

Criminal Liability of Doctors in *Telemedicine Health Services*

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Abstract. The criminal liability of doctors in telemedicine services often becomes a focal point in legal proceedings, especially when undesired outcomes occur for patients or their families. Meanwhile, inaccuracies in patient-provided information are sometimes overlooked or receive less attention. Law Number 17 of 2023 on Health serves as the legal foundation for clarifying criminal acts and the criminal liability of doctors in telemedicine services, particularly when issues arise from factors beyond their control, such as technological limitations, incomplete patient information, and the appropriateness of medical practice. This study aims to determine whether adverse outcomes from telemedicine services for patients or their families constitute criminal acts and can be held accountable under the law. The research employs legal methods with statutory and conceptual approaches. The findings reveal that patient dissatisfaction with services or doctor negligence may lead to legal issues classified as criminal acts. Actions considered criminal in telemedicine include those prohibited by law and subject to penalties under the Health Law. Criminal liability arises if a doctor's error results in serious harm, such as adverse outcomes from diagnoses or treatments conducted without adequate physical examinations, making the doctor subject to criminal sanctions under applicable laws.

Keywords: criminal; doctor; patient; telemedicine

INTRODUCTION

Health is an indicator that plays an important role in the welfare of the Indonesian people in determining the standard of quality of life for everyone (Sukertayasa, & Arjawa, 2023). Health is a person's state of health, both physically, mentally, and socially and not just being free from disease to allow him to live a productive life. Optimal health allows individuals to work more efficiently, actively participate in social life, and pursue better education and economic opportunities in achieving an adequate standard of quality of life. Public health is also the main foundation that supports the welfare and progress of a country as the basic capital of national development which is very important because a healthy society is the key to achieving the progress and welfare of a nation.

The quality of health of the Indonesian people is not only determined by the health conditions of the people, but also supported by the availability of health service facilities that develop according to the needs of the community (Sukertayasa, & Arjawa, 2023). The advancement of health care facilities is an important component that supports efforts to maintain and improve public health (Andrianto & Athira, 2022). As medical science and technology develop, modern healthcare facilities equipped with advanced equipment allow for more efficient diagnosis and treatment (Andrianto & Athira, 2022). A good health facility does not only include hospitals or clinics with adequate infrastructure, but also involves access to

the latest technology, an integrated health information system and provides maximum benefits to the community (Gunawan, 2023). With adequate facilities, people can receive faster, more effective, and more affordable care, which in turn supports efforts to improve overall health. The government's efforts to support public health are committed to bringing progress in health services that meet the needs of the community, including telemedicine services.

Telemedicine services in Indonesia have emerged through various applications, such as halodoc, alodokter, and so on (Primavita, Alawiya & Afwa, 2021). The application functions as a means of communication or platform between doctors and patients, just as the feature of sending direct messages to doctors can be done on the application. With this feature, users can consult doctors directly, anytime and wherever they are. However, there are some limitations in telemedicine services, namely not all diseases can be consulted online. Some medical conditions require a physical visit to a health care facility to require a more direct approach.

Telemedicine in its application has become an innovative solution in expanding access and efficiency of health services (Haleem, Javaid, Singh & Suman, 2021), but its use can also pose a criminal risk if things happen that are not desired by both parties, both patients and doctors. One of the main risks is related to legal issues arising from errors in diagnosis or treatment. Incorrect diagnosis or treatment in telemedicine services can occur due to limited face-to-face interaction and reliance on technology that may not always be able to replace in-person physical evaluation. If a misdiagnosis occurs and impacts the patient's care that results in loss or complications, a doctor may face criminal charges for his actions. Based on user reviews of halodoc and alodokter as telemedicine service provider applications, there are many expressions of dissatisfaction with telemedicine services (Anonim, nd). Patients feel disadvantaged towards doctors in telemedicine services, where their practice is considered wrong in providing diagnosis and providing treatment as an effort to cure patients. In 2022, a new mother named Milka Faisal shared her experience when conducting a consultation through the halodoc application and experienced several times dissatisfaction with the services that had been provided (Anonim, nd). First, there is a misunderstanding by the doctor in looking at the patient's information, where the mother's child is constipated but the doctor gives diarrhea medicine. Second, doctors are also wrong in giving doses to 6-month-olds but are given doses for 6-year-olds. Furthermore, the mother still experienced the same dissatisfaction when consulting through the halodoc application, where there was a misdiagnosis of her child who had diarrhea. The doctor's diagnosis of his child was to have a peanut allergy. However, after consulting directly at the hospital with a pediatrician, it turned out that the diarrhea was caused by a change of brand of milk.

The dissatisfaction experienced by users of telemedicine applications such as halodoc and alodokter reflects a serious challenge in the remote healthcare system. The misdiagnosis and treatment experienced by Milka Faisal shows that communication between doctors and patients often does not go well. This not only results in a negative impact on the patient's health, but also causes anxiety and loss of trust in telemedicine services. Errors in prescribing, such as inappropriate dosage will increase the risk for patients, especially for children who are more susceptible to drug side effects. In addition, criminal risks can also arise from the potential for miscommunication that causes ambiguity or unclear meaning. The accuracy of the information provided by patients in telemedicine services is essential to ensure proper diagnosis and treatment (Kusumastuti & Budiyaniti, 2023). The risk of criminal acts arises when patients provide inappropriate information during remote consultations. Inaccuracies in medical information, such as hiding symptoms, giving incorrect medical history, or underestimating or exaggerating information about their health condition can affect decisions made by doctors. If an action or prescription given based on incorrect information results in a negative impact on the patient's health, be it complications or worsening health conditions, then this can cause legal problems for both parties.

Wrong diagnosis or treatment and resulting in loss or negative impact on the patient also often has an impact on the doctor as the party who is examined and criminally prosecuted (Agustina & Hariri, 2022). Doctors can face criminal charges if things happen that are not desired by the parties which may result from inaccuracies in the information provided by the patient, while doctors have made their best efforts according to the limits of a doctor's ability (Sumeru & Tanawijaya, 2022). Doctors' criminal liability in telemedicine services is often the main focus of legal proceedings, especially when things do not want the parties to do, while incorrect information from patients can sometimes be ignored or not receive equal attention. This is due to the main focus of the legal system on the professional responsibility of doctors to pay attention to the safety and security of patients in accordance with applicable service standards (Azhar & Utik, 2023).

It is important to establish clear guidelines regarding criminal acts and criminal liability of doctors in telemedicine services, including ensuring such accountability when things do not want for the patient or his family that arise due to factors beyond their control, such as technological limitations or inappropriate information about the patient's condition. Fair laws and regulations and a deep understanding of the context of telemedicine services can help direct criminal liability more appropriately to ensure legal certainty to protect their rights and there are no demands from the parties.

METHOD

The research method used in this study is normative legal research conducted through several approaches to legal issues related to the criminal liability of doctors in telemedicine health services, namely the statute approach and the conceptual approach. The statute approach is carried out by examining various legal provisions related to telemedicine practices, health services, and the criminal liability of medical personnel, as regulated in national legislation and other supporting regulations. Meanwhile, the conceptual approach is conducted by analyzing doctrines, principles, legal theories, and the opinions of legal scholars in order to understand the concept of criminal liability of doctors in the implementation of digital-based health services.

The legal materials used in this research consist of three types, namely primary legal materials, secondary legal materials, and non-legal materials. Primary legal materials include legislation, court decisions, and regulations related to telemedicine, medical practice, and criminal law. Secondary legal materials consist of books, scientific journals, research findings, articles, and expert opinions discussing health law, criminal law, and the development of digital health services. Non-legal materials are used as supporting materials to strengthen the analysis of the research, such as dictionaries, encyclopedias, and other sources relevant to the development of health technology and telemedicine.

All legal materials are analyzed qualitatively using a descriptive-analytical method in order to obtain a comprehensive understanding of the forms of criminal liability of doctors in telemedicine health services, including the limitations of doctors' professional obligations and legal protection for patients in digital healthcare practices.

DISCUSSION

Criminal Acts in Telemedicine Services That Result in Things That Patients or Their Families Do Not Want

Acts that are referred to as criminal acts are acts that are prohibited in the law that can be threatened with criminal sanctions (Kanter & Sianturi, 2002). Based on this description, to determine an act as a criminal act, the act must be an act that is prohibited and threatened with

criminal punishment to the subject of the criminal act who commits it or in the formulation of the criminal law is called whoever violates the prohibition. Telemedicine services allow for health consultation interactions that often take place without a direct physical examination, which can pose various risks that may occur. Uncertainty regarding the health and safety of telemedicine services in Milka Faisal's case can cause potential criminal acts if the actions taken meet the elements of criminal acts. These elements not only serve as guidelines in law enforcement, but also to protect the rights of patients and healthcare providers. The elements of the criminal act are as follows:

Presence of a subject

Legal subjects have an important role in the legal system. *Natuurlijke persoon* represents a human individual with a direct legal capacity, while *rechts persoon* includes an entity created by law to function as a legal entity with the capacity to act in the legal realm. Telemedicine services include the relationship between doctors and patients, both of whom have rights and obligations in the law, so they are referred to as legal subjects.

The interaction carried out between the doctor and the patient is clearly a condition for the fulfillment of the legal subject in the elements of the criminal act. The case of Milka Faisal illustrates a situation where doctors are often the party who is criminally prosecuted (the perpetrator) because of his negligence in carrying out duties that are not in accordance with professional service standards by the patient (victim) or his family as the aggrieved party.

The presence of an element of error

Mistakes that include intentionality (*dolus*) or forgetfulness (*culpa*) are an indication of the perpetrator's level of awareness of his actions. Intentionality (*dolus*) is the perpetrator who is aware of his actions with the intention and will to achieve them. Forgetfulness (*culpa*) is a form of mistake that is lighter than intentionality but not a mild intentionality, indicating that the perpetrator did not intentionally commit the act but still shows carelessness or improper negligence.

The case of Milka Faisal illustrates that there is a form of forgetfulness (*culpa*) by the doctor who has admitted his mistake in reading the information given by Milka Faisal, where there are several misunderstandings about the dosage of children aged 6 months to 6 years, misdiagnosis of constipation into diarrhea, and diagnosis of peanut allergy while the pain experienced is due to a change of milk brand. This case proves that telemedicine services do not necessarily run well, especially in communication which can cause a detrimental misunderstanding and is the most important challenge because there is no direct examination conducted by doctors to patients. The fulfillment of the element of error in the fulfillment of the elements of the criminal act in this case shows that similar mistakes such as forgetfulness (*culpa*) or even intentionality (*dolus*) can continue to occur and have the potential to become serious problems in the future.

Unlawful acts

Unlawful acts in telemedicine services refer to actions taken by health care providers that are contrary to legal norms and can harm patients. In the context of telemedicine services, the existence of misdiagnosis and incorrect dosage is something that can harm patients and the fulfillment of unlawful acts as elements of criminal acts.

The doctor's actions in Milka Faisal's case for the wrong dosage and diagnosis have the potential to harm the patient if no confirmation is made, as is the case with giving 2 bottles of yakult per day for a 6-month-old child and giving drugs that are not in accordance with the pain experienced can cause worsening health conditions or other unwanted things. This action can be considered an unlawful act because the doctor has neglected his obligation to provide appropriate medical services and can be held accountable for the losses suffered by the patient or his family.

An act that is prohibited or required by law/legislation

An action that is prohibited or required by law/legislation includes legal provisions that in this case regulate doctors and patients in creating telemedicine services that are expected by the community. To create effective and safe telemedicine services, it is important to ensure that the rights and obligations stipulated in the law are fulfilled by all parties involved.

Article 274 of the Health Law requires that doctors, in this case medical personnel in carrying out mandatory practice:

1. Providing health services in accordance with professional standards, professional service standards, operational procedure standards, and professional ethics as well as the needs of Patient Health;
2. Obtain approval from the Patient or his/her family for the action to be taken;
3. Maintaining the confidentiality of the Patient's Health;
4. To make and keep records and/or documents about examinations, care, and actions performed; and
5. Refer the Patient to Medical Personnel or other Health Workers who have appropriate competence and authority.

In addition, Article 562 Paragraph (2) of Government Regulation Number 28 of 2024 concerning the Implementing Regulation of the Health Law also requires that "Medical Personnel and Health Workers as referred to in Paragraph (1) letters a and b who carry out Telemedicine are required to have STR and SIP".

Article 277 of the Health Law requires that patients have the following obligations:

1. Provide complete and honest information about their health problems;
2. Obey the advice and instructions of Medical and Health Personnel;
3. Comply with the provisions applicable to Health Service Facilities; and
4. Provide service rewards for services received.

The rights and obligations between the doctor and the patient are a related unit, where the patient's rights are the doctor's obligations and the doctor's rights are the patient's obligations. An action that is prohibited or required by law as an element of a criminal act in the case of Milka Faisal is not complied with by doctors in providing service standards that are in accordance with the patient's needs so that it becomes a problem that is complained about in telemedicine services.

Those who violate this will be subject to criminal penalties.

Violations committed by a doctor as part of the Medical Personnel related to telemedicine services have been explicitly criminalized under the Health Law. Article 306 Paragraph (1) of the Health Law stipulates that Violations of discipline of Medical Personnel or Health Workers as intended in Article 304 Paragraph (3) are given disciplinary sanctions in the form of:

1. Written warning;
2. The obligation to attend education or training at an education provider in the field of Health or the nearest educational hospital that has the competence to conduct the training;
3. Temporary deactivation of STR; and/or
4. Recommendation to revoke SIP.

Article 313 Paragraph (1) of the Health Law stipulates that "Every Medical Worker or Health Worker who practices without having an STR and/or SIP as referred to in Article 312 letter c is subject to administrative sanctions in the form of administrative fines". Article 359 and Article 360 of the Criminal Code also highlight the importance of responsibility for forgetfulness that can harm others. Non-compliance with these criminal rules, especially those that result in serious injury or death of a person, can be threatened with criminal sanctions.

However, the principle *of lex specialis derogat legi generali* emphasizes that special legal provisions, such as those contained in the Health Law, will override the general provisions in the Criminal Code (KUHP) when dealing with issues related to telemedicine services. Article 63 paragraph (2) of the Criminal Code emphasizes that "If an act is included in a general criminal provision, but also included in a special criminal provision, then only that special one is applied". Thus, the Health Law provides a more specific and relevant affirmation for medical practice in health services so that those who violate it are criminally threatened.

Article 440 of the Health Law:

1. Any Medical Personnel or Health Worker who commits negligence that results in serious injury is sentenced to a maximum of 3 (three) years in prison or a maximum fine of Rp250,000,000.00 (two hundred and fifty million rupiah).
2. If the negligence as intended in paragraph (1) results in death, each Medical Worker or Health Worker shall be sentenced to imprisonment for a maximum of 5 (five) years or a maximum fine of Rp500,000,000.00 (five hundred million rupiah).

Milka Faisal's case highlights the potential criminal threat for doctors who violate the provisions of the law in telemedicine services, especially related to patient safety. Doctors have an obligation to provide services according to ethical and professional standards. Violations such as negligence in diagnosis or treatment that cause harm to the patient can be considered a violation of the law that leads to criminal sanctions. This criminal threat aims to ensure that health services remain safe, quality, and protect patients' rights. Doctors must be careful and understand their responsibilities for telemedicine services.

The rules governing criminal threats for doctors who commit violations provide a strong legal basis to meet the elements of criminal acts in the context of telemedicine services. Therefore, with the provision regarding criminal threats, criminal liability for doctors who commit violations in telemedicine services can be enforced.

In a certain time, place and circumstances

This element is an important component in determining criminal acts, because it provides a clear context regarding when and where an act is considered unlawful. In addition, certain circumstances, such as emergency situations or stress, can also affect how an action is judged in a legal context. However, the implementation of telemedicine services is not intended for patients in an emergency, because patients in an emergency certainly require direct action rather than just a written medical recommendation (Prasetyo & Prananingrum, 2022).

The importance of the element of time, place, and circumstances in criminal acts lies in its ability to provide a complete picture of the context of the unlawful act. The doctors on duty in Milka Faisal's case were unable to provide adequate attention due to limited information and direct interaction. As such, a deep understanding of these elements is essential to uphold justice and ensure that each case is handled fairly according to its context.

The case experienced by Milka Faisal is an important example in emphasizing the relevance of Article 440 of the Health Law regarding the criminal liability of doctors in telemedicine services. This article states that any medical personnel or health workers who commit negligence that results in a patient suffering serious injuries can be subject to imprisonment or fines. Telemedicine services emphasize the responsibility of doctors in ensuring the accuracy of diagnosis, drug dosage, and understanding of patient information are very crucial. Negligence in these aspects not only has the potential to endanger the patient's life but can also meet the elements of a criminal act as referred to in Article 440 of the Health Law.

Doctor negligence as a medical personnel occurs in these cases, where negligence in reading the patient's information and giving incorrect doses and diagnoses can be fatal. The doctor's actions cannot be categorized as a criminal act in telemedicine services even though

they can have fatal consequences because the patient and his family are wise in responding to misdiagnosis and dosage given so as to prevent unwanted consequences, such as serious injury or death, in accordance with the provisions of Article 440 of the Health Law. However, if the doctor's negligence is not responded to wisely by the patient or his family, and results in serious injury or death, then the action can meet the elements of a criminal act as referred to in Article 440 of the Health Law. In this situation, the doctor can be held legally liable for his negligence. This emphasizes the importance of thorough medical personnel in reading patient information, determining the right dose of medication, and providing accurate diagnosis to avoid adverse effects on patients' health. On the other hand, patients also have the responsibility to provide clear and careful information during the consultation so that there are no misunderstandings that can lead to misdiagnosis or medication dosage. The accuracy of both parties is the main key in maintaining the quality of telemedicine services and preventing unwanted things from happening.

The Health Law also regulates other relevant mechanisms in the provision of appropriate sanctions in the case of Milka Faisal by being proven to have committed violations of professional discipline as stipulated in Article 304 Paragraph (3) or ethical violations regulated in the Indonesian Medical Code of Ethics (KODEKI). Doctors who commit serious negligence, such as errors in reading patient information or determining the dosage of drugs, may be subject to administrative sanctions in accordance with Article 304 Paragraph (3) of the Health Law. This article regulates violations of professional discipline by medical personnel which include wrong actions in carrying out their duties so as to endanger the health of patients. This administrative sanction can be in the form of a written reprimand, restrictions on practice activities, and revocation of practice licenses according to the level of violations committed.

The case experienced by Milka Faisal is a tangible form of public complaints about telemedicine services desired by patients or patients' families. The doctor's actions show an unlawful act and can be categorized as a criminal offense if the patient acts more decisively in prioritizing his rights that are not in line with the doctor's obligations that are fully complied with. Problems like this also do not always focus on doctors who do not comply with their obligations, but also need to consider the compliance of a patient in carrying out his obligations, especially things that support good communication between doctors and patients in the implementation of telemedicine services.

Criminal Liability of Doctors in Telemedicine Services in the Event of Things That Patients or Their Families Do Not Want

Criminal liability is a concept that ensures that acts that are referred to as legal subjects are declared to be justified in committing criminal acts or have a role in violating the law that can be subject to criminal sanctions (Sianturi, 1996). In the criminal law system, criminal accountability serves as a mechanism to link unlawful acts with legal consequences and ensure that the punishment imposed is in accordance with the perpetrator's actions.

Doctors can be held criminally liable if there is a violation of the law, but still consider the suitability of the doctor in complying with the provisions of practice, both as stipulated in the Health Law and the Indonesian Medical Code of Ethics, especially in telemedicine services. Telemedicine services as a remote health consultation service also need to consider the patient's obligations as stipulated in the Health Law. Inaccuracies in providing medical information, such as hiding symptoms, providing incorrect medical history, or reducing or exaggerating information about their health conditions can affect decisions made by doctors. Patients before conducting an online consultation with the available doctor must also be aware that the results of the consultation are only a medical recommendation that should not be carried out immediately. Considering that in an emergency condition, a patient needs immediate action, not limited to medical recommendations or recommendations that can be considered first.

Mistakes are a very important key element in determining criminal liability. In this case, criminal acts do not necessarily include the aspect of criminal responsibility, because criminal acts refer more to acts that violate the law and are prohibited by law. Meanwhile, the provision of criminal sanctions to the perpetrator depends on the existence of an element of guilt attached to the act (Lewansorna, Toule & Sopacua, 2022). If the element of guilt can be proven, then a person can be punished. In the *common law* legal system, criminal liability is closely related to the concept *of mens rea* (malicious intent) and criminalization which is an important basis in determining whether a person deserves to be punished for the criminal act he committed (Syahrin, Anggusti & Alsa, 2023). In addition, criminal accountability has a close relationship with society and functions as a means to maintain social order. This function can be seen from its ability to provide criminal sanctions to perpetrators of criminal acts, which also acts as a social control mechanism in society (Syahrin, Anggusti & Alsa, 2023).

Doctors' criminal liability in telemedicine services includes various aspects, including ethical responsibility to patients, families, communities, and peers (Watulingas, Kristanto, & Waha, 2023). If the doctor acts not in accordance with the standards of medical discipline which results in misdiagnosis, incorrect dosage, such as what happened to Milka Faisal or other unwanted things, then the doctor can be declared to have violated professional discipline. The Indonesian Code of Ethics for Medicine, which was prepared together with professional organizations and the government, is a guideline for minimum standards of behavior that must be followed by every doctor. Violations of this code of ethics can result in disciplinary sanctions, ranging from warnings to revocation of Practice Licenses (SIP).

The legal step that can be taken when a patient feels that his interests are harmed by the actions of doctors who are suspected of violating professional discipline is to first file a complaint with the Professional Disciplinary Council as stipulated in Article 305 Paragraph (1) of the Health Law. The Professional Disciplinary Council is responsible to the Minister to support the duties and functions of the Indonesian Health Council in improving the quality and technical competence of the medical and health professions.

The Professional Disciplinary Council has a very important role in the Indonesian health system, especially in supporting the duties and functions of the Indonesian Health Council. The Professional Discipline Council was established by the Minister to ensure that medical personnel and health workers carry out their practice in accordance with the set standards, as well as to improve the quality and technical competence of their profession. Thus, the Professional Discipline Council is responsible for enforcing professional discipline, which includes receiving and verifying complaints, examining alleged disciplinary violations, and making decisions on the sanctions that must be applied.

A complaint is a notification submitted to the authorities to follow up on a problem. Article 305 Paragraph (2) of the Health Law states that complaints as intended in paragraph (1) must at least contain:

1. Identity of the complainant;
2. The name and address of the practice of the Medical Personnel or Health Workers and the time of the action performed; and
3. Reasons for complaint.

The article provides a mechanism for patients to file complaints when they feel aggrieved by the actions of medical personnel. Such grievance mechanisms are essential to ensure that patients' rights are protected and that they have an official channel to demand justice. This complaint must include some important requirements, such as the identity of the complainant, the name and address of the doctor's practice, and the reason for the complaint. This aims to provide clarity and facilitate the investigation process of complaints submitted.

The case of Milka Faisal is a clear example of how this provision can be applied. Milka Faisal suffered losses due to doctor's error in reading patient information which resulted in

incorrect dosage and diagnosis. Article 305 Paragraph (2) explains that he has the right to file an official complaint against the doctor so that adverse acts of negligence can be examined and followed up by the Professional Disciplinary Council. Without a complaint filed by someone, the Professional Disciplinary Council cannot follow up if there is a telemedicine malpractice submitted by the health service provider, be it by a doctor or other health workers. This provision also encourages doctors to be more careful in their practice, especially in telemedicine services where interaction with patients is not carried out directly.

Misdiagnosis is a form of risk in providing health services through telemedicine (Ernawan, 2022). The risk of misdiagnosis or treatment in telemedicine services can increase if there is no clear communication between the doctor and the patient. Physician discipline and accountability are essential to ensure that the services provided to patients meet high professional and ethical standards. Violations of these standards can not only harm patients directly, but can also reduce public trust in the health system as a whole. Therefore, it is important to have a clear mechanism to deal with professional disciplinary violations that may occur in medical practice, including in telemedicine services where the interaction between doctors and patients takes place remotely.

The Health Law provides the necessary legal framework to enforce discipline among doctors as medical personnel and other health workers. The disciplinary sanctions that can be imposed on violations aim to encourage doctors in this case to be more careful and responsible in their practice. These sanctions are designed to not only punish violations, but also to provide opportunities for doctors to improve their competence through education and training. This is especially important in the context of growing healthcare services, including telemedicine services where mistakes can have serious consequences for patients.

Article 306 Paragraph (1) of the Health Law stipulates that Violations of discipline of Medical Personnel or Health Workers as intended in Article 304 Paragraph (3) are given disciplinary sanctions in the form of:

1. Written warning;
2. The obligation to attend education or training at an education provider in the field of Health or the nearest educational hospital that has the competence to conduct the training;
3. Temporary deactivation of STR; and/or
4. Recommendation to revoke SIP.

In the context of Milka Faisal's case, if the doctor who provides telemedicine services is proven to have made a mistake in reading the patient's information which results in incorrect dosage and diagnosis, this can be considered a disciplinary violation. Milka Faisal's dissatisfaction with the services she received showed the potential for negligence or forgetfulness on the part of the doctor. In this case, if it is proven that the mistake was caused by a lack of attention or competence in providing telemedicine services, then the doctor's actions may be subject to disciplinary sanctions in accordance with the provisions of Article 306. For example, the doctor may be given a written warning or required to attend training to improve his or her competence in telemedicine practice. Additionally, if the error is serious enough and has the potential to harm the patient significantly, it is possible that more severe sanctions such as the deactivation of the STR or the recommendation of revocation of the SIP may be applied. This shows that the legal system has mechanisms to handle cases of malpractice in health services, including in the context of telemedicine.

Milka Faisal's case also highlights the importance of good documentation and effective communication between doctors and patients in telemedicine practice. Errors in reading patient information can be caused by a lack of clear information or a lack of direct interaction. Therefore, it is important for doctors to ensure that they fully understand the patient's condition before providing a diagnosis or treatment. Thus, Article 306 Paragraph (1) of the

Health Law serves as an important legal framework to enforce discipline among doctors and protect the rights of patients like Milka Faisal. This encourages doctors to always improve their competence and pay attention to health service standards so that mistakes do not occur that can harm patients, especially in the growing practice of telemedicine.

In addition to ethical responsibilities, doctors also have legal responsibilities that include criminal liability in the event of alleged malpractice (Ernawan, 2022). Any act of negligence or mistake in providing telemedicine services can lead to a lawsuit. In a criminal context, telemedicine malpractice can occur when a doctor provides a diagnosis without conducting a direct physical examination of a disease that requires immediate treatment and is contrary to the principle of prudence. Criminal malpractice must meet the elements of criminal acts, such as reprehensible acts and wrong mental attitudes (*mens real*), namely intentionality (*dolus*) or forgetfulness (*culpa*). A doctor's criminal liability arises if there is a medical error that can be proved (Gunawan, Yudanto & Junaidi, 2023).

Malpractice in telemedicine services is evidenced by the risk of misdiagnosis if the error or negligence causes loss or injury to the patient⁴⁸ due to the limitation of direct interaction between the doctor and the patient. If a doctor fails to meet the expected professional standards, such as providing inadequate information or performing actions outside of his competence that result in the patient's deteriorating health condition or even cause complications, then such actions can be considered malpractice. This has the potential to cause serious legal consequences, where doctors can be held criminally liable for negligence that results in losses to patients or their families. Article 440 of the Health Law regulates criminal sanctions in the form of:

1. Any Medical Personnel or Health Worker who commits negligence that results in serious injury is sentenced to a maximum of 3 (three) years in prison or a maximum fine of Rp250,000,000.00 (two hundred and fifty million rupiah).
2. If the negligence as intended in paragraph (1) results in death, each Medical Worker or Health Worker shall be sentenced to imprisonment for a maximum of 5 (five) years or a maximum fine of Rp500,000,000.00 (five hundred million rupiah).

Article 440 of the Health Law stipulates criminal sanctions for medical personnel or health workers who commit negligence that results in serious injury or death of the patient. In the case of Milka Faisal, if there is an error in reading the patient's information that results in incorrect dosage and diagnosis, then the action can be considered as forgetfulness that has the potential to seriously harm the patient in relation to things that are not desired by the patient or his family. If it is proven that the doctor has been negligent in providing telemedicine services, they may be subject to sanctions in accordance with the provisions of this article, namely imprisonment for a maximum of three years for serious injury or five years for death, as well as a significant fine.

Telemedicine services that emphasize that the interaction between doctors and patients are not carried out directly add to the challenges in ensuring the accuracy of diagnosis and treatment. Therefore, Article 440 of the Health Law serves as a reminder that doctors in this case must still adhere to professional standards even if they operate in a remote format. Mistakes in providing diagnosis or treatment through telemedicine, such as Milka Faisal's, can result in legal consequences for the medical personnel concerned.

This case also shows the need for good documentation in medical records during the telemedicine process because healthcare requires every interaction to be well documented to protect all parties involved. In the event of a complaint or problem, the documentation can be an important piece of evidence in the legal process. Thus, Article 440 of the Health Law not only provides legal protection for patients like Milka Faisal but also encourages medical personnel to act more carefully and professionally in telemedicine services. It is important to maintain public trust in the health system and ensure that remote health services are carried

out in a safe and effective manner. The interaction between doctors and patients in telemedicine services carried out remotely is a challenge in maintaining increasingly complex professional ethics. Doctors must ensure that the services provided meet the standards of professionalism and do not disregard the rights of patients, although technological limitations can be an obstacle. In this case, the application of the principle of *restorative justice* becomes very relevant as an approach that focuses on restoring the relationship between doctor and patient.

Disciplinary violations by medical personnel or health workers will be processed by the Professional Disciplinary Council and if there is a suspicion of a criminal act, law enforcement officials should prioritize a *restorative justice approach* (Nurhasanah & Yusuf, 2024). Article 310 of the health law affirms that "in the event that a medical personnel or health worker is suspected of making mistakes in the exercise of their profession that cause losses to the patient, the dispute arising from the error is resolved first through an alternative dispute resolution outside the court".

Restorative justice is a process that focuses on recovery by involving interested parties to identify collectively in dealing with impacts, needs, and obligations by placing everything as fair as possible (Zehr, 1990). *Restorative justice* emphasizes the importance of restoring the relationship between doctors and patients, as well as providing space for both parties to communicate openly about the issues at hand. Most medical disputes do not occur intentionally, but are more often triggered by communication problems between doctors and patients. The challenges of remote communication in telemedicine services can further magnify the potential for misunderstandings. Losses that arise are generally caused by negligence or even purely an unwanted accident (*pure accident*) (Zehr, 1990).

The principle of *of inspanning verbintenis* proves that the doctor's responsibility is to seek the best results based on his professional abilities, not to promise absolute healing (*resultaat verbintenis*) (Sutarno, 2017). With this approach, doctors are not only seen as the party responsible for the error, but also as individuals who have the right to legal protection while carrying out their duties to the fullest extent possible. Doctors have the right to be protected from unfair lawsuits, especially when they carry out their professional duties in good faith. Within the framework of *restorative justice*, it is important to recognize that many medical disputes occur not because of ill will, but rather because of unintentional mistakes or shortcomings in the system.

Restorative justice allows doctors to explain the situation and defend their rights in the legal process. This can help reduce negative stigma against doctors and create a more supportive environment for them to practice medicine with confidence. The application of *restorative justice* in resolving medical disputes can also strengthen the relationship between medical personnel and the community. The involvement of all parties in the conflict resolution process, including the patient and their families, *restorative justice* creates an opportunity to understand each other's perspectives. This process focuses not only on compensation or punishment, but also on the restoration of relationships damaged by medical disputes. When doctors feel valued and protected in carrying out their duties, they will be more motivated to provide quality services to patients. Thus, *restorative justice* not only provides justice for patients but also protects the rights of doctors as professional health care providers.

Medical disputes brought by patients or their legal counsel to the court also often have difficulty proving whether the adverse event experienced by the patient was due to medical negligence and not due to medical risk due to a lack of understanding of the medical discipline. Only the doctors themselves fully understand whether the incident is due to medical negligence or medical risk. Even though the doctor was ultimately found innocent, it still had a big impact on the doctor's reputation, the psychological burden on the family, and the loss of

patient trust. This is an important foundation in creating a balance between patient rights and legal protection for doctors in telemedicine services.

The criminal liability of doctors as medical personnel who have an important role in providing telemedicine services, not only bears moral and professional responsibilities, but also legal responsibilities. The Indonesian legal system divides two main forms of responsibility, namely responsibility for violations of Professional Discipline to the Professional Disciplinary Council, as well as criminal liability (Gunawan, Yudanto & Junaidi, 2023). Both of these forms of responsibility aim to ensure that doctors conduct medical practice ethically and professionally, while providing legal protection guarantees for patients who may be harmed by errors or negligence in medical services.

CONCLUSION

Telemedicine services that result in things that the patient or his family does not want are included in the criminal act if they have met the elements of the criminal act. Acts that are classified as criminal acts are acts that are prohibited in the law that are threatened with criminal sanctions, namely doctors in telemedicine services commit prohibited acts and are threatened with criminal penalties to the subject of the criminal act who commits it or in the formulation of criminal law is called "whoever" violates the provisions regulated in the Health Law.

Criminal liability of doctors in telemedicine services in the event of things that are not desired by the patient or his family is carried out by considering the doctor's obligation to comply with the provisions of practice and the patient's balance in carrying out his obligations. Criminal liability of doctors in telemedicine services arises if the *mens rea* element is proven intentionally or due to negligence in not meeting the expected service standards, such as doctors handling patients who need direct treatment that are contrary to the professional service standards regulated in the Health Law so that there is a risk to patient safety. The Health Law affirms criminal sanctions for violations of professional discipline and forgetfulness in the form of malpractice. In addition, the Professional Discipline Council has the duties and functions of the Indonesian Health Council in improving the quality and technical competence of the profession of Medical Personnel and Health Workers as stipulated in the Health Law by prioritizing *the restorative justice approach* in the event of a violation of professional discipline.

REFERENCE

- Agustina, Z., & Hariri, A. (2022). Pertanggung jawaban pidana atas kelalaian diagnosa oleh dokter hingga mengakibatkan kematian anak dalam kandungan. *IBLAM Law Review*, 2(2), 108–128.
- Alsa, A. A., Anggusti, M., & Syahrin, A. (2023). *Dasar-dasar hukum pidana: Suatu pengantar (Buku kesatu Undang-Undang Nomor 1 Tahun 2023 tentang Kitab Undang-Undang Hukum Pidana)*. Merdeka Kreasi Group.
- Andrianto, W., & Athira, A. B. (2022). Telemedicine (online medical services) dalam era new normal ditinjau berdasarkan hukum kesehatan (Studi: Program telemedicine Indonesia/Temenin di Rumah Sakit dr. Cipto Mangunkusumo). *Jurnal Hukum dan Pembangunan*, 52(1), 220–250.
- Azhar, M., & Handayani, U. (2023). Perlindungan hukum terhadap korban malpraktik layanan kesehatan berbasis telemedicine. *Law, Development & Justice Review*, 6(1), 51–65.
- Dames Lewansorna, E. R. M., Toule, M. G., & Sopacua, M. G. (2022). Pertanggungjawaban pidana aparat kepolisian yang melakukan kekerasan terhadap demonstran. *TATOHI: Jurnal Ilmu Hukum*, 2(1). <https://doi.org/10.47268/tatohi.v2i1.898>

-
- Ernawan, D. S. (2022). Tanggung gugat dokter akibat kesalahan diagnosa terhadap pasien dalam layanan kesehatan telemedicine. *Jurist-Diction*, 5(5), 1711–1724. <https://doi.org/10.20473/jd.v5i5.38434>
- Gunawan, A. (2023). *Pengantar sistem informasi kesehatan*. Literasi Nusantara Abadi Grup.
- Gunawan, A. C., Yudanto, D., & Junaidi, A. (2023). Tinjauan hukum pidana terhadap tindakan malpraktek dalam bidang kesehatan atau medis. *UNES Law Review*, 6(2), 5387–5397.
- Haleem, A., Javaid, M., Singh, R. P., & Suman, R. (2021). Telemedicine for healthcare: Capabilities, features, barriers, and applications. *Sensors International*, 2, Article 100117, 1–12.
- Ikatan Dokter Indonesia. (2012). *Kode etik kedokteran Indonesia*. Pengurus Besar Ikatan Dokter Indonesia.
- Kanter, E. Y., & Sianturi, S. R. (2002). *Asas-asas hukum pidana di Indonesia dan penerapannya*. Stora Grafika.
- Kusumastuti, W., & Budiyantri, R. T. (2023). Keabsahan layanan telemedicine terkait surat keterangan sakit online dalam persepsi dan ekspektasi pengguna. *Media Kesehatan Masyarakat Indonesia*, 22(6), 352–357.
- Nurhasanah, & Yusuf, H. (2024). Penyelesaian sengketa medik melalui restorative justice untuk memberikan keadilan bagi pasien dan dokter. *JICN: Jurnal Intelek dan Cendekiawan Nusantara*, 1(5), 8157–8172.
- Peraturan Menteri Kesehatan Nomor 4 Tahun 2018 tentang Kewajiban Rumah Sakit dan Kewajiban Pasien.
- Peraturan Menteri Kesehatan Nomor 20 Tahun 2019 tentang Penyelenggaraan Pelayanan Telemedicine Antar Fasilitas Pelayanan Kesehatan.
- Peraturan Pemerintah Nomor 28 Tahun 2024 tentang Peraturan Pelaksanaan Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan.
- Prasetyo, A., & Prananingrum, D. H. (2022). Disrupsi layanan kesehatan berbasis telemedicine: Hubungan hukum dan tanggung jawab hukum pasien dan dokter: Indonesia. *Refleksi Hukum: Jurnal Ilmu Hukum*, 6(2), 225–246. <https://doi.org/10.24246/jrh.2022.v6.i2.p225-246>
- Primavita, S., Alawiya, N., & Afwa, U. (2021). Tanggung jawab hukum dokter dalam pelayanan telemedicine. *Soedirman Law Review*, 3(4), 580–598.
- Quora. (n.d.). *Bagaimana kesan kamu jika pernah menggunakan aplikasi Halodoc ataupun Alodokter?* Diakses 25 Agustus 2024, dari <https://id.quora.com/Bagaimana-kesan-kamu-jika-pernah-menggunakan-aplikasi-Halodoc-ataupun-Alodokter>
- Sianturi, S. R. (1996). *Asas-asas hukum pidana Indonesia dan penerapannya*. Alumni Ahaem-Petehaem.
- Sianturi, S. R. (2002). *Asas-asas hukum pidana*. Stora Grafika.
- Sukertayasa, I. M. A., & Arjawa, A. A. G. P. (2023). Perlindungan hukum pasien dalam layanan konsultasi kesehatan online. *Jurnal Hukum Kesehatan Indonesia*, 3(2), 81–90.
- Sumeru, F. A. K., & Tanawijaya, H. (2022). Inspanning verbintenis dalam tindakan medis yang dikategorikan sebagai tindakan malpraktek. *Jurnal Hukum Adigama*, 5(2), 490–512.
- Sutarno. (2017). *Etikolegal: Hubungan dokter-pasien dalam pelayanan kesehatan*. MIC Publishing.
- Undang-Undang Nomor 1 Tahun 1946 tentang Peraturan Hukum Pidana.
- Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan.
- Watulingas, A. M., Kristanto, E. G., & Waha, C. J. J. (2023). Implementasi perlindungan hukum profesi dokter terhadap layanan telemedicine di RSUP Prof. Dr. R. D. Kandou Manado. *Medical Scope Journal*, 5(2), 247–252. <https://doi.org/10.35790/msj.v5i2.46257>
- Zehr, H. (1990). *Changing lenses: A new focus for crime and justice*. Herald Press.
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