

Legal Construction and Responsibility of Teleconsultation Based Health Services

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Abstract

Telemedicine development. Such developments are new in Indonesia, so that opening up opportunities for potential unprepared legal regulations that cause problems in terms of the construction of the underlying agreement and liability to patients as consumers of digital platforms and doctor who are binding to providing these services. This paper answers questions about these two things. The results of the study show that the triangular agreement between patients, doctors, and digital platform providers is a teleconsultation agreement, which is a form of mix agreement between a standard of therapeutic agreement, a standard of use application agreement and partnership of health service provider agreement that utilizes digital technology. In this case, there is the main agreement and an accompanying agreement. The main agreement is a therapeutic agreement between a doctor and a patient and the accompanying agreement is a standard agreement that binds all three parties. In the event of a violation of the patient's rights, both the doctor and the platform provider can be held responsible together, which is known as joint liability.

Keywords

Liability, Construction of Agreement, Teleconsultation, Mix Agreement, Joint Liability

1) Introduction

Rapid technological developments have an effect on all sectors, unexpectedly in the health sector. One form of revolution in the field of health today is treatment from distance called telemedicine. In health law in Indonesia the definition of telemedicine is given in Minister of Health Regulation No. of 2019. In this regulation, telemedicine is defined as the provision of health services remotely by health professionals using information and communication technology, including the exchange of information on diagnosis, treatment, prevention of disease and injury, research and evaluation and continuing education of health service providers for the benefit of improving individual and public health. From this understanding, the authors simply conclude that telemedicine is a technology used for patients to make a diagnosis, treatment, and consultation efforts, in this case carried out remotely.

This phenomenon when viewed from a legal perspective will look unique, namely that there is something complex in telemedicine. Due to the emergence of the platform, changing the pattern of the doctor-patient relationship that was previously direct, now becomes indirect and the platform becomes a party that functions as a liaison or means of providing facilities for doctors and patients to connect with each other. Therefore, in telemedicine, which is based on a platform, the parties involved do not only number two but also become three parties along with the agreement that becomes complex.

The use of Telemedicine that utilizes information technology makes other rules get mixed up. Law No.19 of 2016 concerning Information and Electronic Transactions and Law No. 8 of 1999 concerning Consumer Protection applies as *lex specialis derogate legi generali* to the general provisions on contract law as regulated in Book III of the Civil Code, which regulates information, documents, and electronic signatures. In general, it is said that electronic information and/or electronic documents and/or their printouts are an extension of valid evidence in accordance with procedural law in force in Indonesia (Devina, 2019).

Looking at the current telemedicine platform, there is no legal construction that is suitable to categorize it. This is because there is a uniqueness in it where there are three interrelated parties and also not only one agreement that was born because of the platform itself. It becomes quite an interesting matter to be discussed to determine the construction of the agreement.

The problem that then arises is about how the process of providing health services is provided, if in the provision of health services directly there can still be errors then what about the provision of health services online. Examinations on online health platforms are not possible for the doctor to go directly to examine the patient. Seeing this, the possibility of an error in diagnosing a disease in a patient can happen and of course harm the patient as a user of the health service because the procedures that are usually done conventionally cannot be done online and not only that, the platforms also often include a disclaimer that useful to escape from responsibility (Diana, 2011). It should be remembered that patients have rights that must be protected as stated in Law no. 8 of 1999 concerning Consumer Protection which stipulates nine rights (Aziz, 2009).

To protect patients from malpractice carried out by both doctors and health platforms, accountability in health services is an interesting and important thing to research. Liability is a specific form of responsibility. The definition of liability refers to the position of a person or legal entity that is deemed to have to pay some form of compensation or compensation after a legal event or legal action. (Peter, 2009). Liability is addressed to a person or legal entity who must pay compensation or compensation that occurs after a legal event. Because it violates the law, causing individual or legal losses, this liability is in the realm of private law based on article 1365 of the Civil Code and whether in compensation the parties can be jointly and severally responsible because doctors and the platform are interconnected with each other even though there is a disclaimer provision in it. . However, this research will focus more on one form of telemedicine, namely teleconsultation.

1.1 Objectives

The purpose of this study is to examine and find out about what construction is appropriate to map the legal relationship between patients, doctors and health platforms and to find out whether a disclaimer contained in the teleconsultation agreement can abort joint and several responsibilities.

2. Literature Review and Methods

The research method is systematically used to organize science. In a broad sense, research methods are systematic and organized ways and procedures to investigate a particular problem with the intention of obtaining information to be used as a solution to the problem (Anthon, 2011). The research method used in this research is normative legal research. The type of research that the author does is normative legal research, this research is a study that studies the law which is conceptualized as a norm that applies in society and becomes a behavioral reference for everyone. In written normative legal research (Jonaedi, 2016). The studies carried out include aspects of theory, philosophy, structure/composition, consistency, general explanations, and explanations in articles (Soerjono, 2005). The research conducted is descriptive research which aims to describe a thing in a certain area and at a certain time. The type of data taken using secondary data consisting of primary, secondary and tertiary legal materials. (Bambang, 2008). This research uses a statutory approach which is carried out by examining laws and regulations related to the legal issues being handled. The analytical technique used is to analyze written legal materials. The data analysis used is descriptive, systematic and legal interpretation. Systematic analysis technique is reading legal material by linking one article with another article in law with other laws or with regulations at lower levels such as government regulations, presidential regulations, or implementing regulations. The technique of analyzing legal interpretation is to seek and determine the meaning of the arguments contained in the legal material in accordance with what is desired

3. Results and Discussion

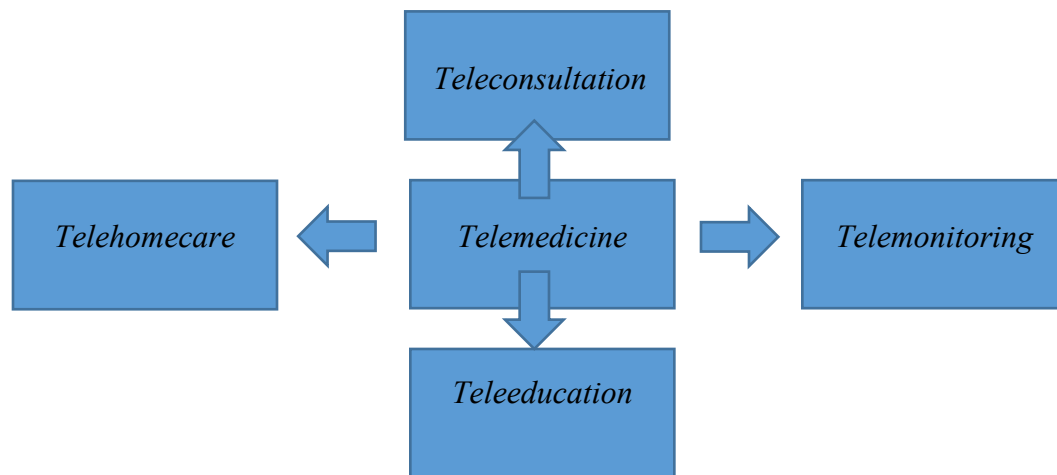


Figure 1 various form of telemedicine

From the Figure 1 above, telemedicine is divided into four forms of practice and this research focuses more on the form of teleconsultation. The teleconsultation concept is “similar to traditional medical consultation, with the difference that the doctor and patient are physically separated and communicate remotely, establishing real-time conversations via video conferencing, telephone or chat”. Judging from the concept, telemedicine can also be said as teleconsultation because patients and doctors are not in the same place and are connected by a media. From this concept, it can also be seen that in the form of teleconsultation, the consultation model changes services between doctors and patients which used to be done directly but are now done in a different way. In a broader sense, teleconsultation can include healing efforts in the context of prevention. In this study, we will discuss telemedicine in the form of teleconsultation practice.

In telemedicine, there are two concepts that can be applied, there is one called real time and store and forward. The real time concept has the understanding that the doctor and patient must be present together, there is a media that connects the two parties. On the other hand, in the store and forward concept, both parties do not need to be present, only medical data is needed which will later be evaluated by a doctor, these two concepts were put forward by Kuntardjo, C (Kuntardjo, 2020). These two concepts can be intertwined because of the existence of a platform that provides teleconsultation services which change the pattern of patient-doctor relationships from direct to indirect. The platform plays an important role because it acts as a liaison between doctors and patients. That way the platform cannot release the responsibility of the teleconsultation service provider that it provides, moreover it has a crucial position because it is a regulator that makes terms and conditions to bind the parties.

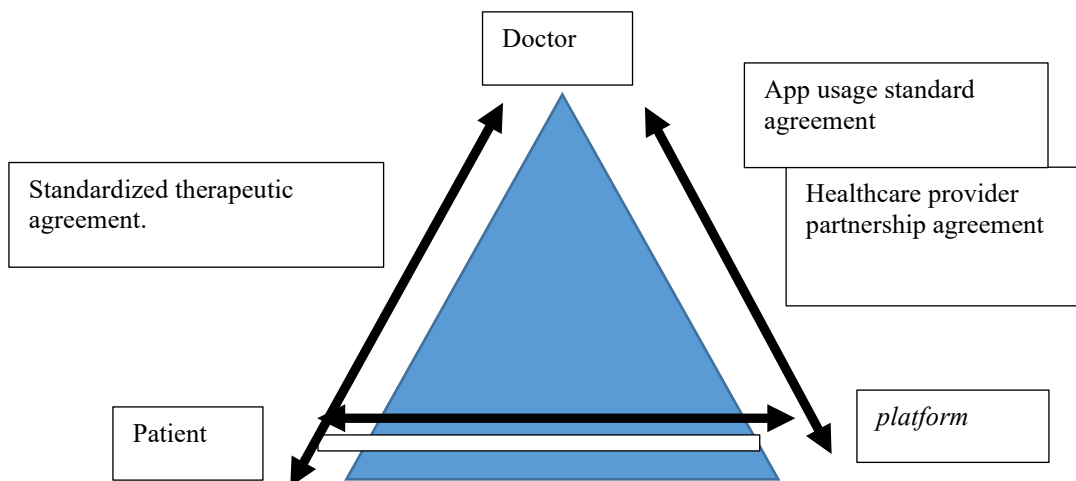


Figure 2 agreement triangle

From the Figure 2 above, there are three agreements that are connected to each other. First, there is a standard agreement on the use of the application which is a liaison between doctors, patients, and application providers. Second, there are standardized therapeutic agreements to connect doctors and patients. Third, there is a health service provider partnership agreement, the relationship between doctors and the platform in which they partner, and the doctor becomes the provider of health services.

The agreement between the doctor and the patient in a therapeutic agreement is like an agreement in general which has an object of agreement. The object of the agreement is an appropriate healing effort for the patient. The object is often misunderstood by several people, where the majority think that the object of the therapeutic agreement is the patient's recovery, even though it needs to be reaffirmed that the object of the agreement is a healing effort (Bahder, 2005). In the agreement this does not need to be done clearly in writing because of the nature of approval and trust (Guwandi, 1996). The therapeutic agreement itself is included in the agreement to perform certain services (Subekti, 2014). The legal relationship between doctors and patients with the platform. looks like two separate agreements, but these three things become one in a standard agreement on the use of applications in the form of an electronic contract (Aris, 2020). An electronic agreement or electronic contract is an agreement whose binding is done electronically. Electronic agreements are commonly used in business or institutional activities and even against people. In the regulation itself, it will refer to Article 1 paragraph (17) of Law no. 11 of 2008 concerning Electronic Transactions and Transactions. Doctors and the platform have a partnership relationship, more precisely the partnership agreement for health service providers, which is stated in the doctor's terms and conditions. The definition of partnership can be seen in Law no. 20 of 2008. Because they are bound by a partnership agreement, doctors are not workers from the platform but as partnerships.

Judging from the explanation that has been described the construction of the agreement between the patient, doctor and the platform, it can be constructed as mixed agreement or contracts *sui generis* between a standardized therapeutic agreement with a standard agreement on the use of applications and a health service provider partnership agreement that binds the three parties. For this reason, the author gives the name of the construction of this agreement with the name of the electronic consultation agreement or electronic consultation.

Furthermore, if one day there is a loss experienced by the patient in the teleconsultation action. In this case, accountability can be requested by applying the ostensible agency doctrine. This doctrine is an accountability where responsibility can be asked to the principal for the losses caused by the agent because it is seen as a single entity. There are three elements that must be considered in this doctrine, namely: First, the plaintiff must be quite sure if the agent is under the control of the principal, Second, the plaintiff's belief must be the result of the principal's actions or omissions to be prosecuted and third, the plaintiff cannot be negligent (Shidarta, 2018). The Ostensible Agency doctrine also recognizes three important actors, namely, principals, agents and third parties (Miller). In teleconsultation of a doctor who practices online and, on a platform, to facilitate the connection of doctors and patients, consumers will see the figure of a doctor and the platform as a single entity that should be held accountable

even though in practice a doctor and platform are only agents and principals and there is a disclaimer stating the platform transfers responsibility. However, consumers see them as one unit, and for accountability according to what they are part of. Consumers in this case can sue jointly and severally with the doctor as defendant 1 and the platform as defendant 2.



In practice this doctrine was used when there was a case experienced by John Lynn Stephens in 1981, Oklahoma, United States. In this case, Stephen sued L&A Tire Company with several parties and one of them was Conoc, Inc. for the loss he suffered, the loss referred to in the form of accidental injury due to the tires he just bought. In that case, the judge who presided over the trial saw the problem from the consumer's point of view. With the intent carried out by the L&A Tire Company in the eyes of Stephens and the consumer at large is a representation of the quality of the work of Conoc Inc. Thus, the judge views that they are an integral part of their accountability to consumers (*Justia us law Lee v Helmco, Inc.*). And the second case. In the world of applied health, in America at that time the Supreme Court of Putnam County decided based on the Ostensible Agency Doctrine at the Hudson Hospital Center. The problem is with an anesthesiologist who causes the patient to be injured. In general, hospitals cannot be held responsible for someone who is not a hospital employee, but the hospital is categorized as one of a group of independent contractors or principals. For this reason, the representative's responsibility for medical malpractice is assigned to anesthesiologists under the Ostensible Agency Doctrine. The judge considered that consumers in general would be convinced and impressed that the anesthesiologist had the authority to act on behalf of the hospital. Patients who trust let the anesthesiologist perform the procedure because they believe the anesthesiologist works or is provided by the hospital (*Justia us law Keesler v Small (ostensible agency)*).

The doctor's responsibility is seen from consumer protection. Doctors and patients can be categorized as consumers and business actors based on Law no. 8 of 1999, this is because consumers in the world of health are categorized as recipients of health services and doctors as providers in therapeutic agreements (Triana, 2007). The patient can sue the doctor for the loss caused by an error based on Article 19 paragraph (1), namely the patient can claim compensation and claim for compensation based on Article 19 paragraph (2), which can be in the form of a refund or replacement of goods and/or compensation. The principle of responsibility adopted according to the law is the principle of always being responsible, the perpetrator is always responsible and must prove that he is innocent (Aulia, 2017). What is meant by proving is by presenting facts to provide certainty to the panel of judges regarding the occurrence of an event or legal relationship (Abdul, 2000). This is called a reversed proof system which some countries have implemented such as in Europe.

4. Conclusion

- 1) The conclusion that can be drawn is that the agreement that occurs in teleconsultation is unique because there are three different parties related to each other and each party has an interrelated agreement. The author constructs an electronic consultation agreement, this can be supported by arguments:
 1. There are three parties to teleconsultation, namely: doctors, patients, and platforms.
 2. There are three agreements, standardized therapeutic agreements, standard application use agreements and health service provider partnership agreements
 3. The first agreement is a standard agreement on the use of an application that has fulfilled the conditions for a valid agreement in accordance with Article 1320 of the Civil Code in this case between doctors, patients and the platform. This agreement is written in electronic form which will emphasize that the platform will be a liaison between doctors and patients.
 4. The second agreement is a standardized therapeutic agreement as the basis for the relationship between the doctor and the patient, even though the two are not face-to-face or face-to-face, because basically when a patient sees a doctor to be diagnosed, a therapeutic agreement has occurred even though in this case both parties, namely the doctor and the patient brought together or connected by a platform with interactions defined by the platform.
 5. Health service provider partnership agreement. This agreement applies between the doctor and the partnering platform. Doctors will provide health services by using an application facilitated by the platform.
 6. From the agreement that occurs, it can be seen that the therapeutic agreement is the main agreement because the patient's intention from the beginning to take treatment and the standard agreement here binds the parties to each other. Like the main agreement when the patient and doctor cancel the therapeutic agreement, the additional agreement, namely the standard agreement, will also be canceled. However, patients who make

diagnoses in telemedicine must still meet the requirements in the platform conditions, especially the patient's skills when creating an account.

- 2) Doctors and the Platform can be held responsible for the losses of patients in teleconsultation based on the Ostensible Agency Doctrine because they view one party, namely the principal (platform) and the agent (doctor) as a single entity without consumers needing to know the relationship more deeply and clearly, this doctrine was born because a consumer cannot see clearly what relationship is going on in a party and because of this the consumer finally sees the parties as a single entity. In this case the doctor as an online health service provider whose practice is carried out with the platform as a facilitator, consumers will see that the platform can also be held accountable even though the relationship between the platform and doctors is limited to principals and agents. However, in terms of accountability, it is still carried out according to their respective portions.

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