

Doctor's Legal Liability Against Consultation Via Online if a Patient Experiences Loss

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Abstract

Health is need of every human being in living his/her life. Health is also crucial because without good health, it will be difficult for every human being to carry out his/her daily activities. Entering an era of rapid development, the world is faced with the emergence of new technologies in the medical field that allow doctors to practice in a virtual space. To analyze the legal basis of online medical services as well as to analyze the legal liability of doctors in providing online medical services if a patient experiences loss. Until now, there have been no detailed regulations regarding online-based medical services, both in statutory provisions and in the provisions of the medical code of ethics. Law Number 36 of 2009 concerning Health and Law Number 29 of 2004 concerning Medical Practice so far have not been used as a reference for the administration of medical practice using online-based medical services. Furthermore, Law Number 11 of 2008 concerning Electronic Information and Transactions also cannot be used as a reference.

Keyword: Legal Liability, Online-Based Medical Services, Medical Record.

Introduction

The new medical service in the form of online-based medical services in principle provides medical services that can be reached without the need to meet face to face, so that even long-distance patients can use these services. In terms of usage, online medical services use a mobile application on a smartphone and an internet network is required to access it. So it can be said that online medical services are more accessible in terms of use and are also more practical.

Doctor consultation through online media should comply with Law Number 11 of 2008 concerning Electronic Information and Transactions. Providers of consulting services through electronic systems are

required to comply with the ITE Law. The service provider should design a good and safe system as well as be able to maintain the data confidentiality. This online health service should be further regulated in special regulations.¹ Medical services in the form of consultation from conservative to online or online must be protected by law, both protection for doctors, system administrators and especially for patients or consumers who use online media.

In practice, the relationship between doctors and patients in online medical services is carried out via the internet, then as it is the relationship between doctors and patients in conventional medical services, the relationship between doctors and patients using online medical services must also meet the requirements stipulated in Law Number 29 of 2004 concerning Medical Practice.

The positive impact of online medical services is that people can ask doctors anytime and anywhere via their handphones/smartphones about their health problems. However, the negative impact is how do doctors know

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correctly the condition of the patient's body? What limitations do doctors have in giving opinions about these health problems? In terms of patient liability, who will be liable if the patient experiences problems or complications during treatment that is carried out in online-based health services? Several potential legal problems that can arise in online medical services in the future, including regarding the granting of online practice licenses, data protection of patient privacy rights, and accountability if there are parties who experience losses.

In general health services, medical records that are used can be in paper or electronic form. However, the use of medical records on paper media certainly cannot be used in online consultation services or application-based home visits. Referring to the provisions of Article 5 of the Minister of Health Regulation Number 269 of 2008 concerning Medical Records which states that "every doctor or dentist in carrying out medical practice is obliged to make medical records", in essence online consultation medical services and home visits are no exception and must use electronic medical records.² In the use of online medical services, it is also necessary to regulate regarding protection of patient data, so that it is not easily accessed by unauthorized parties and provides a sense of security for each user.

Discussion

Legal Basis for Health Services

The legal arrangement for health services uses the following provisions: *Law Number 36 of 2009 concerning Health*. In terms of health services, the Health Law of 2009 provides more protection and legal certainty for both service providers as health workers and recipients of health services as patients. On the one hand, every person has the right to demand compensation from a person, health worker, and/or health provider who has caused losses due to errors or negligence in the health services that they receive. However, on the other hand, if the health worker is suspected of negligence in carrying out his/her profession, the negligence according to law must be resolved first through mediation.³

Law Number 29 of 2004 concerning Medical Practice, The purpose of this law concerning medical practice is to provide protection to patients, maintain and improve the quality of medical services provided by

doctors and dentists, and provide legal certainty to the public, doctors and dentists as stated in the provisions of Article 36 Law Number 29 of 2004 concerning Medical Practice.⁴

Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 Concerning Electronic Information and Transactions. If it is related to the existence of online-based health services by utilizing an electronic system by creating websites, blogs and online-based applications, it can be concluded that doctors in providing health services are included in the administration of an electronic system.⁵

Telemedicine the definition of telemedicine is also stated in the provisions of Article 1 Paragraph 1 of Permenkes Number 20 of 2019 which is defined as: "the provision of remote health services by health professionals using information and communication technology, including exchange of information on diagnosis, treatment, prevention of disease and injury, research and evaluation, and sustainable education of health service providers for the benefit of improving the health of individuals and communities." The purpose of telemedicine is to achieve equal distribution of health services throughout the country's population, improve service quality, especially for remote areas and save costs compared to conventional methods.

Doctor's Legal Liability If Patient Experiences Loss Due to Medical Services

In the implementation of medical services, it is closely related to therapeutic or in translation from *therapeutic* which means in the field of medicine. The agreement that occurs between the doctor and the patient is not only in the field of medicine but is broader, covering the fields of diagnostics, preventive, rehabilitative and promotive, so this agreement is called a therapeutic agreement or a therapeutic transaction. A therapeutic transaction is an agreement between a doctor and a patient, in the form of a legal relationship that creates rights and obligations for both parties. The object of this agreement is in the form of efforts or therapy to cure the patient.⁶

Therapeutic transaction is a main part of health efforts, namely in the form of providing medical services based on expertise and skills, as well as thoroughness, so the goal cannot be separated from the objectives of

medical science itself. Article 1 point 6 of Law Number 36 of 2009 concerning Health which states: "Health Worker is every person who is devoted to the health sector and has knowledge and/or skills through education in the health sector which for certain types requires the authority to carry out health efforts."⁷

Liability is something that obliges someone to bear something if something undesirable happens, that person can be blamed, sued, prosecuted and so on.⁸ In general, the principles of liability in law can be distinguished:

- a. The principle of liability based on fault
- b. The principle of presumption of liability
- c. The principle of presumption of nonliability
- d. The principle of strict liability
- e. The principle of limitation of liability.⁹

Herkutanto quoted from the World Medical Association Statement on Medical Malpractice which was adapted from the 44th World Medical Assembly Marbella Spain, September 1992, stated that: "Medical malpractice is the failure of doctors to meet standard procedures in handling their patients, inability or negligence, which causes the direct cause of this loss to the patient."¹⁰

There are three theories that state the source of malpractice, namely: ¹¹*Contract Breach Theory*, one theory which states that the source of malpractice is due to a breach of contract. This has the principle that legally a health worker has no obligation to care for someone if there is no contractual relationship between the health worker and the patient. The relationship between the health worker and the patient only occurs when there is a contract between the two parties. *Theory of Intentional Actions*, the second theory that can be used by patients as a basis for suing health workers for malpractice is an intentional tort, which results in a physical injury (assault and battery). *Negligence Theory*, the third theory states that the source of malpractice is negligence. Negligence that causes the source of an act which is categorized as malpractice must be proven to exist, besides that the negligence in question must prove that this is of course not an easy task for law enforcement officials.

Juridical malpractice in three categories, namely: *Civil malpractice* will occur if the doctor or the hospital parties do not fulfill its obligations or do not provide the patient's rights based on the health service provision agreement, so that the doctor and or the hospital has defaulted on the agreement. Civil malpractice can also occur if a doctor or patient takes an action that causes loss to the patient so that it can be said to have committed an act against the law. *Criminal malpractice* occurs when there is a doctor's mistake in doing careless action that causes the patient to die or become disabled. *Administrative malpractice* occurs when doctors, health workers or hospitals carry out practices in violation of state administrative laws, such as practicing without a permit, committing practices or actions that are not in accordance with the permits that they have, or their permits have expired and/or practice without making clear medical records.

Conclusions

Based on the researcher's analysis that has been described in this study, the following conclusions can be drawn: until now, there have been no detailed arrangements regarding online-based medical services both in statutory provisions and in the provisions of the medical code of ethics. Law Number 36 of 2009 concerning Health and Law Number 29 of 2004 concerning Medical Practice and Law Number 11 of 2008 concerning Electronic Information and Transactions have not been used as a reference for the administration of medical practice using online-based medical services. The legal liability of doctors in providing online-based medical services is civil, criminal and administrative legal liability, while the professional liability will be followed up according to the procedures in the medical code of ethics.

Limitation and Study Forward

This research is limited to the disclosure of cases that can harm the patient in terms of health efforts and the patient's medical record which should be the secret of patients and doctors, so this research is needed further research to minimize a case that occurs against health services conducted online which can lead to harm to the patient.

Ethical Clearance : Nil

Conflict of Interest: Nil

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