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Responsibilities of Medical Practice through Digital Health Platforms

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Abstract

Medical practice through digital health platforms is one of the innovations in the health sector that changes the practice of medicine in a modern direction with technological intermediaries. Digital health platforms accommodate doctors in providing medical services to patients virtually. Certain parties may experience the disadvantages of using technology as a result of limitations that surround medical practice through digital health platforms. The laws have not yet provided specific arrangements related to the medical practice through digital health platforms. This research aims to provide legal certainty by identifying and analyzing the limits of liability of the parties involved in medical practices through digital health platforms. This legal research uses a statutory approach and conceptual approach. The results showed that the imposition of liability for losses suffered by a particular party is based on the element of error inherent in the party that caused the loss. Platform operators are responsible for the leakage of a patient's personal data and medical records. Doctors are responsible for misdiagnosis and prescribing of drugs after the patient provides correct health information. The courier delivery is responsible for ensuring the medicine reaches the patient from the pharmacy according to the prescription given by the doctor. The electronic payment company must solve the transfer of funds problem and the insurances responsible for taking care on insurances needs if the patient connects the treatment with their insurance.

Keywords: Medical Law; Responsibility; Digital Health Platform.

Introduction

In the digital era, the rapid development of technology has changed health services. These developments are taking healthcare practices in a modern direction by utilizing technology as a liaison for healthcare providers and recipients. The practice of healthcare is virtually referred to as telemedicine. The term telemedicine was first used by Thomas Bird in the 1970s and derived from Latin and Greek “tele”

and “*medicus*” to describe a condition “healing from a distance”.¹ The European Commission defined telemedicine as rapid access to shared and remote medical expertise by means of telecommunication and information technologies, no matter where the patient or relevant information is located.² Telemedicine is also defined as using communication technology to provide information and remote health services.³ Based on these definitions, telemedicine uses technology, information, and communication to provide health services regardless of the distance between doctors and patients. Telemedicine is a means of connecting users and healthcare providers with effectiveness and efficiency involving patients, health management, and professionals.⁴

The practice of telemedicine in Indonesia is limited to telemedicine that is integrated and run by health facilities. The practice of telemedicine was originally only a forum for consultation between health facilities to obtain expertise. The types of health facilities are contained in the provisions of Article 4 paragraph (1) of Government Regulation Number 47 of 2016 concerning Health Service Facilities, which include independent practice places for health workers, community health centers (*Puskesmas*), clinics, hospitals, pharmacies, blood transfusion units, health laboratories, opticals, medical service facilities for legal purposes and traditional health service facilities. Services in telemedicine between health facilities consist of teleradiology, teleelectrocardiography, teleultrasound, clinical teleconsultation, and other telemedicine consulting services through the development of science and technology. The practice of telemedicine, as stipulated in the Regulation of the Minister of Health Number 20 of 2019 concerning the Implementation of Telemedicine Services Between Health Service Facilities, is only related to telemedicine services that are carried out between health facilities and not directly

¹ Strehle EM and Shabde N, ‘One Hundred Years of Telemedicine: Does This New Technology Have a Place in Paediatrics?’ (2006) 91 *Arch Dis Child*. [956].

² *ibid.* [957].

³ Fatmawati, *Peran Telemedicine Bagi Tenaga Kesehatan di Era New Normal* (Insan Cendekia Mandiri 2021). [1].

⁴ *ibid.* [2].

carried out by doctors and patients. Health facilities as consultation providers are in the form of hospitals owned by central, regional, and private governments. In contrast, health facilities as consultation recipients include hospitals, first-level health facilities, and other health facilities.

Since the Covid-19 pandemic, the government has given additional clinical authority for doctors to provide medical services to patients virtually. This is an effort to minimize the arrival of patients at health facilities which has implications for spreading the Covid-19 virus. The legal footing for doctors in carrying out virtual medical practice is given through the Indonesian Medical Council Regulation Number 74 of 2020 concerning Clinical Authority and Practice of Medicine Through Telemedicine During the Corona Virus Disease 2019 (Covid-19) Pandemic and Decree of the Minister of Health Number HK.01.07 / MENKES / 4829 / 2021 concerning Guidelines for Health Services Through Telemedicine During the Covid-19 Pandemic. Thus, telemedicine in Indonesia has experienced developments that were initially only a means of consultation between health facilities but have penetrated as a means of connecting doctors and patients directly. However, this regulation only applies during the Covid-19 pandemic.

Currently, many platforms provide medical services virtually, such as in telemedicine practices during the Covid-19 pandemic. The platform was created by a start-up focused on providing virtual medical services, referred to as a digital health platform. Digital health platforms are different from telemedicine which is integrated with health facilities. This is because digital health platforms can be distinct from health facilities. A digital health platform is simply a container that connects doctors and patients. Digital health platforms are growing in Indonesia, such as Alodokter, KlikDokter, Halodoc, Get Well, etc. The use of digital health platforms has increased during the Covid-19 pandemic. This is because digital health platforms provide a variety of exciting and easy-to-operate features.

Although various conveniences and practicalities are born from the existence of digital health platforms, legal problems arise if certain parties experience losses. This is because, in the digital health platform, several parties collaborate with

digital health platforms to provide medical services virtually. Applicable laws have not provided regulations related to the practice of medicine through digital health platforms. Each digital health platform has different terms and conditions, so arrangements are not uniform in the event of a dispute. Therefore, this study will examine the responsibilities of parties involved in medical practice through digital health platforms.

Legality of Medical Practice Through Digital Health Platforms

Medical practice is generally based on the existence of Registration Certificate (STR) and Practice License (SIP). This is contained in the provisions of Article 29 paragraph (1) and Article 36 of the Law on Medical Practice. STR is one of the requirements for a doctor to obtain an SIP. According to the provisions of Article 36 of the Law on Medical Practice, that SIP is issued by the authorized health official in the regency or city where the doctor practices medicine. An SIP is given to doctors to practice three places at most. In some conditions doctors and dentists are allowed to practice at places that are not listed in the SIP, namely if the doctor or dentist is asked by the Health Facility to provide special medical services on an irregular schedule, carry out social services, humanitarian and state duties, carry out disaster management and provide medical services to families, neighbors, friends, home visits and the poor.

In practicing medicine through digital health platforms, doctors are required to comply with the terms and conditions set by the platform organizers. Doctors who provide medical services have STR and SIP registered with Health Facilities. STR and SIP are important requirements to ensure that the medical service provider is a doctor who has been legally recognized. Conventional doctor's place of practice is also listed on the doctor's profile so it can be said that doctors who provide medical services on the digital health platform have a license to practice that is integrated with Health Facilities and have the legality of exercising authority in medical practice. Therefore, the Council on Clinical Authority and Medical Practice Through Telemedicine During the Covid-19 Pandemic provided legality for doctors

to practice medicine through digital health platforms during the Covid-19 pandemic. However, this regulation only applies during the Covid-19 pandemic; there will be a legal vacuum of medical practices through digital health platforms when the Covid-19 pandemic is declared over.

Parties in the Medical Practice through Digital Health Platforms

A digital health platform is a forum that provides information services about health that can be accessed, one of which is via the web. Some start-ups have developed services through digital health platforms with an application that connects users with healthcare providers. The existence of a digital health platform makes it easier for people to access to health services virtually, especially during the Covid-19 pandemic. People choose to consult virtually through digital health platforms instead of visiting health facilities. Several parties are involved in digital health platforms, including doctors and patients. These parties have different roles in implementing services in digital health platforms. These parties are companies managing digital health platforms: start-ups, pharmaceuticals, drug delivery service providers, payment companies through electronic money, and insurance companies.

A start-up is the founder and manager of a digital health platform. The definition of a start-up is as a developing business that uses technology, one of which is in the form of an application as the primary tool or used as a product produced.⁵ Halodoc's official website states that the platform is in the form of applications (both Android and iOS), which accessed using the web, and websites are managed by the company. The platform functions as a user liaison with third parties who provide services or sell goods, not limited to doctors, veterinarians, psychologists, laboratories, pharmacies, hospitals, delivery services, and insurance providers, referred to as service providers. Halodoc's official website expressly mentions digital health platforms' position as technology companies, not healthcare providers. The same is confirmed by other digital health platforms such as Alodokter.

⁵ Yudho Yudhanto, *Information Technology Business Start-Up* (PT Elex Media Komputindo 2018).[6].

The platform is an electronic system. Based on the provisions of Government Regulation Number 71 of 2019 concerning Electronic System and Transaction Operators (PP Number 71 of 2019), the platform operator is an Electronic System Operator (PSE). Article 1 number 4 PP Number 71 of 2019 defines PSE, namely everyone, state operators, business entities, and the community who provide, manage, and operate the electronic system individually or jointly to the electronic system user for his own and other parties' needs. Digital health platforms such as Alodokter, Halodoc, Getwell, KlikDokter, Good Doctor and GrabHealth, and KlinikGo are electronic systems created by PSE that contain electronic information in the form of health-related information, online consultation services with doctors via chat, drug purchase services, making appointments for direct consultations with specialist doctors and laboratory tests.⁶ The organizer of the digital health platform is domiciled as a Private Scope PSE, which is the organizer of PSE by people, business entities, and the community. Private scope PSEs must register with the Ministry of Communication and Informatics system, pse.kominfo.go.id.

Service users on digital health platforms access the platform according to their needs. One can take advantage of the platform to read health articles by doctors and other health practitioners. In addition, users can also use the application's features, such as conducting paid consultations with selected doctors. Users can also be referred to as patients if the person concerned uses the services of a doctor to get medical services. The provisions of Article 1 number 10 of the Medical Practice Act define a patient as any person who consults his health problems directly or indirectly to a doctor or dentist.

The platform is only positioned to accommodate users or patients with healthcare providers such as doctors and dentists. Hence, the primary legal relationship in medicine arises from the relationship between the doctor and the user or patient. The relationship between doctors and patients is based on therapeutic

⁶ Abigail Prasetyo and Dyah Hapsari Prananingrum, 'Disrupsi Layanan Kesehatan Berbasis Telemedicine: Hubungan Hukum dan Tanggung Jawab Hukum Pasien dan Dokter' (2022) 6 Refleksi Hukum: Jurnal Ilmu Hukum.[232].

transactions.⁷ Therapeutic transactions on digital health platforms persist even though there are no in-person meetings between doctors and patients.⁸ The practice of medicine conducted by doctors to patients is bound by the terms and conditions set by the platform organizer. The parties must comply with the terms and conditions that the platform has determined. Users are deemed to know and agree to the policies on the platform if they have downloaded or used services.

The platform organizer collaborates with third parties to support the services provided on the platform, such as pharmacies, to make it easier for patients to obtain medicines that doctors have prescribed. The platform organizers also collaborate with delivery service providers. Delivery services are an introduction to orders for drugs and medical devices to platform users. In addition, several platforms also collaborate with online payment service providers (e-wallets) to provide options for users to make payments for transactions. Delivery and payment service providers working with digital health platforms are classified as private PSEs. Several digital health platforms, such as Halodoc and GetWell, also collaborate with insurance companies. Users can connect insurance with related applications to obtain health services for free.

Responsibilities of the Parties in Medical Practice through Digital Health Platforms

Parties in digital health platforms have different roles in delivering health services. Therefore, there is a limitation of liability imposed on each party, as is a general principle in the law related to liability.⁹ The principle states that a person can only be held legally liable if there is an element of wrongdoing.¹⁰ Regarding criminal liability, there are essential things that need to be considered, namely:

⁷ Bahder Johan Nasution, *Hukum Kesehatan Pertanggungjawaban Dokter* (PT Rineka Cipta 2005).[6].

⁸ Prasetyo and Prananingrum (n 6).[225].

⁹ Syafruddin and Arif Rohman, 'Model Perlindungan dan Pemenuhan Hak Pasien Terhadap Pelayanan Informed Consent di Indonesia' (2019) 31 *Jurnal Mimbar Hukum*. [229].

¹⁰ Sidharta, *Hukum Perlindungan Konsumen Indonesia* (Grasindo 2006).[73].

1. Error element

- a. Committing a criminal act
- b. Above a certain age and able to take responsibility
- c. The existence of intentionality or negligence
- d. No forgiving reason

2. Error Form

- a. Intentionality
- b. Negligence.¹¹

In the practice of medicine through digital health platforms that utilize technology as a liaison between doctors and patients, there will be the possibility of losses. The use of technology offers convenience and advantages, but technology acts as a double-edged knife that can harm users if not managed wisely.¹² Problems arising from digital health platforms include patient electronic medical data leakage, misdiagnosis, and doctor's advice. In many medical malpractice cases, the polemic between doctors' associations and law enforcement often revolves around the limits of doctors' liability.¹³ In determining the party responsible for the losses incurred, the cause of the loss must be seen objectively. The platform organizer disclaims liability for losses suffered by users due to the mistakes of third parties. This is because the position of third parties, such as drug delivery service companies, electronic payments, and health insurance companies, are as platform partners.

The operator of the digital health platform as a PSE has responsibility for the implementation of electronic systems, as in the provisions of Article 15 of Law Number 11 of 2008 concerning Electronic Information and Transactions as amended in Law Number 19 of 2016. Platform operators must organize electronic systems safely and reliably, including the security of user data. Such liability falls if it can be proven that the losses occurred due to the negligence and fault of the user and the existence of compelling circumstances.

¹¹ Didik Endro Purwoleksono, *Hukum Pidana* (Airlangga University Press 2014).

¹² Rani Tiyas Budiyantri dan Penggalih Mahardika Herlambang, 'Perlindungan Hukum Pasien Dalam Layanan Konsultasi Kesehatan Online' (2021) *Jurnal Hukum Kesehatan Indonesia*. [2].

¹³ Syafruddin and Ghansham Anand, 'Urgensi Informed Consent terhadap Perlindungan Hak-hak Pasien' (2015) 1 *Hasanuddin Law Review*. [173].

The practice of medicine through digital health platforms is organized through electronic systems, thus posing a risk of leakage of personal data and medical records of patients due to hacking. The laws and regulations in Indonesia that relate to public protection of their personal data are the Law on Electronic Information and Transactions and its amendments, Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions, Government Regulation Number 80 of 2019 concerning Trade through Electronic Systems, and Minister of Communication and Information Technology Regulation Number 20 of 2016 concerning Personal Data Protection in Electronic Systems.¹⁴ In addition, Law Number 27 of 2022 concerning Personal Data Protection provides an obligation for Personal Data Controllers and was legalized to prevent personal data from being accessed unlawfully and protect the security of the personal data they process. Therefore, PSEs must strive to guarantee safety in the operation of electronic systems.

Examples of digital health platforms run by a legal entity as a company (PT) are Halodoc, GetWell, and Alodokter. In addition, third parties such as delivery, payment, and insurance companies are also in the form of a PT. As in Jowitt's Dictionary of English Law, a legal entity (*rechtspersoon*) is an association or organization treated legally like a human being (*natuurlijke person*) that carries rights and obligations, has binding power in corporate affairs, and can own wealth.¹⁵ Another legal subject besides a human being who has rights and obligations is a legal entity. Ishaq, in his book, states that a legal entity is an association that bears rights and obligations, a soulless bearer of rights that can act as a bearer of human rights such as consenting and owning wealth independent of the wealth of the members.¹⁶ As one of the legal entities, there are several organs, namely the General Meeting of Shareholders (RUPS), the Board of Directors, and the Board of

¹⁴ Maldi Omar Muhammad and Lucky Dafira Nugroho, 'Perlindungan Hukum Terhadap Pengguna Aplikasi yang Terdampak Kebocoran Data Pribadi' (2021) 14 Jurnal Pamarator.[168].

¹⁵ Adriano, 'Menguji Konsep Pertanggungjawaban Pidana Korporasi' (2013) 28 Yuridika.[335].

¹⁶ Ishaq, *Dasar-Dasar Ilmu Hukum* (Sinar Grafika 2008).[47].

Commissioners. The PT cannot carry out its interests, so the organs within the PT that carry out all the interests of the PT, as stipulated in Article 98 of Law Number 40 of 2007 concerning Limited Liability Companies that represent the interests of the company inside and outside the court, are namely the board of directors.

Doctors, as healthcare providers, are responsible for the efforts made (inspanning verbinntenis) by not guaranteeing the final result (resultant verbinntenis). In providing medical services, it is possible for doctors to make mistakes, such as misdiagnosis and prescribing medicines. The doctor's diagnosis and prescribing of medicines depend on all the information submitted by the patient. Obtaining unbiased information regarding the patient's condition from the patient himself and his family is one of the doctor's rights. Just as a doctor has the responsibility to provide maximum medical services, to realize this, the doctor has the right to obtain all information that can support this responsibility.¹⁷ On the other hand, there are limitations in the practice of medicine through digital health platforms, namely the inability to carry out physical examinations directly. At the same time, in establishing a diagnosis, doctors first perform anamnesis by listening to the patient's health problem and physical examinations. Some types of diseases require supporting examinations, which can be in the form of laboratory examinations.

The losses suffered by the patient need to be considered whether the doctor in question has worked according to the rules or not. Doctors who act inconsistently with applicable medical discipline standards and result in misdiagnosis may be declared in violation of medical discipline.¹⁸ On the other hand, medical actions carried out by doctors are said not to be contrary to the law if they have medical indications, and are aimed at achieving concrete goals.¹⁹ Suppose a doctor makes a mistake in providing a diagnosis that results in the loss of health service users, in

¹⁷ Pukovisa Prawiroharjo, Peter Pratama dan Nurfanida Librianty, 'Layanan Telemedis di Indonesia: Keniscayaan, Risiko, dan Batasan Etika' (2019) 3 Jurnal Etika Kedokteran Indonesia.[27].

¹⁸ Bernadetha Aurelia Oktavira, 'Langkah Hukum Jika Dokter Salah Diagnosis dalam Pengobatan' (*HukumOnline.com*, 2022) <<https://www.hukumonline.com/klinik/a/dokter-salah-diagnosis-lt5f93baf282fc5>> accessed 13 November 2022.

¹⁹ Anny Isfandyarie, *Tanggung Jawab Hukum dan Sanksi Bagi Dokter* (Prestasi Pustaka 2006).[20].

that case, one of the efforts that can be taken is to submit a complaint to the Honorary Council of Indonesian Medical Disciplines (MKDKI).²⁰ MKDKI generally has a duty in law enforcement for the implementation of medical practices that cause harm to the interests of patients.²¹ There are three standard measures for doctors in carrying out the medical profession: authority, expertise, and general accuracy.²² Naturally, there are two foundations of authority. The first is the material authority says that treatment by a doctor is possible if he follows his expertise. Second, formal authorities allow doctors to perform the treatment if they have a valid STR and SIP. The main characteristics of a measure of expertise is mastery of knowledge, specialization, and having a professional attitude in everyday life. Each doctor has a different specialty or expertise. The third standard is general accuracy, carefully exercising steps and actions with caution, not carelessness.

The provisions of Article 50 of Law Number 29 of 2004 concerning the Practice of Medicine accommodate doctors' rights in practicing medicine. One of these rights is to obtain legal protection as long as the doctor carries out his duties under professional standards and standard operating procedures. However, there are no arrangements related to professional standards and standard operating procedures for practicing medicine through digital health platforms, so doctors must be careful in carrying out medical practices through digital health platforms.

Platform users are responsible for entering the appropriate personal data when registering on the digital health platform because it is possible for users to enter incorrect personal data, such as using pseudonyms or identities of others. When consulting with a doctor, users as patients are expected to be able to provide accurate health information to doctors during e-anamnesis. Article 53, Law on

²⁰ Ni Luh Dina Yuliana dan I Nyoman Bagiastra, 'Perlindungan Hukum Terhadap Pasien Yang Menderita Kerugian Akibat Salah Mendiagnosis Dalam Layanan Kesehatan Online' (2021) 10 Jurnal Kertha Wicara.[650].

²¹ Sapta Aprilianto, 'Peran Majelis Kehormatan Disiplin Kedokteran Indonesia (MKDKI) Terhadap Dugaan Kelalaian Medis Dokter' (2015) 30 Yuridika.[527].

²² *ibid.*[533].

the Practice of Medicine Act, requires patients to provide complete and honest information about their health problems to doctors. Patients who lie about their health condition can have implications for misdiagnosis and treatment advice to drug prescribing. This is because there are limitations in practicing medicine through digital health platforms, one of which cannot be carried out by physical examinations. Hence, doctors only refer to the information submitted by patients. In some conditions, patients refuse to make voice or video call sessions, resulting in doctors only reading information via message.

Doctors should not be seen as parties who are always responsible for losses suffered by patients. Doctors and patients realize that the practice of medicine through digital health platforms has limitations due to the absence of in-person meetings between the parties, so patients must provide valid information regarding their health conditions. Therefore, the losses suffered by the patient in therapeutic transactions are likely sourced from the patient himself due to the discrepancy in the information submitted.

After knowing the responsibilities of the parties and their limitations, if there is a loss suffered by the patient, there are several mechanisms of legal remedies that can be taken by the aggrieved party. These legal remedies are in the form of civil lawsuits, criminal procedure and administrative justice processes through the Indonesian Medical Council (KKI) and the Indonesian Medical Discipline Honor Council (MKDKI).²³ If the patient files a civil lawsuit, they can use the legal basis of Article 1365 of the *Burgerlijk Wetboek*, namely a tort lawsuit. Meanwhile, if the patient wants to take the criminal procedure, the patient can use the legal basis contained in the Medical Practices Law if it is related to the services provided by doctors. And administrative law efforts can be taken by reporting to the Indonesian Medical Council (KKI) and the Indonesian Medical Discipline Honor Council (MKDKI).

²³ Tri Hartini, 'Legal Policy of Protection COVID-19 Patients in Hospitals' (2022) 2 Journal of Human Rights, Culture and Legal System.[55].

Conclusion

The principle of criminal law states that there is no punishment without guilt (*geen strafzonder schuld*), in order to hold a party responsible for the harm suffered, the element of fault must be found attached to the perpetrator. Platform operators are responsible for the leakage of patient's personal data and medical records. Doctors are responsible for misdiagnosis and prescribing of drugs. Diagnosis and prescribing by the doctor depend on the information provided by the patient, so the patient must provide information about their health information truthfully; if the patient provides information that is not true then the doctor cannot be held accountable, because the doctor's decision depends on what is conveyed by the patient. The courier delivery is responsible for ensuring that the medicine reaches the patient after the pharmacy ensures that the medicine is dispensed according to the prescription given by the doctor. If there is a problem with the transfer of funds, the electronic payment must resolve the payment. Meanwhile, the insurance company is responsible for taking care of insurance needs if the user or patient connects the treatment with their insurance.

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