

THE FORMS OF LEGAL PROTECTION OF PATIENT MEDICAL RECORDS IN ONLINE HEALTH SERVICES

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Abstract

Health services online should have special regulations, the goal is that online consultations on medical records must be protected by law for the protection of doctors, system administrators, and patients. The purpose of this research is to analyze the Legal Basis for the Implementation of Online Health Services, Forms of Legal Protection of Patients against Online Health Services and Patient Rights as Users of Online Health Services & Responsibilities of Online Health Service Providers in Aspects that Harm Patients. The methodology uses normative juridical with a legal and conceptual approach. Health services performed by doctors online must comply with the Information and Electronic Transaction Law, the Health Law, and the Medical Practice Law and related regulations. The confidentiality of patient data must be maintained and must maintain data security to avoid data leakage which will be misused by people who do not have rights. The patient must provide the correct complaint so that the doctor can give the right advice. Patients have the right to choose a doctor who has the ability and expertise and the right to receive clear information regarding their health. If there is no meeting point on the existing problems, a lawsuit can be filed in court.

Keywords: Medical; Online; Patient; Protection; Service.

A. INTRODUCTION

The rapid development of health services that is happening today is related to the development of information and communication technology, one of which is the electronic ^{health} (e-health) sector which provides medical services, consultations, online pharmacy services, and various health information in the form of internet-based applications to provide convenience to patients in accessing health services effectively, time and cost-efficient.¹

In general, it is known that health services provide services between doctors as service providers and patients as service recipients² Since ancient times known as a relationship of trust is called a therapeutic transaction, a transaction is a reciprocal relationship generated through communication

1 Rajiv Suman Abid Haleem, Mohd Javaid, Ravi Pratap Singh., Medical 4.0 Technologies for Healthcare: Features, Capabilities, and Applications, *Internet of Things and Cyber-Physical Systems*, Vol. 2, 2022, page.12–30

2 Achmad Busro., Aspek Hukum Persetujuan Tindakan Medis (Inform Consent) Dalam Pelayanan Kesehatan, *Law, Development and Justice Review*, Vol. 1, No. 2018, 1AD, page.1–18

while therapeutic is something that contains elements of treatment.³ As a whole, it means that the legal relationship between doctors and patients in professional medical services is based on competence in accordance with certain expertise and skills in the field of medicine, and the services provided are in the nature of providing assistance or assistance based on the patient's trust in doctors.⁴

Online doctor practice is a health service facility that functions to provide and organize health efforts that are consultations for the healing and recovery of patients, and health services provided by online doctors to patients, following Law Number 8 of 1999 concerning Consumer Protection. Consumer protection is a part of the law that contains principles or rules that are regulatory and also protect the interests of consumers.⁵

The protection of patient data related to medical records which constitute the patient's health data, must be maintained so that it does not spread to other parties. The protection of personal data is related to the concept of privacy, which must be protected for its confidentiality.⁶ The concept of privacy is an idea to guarantee the integrity, dignity, and standard of living of a person. Efforts to protect a person's right to privacy are the same as protecting the right to freedom of speech, which must guarantee protection from misuse of personal data, which is part of human rights.⁷

Protection of personal data is part of fundamental human rights, namely the right of a person to receive protection and security for personal information, if there is a problem the owner of personal data has the right to justification and defense.⁸ Personal rights are more sensitive because the information contained therein contains a number of crucial personal information.⁹

The condition of the patient who suffers a lot of harm requires efforts to protect it so that consumer rights can be upheld. Protecting consumers/business actors, may not shut down the business of producers/business actors, because the existence of producers is essential

3 Barbara A. Budjac Corvette, Therapeutic Jurisprudence., *Sociological Practice: A Journal of Clinical and Applied Sociology*, Vol. 2, No. 2, 2000, page.127–32

4 I Ketut Agus Prasetyo, et al., Medical Service Management Analysis in the Specialist Medical Centre, *Hang Tuah Law Journal*, Vol. 5, No. 2, 2021, page.1–10

5 John Prawira Yodi Mahendradhata, et al., *The Republic of Indonesia Health System Review* (Indonesia: Asia Pacific Observatory on Health Systems and Policies/WHO, 2017,).

6 Lintang Yudhantaka et al., The Principle of Consensualism in Informed Consent Between Doctor and Patient Lintang," *Hang Tuah Law Journal*, Vol. 5, No. 1, 2021, page.24–37

7 Veronica Novinna., Perlindungan Konsumen Dari Penyebarluasan Data Pribadi Oleh Pihak Ketiga: Kasus Fintech Peer To Peer Lending, *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, Vol. 9, No. 1, 2020, page.92–110

8 Jie (Jeanne) Huang., Applicable Law to Transnational Personal Data: Trends and Dynamics, *German Law Journal*, Vol. 21, No. 6, 2020, page.1283–1308

9 Masitoh Indriani Dian Purnama Anugerah., Data Protection in Financial Technology Services (A Study in Indonesian Legal Perspective), *Sriwijaya Law Review*, Vol. 2, No. 1, 2018, page.82–92

to the country's economy.¹⁰ Provisions that protect consumers must be balanced with provisions that protect producers/business actors so that consumer protection does not turn a weak consumer's position into a strong one and vice versa, a weakened position of producers/business actors.

Research conducted by Kastania Lintang with the title Legal Protection of Privacy Rights and Patient Medical Records during the Covid-19 Pandemic that in emergency conditions, the guarantee of the fulfillment of patient rights categorized as Derogable Rights is a right that can be limited or delayed in its fulfillment.¹¹

Research conducted by Esa Dhiandani with the title study literature review legal protection of medical records contents in advanced health care facilities that legal protection can be grouped into two, namely preventive and repressive legal protection. Preventive legal protection or prevention of violations related to medical records can be done by maintaining the confidentiality of medical records, maintaining medical record storage, and maintaining health information release procedures. Meanwhile, repressive legal protection can be carried out by taking responsibility for violations that have been committed in the form of criminal, civil and administrative sanctions.¹²

The balance of protection between business actors and consumers shows the function of law as a means of controlling social life by balancing the interests that exist in society as social control. Regarding online health services protecting both parties, of course, this will create new problems. Article 1 point 10 of Law Number 29 of 2004 concerning Medical Practice explains the definition of a patient. And Law Number 11 of 2008 concerning Information and Electronic Transactions as per Law Number 19 of 2016, doctor consultations through online media should comply with the Electronic Transaction Information Law, as well as service providers who must comply. Service providers must design systems that are good and secure and can maintain data confidentiality. The purpose of this research is to analyze the Legal Basis for the Implementation of Online Health Services, Forms of Legal Protection of Patients Against Online Health Services and Patient Rights as Users of Online Health Services & Responsibilities of Online Health Service Providers in Aspects that Harm Patients.

B. RESEARCH METHODS

The research method used in this study is normative juridical research method which emphasizes legal norms by analyzing related laws and regulations. In this study, researchers used two problem approach

10 Penggalih Mahardika Herlambang Rani Tiyas Budiayanti., Perlindungan Hukum Pasien Dalam Layanan Konsultasi Kesehatan Online, *Jurnal Hukum Kesehatan Indonesia*, Vol. 1, No. 1, 2021, page.1–10

11 Lintang, K., & Triana, Y., Perlindungan Hukum terhadap Hak Privasi dan Rekam Medis Pasien pada Masa Pandemi Covid-19, *Jurnal Hukum Lex Generalis*, Vol. 2, No. 10, 2021, page.913–927.

12 Esa Dhiandani., Study Literature Review Perlindungan Hukum Terhadap Isi Rekam Medis Di Fasilitas Pelayanan Kesehatan Tingkat Lanjut, *Serulingmas Health Journal (SHJ)*, Vol. 3, No. 1, Juni, 2023, page.53-59

methods, namely the statute approach, which involves examining all laws and regulations related to the problem. As well as the conceptual approach, an approach that departs from the views and doctrines that have developed within the science of law.

C. RESULTS AND DISCUSSION

1. Legal Basis for Implementing Health Services Online

Doctor consultation as a form of implementing online health services requires elements of contract law. According to Subekti, an agreement is an event where a person promises something to another person or where two people promise each other to do something.¹³ An agreement is a legal action regarding assets between two parties in which one party promises or is considered to promise to do something or not to do something.¹⁴

If a doctor, patient or online consultation system provider has agreed to an agreement, it will have legal consequences. According to J. Satrio, an agreement will have legal consequences, namely the agreement binds the parties as a law or the principle of *pacta sunt servanda* as stated in Article 1338 of the Civil Code.¹⁵ All agreements made legally apply as laws to those who make them. If the patient has chosen to have a consultation/health service by selecting the "start chat" menu, then the doctor and patient are bound by an agreement.

a. Agreement for Implementing Medical Practice Through Online Health Services

The relationship between the patient and the provider of the online service system is legal. The system provider is the doctor's consulting liaison with the patient, so the patient is required to register an account.¹⁶ Account registration is a form of providing accurate, current, and complete information. System providers may request information in the form of additional documents, verifying bank details, and so on. Patients are prohibited from notifying the personal account to others to avoid misusing the account. Patients who conduct online health consultations/services are responsible for their choices.

b. Legal Position of Patients as Consumers of Health Services Online

c. The patient's position in medical care is based on patient autonomy. Patient autonomy is the patient's ability to decide on a medical treatment program, this is related to the patient's abilities, what is

13 Subekti., *Pokok-Pokok Hukum Perdata*, Cet.XXXIII, Jakarta, Intermasa, 2011, page.34

14 I Gusti Agung Ayu Mas Triwulandari A.A.A.Ngr.Sri Rahayu Gorda, Ni Ketut Elly Sutrisni, The Legal Status of Surrogacy Agreement According to Contract Law in Indonesia, *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, Vol. 8, No. 4, 2019, page.471–79

15 J. Satrio., *Hukum Perjanjian*, Bandung, Citra Aditya Bakti, 1992, page.17

16 Dyah Hapsari Prananingrum Abigail Prasetyo., Disrupsi Layanan Kesehatan Berbasis Telemedicine: Hubungan Hukum Dan Tanggung Jawab Hukum Pasien Dan Dokter, *Refleksi Hukum, Jurnal Ilmu Hukum*, Vol. 6, No. 2, 2022, page.225–46

meant by ability is the patient's ability to make medical decisions.¹⁷ About health services needed by patients, it is regulated in Article 1 number 4 of Law Number 44 of 2009 concerning Hospitals and Article 1 number 10 of Law Number 29 of 2004 concerning Medical Practice, also relating to consumers is regulated in Article 1 number 2 Law Number 8 of 1999 concerning Consumer Protection. From the provisions of this article, patients are consumers who use health services, as users of health services, patients are also called consumers.

The form of online health service practice can be initiated by the interrelationship of the parties in health services. According to Sofwan Dahlan, the relationship between doctor and patient initially adhered to a model of a therapeutic relationship and family relationship based on trust.¹⁸ According to Bhader J. Nasution, a therapeutic agreement is a transaction to determine the most appropriate therapy for a patient by a doctor who is an expert.¹⁹ According to Jusuf Hanafiah and Amri Amir, therapeutic agreements between patients and doctors are not only for treatment but are broader, covering diagnostic, preventive, rehabilitative or promotive fields.²⁰

Regulations related to technology and health services are Minister of Health Regulation Number 20 of 2019 concerning Telemedicine, the regulation defines telemedicine as the provision of remote health services 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 care providers for the benefit of improving individual and community health. Telemedicine technology can help people with illnesses and health institutions share information easily and quickly.

One of the telemedicine systems is the m-Health system (Mobile e-Health), this system prioritizes the use of cellular telephone networks. An increase in the number and types of mobile phone applications on the technology side can provide various types of innovation for the development of public health service applications.

Currently, the use of telemedicine is very helpful and has its trend. Telehealth is a form of development from telemedicine which is one of the trends. Telehealth is the use of medical information converted from one site to another through electronic communication tools to improve patients. Telehealth uses the use of medical information that is

17 Nasrullah Nila Nirmalasari, Helmi, Mirza Satria Buana., The Covid-19 Vaccination's Obligation in Pandemic Era Relates to Autonomous Rights and Informed Consent, *Hang Tuah Law Journal*/Vol. 6, No. 2, 2022, page.87–99

18 Sofyan Dahlan., *Hukum Kesehatan*, Semarang, Badan Penerbit Universitas Diponegoro, 2003, page.54

19 Bhader J. Nasution., *Hukum Kesehatan Pertanggungjawaban Dokter*, Jakarta, Rineka Cipta, 2005, page.22

20 Jusuf Hanafiah & Amri., *Etika Kedokteran Dan Hukum Kesehatan*, Jakarta, BGG, 1999, page. 267

converted from one website to another through electronic communication tools to improve patients.²¹

To find out the patient's health, observation of the daily routine activities of the patient can be carried out. The ODL (Observation of Daily Living) application supports this observation, so that each patient has personal health data. Store and forward applications, use more media. Observations of the patient's daily life and clinical data will be captured and stored in the patient's computer. The data will be transmitted securely to specialists who will study the data. Real Time application, allows direct two-way communication to occur using audio and video in the communicatio.

2. Forms of Patient Legal Protection for Online Health Services

The rapid development of information technology has had a significant impact on aspects of life in globalization. Health is one of the basic needs of every human being, the more various diseases they suffer, the more people's need for health services increases.²² Information and communication technology has great potential to address the problems of both developing and developing countries by providing access to fast, cost-effective, and quality health care. Providing quality and responsible services, online doctor service providers work closely with doctors to serve patient consultations.

The relationship between doctors, patients, and online health service providers, is inseparable from the role of the Consumer Protection Act, service providers together with doctor partners sell certain drugs that are sent via electronic transaction media. In the delivery of goods from one party to another, the parties involved are divided into 2 (two) groups, namely the first party is referred to as the entrepreneur, and the second party is referred to as the consumer.

The use of health information from the internet in health services continues to increase. Activities that are usually carried out by patients in using the internet include: (1). Deciding how to treat the disease, (2). Ask new things or ask for a second opinion from another doctor, (3). Decide to visit a doctor, (4). Find ways to take care of yourself. The use of the internet can lead to a consumerist model that makes patient and doctor relationships more effective. Doctors will face questions from patients regarding information obtained from the internet, but doctors who are used to an authoritarian role or are always obeyed may have difficulty adjusting to the consumerist model and patients who understand information will be seen as a challenge to traditional medical authorit.

The relationship between doctors and patients in civil law originates in the relationship between legal subjects, namely doctors or

21 Okti Sri Purwanti Agus Sudaryanto., Telehealth Dalam Pelayanan Keperawatan, in *Seminar Nasional Informatika 2008 (SemnasIF 2008) UPN "Veteran"*, 24 Mei 2008, Yogyakarta, 2008, page.7–10

22 G. Emmanuel Guindon Tikki Pang, Globalization and Risks to Health, *Embo Reports*, Vol. 5, No. S11, 2004

health workers as parties who provide health services in therapeutic transactions. A therapeutic transaction is a healing agreement which is a form of the legal relationship that is *inspanningsverbintenis* in that a doctor tries his best to heal the patient. This legal relationship is not a self-binding by one of the parties to the other party for the achievement of a concrete result, so it is not purely *resultaatsverbintenis*. Between the doctor and the patient requesting the consultation or treatment, an agreement arises to carry out several services.²³

A lawsuit for default can be filed by a patient who feels aggrieved, if the health worker has promised to provide health services but does not perform the service or vice versa.²⁴ The lawsuit creates an obligation for health workers to provide compensation, as referred to in Article 58 paragraph (1) of Law Number 36 of 2009 concerning Health and paragraph (3) regarding the provisions on procedures for filing claims as referred to in paragraph (1).

3. Patient Rights as User of Online Health Services

Rights and obligations as a result of the legal relationship between doctors and patients have the potential for conflicts between doctors and patients or medical disputes. In order to avoid or reduce medical disputes that occur, it is necessary to understand the construction of the legal relationship between doctors and patients. From this legal relationship will give birth to legal actions and give rise to legal consequences. A legal consequence, which cannot be separated is who is responsible and to what extent responsibility can be given. If the relationship between doctor and patient is constructed, it can be divided into 2 (two) things, namely therapeutic transactions and laws. Discrimination still occurs in medical services, lower class people often have difficulty getting information about their rights as patients, on the other hand people who are affluent have no difficulty getting their rights.

Patient rights are protected by Law Number 8 of 1999 concerning Consumer Protection. Patients have a position as consumers to get services from doctors. Patients must be intelligent and critical patients, but on the other hand patients must understand the professionalism of doctors, the balance of consumer protection with producers or business actors can be achieved by increasing protection for consumers, because the position of producers so far is stronger than consumers.

4. Responsibilities of Online Health Service Providers in Harmful Aspects to Patients

The healthcare industry has a lot to fix, including legal regulations. Apart from protecting the public, regulations also play a role in providing

23 Yetti Rinaldi Syahputra, Sarina Uly, Armen Sosialisa Sihotang., Tinjauan Yuridis Sahnya Perjanjian Terapeutik Dan Perlindungan Hukum Bagi Pasien, *Humantech: Jurnal Ilmiah Multidisiplin Indonesia*, Vol. 2, No. 1, 2022, page.54–64

24 Armanda Dian Kinanti, Dika Arum Permatasari, and Dita Clara Shinta., Urgensi Penerapan Mekanisme Informed Consent Untuk Mencegah Tuntutan Malpraktik Dalam Perjanjian Terapeutik, *Privat Law*, Vol. 2, No. 1, 2013, page.108–18

clear boundaries for service providers. Healthcare in Indonesia requires definite regulations, and the existence of medical record regulations will have a direct impact on several lines of health business. Regulations for medical records are regulated by Regulation of the Minister of Health Number 269 of 2008 and Law Number 69 of 2004.²⁵

Consumer empowerment can be carried out through the application of adequate consumer protection laws, consumer protection laws become relevant at three stages of consumer transactions, namely pre-purchase, during purchase, and after purchase. Empowerment is not an easy job, but efforts must be made so that conditions do not get worse and efforts are made to be in balance with the position of producers who have so far been far superior to consumers.

Default lawsuits, on the one hand, are the exercise of the rights of a person through the court to obtain other people's obligations that have not been paid to him. And on the other hand, a lawsuit is an emergency exit to get justice and a balance between the rights and obligations that have been bound. Basically, lawsuits are not wanted by the parties even in forced circumstances, but lawsuits are a way for parties who feel that their justice is being ignored by other parties. The relationship between doctors and patients is a normal relationship and is carried out by many people every day, there is not the slightest legal threat between the two as long as the parties act fairly in carrying out their respective obligations.

Providing advice and motivation to the community who are service user clients to continue diagnosis and further diagnosis and treatment to health care facilities must always be done. Doctor's license to practice needs to be specifically regulated so that doctors who are the subject of services are protected from administrative law aspects. The government together with professional organizations professional organizations need to regulate processes related to the realization of these matters.

D. CONCLUSION

Health services performed by doctors online must comply with the Information and Electronic Law Transactions, the Health Law and the Medical Practice Law and related regulations. The confidentiality of patient data must be maintained and must maintain data security to avoid data leakage which will be misused by people who do not have rights. The patient must provide the correct complaint so that the doctor can give the right advice. Patients have the right to choose a doctor who has the ability and expertise and has the right to receive clear information regarding their health. If there is no meeting point on the existing problems, a lawsuit can be filed in court. Basically, lawsuits are not wanted by the parties even in forced circumstances, but lawsuits are a way for parties who feel that their justice is being ignored by other parties. The relationship between doctors

25 Made Dwi Mariani., *Perlindungan Hukum Terhadap Rekam Medis Pasien Di Rumah Sakit, Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, Vol. 4, No. 2, 2015, page.383–91

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