
THERAPEUTIC TRANSACTIONS FOR MEDICAL SERVICES THROUGH ONLINE CLINICS ON A LEGAL PERSPECTIVE

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ABSTRACT

KEYWORDS

telemedicine; right; obligation; patient; doctor

Online clinics have become an alternative for people to get medical services without having to come to a hospital or clinic. However, the use of online clinics in medical services raises various legal issues, including therapeutic transactions between doctors and patients. The study aims to evaluate therapeutic transactions in medical services through online clinics from a legal perspective. The study uses a descriptive method with a normative juridical approach. The data used in this study are secondary data from several related studies conducted in Indonesia. Data analysis is carried out with reference to health legislation and electronic information and transaction laws. The results showed that therapeutic transactions in medical services through online clinics must meet the requirements stipulated in the health law and the electronic information and transaction law. In addition, legal protection of patients must be observed in therapeutic transactions between doctors and patients. This study provides important information about therapeutic transactions in medical services through online clinics from a legal perspective. The results of this study can be used as a basis for the development of better regulation in the use of online clinics in medical services. It is hoped that further research can be conducted to deepen the understanding of therapeutic transactions in medical services through online clinics from a legal perspective.

INTRODUCTION

Internet-based technology provides comfort and convenience for users to access information and join a community (Vromen, 2007). Through this media, the general public can also easily spread interpretations related to health events without any scientific framework or outside the context of public health itself. To overcome this, epidemiology and surveillance (i.e. biosurveillance), need to develop, fuse and provide a variety of health information that is important for decision making in various fields, communities, professions, organizations, institutions and health systems. Public health epidemiology and surveillance carried out through electronic media (especially the internet) are called “Inferdemiology” and “infoveillance”, respectively, opening up good opportunities for practice and research activities (Wibowo & et al, Health in the Digital Age 4.0 Indonesian Perspective, 2021)

Developments in globalization illustrate the increasingly rapid development of capitalism, the role of markets is increasingly global and competition in the business world is increasing. Although there is hope for human well-being, globalization also raises doubts and several arguments in social development theory support this (Sutrisno, 2007)

One of the most significant developments of globalization is the use of technology, which has impacted almost all aspects of modern life, including healthcare. Health is very important for everyone, regardless of age, socioeconomic status, or other factors. The number of new telemedicine service users has increased by 44.1% in the last six months. The increase occurred after the government provided a solution when the Covid pandemic hit Indonesia. The results

of the data were collected from 2,108 people from 28 February to 7 March 2022. That 1,416 people who conducted the survey used telemedicine services such as Halodoc, Alodokter, Good Doctor, and others (Katadata.co.id, 2022). The Civil Code does not regulate the doctor-patient relationship known as a "therapeutic transaction", where the doctor provides treatment based on the patient's full trust and is responsible for his expertise or skills in providing care. To provide effective health services, doctors or medical personnel must be supported by adequate equipment (Dharma, 2020)

Therapeutic transactions consist of treatment, diagnosis and medical care. But in online clinics, there is debate about the legality and ethics of these therapeutic transactions. Some of the problems that arise in therapeutic transactions through online clinics include the inability to perform physical examinations, medical data security issues, and the inability to track patient history (Zadeh & Tremblay, 2016). Applicable legal provisions are very important when conducting treatment transactions through online clinics. As shown in Law Number 36 of 2009 concerning Health, online clinics and conventional health services are closely related to each other (Herawati et al., 2021). However, the Health Law does not provide a clear description of internet-based health services or telemedicine.

One of the ways and tools to regulate and direct the life of the Indonesian people towards the ideals of the state is legislation. In practice, the function of legislation is to regulate and direct the lives of Indonesian people towards the ideals of the state through the laws they make (Sutrisno, 2007). So, with advances in health technology, clear safeguards for therapeutic transactions are required.

Previous research by Hutomo and Suhartana (2020) on legal protection for patients using online health services, highlighted therapeutic transactions between doctors and patients in professional medical services based on a legal perspective. Furthermore, Amalia (2016) discusses the practice of health services through online clinics according to Indonesian law. This research uses normative juridical approach method and refers to health law and electronic information and transaction law. Such past research can provide better information and understanding of therapeutic transactions in medical services through online clinics from a legal perspective.

In today's digital era, the provision of medical services through virtual clinics has grown rapidly. However, the existence of online clinics creates unclear legal regulations regarding therapeutic transactions, which can have legal impacts potentially detrimental to patients (Whittaker, 2011). Patients can file lawsuits against online clinics and the health workers involved if errors occur in diagnosis or treatment (Wamisho et al., 2019). Apart from that, the security of patient data also needs to be considered in medical services through online clinics (Puri et al., 2021). Therefore, it is important to consider the fulfillment of legal requirements for the delivery of drug prescriptions and treatments remotely in regulations regarding online clinic health services. For questions regarding the problem how is the legitimacy of therapeutic transactions in online clinical practice based on Health Law Number 36 of 2009 concerning Health and what is the responsibility for patients in medical services through online clinics based on Health Law Number 36 of 2009 concerning Health. Moreover, the study aims to evaluate therapeutic transactions in medical services through online clinics from a legal perspective.

RESEARCH METHOD

Normative juridical (doctrinal) research methods are used to look at problems from a legal perspective. This method takes into account the applicable laws and regulations in written form relating to the application of the policy of the Minister of Health Regulation Number 20

of 2019 Concerning Clinical Administration and Medical Practice Through Telemedicine During the Corona Virus Disease 2019 (Covid-19) Pandemic in Indonesia relating to practice medical services through online clinics. This doctrinal approach is carried out regarding several written legal norms in the form of Law Number 29 of 2004 concerning Medical Practice, Law Number 36 of 2009 concerning Health, Kode of Indonesian Medical Ethics, and Supreme Court Decision Number 2566 K/Pdt.Sus/2017 Concerning Doctors' Responsibilities in Providing Health Services through Electronic or Telemedicine networks.

RESULTS AND DISCUSSION

The current reality shows that the development of health information can be accessed easily, but also in new media. The development of digital health in Indonesia is experiencing rapid development. The existence of digitalization in the health sector can reduce the burden of health costs and improve the welfare of the Indonesian people, namely in the form of cheap and affordable health services and innovations (Wibowo & et al, Health in the Digital Age 4.0 Indonesian Perspective, 2021).

Patients are individuals who receive health services from health workers as final consumers. The health services provided aim to improve the patient's health status in a promotive, preventive, curative or rehabilitative manner so that patients can improve their quality of life. This is very different from commercial transactions, where raw materials are processed into products for resale. Better health after receiving healthcare services can help patients live more productive lives (Ramadianto, 2021). In providing health services, especially during the COVID-19 pandemic, online clinical practice or telemedicine has become an alternative choice. However, when implementing this method, there are some legal elements that must be considered, especially in medical transactions between doctors and individuals receiving treatment.

Therapeutic agreements through online clinics must meet the requirements of contract law, the *Inspanning Verbentennis* principle, and the provisions in Article 1320 of the Indonesian Civil Code. The goal is to ensure fairness, security and legal certainty in the relationship between doctors and patients that occurs in telemedicine practices. Therefore, the regulations that apply to treatment transactions carried out at online clinics can be clarified.

Regulations in Criminal Law regarding the validity of Therapeutic Transactions through online clinic practice:

Examinations related to online clinical practice must meet the licensing and permit requirements required by health authorities or authorized institutions. If the practice is not legally licensed, therapeutic transactions made through the platform may be considered illegal. Articles 36 and 37 of the Health Law Number 29 of 2004 concerning Medical Practice regulate the issuance of a Doctor's Practice Permit.

In addition, in criminal law, it is very important to determine whether the online clinical practice violates the provisions in the Criminal Code regarding embezzlement (Article 372), fraud (Article 378), or fraud (Article 378) that occurs when making online transactions. . If there is an element of fraud or other criminal acts in the therapeutic transaction, the parties involved in online clinical practice may become the subject of criminal prosecution.

Regulations in Civil Law regarding the validity of Therapeutic Transactions through online clinical practice:

Examination of transactions carried out through online clinical practice must meet the requirements of a valid contract, such as the existence of a mutually beneficial agreement between the two parties, clarity regarding the goods or services provided, and legal

considerations between the parties involved. Book III of the Civil Code, which consists of Article 1233 to Article 1864, contains 18 chapters and 631 articles, discusses contract law.

Regarding Civil Law, it is necessary to consider compliance in fulfilling applicable consumer protection provisions. If there is a violation of consumer rights, such as providing misleading information or a discrepancy between the products or services promised and those provided, parties involved in online clinic practices may be subject to civil lawsuits. Article 5 of the Consumer Protection Law Number 8 of 1999 includes these provisions.

Right is an authority given by law to individuals or society. Contractual obligations are called obligations. When legal events occur, legal embodiment becomes rights and obligations. Legal subjects can have rights due to several reasons, such as the existence of a new legal subject, an agreement, losses due to other people's mistakes, and someone who has performed an obligation (Utomo, Putra, & Sutrisno, 2021).

Regulations in Health Law regarding the validity of therapeutic transactions through online clinical practice:

Medical ethical standards (Article 24 of Law No.36 of 2009 concerning Health), medical practice licenses (Article 30 paragraph (2) letter e and Article 51 letter a of the Medical Practice Law), and regulations governing the provision of health services relating to the validity of therapeutic transactions through online clinical practice.

Violation of these rules can result in disciplinary sanctions and license withdrawal, as well as legal action if there are losses caused by unauthorized online clinic practices. In terms of patient rights and obligations, Articles 52 and 53 of Law Number 29 of 2004 concerning Medical Practice regulate sanctions if patient rights and obligations are violated.

MKEK IDI regulates sanctions for violations of medical ethics. Sanctions that can be given by MKEK IDI include verbal or written warnings, professional coaching or training, revocation or freezing of competency certificates, certificates of registration, or practice permits, and temporary or permanent revocation or suspension of IDI membership.

Patients who use medical services through online clinics have the same rights as patients who use medical services at physical clinics. However, there are several legal consequences that need to be considered in medical services through online clinics.

First of all, patients must ensure that the online clinic used meets regulatory requirements and has official permission to practice Telemedicine. Patients must also ensure that physicians providing health services through online clinics meet the educational requirements and professional standards necessary to provide safe and effective health services.

Malpractice or medical errors that occur when receiving medical treatment at an online clinic have the right to sue the doctor or clinic concerned. Patients can file civil lawsuits to get compensation for losses suffered as a result of these medical errors or mistakes. However, patients should also note that the evidence needed to prove medical errors or malpractice in medical services through online clinics may be difficult to obtain. Patients must ensure that they have kept a complete record of the health services received through the online clinic, including examination results, diagnoses, drug prescriptions, and other medical procedures. In addition, patients also need to pay attention to privacy rights and data security in medical services through online clinics.

Law Number 29 of 2004 concerning Medical Practice regulates therapeutic agreements and online medical services in Indonesia. Article 10 states that doctors must establish a cooperative relationship with patients based on therapeutic agreements based on ethics and applicable laws. This applies if the patient receives medical services by telephone or in an online clinic. This includes the doctor's obligation to provide clear and open information about

the patient's health condition as well as treatment suggestions according to the patient's condition.

Doctors must ensure that patients understand the risks and benefits of any treatment recommendations given. In addition, the Indonesian government has also issued several regulations related to telemedicine services. In 2020, Decree of the Indonesian Minister of Health Number HK.01.07/MENKES/328/2020 stipulates Guidelines for Health Services Through Telemedicine. This guideline sets out the requirements and standards for Telemedicine services that must be met by online health services in Indonesia. In terms of legal consequences for therapeutic agreements, if doctors or telemedicine services violate ethics or applicable laws in providing medical services, then they can be prosecuted. Patients can also file a claim for compensation if they experience a loss or negative impact due to the mistake or negligence of the doctor or the telemedicine services provided. Therefore, it is very important for doctors and telemedicine service providers to comply with applicable regulations and ethical standards when providing medical services online.

Patients who use medical services through online clinics have the same rights as patients who use medical services in physical clinics. However, patients must also pay attention to possible legal consequences, including the right to file lawsuits for medical errors or malpractice, as well as the right to privacy and data security. Patients must ensure that online clinics and doctors who provide healthcare services through online clinics meet regulatory requirements and professional standards necessary to provide safe and effective healthcare. However, there are a few things to watch out for, especially when getting medical care through online clinics or telemedicine.

Medical services through online clinics, there are several obstacles that can affect legal consequences for therapeutic agreements. As mentioned, there are several diseases that require in-person examination, so the recommended diagnosis and treatment can be inaccurate when done online. In this case, doctors who provide medical services through online clinics need to provide a clear explanation regarding the limitations of these medical services, as well as provide recommendations for patients who require in-person examinations. In addition, doctors also need to ensure that patients give their fully informed consent and are not coerced into accepting the recommended treatment.

Medical services through online patients have the responsibility to pay attention to the rights and obligations as well as legal risks related to the use of these online health services. One of the patient's main responsibilities is to ensure that the online clinic used has an official license from the government and complies with applicable regulations and rules. If a patient uses online clinic services without paying attention to the official license and applicable regulations, the patient may be subject to legal consequences such as lawsuits from parties who feel aggrieved. In addition, patients must also pay attention to patient data security and privacy when using online clinic services. If there is a breach of data or privacy by the online clinic, then the patient can file a related lawsuit.

Patients have a responsibility to pay attention to their rights and obligations, even though there are legal risks associated with using online clinic services. Currently, there are no regulations from the central government that specifically regulate the use of online clinics. Therefore, patients need to be careful in using online clinic services and ensure that patients choose an online clinic that they can trust. As an appeal, the Indonesian Doctors Association (IDI) has reminded the public to be careful when using online clinic services and ensure that the online clinic used meets existing medical standards. Apart from that, IDI also reminded that the use of online clinic services cannot replace direct examination by a doctor in person.

An agreement between a doctor and an individual receiving medical care with the goal of providing optimal and appropriate medical services. However, in the context of online clinics, the lack of physical interaction between doctors and patients can affect the quality of diagnosis and treatment. In addition, patients who use online clinic services will have a greater responsibility in choosing the right service because there are no central government regulations governing remote health services.

Law is needed generally and comprehensively, it is believed that law will always regulate human life (Sutarno, 2014; 31). Because in a legal context, patients have the right to receive quality and safe medical services. Patients can claim compensation or file a claim against the responsible party if an error or negligence occurs in the provision of medical services. Therefore, it is important for patients to ensure that the online clinic services used meet established safety and quality standards. Apart from that, the patient must also understand and agree to all the terms and conditions that apply in the therapeutic agreement with the doctor through the online clinic.

Responsibility towards patients can be guaranteed through firm and fair patient legal protection. Legal protection ensures that every medical procedure is carried out with high standards of ethics and professionalism. With this protection, patients have the right to obtain clear and open information about the medical procedure to be performed, the associated risks, and they also have the freedom to choose whether to accept or reject the medical procedure.

Responsibility can be imposed on service providers or online clinic platforms such as Alodok, Halodoc, and others if the elements of error are met. As online healthcare providers, their responsibility for errors can arise in a number of ways. For example, they must ensure that doctors or medical personnel involved in online services have valid qualifications and licenses. If service providers fail to carry out adequate verification or provide incorrect information about the skills and qualifications of medical personnel, they may be deemed to have committed error.

Liability may also arise if online clinic platforms fail to provide adequate access to patient information or if they violate patient privacy in an unauthorized manner. They must also ensure that the technology systems they use are safe and protected from security threats that could compromise patient personal information.

The application of this element of error is important in determining the responsibility of service providers or online clinic platforms. This requires them to act in good faith, maintain standards of security and privacy, and provide medical services that meet established requirements.

It should be noted that the existence of regulations governing the responsibility of service providers or online clinic platforms is relatively new and may vary by jurisdiction. Therefore, it is very important for governments and regulatory agencies to establish more specific and comprehensive regulations to regulate their responsibilities, including errors that may occur in online healthcare.

In practice, proof of wrongdoing by service providers or online clinic platforms may involve careful assessment of the policies, procedures and actions taken by them. Effective oversight and enforcement of laws can provide protection to consumers and encourage better accountability from service providers or online clinic platforms in providing quality and safe health services.

CONCLUSION

The validity of therapeutic transactions in online clinical health services can be reviewed based on Health Law Number 36 of 2009 concerning Health and Article 1320 of the Civil Code which regulates the legal requirements of an agreement. Although the Health Law does not specifically regulate online clinics, it does apply to all health service delivery in Indonesia. Therefore, therapeutic transactions in online clinical services must comply with the provisions stipulated in the Act.

Responsibility for patients in medical services through online clinics must include fulfilling the requirements of Health Law Number 36 of 2009. Doctors and online clinics must ensure agreement and cooperation with patients, maintain data privacy and security, and be responsible for possible medical errors. In addition, it is important to keep updating relevant regulations and guidelines to accommodate technological developments and ensure safe and quality medical services through online clinics.

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