

Implementation of the Precautionary Principle in Determining the Diagnosis of Patient Diseases Through Telemedicine Consultation

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ABSTRACT : Humans are social beings, namely beings who are naturally living in society. As social beings, humans need other humans who live in society. Realize it or not to fulfill their life needs in exercising the rights and obligations to obtain health. Organizing effective and efficient health efforts requires health information, health information as referred to is carried out through an information system and through cross-sectors. In addition, further provisions regarding the information system as referred to are regulated by Government Regulation. it is emphasized that everyone has the right to health and even everyone has the same rights in obtaining access to resources in the health sector. Likewise, everyone has the right to obtain safe, quality, and affordable health services. The research method uses a normative legal method using an analysis method that is qualitative analysis with a statutory regulatory approach. 1. Legal framework regarding patient consultation using telemedicine in Indonesia. The use of telemedicine-based health services is stated in the Decree of the Minister of Health of the Republic of Indonesia concerning the benefits of telemedicine-based health services as an effort to achieve equitable health services, improve the quality of health services in remote areas and reduce referrals to hospitals, especially in handling emergency cases. Telemedicine can be said to be a solution for the community and medical personnel when faced with field situations that are not possible, so to provide a sense of security to medical personnel and patients, there are several legal bases related to the implementation of telemedicine in Indonesia which are regulated in laws and regulations. Telemedicine services have four obstacles, namely the Technological Environment, the Human Environment, the Economic Environment, and the Organizational Environment. The willingness of patients to use technology (45.7%) and the obstacles are limited infrastructure, Community Acceptance, and the Human Development Index (HDI). 2. Legal protection of the parties is associated with the application of the precautionary principle in diagnosing diseases through telemedicine. The legal basis for online consultation services or telemedicine still does not have concrete legal certainty at the national level. There are no national regulations that specifically regulate the implementation of telemedicine services and health workers who provide these services in Indonesia. Legal protection for related parties through telemedicine can be seen that related parties in this case medical service providers must comply with the rules governing human actions based on law, justice and morality.

KEYWORDS : *Precautionary Principle, Patient Disease Diagnosis, Telemedicine Consultation*

I. INTRODUCTION

The importance of the right to health is stated in Article 34 paragraph (3) of the 1945 Constitution, which states that; "The state is responsible for providing adequate health service facilities and public service facilities". However, in reality, health services in Indonesia are still not optimal, because there are still many basic health facilities that do not meet service standards, the absence of health service guideline standards, availability of facilities, completeness of facilities, medicines, equipment and health workers. The Ministry of Health is also carrying out a health transformation that includes 6 pillars of transformation including transformation of Primary Services, Referral Services, Health Resilience Systems, Health Financing Systems, Health Human Resources, and Health Technology (one of which is through telemedicine services).

Telemedicine in its implementation can be divided into two forms or types, namely with the concept or method directly/real time (synchronous) and indirectly/store-and-forward (asynchronous). Real-time telemedicine (synchronous telemedicine) can be in a simple form such as using a telephone or in the form of Chat. Synchronous Telemedicine requires the presence of both parties at the same time, therefore a connecting medium is needed between the two parties that can offer real-time interaction so that one party can carry out health care. Another

form of Synchronous Telemedicine is the use of medical equipment connected to a computer so that interactive health inspections can be carried out. Telemedicine with store-and-forward (asynchronous telemedicine) includes collecting medical data and sending this data to a doctor at the right time for offline evaluation. This type of telemedicine does not require the presence of both parties at the same time. Dermatologists, radiologists, and pathologists are specialists who usually use this asynchronous telemedicine. Doctors using telemedicine medical equipment can see digital images directly and even the patient's heart and breathing transmissions can be detected by the doctor (via audio signals from an electronic stethoscope), even though the two (doctor and patient) are in two places far apart. Supported by medical equipment that can convert video images into digital images, the use of telemedicine has been widely used and applied in many countries in the world such as the United States, Greece, Israel, Japan, Italy, Denmark, the Netherlands, Norway, Jordan, Malaysia and India. Narayanan Hospital in Bangalore India for example, has been able to provide health services to patients there, where patients and specialist doctors do not have to meet in person, but rather the patient is in a small, comfortable room, with a 42" LCD monitor, a set of personal computers (PC), then a patient who is in a rural health clinic 600 km from Bangalore City can communicate interactively with his specialist doctor at the hospital in Bangalore City via the LCD layer. Doctors are expected to use social media wisely by considering the ethical aspects contained in the Indonesian Medical Code of Ethics (KODEKI), especially professionalism, valid statements and opinions, honesty. This is in line with the theory put forward by Immanuel Kant who was a great philosopher from the Enlightenment era who was famous for his moral philosophy and epistemology. In the context of the "principle of precaution," Kant does not explicitly use the term, but his idea of the principle of precaution can be interpreted through the framework of his deontological ethics, specifically in the concept of the categorical imperative. Kant's theory of law, justice, and morality is known as deontological ethics, which focuses on moral obligations and the rules that govern human action. Some of the main points of Kant's theory include: 1) Universality of Ethical Categories; 2) Categorical Imperative; 3) Moral Law; 4) Justice and Law; 5) Human Dignity. IDI and MKEK need to start paying attention to the increasingly mushrooming telemedicine services, because in fact these practices provide medical advice like regular medical practices, and until now have not been controlled by any regulations, telemedicine doctors do not need a SIP, and their services do not require a permit. The argument that telemedicine doctors do not need regulation because they do not provide medicine is not entirely correct, because non-drug management, including the medical advice given, is still included in the domain of medicine. In fact, medical practice actually begins when anamnesis is performed, where the patient reveals information about himself and his medical condition to the doctor.

II. METHOD

The research method used is the normative legal research method, to determine legal regulations, legal principles and legal doctrines. This research also uses the approach of positive legal rules and their principles (statue approach), namely conducting a review of all laws and regulations related to the problem/issue faced. The legal materials required in this research are in the form of primary and secondary legal materials. Primary legal materials are legal materials whose existence is based on or produced by a certain authority, for example laws and other legal regulations as long as the material is related to the problem being studied.

III. RESULTS AND DISCUSSION

Legal protection of the parties is associated with the application of the precautionary principle in diagnosing diseases through telemedicine

In principle, telemedicine services only provide interaction between doctors and patients. One form of interaction is health consultation, where patients can consult remotely. From a consumer perspective, the presence of this telemedicine service provides convenience because it can present doctors through everyday habits. In practice, doctors can potentially make professional errors because the process is carried out online, namely not meeting in person. The problems in question are misdiagnosis, wrong treatment or administration of drugs. Furthermore, another core problem is regarding the protection of patient privacy rights over their health data that is recorded electronically on telemedicine services. As is well known, everyone has the right to the confidentiality of their personal health conditions that have been submitted to health service providers.

Based on this, legal protection is considered necessary because it is a guarantee that should be given by the state to all parties to be able to exercise their legal rights and interests, in their capacity as legal subjects. Regarding the legal basis for telemedicine services, according to interviews from this study regarding the legal basis for telemedicine services, it was stated that the legal basis for online consultation or telemedicine services still does not have concrete legal certainty at the national level. This is also in line with previous studies concerning the legal aspects of online consultation or telemedicine services which assume that Indonesia does not yet have a law that specifically regulates the use of telemedicine services. Indonesia has only regulated its telematics problems in general. In accordance with the results of this study's interviews, it is known that there are no national regulations that specifically regulate the implementation of telemedicine services and health workers who provide these services in Indonesia. This can give rise to various problems that will arise and develop in the future,

although the legal bases above can help law enforcement and health professions, but only as a reference and cannot be a solid protection for the medical profession in the era of digitalization 4.0, especially in this country of law. The responsibility of the medical profession for telemedicine services concerns the ethical responsibility of the medical profession, namely a set of behaviors of doctors and dentists in their relationships with patients, families, communities, colleagues and work partners. The formulation of the behavior of members of the profession is compiled by professional organizations together with the government into a code of ethics concerned. In carrying out their profession, more concrete objective guidelines are needed, namely a code of professional ethics (rule of conduct) which is a minimum standard rule of behavior that can be accepted as a must to be achieved.

Professional doctors are often faced with situations that give rise to complex problems in determining behavior that meets the demands of professional ethics. The purpose of developing this professional ethics is to regulate the reciprocal relationship between members of the group or members of the community who serve and are served. Violations of professional ethics can be subject to professional disciplinary sanctions in the form of warnings to more severe ones, namely the obligation to undergo certain education (if due to lack of competence) and revocation of their right to practice the profession. Regulation of the Minister of Health Number 755 of 2011 concerning the implementation of the Medical Committee states that consideration of the revocation of certain clinical authority by the head/director of the Hospital is based on the performance of the profession in the field, for example the medical staff concerned is disturbed in their health, both physically and mentally. In addition, the revocation of clinical authority can also be carried out if a medical accident occurs which is suspected of being due to incompetence or due to disciplinary action from the medical committee.

In the context of the "prudential principle," Kant does not explicitly use the term, but his notion of the prudential principle can be interpreted through the framework of his deontological ethics, specifically the concept of the categorical imperative. Kant's theory of law, justice, and morality is known as deontological ethics, which focuses on moral obligations and the rules that govern human action. Here are some key points of Kant's theory :

1. Universality of the Ethical Category: Kant believed that moral actions should be based on universally applicable principles. In this case, he stated that a moral action is an action that can be done by everyone without violating the same moral principles;
2. Categorical Imperative: Kant developed the concept of the "categorical imperative," which is a moral rule that is absolute and binding on everyone. This rule does not depend on the desires or interests of the individual, but must be followed universally;
3. Moral Law: Kant believed that moral rules are laws that must be followed, like the laws set by the state. However, the law of morality does not depend on external supervision or punishment; instead, individuals must follow the law of morality because of their own moral obligation;
4. Justice and Law: Kant also considered the role of justice in his theory. According to him, justice must follow the principles of morality and provide fair treatment to everyone. Laws must be based on the principle of justice and must be applied equally to all;
5. Human Dignity: Kant stated that every human being has the same dignity, which must be respected and protected by everyone. Therefore, actions that ignore or degrade human dignity are considered immoral.

From the overall results of the theory put forward by Immanuel Kant, it is known that the importance of universal moral principles, individual moral obligations, and justice in law and treatment of humans. In addition, Immanuel Kant also rejected the concept of relativist ethics which states that moral actions depend on a particular context or culture. In this case, Immanuel Kant's moral rules must apply universally and cannot be compromised. This is in accordance with the opinion of the informant, namely the Director of Health Services, who said that in diagnosing diseases through telemedicine, it always emphasizes the principle of just morality, namely diagnosing diseases more carefully and more carefully to make decisions by looking at the various symptoms that exist. In addition, in handling, even though you do not meet directly, good communication must still be established based on good treatment without looking at a particular culture or tribe.

In addition, Immanuel Kant also provided the concept of "practical reason" which is the ability of individuals to use their reason to make correct moral decisions. Based on the theory put forward, it can be seen that practical reason is the ability to understand moral rules and apply them in everyday life. In addition, it can also distinguish between actions based on the right motives and actions based on the wrong motives. According to Immanuel Kant's concept, moral actions can only be considered moral actions if they are carried out with the right motives, namely to fulfill obligations and not forget rights. On the other hand, actions carried out with the wrong motives, such as selfish motives or motives to achieve wrong goals, cannot be considered moral actions. It is also known from the concept put forward by Immanuel Kant that he also introduced the concept of "the end in itself," which refers to the intrinsic value of every human being and his dignity as a rational being. Overall, Kant's theory of law, justice, and morality emphasizes the importance of universal moral rules and individual moral obligations, as well as fair treatment of every human being. This theory put forward by Immanuel Kant can be the basis for the principle of caution in diagnosing diseases through telemedicine.

Diagnosing diseases through telemedicine at the Banggai District Hospital does not yet have a standard SOP that is legally established in its implementation. However, the practice of using telemedicine has been ongoing and used until now, while the basic legal framework is based on the new regulation, namely Law No. 17 of 2023 Article 25 concerning Health. Based on the existing reality, medical personnel when taking action through telemedicine require a cautious attitude as explained by the concept of Immanuel Kant's theory, although being careful, it cannot be denied that the use of telemedicine in diagnosing a disease is still difficult due to various factors, especially for medical personnel who will take action, of course, they must consider carefully what will be done.

It would be better if the Banggai Regency Regional Public Hospital makes a regulation that can provide legal protection to medical personnel, not only to patients as service users. In this case, an example can be taken from the Andi Makkasau Regional Public Hospital which issued a decree of the Director of the Parepare City Hospital Number 52 of 2021 concerning the second amendment to the decree of the Director of the Andi Makkasau Regional Public Hospital, Parepare City Number 281 of 2020 concerning the Determination of Service Standards in the Andi Makkasau Regional Public Hospital, Parepare City.

IV. CONCLUSION

1. The legal framework applied in Indonesia regarding patient consultation using telemedicine is so much, but the benchmark is the latest Law Number 17 of 2023 Article 25 concerning Health.
2. Legal protection by using the principle of caution in diagnosing diseases through telemedicine based on the balance between doctors and patients is from the aspect of the therapeutic relationship between doctors and patients. To minimize malpractice, careful actions are needed which are based on Immanuel Kant's theory which focuses on moral obligations and rules that govern human actions which can be seen from the Universal Ethical Category, Categorical Imperative, Morality Law, Justice and Law and Human Dignity

SUGGESTIONS

The Director of Banggai District Hospital should create a regulation that can provide legal protection to medical personnel regarding the use of telemedicine in health services at the Hospital

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