

LEGAL ASPECTS OF THERAPEUTIC AGREEMENTS IN ONLINE-BASED HEALTH SERVICES (TELEMEDICINE)

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Abstract

The purpose of this study is to determine the legal aspects of therapeutic agreements using online-based health services in the relationship between doctors and patients. At the beginning of the pandemic, the spread of Coronavirus Disease-2019 (COVID-19) developed very quickly, one of the government's steps in preventing the spread of COVID-19 was to limit face-to-face health services through the use of telemedicine or online-based health services. Telemedicine is the use of information and communication technology combined with medical expertise to provide health services without being limited in space or carried out remotely. Currently, although it is still in progress, the implementation of telemedicine application services continues to be used and has experienced a rapid increase in use. The research method used is normative law. The results of the research method concluded that: in online-based health services therapeutic agreements between doctors and patients still occur even though they do not face each other directly, electronic agreements that are binding for the parties are agreements that have fulfilled the requirements of a valid agreement as in Article 1320 of the Civil Code. And there is still no specific legal certainty in the use of online-based health services.

Keywords: Telemedicine, Law, Theurapetic Agreement

INTRODUCTION

Entering the 21st century, the world is faced with the emergence of new technologies in the field of medicine that allow doctors to practice in virtual spaces. This innovative technological revolution is known as *Telemedicine*. Thanks to *telemedicine*, medical services can now be provided via telecommunications, audio, visual and data that can connect health care facilities even though they are geographically separated so that differences in time, place and distance are no longer an obstacle in the therapeutic relationship between doctors and patients (Primavita et al., 2021).

2020 was the beginning of the COVID-19 pandemic which resulted in unusual changes in health services. Coronavirus Disease 2019 (COVID-19) is a new infectious disease that has never been identified before in humans. The virus that causes COVID-19 is called Sars-CoV-2. COVID-19 can be transmitted from human to human through coughing/sneezing splashes (droplets), and not through the air.

People most at risk of contracting this disease are people who are in close contact with COVID-19 patients, including those who care for COVID-19 patients (Kemenkes, 2020). So that the government gives an appeal to all health agencies and their staffs, namely the development of telemedicine services or *other* online *applications* in providing services to patients in need. This is shown as the government's responsibility in providing health services during the pandemic to minimize the risk of COVID-19 transmission (Siboro et al., 2021).

Telemedicine can simply be interpreted as the delivery of health services that are carried out remotely. That is, doctors when providing services to patients are carried out directly, but use technological means to help. Not done face-to-face between doctors and patients. In its implementation, *the relationship between doctors and patients in online medical services is carried out using the internet through an information system, so just like* 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. Article 39 stipulates that the practice of medicine is carried out based on an agreement based on a relationship of trust between the doctor or dentist and the patient in the efforts of health maintenance, disease prevention, health improvement, disease treatment and health recovery. The agreement as referred to is the maximum effort of medical profession service that must be carried out by doctors and dentists in healing and restoring patient health in accordance with service standards, professional standards, standard operational procedures and patient medical needs (Anwar, 2013).

Currently, existing legal regulations have not explicitly regulated the implementation of *telemedicine*. When the rate of COVID-19 transmission is increasing, the Ministry of Health considers that health services through the use of information and communication technology in the form of *telemedicine* are needed for COVID-19 patients who are self-isolating through the Decree of the Minister of Health of the Republic of Indonesia Number Hk.01.07/Menkes/4829/2021 concerning Guidelines for Health Services through *Telemedicine* during the Corona Virus Disease 2019 (Covid-19) Pandemic (Manik et al., 2020). But the decision is only a guideline for clinical governance of self-isolation patients. Another regulation regarding telemedicine is the Regulation of the Minister of Health of the Republic of Indonesia Number 20 of 2019 concerning the Implementation of Telemedicine Services Between Health Service Facilities, namely regulations for consultation services between health service facilities (for example between hospitals, or between first-level health facilities and hospitals) through telemedicine To bring specialist health services closer, especially remote areas (Lestari, 2021).

Some countries, such as Malaysia have made a Law on Telemedicine *under the name* Telemedicine Act 1997. India also has an Act on *Telemedicine* under the name of *Telemedicine Act 2003*. Based on the approval of Governor California Brown on October 7, 2011, the Senate has passed the *Telehealth Advancement Act of 2011* to replace the *Telemedicine Development Act of 1996*. While in Indonesia the legal basis regarding *online* health services is only implicitly stated in Article 42 of Law No. 36 of 2009 concerning Health which reads "Health technology and technology products are held, researched, distributed, developed, and utilized for public health" (I. D. Indonesia, 2012).

In its current implementation, the use of online-based health services (*telemedicine*) has been widely used by the community. Health services carried out are consultations between health workers and patients using *platforms* or applications. This makes it urgent for stakeholders to immediately make regulations regarding telemedicine *because in the future there will definitely be legal problems in the implementation of telemedicine*. Based on this presentation, the author wants to examine how the form of legal relations that arise between doctors and patients, the legality of therapeutic agreements and the legal basis of online-based health services using health *platforms*.

RESEARCH METHODS

The type of research used is normative legal research. Research oriented to legal symptoms that are normative, and more sourced from collecting literature data. The approach used is the *statutory approach* (*statute approach*) and the concept *approach* (Prasetyo & Prananingrum, 2022). The primary legal materials used include laws and regulations related to health, specifically those containing *telemedicine* and medical practice. While the secondary legal materials used are textbooks and scientific journals related to the author's legal issues, namely the practice and concept of *telemedicine*.

The data collection technique that will be used in this writing is using legal materials in the form of literature research. The primary legal materials used include laws and regulations related to health, specifically those containing *telemedicine* and medical practice. And the secondary legal materials used are texts and scientific journals related to the author's legal issues, namely the practice and concept of *telemedicine*.

RESULTS AND DISCUSSION

Legal Relationships That Arise Between Doctors and Patients in *Online Healthcare*

The legal relationship that occurs between doctors and patients is not specifically regulated in the Civil Code (Iswandari, 2006). The relationship between doctors' health services as service providers, providing health effort services to patients that aim to make or improve patient health. This kind of relationship is also referred to as a service relationship in the health sector. Furthermore, the relationship between doctor and patient comes from trust, from which the relationship is known as the therapeutic agreement (Veronica, 2002).

Health services are service providers, in this case doctors and make health efforts in this case are patients. Related to that, in medical law, the subjects are doctors and patients who from the results of the relationship indirectly form medical relationships and legal relationships (Realita et al., 2016). This service does not promise results but strives for the best possible results and before the therapeutic contract there will be a relationship between doctor and patient known as doctor-patient relationship. This relationship is also necessary in creating therapeutic transactions or contracts that give rise to the rights and obligations of each party (Budiyanti, 2021).

The bond between doctors and patients, the main achievement is to "do something done", both in the context of preventive, curative, rehabilitative and promotive (Hanafiah & Amir, 1999). And the legal relationship between doctor and patient is an agreement between doctor and patient, namely the agreement of a doctor

is obliged to cure and advise the patient and the patient listens and does all the advice given with the doctor and is obliged to pay for the services provided by the doctor. The agreement between the patient and the doctor gives rise to a legal relationship in the form of an engagement between the two. The engagement between the doctor and the patient will give rise to a medical action agreement which agreement is given by the doctor to the patient approved by the patient (Sayogi et al., 2014).

In accordance with Article 39 of Law Number 29 of 2004 concerning Medical Practice that the basis for medical practice is the word agreement. At first the doctor asks the patient to answer or what is called anamnesis. After that there is a physical examination, which ends with the doctor giving a diagnosis of the patient's complaint. When viewed from civil law, doctors and patients have rights and obligations. The relationship between doctors and patients is categorized as an engagement based on the highest effort or effort (*inspanningsverbintenis*) (Hanafiah & Amir, 1999).

In this case, conventional agreements are different from agreements through online media. The parties to the electronic agreement do not meet each other as usual (Dharma, 2020). In online health care, patients can access the platform by downloading the healthcare application on a *smartphone* and registering to create an account. After completing the data and agreeing to the terms and conditions that have been made by the platform, patients can start conducting medical consultations with doctors who are also bound by agreements with *the platform*. As with the account creation procedure on the Platform, the relationship of agreements on the Platform occurs for doctors with the Platform and patients with the Platform. The doctor-patient relationship has no direct line, because doctors and patients bind themselves together on the platform. So that the legal relationship that occurs is the relationship between doctors and platforms and patients with platforms. These two relationships occur after the terms and conditions of the platform are agreed upon by the doctor and patient, as these terms and conditions constitute a valid agreement (Prasetyo & Prananingrum, 2022).

The indirect relationship between doctors and patients in this case, does not necessarily make doctors and patients have no relationship on the platform. A therapeutic agreement is a legal event that occurs automatically between a doctor and a patient, even without directly communicating it This therapeutic agreement has existed since the patient went to his doctor to seek medical remedies. The context of the doctor's practice in *telemedicine* is a platform, so that when a patient who aims to be diagnosed through a doctor's consultation via the platform, the therapeutic agreement has automatically occurred even though it is not disclosed directly.

Legality of Therapeutic Agreements in Online Health Services

A therapeutic contract is a type of agreement between a doctor and a patient who will receive health care (Astuti & SH, 2009). The therapeutic transaction is crucial in the relationship between doctor and patient. With the start of therapeutic transactions, then each party begins to be bound by rights and obligations. Therapeutic transactions also have legal force that gives responsibility to doctors to their patients as well as legal protection to their patients. According to articles 1320, 1332, and 1333 of the Civil Code, there are several aspects that are required in a therapeutic contract such as the existence of an agreement of will, the ability of the agreed parties, the existence of certain objects, and halal (Budiyanti, 2021).

The birth of a covenant is a valid form of a legal act. In the ITE Law regime, it has a different concept to explain how valid the agreement is in an electronic agreement, if viewed in terms of the type of agreement, then this electronic agreement/contract is an unnamed agreement/contract because this type of agreement/contract is not contained in the Civil Code. However, in connection with the birth of the electronic agreement / contract, several theories about the time of the agreement / contract can be applied in the electronic agreement / contract, namely the theory of will, theory of statement, theory of knowledge and theory of belief as explained, namely according to the theory of trust, the word agreement is stated to occur if what has been received by the other party through the electronic media, According to reasonableness, the contents are known by the receiving party (Asnawi, 2018).

Juridically, a therapeutic agreement is defined as a legal relationship between doctors and patients in professional medical services based on competencies in accordance with certain expertise and skills in the field of health (Veronica, 2002). There are four elements of Article 1320 of the Civil Code, all four elements of which must be fulfilled. Therefore, these elements need to be examined one by one, in order to find out the legal relationship that occurs between doctors and patients in online medical services through agreements made is legal or not, including the following (Prasetyo & Prananingrum, 2022).

1. The Agreement of Those Who Bind Themselves

There is a volitional agreement between the parties who have made an agreement (consensus). Consent of will is an agreement, in agreement between the parties on the subject matter of the agreement (Syahputra et al., 2022). In online health services, there are at least three parties that bind themselves in the agreement, namely between doctors, patients and the *platform* that organizes *telemedicine*. The creator of this standard agreement is a *platform*, where the clauses in the agreement have been completely standardized, so that both doctors and patients who want to use the application must agree to the standard agreement that has been made by the platform. Consciously, doctors and patients when creating an account on the platform must agree to the standard agreement that has been stated in the terms and conditions (terms of use) of the *platform*. When the doctor and patient have agreed on it, then that's when there is an 'agreement' between these parties on the *platform* that organizes (Prasetyo & Prananingrum, 2022).

2. The ability of the parties to make an engagement

There is the ability of the parties to make agreements (*capacity*). In general, people who can be said to be capable of doing legal actions when they are adults, meaning that they have reached the age of 21 years or have married even though they are not yet 21 years old (Wijayanto et al., 2022). This skill must exist on both sides, namely those who provide services and those who need services. From the patient's side according to this provision, a capable person is required to make an engagement, that is, a sane adult. If other than this, of course, there must be someone who delivers as a companion to the patient. Similarly, from the side of doctors and other health workers. In addition, doctors must have the skills required or required by patients, namely general practitioners as general practitioners and specialists according to the specialties they pursue. Must have evidence, such as diplomas, competency certificates, and Registration Certificates

recognized by the government and their expertise associations (Hanafiah & Amir, 1999).

3. A certain subject

A therapeutic agreement is a service delivery agreement. This can be seen from the form of achievement given, namely the achievement to do something. In addition, referring to *telemedicine* where doctors do not deal directly with their patients to provide treatment, the efforts they make are based on the trust (fiduciary) that patients have in their doctors. Based on this, it can be seen that the object of this therapeutic agreement is the work or service that must be done by the doctor, namely 'patient healing efforts' or classified as *inspanningverbintenis*, which is an effort agreement based on maximum effort to achieve a result. So in principle, doctors do not promise cure, but make the maximum effort possible (Putra, 2001).

4. A lawful cause

The goal to be achieved by the party making the agreement, whether prohibited by law or not, whether it is contrary to public order and decency or not in accordance with Article 1337 of the Civil Code. The meaning of the article is that in entering into an agreement it must be in accordance with the provisions in laws and norms in society.

The halal reason contained in the Therapeutic agreement is where the purpose of healing is the maintenance and improvement of health oriented to family principles, including activities to improve the quality of health (promotive), disease prevention (preventive), disease healing (curative), and health restoration (rehabilitative) (Hernoko & SH, 2019).

Based on this explanation, the provisions of Article 1320 of the Civil Code in this case are therapeutic agreements have been fulfilled. So that the therapeutic agreement as a basic form of the legal relationship between doctors and patients still occurs even though the two do not face each other directly.

Online Healthcare Law in Indonesia

Advances in technology make doctor consultations change, from conventional to online or online consultations (Karo & Pasaribu, 2019). Online health consultation has grown a lot in Indonesia. These services are in great demand because of various advantages including cheaper costs, flexibility, wider reach, and can improve health services (Budiyanti, 2021).

The definition of telemedicine according to the Regulation of the Minister of Health Number 20 of 2019 concerning the Implementation of Telemedicine Services Between Health Service Facilities is telemedicine is the provision of telemedicine services by health professionals using information and communication technology, including the exchange of information on diagnosis, treatment, prevention of diseases and injuries, research and evaluation, and continuing education providers health services for the benefit of improving individual and community health (Muliawan, 2022).

The main advantage of telemedicine services is the use of technology to eliminate distance and geographical restrictions and associated costs, especially for medical services in remote areas that lack medical personnel (Field, 1996). At the core of *telemedicine* is the use of technology to conduct diagnosis, consultation and treatment for patients remotely (Prasetyo & Prananingrum, 2022).

Telemedicine recommended in Indonesia based on IDI guidelines on *telemedicine* is divided into five, namely (I. D. Indonesia, 2012).

1. *Tele-expertise*, which connects general practitioners and specialists or between specialists, such as teleradiology.
2. *Tele-consultation*, which connects patients and doctors
3. *Tele-monitoring*, which is used by health workers to monitor various parameters of the patient's body virtually
4. *Tele-assistance*, which is used to provide direction to patients, for example in the rehabilitation process
5. *Tele-robotic/tele-intervention*, which is the remote control of a robot in a tele-surgery.

Online *health services* are included in the teleconsultation category. In principle, this online health service only provides consultation facilities between doctors and patients. In terms of its use, online medical services use a platform or application on a *smartphone* and to access it, an internet network is needed.

The platform is basically an electronic system, thus the platform operator is the operator of the electronic system as regulated in Government Regulation (PP) No. 82 of 2012 concerning the Implementation of Electronic Systems and Transactions, what is meant by an electronic system is: "A series of electronic devices and procedures that function to prepare, collect, process, analyze, store, display, announce, transmit, and/or disseminate electronic information" (Maharani et al., 2019). And according to Law No. 19 of 2016 concerning Electronic Transaction Information article 1 point 6a states that Electronic System Operator is any person, state operator, business entity, and community who 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.

Electronic Transaction is an agreement made by the parties through an Electronic System as determined by the general explanation of Article 1 number 17 of the ITE Law (Maharani et al., 2019). The attachment of doctors and patients through telemedicine is not only beneficial for patients, because in telemedicine doctors can only act limited to conveying medical information, and providing prescriptions and necessary drugs.

Online *health consultation services* can take place directly (synchronous) in the form of video calls or audio calls or take place indirectly (asynchronous) such as through chat, comments on blogs, web, or social media (Frade & Rodrigues, 2013). Here the doctor needs to explain to the patient about the limitations of their action with the use of telemedicine, *so that the patient can make the choice to agree to the action using telemedicine or refuse*. The use of *telemedicine* by doctors also requires clear protocols and regulations to assure patients about the confidentiality of patient data and information (Chaet et al., 2017).

Digital platforms currently in Indonesia consist of government-owned platforms, namely Temenin and private-owned platforms. Private platforms have until now been intermediaries, not health care providers. The private platform has the concept of consulting with doctors / dentists, but actually only facilitates the search for doctors / dentists who are health services, so it is not appropriate to be called a telemedicine organizing platform. Unlike the government-owned platform which has an initial concept, which is to make it easier for doctors in remote areas to communicate with specialists who are more competent in providing the best treatment for patients, so that the patient's health status also increases. With the

telemedicine, it is expected to provide a comprehensive range of health services for all Indonesian people, so that the Temenin platform officially provides hospitals / Puskesmas and doctors / dentists who have collaborated and registered that can be connected to each other (Romdlon et al., 2021).

Regulation regarding health services through *telemedicine* is implicitly stipulated in Article 42 of Law No.36/2009 on Health, that before being circulated for use for public health, technology and technology products must be researched first, all medical methods and devices that can help prevent health problems or treat health problems, and all devices must meet the provisions in general in related regulations (Wahono et al., 2023). Health technology referred to above is a way, method, process, or product resulting from the application and utilization of scientific disciplines in the health sector that produce value for meeting needs, sustainability, and improving the quality of human life. One of the applications in Article 42 is with the resulting technology products, namely the existence of *online clinics that help the public in terms of providing health analysis and remote examinations with patients and providing prescriptions and purchasing drugs practically with online media*.

Another regulation that forms the basis of online health services is the Regulation of the Minister of Health Number 46 of 2017 concerning the National E-Health Strategy explaining that e-Health is the use of information and communication technology for health services and information, mainly to improve the quality of health services and improve effective and efficient work processes (R. Indonesia, 2017). Various regulations have been created to accommodate the role of e-health in the national health system both directly and indirectly. Laws, Government Regulations, Presidential Instructions, Ministerial Regulations which in principle regulate how to collect health data, data storage, data use, and dissemination of health data and information. These regulations need to be described in more detail in the guidelines and standard operating procedures of various e-health used in health organizations.

Health services using *telemedicine* in terms of consultation and other forms of health services between patients and doctors have limitations, one of which is the presentation of information on the patient's clinical condition as a whole, because this is feared to be risky for doctors in decision making (Jannati, 2022).

In every business activity carried out, both goods and services are impossible if they are not regulated in legal products in Indonesia, including telemedicine, no exception. There is no explicit law governing telemedicine. In Indonesia, telemedicine is still regulated at the level of implementing regulations outlined in the Permenkes and Kepmenkes to regulate health services, while platforms are specifically regulated in the ITE Law and in more detail are in Government Regulations, namely PP No. 82 of 2012 concerning the Implementation of Electronic Systems and Transactions. For now, private liaison platforms are required to register as platforms that organize electronic systems at the Ministry of Communication and Information in accordance with Law No. 19 of 2016 concerning Electronic Information and Transactions Article 1 paragraph 6a which states that "Electronic System Operator is any Person, state operator, 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". *Private platforms that will provide telemedicine services (not as a connecting platform)*

must also be registered with the Ministry of Health of the Republic of Indonesia at the same age as PMK 20/2019 Article 12 paragraph 3 (Wirateja et al., 2022).

From the discussion that has been conveyed, it can be concluded that in online-based health services, therapeutic agreements between doctors and patients still occur even though they do not face each other directly, an electronic agreement that is binding for the parties is an agreement that has fulfilled the requirements of a valid agreement as in Article 1320 of the Civil Code.

Further regulatory development is needed from telemedicine or teleconsultation. And also the government should pay more attention to technological developments, especially in terms of online medical practice by making rules that synergize the Health Law with the Electronic Information and Transaction Law. In addition, multistakeholder cooperation is needed in developing and supervising the implementation of online health consultation services so that they do not conflict with ethics and applicable laws in Indonesia.

The involvement of professional organizations also needs to immediately create limits on telemedicine services, related to the authority of doctors, limits on diagnosis and treatment through audiovisual, electronic prescriptions, and others. On the part of telemedicine application developers, they must pay attention to matters that have legal implications in order to protect the interests of patients and the interests of service providers

CONCLUSION

From the discussion that has been conveyed, it can be concluded that in online-based health services, therapeutic agreements between doctors and patients still occur even though they do not face each other directly, an electronic agreement that is binding for the parties is an agreement that has fulfilled the requirements of a valid agreement as in Article 1320 of the Civil Code.

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