutor's Response to the Legal Counsel's Pledoi), reading the Duplik (Legal Counsel's Response to the Reply from the Public Prosecutor), and reading the Verdict.

2. Administrative/State Administration Medical Dispute Resolution

The procedure for examining state administrative disputes through the State Administrative Court (PTUN) is in principle the same as the civil court, but there is an additional "Dismissal Process". The judge will assess the dispute between the two parties, whether this dispute is worthy of being forwarded to the PTUN. Based on Law Number 5 of 1986 concerning the State Administrative Court which was amended by Law Number 17 of 2023 and last amended by Law Number 51 of 2009, State Administrative Disputes: Disputes arising in the field of state administration between individuals or civil legal entities with state administrative bodies or officials, both at the center and in the regions, as a result of the issuance of state administrative decisions, including personnel disputes based on applicable laws and regulations.

3. Settlement of Telemedicine Service Disputes Through Medical Professional Institutions:

a. Medical Ethics Honorary Council (MKEK)

The Medical Ethics Honorary Council (MKEK) is a special council for medical personnel, this resolution mechanism applies to the medical field. The legal basis for the Medical Ethics Honorary Council (MKEK) was formed in 1979 based on Article 16 paragraph (1) of the Indonesian Doctors Association (IDI) Bylaws. MKEK is an autonomous body within the IDI organization consisting of the Central MKEK, Regional MKEK (at the provincial level) and Branch MKEK (at the Regency/Municipality level). The composition of MKEK members consists of Chairperson, Deputy Chairperson, Secretary, Permanent Members and Non-permanent Members.

In its implementation, since the enactment of Law Number 17 of 2023 concerning health and the establishment of the Indonesian Medical Council and the MKDKI, only a few cases have been handled or reported by the public. This may be because the socialization of the existence of this organization has not been maximized and the public is not very familiar with the MKDKI institution.

The authority of independent doctors in providing telemedicine services to patients is divided into 2, namely material authority and formal authority. Material authority is the authority based on the expertise of a doctor in providing telemedicine services, which is the authority of expertise, which is inherent in the individual doctor. Formal authority is the authority according to statutory regulations, namely before a doctor practices providing telemedicine services to his patients, a doctor is obliged to have a Registration Certificate (STR). These two authorities have a unity that cannot be separated from each other. The form of legal protection for doctors against risks in telemedicine services to patients is in the form of preventive and repressive protection. Preventive legal protection is preventive in nature against the occurrence of disputes, in which case KKI organizes training and skills improvement activities for doctors in order to improve the quality of services provided to patients. On the other hand, the protection provided is legal protection.

CONCLUSION AND RECOMMENDATIONS

The conclusion this research that the form of legal protection for doctors against risks in telemedicine services to patients is in the form of preventive and repressive protection. Legal protection for doctors in therapeutic relationships of health services through electronic telemedicine media is regulated in Law Number 17 of 2023 concerning Health. Preventive legal protection is preventive in nature against disputes, where in this case the KKI organizes training and skills improvement activities for doctors in order to improve the quality of services provided to patients. On the other hand, the protection provided is repressive legal protection related to the resolution of medical disputes between medical personnel and patients.

Suggestions that can be given include 1) legal perspective, a new regulation is needed equivalent to the Law (*lex specialis*) whose contents specifically regulate telemedicine.; 2) Professional groups must have legal awareness in carrying out their duties for the honor of the profession itself. If a doctor in carrying out his medical profession has been proven to have committed a medical error in telemedicine services, and has not complied with the

obligations that have been set for him, then the form of legal responsibility can be demanded based on civil, criminal, and administrative legal responsibility, while responsibility in the professional environment will be followed up by the Medical Ethics Honorary Council (MKEK) and the Medical Ethics Consideration and Development Committee (P3EK).

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