

The Concept of Justice in the Reconstruction of Legal Protection Regulations for Doctors and Patients in Health Services through Telemedicine

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Abstract

Development of technology affects health services known as telemedicine. Health services through telemedicine have many benefits and high risks, so legal protection is needed. The purpose of this study is to describe, analyze and examine the regulation of legal protection for doctors and patients in health services through telemedicine has not been based on the value of justice, the obstacles to the regulation of legal protection for doctors and patients, as well as the regulation of legal protection for doctors and patients based on the value of justice Pancasila. This research method is juridical sociological, with a constructivism paradigm; the research specifications are descriptive analytical. The results of this study explain that first, the regulation of legal protection for doctors and patients in health services through telemedicine has not been based on the value of justice, because there is no legal protection that regulates considering that health services through telemedicine have a high risk. Second, the weaknesses of legal protection regulations for patients in health services by doctors through telemedicine can currently be seen from the aspects of legal substance, legal structure and legal culture. Third, the reconstruction of legal protection regulations for doctors and patients in health services through telemedicine based on the value of Pancasila justice, in terms of: aspects of legal substance can be done through strengthening legal instruments, the establishment of laws on telemedicine; then aspects of legal structure can be done through improving communication infrastructure, improving the quality and quantity of health workers, as well as synergy and understanding of health organizations and related parties. The legal culture aspect can be done through increasing the legal awareness of health workers and the public, and counseling and guidance for the public about the importance of telemedicine.

Keywords

Justice; legal; protection; telemedicine



I. Introduction

Health is part of human rights that must be realized, because it is part of the ideals of the Indonesian nation. One of the most important elements of a country's development is the good health index of its citizens. Indonesia's health resilience index in 2021 is ranked 13th in G20. Based on the global health resilience index, Indonesia's resilience can be said to be not too bad. Indonesia still continues to improve its health resilience, by carrying out development in the health sector (Anak Agung Gde Siddhi Satrya Dharma, 2020).

The Constitution of the Unitary State of the Republic of Indonesia states that health care is a basic right of citizens that must be upheld and provided to all Indonesian people without exception. As stipulated in Article 28H paragraph (1) of the 1945 Constitution of the Republic of Indonesia, health is one of the elements of general welfare that must be realized in accordance with the ideals of the Indonesian nation as mandated in the Preamble of the 1945 Constitution of the Republic of Indonesia through sustainable national development based on Pancasila and the 1945 Constitution of the Republic of Indonesia (Deddy Rasyid, 2000)

Development in the health sector through health services aims to carry out the prevention and treatment of diseases, including medical services carried out on the basis of an individual relationship between doctors and patients who need healing. The existence of health care facilities affects the degree of public health in a country (Luthvi Febryka Nola, 2016) The government cooperates with hospitals throughout Indonesia to provide maximum health services and facilitate financing with the help of social health insurance for the people, so there is no reason for the community not to get health insurance from the state. (Ni Luh Dina Yuliana and I Nyoman Bagiastra, 2021)

One form of public health service in hospitals is the provision of medical services for patients who need care and treatment carried out by health workers. The provision of services, especially in the relationship between doctors or health workers and their patients, is greatly influenced by socioeconomic conditions and situations, culture and emotional state. Each human body is unique, is a changing organism, can make adaptations to evolutive changes, thus one human being is never the same as another human being. Likewise, the response to medicalization sometimes occurs not as predicted beforehand (Pukovisa Prawiroharjo, Peter Pratama, and Nurfanida Librianty, 2019).

Especially at the beginning of the Covid-19 pandemic, it had a major impact on health services. Doctors and other medical personnel are individuals who are at high risk of contracting Covid-19. So the government issued a policy to develop telemedicine in providing services to patients and families of patients who need it. Telemedicine is one form of information technology development. (Rinna Dwi Lestari, 2021) In general, telemedicine is the use of information and communication technology combined with medical expertise to provide health services, ranging from consultation, diagnosis and medical action, without space limitations or carried out remotely. To be able to run properly, this system requires communication technology that allows data transfer in the form of video, sound, and images interactively carried out in real time by integrating it into video-conference support technology. Included as a supporting technology for telemedicine is image processing technology to analyze medical images. (Sri Hartini, Tedi Sudrajat and Rahadi Wasi Bintoro, 2012)

The goal of telemedicine is to achieve equitable health care throughout the country's population, improve the quality of care especially for remote areas and cost savings compared to conventional methods. (Valen Nainggolan and Tundjung Herning Sitabuana, 2022) Telemedicine is also intended to reduce referrals to doctors or health services in big cities, medical education facilities and also for emergency cases. The benefits of telemedicine can extend to disaster areas, long-distance flights, and for foreign tourists who are in tourist areas. (Wahyu Andrianto and Atika Rizka Fajrina, 2021)

The implementation of telemedicine can be done in two forms, namely by health care facilities to patients or between health care facilities in Indonesia. Based on Minister of Health Regulation Number 20 of 2019 concerning the Implementation of Telemedicine Services Between Health Care Facilities, telemedicine is implemented in the form of consultation to establish diagnosis, therapy, and/or prevention of disease remotely from

one to another health care facility.(Ervianingsih, 2020) This includes clinical teleconsultation, which is a remote clinical consultation service to help establish a diagnosis, and/or provide consideration or advice on management.

The clinical teleconsultation can be done in writing, voice and/or video, but currently there are no regulations governing telemedicine services from health care facilities to patients.(Edmon Makarim, 2003) In order to support the implementation of telemedicine services, the Indonesian Medical Council (KKI) then issued Medical Council Regulation Number 74 of 2020 concerning Clinical Authority and Medical Practice through Telemedicine during the 2019 Corona Virus Disease (Covid-19) Pandemic in Indonesia. This regulation aims to provide additional clinical authority to doctors and dentists in order to carry out telemedicine services that apply only during the Covid-19 pandemic. This additional authority is also supported by the Indonesian Ministry of Health through Circular Letter Number: HK.02.01/Menkes/303/2020 concerning the Implementation of Health Services Through the Utilization of Information and Communication Technology in the Context of Preventing the Spread of Corona Virus Disease 2019 (Covid-19).

The main advantage of telemedicine services is the use of technology to eliminate distance and geographical limitations and associated costs, especially for medical services in remote areas that lack medical personnel. This is very relevant and a necessity in Indonesia, which has a very large area, consists of thousands of islands, with poor connecting transportation infrastructure, and has a very limited number of doctors. Meanwhile, the internet network can be supported via satellite to all corners of the archipelago, crossing geographical obstacles such as sea, hills, mountains, forests, and so on.

The risk of providing health services through telemedicine is greater than health services through face-to-face or in person, considering that not all regions (especially in remote areas) in Indonesia have good and quality internet access (difficult), such as the quality of the internet in urban areas, thus making communication not smooth, the information obtained is not complete or comprehensive. The ease of consulting with doctors by patients online or telemedicine does not mean there are no problems. In terms of consultation and diagnosis, usually doctors and patients are carried out face-to-face, so that doctors can examine the actual condition of the patient.

If there is no direct examination, the doctor cannot know the patient's condition, let alone online. Some diseases cannot be diagnosed online, such as tumors. In addition, inaccurate diagnosis to patients can also affect the certainty of the type of disease and the inaccuracy of drug administration to patients.

Online health consultation services, if there is a misdiagnosis and it harms the patient, of course there must be a responsible party. Likewise with doctors, examinations carried out online, the doctor believes what the patient says about the symptoms of the disease suffered by the patient, and sometimes the patient fails to provide information about his illness, so the doctor cannot confirm the disease and what medical action is right for the patient. These things affect the relationship between doctors and patients based on therapeutic transactions.

Both doctors and patients in the implementation of telemedicine must equally get legal protection in consultation services and medical actions carried out on the agreement between doctors and patients, because there may be risks or even malpractice in online health services. Although telemedicine has been regulated in the regulation of the Minister of Health, there is no supervision in the provision of health services with telemedicine. There is still much that needs to be addressed in the implementation of telemedicine in health services in Indonesia.

Given that the legal protection in health services through telemedicine is only intended for the implementation of telemedicine services between health care facilities, it is also only applied during the Covid-19 pandemic, so that with the end of the pandemic, the legal protection in health services through telemedicine cannot be applied. Law Number 29 of 2004 concerning Medical Practices as a legal protection in providing medical services by doctors also does not regulate the use of telemedicine, so it is necessary to reconstruct the articles in Law Number 29 of 2004.

The previous research was written by Arman Anwar (2013) on the Principles of Liability in Telemedicine Medical Practice with the results of research Weaknesses in providing health services with telemedicine affect legal protection so that reformulation of rules is needed. Furthermore, by Zahir Rusyad (2017), Legal Protection of Patients in the Fulfillment of Health Services by Doctors in Hospitals with the results of research, there is a need for reconstruction in terms of legal substance so that it has permanent legal force. Based on the description above, the focus of this research is the concept of justice value in the reconstruction of legal protection regulations for doctors and patients in health services through telemedicine.

II. Research Method

This research method uses a type of sociological legal research. based on normative legal science (laws and regulations), does not examine the norm system in laws and regulations, but observes the reactions and interactions that occur when the norm system works in society.(Dedy N. Hidayat, 2003) The types and sources of data used in this research are primary data and secondary and tertiary data.

III. Result and Discussion

Legal protection regulations for doctors and patients in health services through telemedicine have not been based on the value of justice in this study analyzed through 3 aspects, namely the relationship between doctors and patients in health services, obstacles and concept reformulation.

First, the relationship between doctors and patients in health services is an effort organized alone / together in an organization to maintain and improve health, prevent and cure diseases and restore the health of individuals, families, groups, or communities. in general, the forms and types of health services can be divided into 2 (two), namely: Medical services and Public health services. Health services as the main activity of the hospital places doctors and nurses as health workers who are most closely related to patients in handling diseases. Good health services by health workers in hospitals are needed by patients in the hope of obtaining healing for diseases or other medical services.

The existence of Covid-19, which the *World Health Organization* (WHO) officially declared a global pandemic on March 11, 2020, has caused the need and interest in telemedicine to increase rapidly. Major advances in telemedicine are designed to help address the pandemic and also show how the emergence of telemedicine can transform the preparedness infrastructure of healthcare systems. Currently, efforts in telemedicine are in the diagnosis and monitoring of physiological dysfunctions.

Basically, telemedicine is used because in certain circumstances there is no other alternative and because telemedicine is proven to be better than conventional medicine. Telemedicine makes promises, that its presence will bring good and big changes in the world of health. At least, there are 3 (three) big points promised from the concept of

telemedicine, namely: improving public health access; improving health quality; reducing health costs. Therefore, various aspects need to be considered in its development. Not only legal aspects, but also human resources, economics and qualified technology, which must be owned by the Indonesian state. Indeed, it is time for Indonesia to improve to keep up with technological developments that are advancing rapidly, so as not to be left behind by other countries that are more advanced in utilizing their technology.

Legal protection for doctors and patients in health services through telemedicine has not been based on the value of justice. The application of telemedicine in Indonesia tends to be new. In 2016, telemedicine applications sprung up and began to develop. Then, the existence of the Covid-19 pandemic which entered Indonesia in March 2020 became one of the factors for the increase in public interest and need for health services through telemedicine. Telemedicine is present as an alternative to providing health services that minimize direct contact between doctors and patients to reduce the number of Covid-19 transmission. When viewed in terms of regulation, the application of telemedicine in Indonesia is currently guided by several laws and regulations. To date, there is only one legislation that regulates telemedicine in general, namely the Minister of Health Regulation Number 20 of 2019.

Permenkes Number 20 of 2019, outlines the implementation of telemedicine services between health service facilities starting from the types of services provided, costs, rights and obligations between health service facilities that request consultations and health service facilities that provide consultations, funding of telemedicine services provided, and guidance and supervision. This Permenkes does not regulate the procedures for organizing telemedicine between doctors and patients, but only between health care facilities.

Then, the laws and regulations governing telemedicine specifically during the Covid19 pandemic, namely the Decree of the Minister of Health Number: HK.01.07 / MENKES / 4829 / 2021 concerning Guidelines for Health Services Through Telemedicine During the 2019 Corona Virus Disease Pandemic (Covid-19), these regulations still regulate matters that are general in nature and are considered essential, considering that the implementation of telemedicine has only begun to be regulated in 2019 through health ministerial regulations. Until now, there are no laws and regulations governing the implementation of comprehensive doctor-patient telemedicine, which does not only apply during a pandemic. The laws and regulations governing the implementation of telemedicine in the conditions of the Covid-19 pandemic are also still classified as general and have not been regulated in detail per health sector.

For doctors and patients in health services such as in consultation services must get legal protection, because there can be medical risks and even malpractice in online health services, so that it will provide justice for doctors and patients, if something goes wrong. Telemedicine does provide many benefits in health services, but it also contains many risks, especially for patients. Because health services by doctors are delivered remotely, it is possible that the results are not optimal. Moreover, the regulations governing telemedicine are not at the level of laws, still in the form of Permenkes, in the absence of provisions on the limits of medical actions carried out through telemedicine, it cannot fully provide legal protection for both doctors and patients. Of course, it cannot be said to be fair, if in its implementation it causes harm to doctors and patients, so that both doctors and patients cannot fight for their rights when mistakes occur in medical actions through telemedicine.

Second, the weaknesses of legal protection regulations for doctors and patients in health services through telemedicine can be understood in terms of legal substance, legal structure and legal culture. Weaknesses in terms of Legal Substance, the application of

telemedicine in Indonesia, including new things used during the Covid-19 pandemic, is an alternative to providing health services that minimize direct contact between doctors and patients to reduce transmission rates.

The legal protection for the use of telemedicine during the Covid pandemic is Minister of Health Regulation Number 20 of 2019 concerning the Implementation of Telemedicine Services Between Health Care Facilities and several other regulations, Minister of Health Decree Number: HK.01.07/MENKES/4829/2021 concerning Guidelines for Health Services Through Telemedicine During the Covid-19 Pandemic and Medical Council Regulation Number 74 of 2020 concerning Clinical Authority and Medical Practice Through Telemedicine During the 2019 Corona Virus Disease (Covid-19) Pandemic.

Legal protection for patients in telemedicine, regulated in the provisions of Article 3 paragraph (2), then in Article 3 paragraph (4) of the Medical Council Regulation Number 74 of 2020, the patient's personal information is confidential, no other party can find out the patient's information, except the doctor and the patient himself. The doctor's responsibility for violations of the implementation of doctor practice through telemedicine is regulated in Article 9 of the Medical Council Regulation Number 74 of 2020.

The current development of telemedicine is an opportunity to open up broad access for the public to obtain health services. On the other hand, it provides new challenges to adapt various aspects of health services for the community. Therefore, the government needs to immediately prepare a comprehensive set of regulations so that the rights of the community receiving health services and the rights of health service providers are protected. In addition, it is also necessary to have professional ethical standards related to telemedicine issued by professional organizations.

In terms of Legal Structure, to ensure telemedicine operations, adequate human resources are required, both in terms of quality and quantity. The reliability of human resources will prevent the occurrence of possible incidents caused by human error. In addition, the skills of trained human resources will accelerate the process of health services with telemedicine.

Health service delivery provides many challenges for governments in most developing countries. Some of these challenges include financial and human resource issues that may affect the government's ability to manage and convert scarce resources to meet health needs. Human factors play an important role in the functioning of the law. If the regulations are good, but the quality of human resources is low, there will be problems. Vice versa, if the regulations are bad, while the quality of human resources is good, problems may also arise, only these problems can be minimized.

The ability and absorption of technology both in health workers, as well as in the general public, especially in villages, is still low. Most Indonesians, including health workers, are still not IT literate, and of course it is very difficult to change the conventional medical paradigm into a telemedicine model. Lack of organizational and personnel resources is a major obstacle in the development of telemedicine in healthcare. The lack of system and service standards is an important element for system integration. There are no standards for telemedicine, and this limits its development. The role of the government is not optimal, which makes the lack of socialization of telemedicine as a health care option, in addition to the unpreparedness of supporting technology and information infrastructure.

In terms of Legal Culture, so far, the ratio of doctors in Indonesia is still one in 5,000 people. When compared to Malaysia, the ratio of doctors in Malaysia is one to 700 people, so patients there can be well served. Another problem faced by Indonesia is the geographical condition of the archipelago (17,000 islands), so to place expert doctors on all

islands clearly has its own obstacles. Most specialists prefer to be located in large urban centers, especially provincial capitals. People in districts, sub-districts, or villages, especially in border areas, must inevitably be satisfied to be served by non-specialist doctors or even orderlies and nurses.

The gap in health services and the uneven distribution of doctors in Indonesia, especially specialists, are obstacles that are difficult to overcome. Legal culture can be given the same limitation as legal awareness. Legal awareness is an abstraction (experts) regarding the legal feelings of legal subjects. In the context of discussions about the legal system, what is meant by legal culture is the legal awareness of the legal subjects of a community as a whole. The legal awareness of the community is closely related to the issue of legal culture. What is meant by legal culture here is a category of values, views and attitudes that influence the operation of law.

Although the substance of the law (laws and regulations) has provided legal protection in health services, especially for patients, the legal structure (authorized agencies) has been available with all the facilities and infrastructure as well as qualified human resources, in the implementation of providing health services there is a possibility of differences in work patterns and application in services, which are not even in accordance with the objectives of the regulations that have been set, due to the work culture factor of health workers towards underprivileged communities, not getting attention.

The work culture of health care providers is a serious problem and should be given special attention. This can be seen from the lack of response of health service providers to patients from underprivileged communities. This is contrary to the basic principles of health ethics. The Indonesian Medical Council, by adopting the principles of Western medical ethics, stipulates that the practice of Indonesian medicine refers to the basic moral rules which are often also called the basic rules of medical ethics or bioethics, including: Beneficence, Non-maleficence; Justice; Autonomy; Confidentiality; Fidelity; Fiduciarity.

The problem of legal culture in health services for underprivileged communities is that the community is still placed as an object in health development, health promotion has not changed the behavior of the community much. Health efforts have not fully encouraged an increase or change in the clean and healthy living behavior of the community, resulting in high morbidity rates suffered by the community. Awareness of telemedicine technology is very important as a form of good approach, so that there is no negative perception that results in rejection from the community, especially people in remote villages or in remote areas, which are still less touched by technology.

Third, basically, people who get health care and services are patients who need treatment to cure their illness. Discussing the issue of health services, it must first be agreed that the nature of health care and health service efforts is a dynamic process flow that continues to problems in the economic, social and cultural fields of a very complex society. The complexity of the elements of health care-services will sooner or later result in greater pressures on the state budget required for health care and services. reconstruction of legal protection regulations for doctors and patients in health services through telemedicine based on the value of Pancasila justice, in terms of: aspects of legal substance can be done through strengthening legal instruments, the establishment of laws on telemedicine; then aspects of legal structure can be done through improving communication infrastructure, improving the quality and quantity of health workers, as well as synergy and understanding of health organizations and related parties. The legal culture aspect can be done through increasing the legal awareness of health workers and the public, and counseling and guidance for the public about the importance of telemedicine.

IV. Conclusion

The regulation of legal protection for doctors and patients in health services through telemedicine has not been based on the value of justice, because there is no legal protection that regulates the application of telemedicine in health services in Indonesia. Until now, there is no comprehensive legislation governing the implementation of doctor-patient telemedicine, considering that health services through telemedicine have higher risks. Existing regulations have limitations, namely telemedicine is only used during the Covid-19 pandemic. The weaknesses of the current regulation of legal protection for doctors and patients in health services through telemedicine, in terms of: legal substance, legal structure, legal culture. The ideal value reconstruction in the regulation of legal protection for patients in health services by doctors through telemedicine based on the value of justice Pancasila, is legal certainty regarding health services through telemedicine, so as to provide legal protection for doctors and patients regulated in laws and regulations; Justice for all Indonesian people in obtaining maximum and optimal health services; Increased legal awareness for health workers and the public in working together to realize online-based health services that are complete and comprehensive, so that they benefit all Indonesian people.

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