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## Legal Protection for Dentists Who Practice Teledentistry in Dealing with the Risk of Drug Allergies

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### Abstract

Teledentistry is a relatively new combination of telecommunication technology and dental treatment. It is rooted in telemedicine, which involves using communication and information technology to provide healthcare services across geographical distances. Teledentistry faces several challenges, including limited internet access and inadequate infrastructure in remote areas, concerns about the confidentiality of electronic medical records, and incomplete regulations regarding teledentistry in the current laws. The problems addressed in this research are the barriers teledentistry practitioners face in Indonesia, including factors that hinder their ability to manage medical risks and the legal protection for teledentistry practitioners who face medical risks, such as drug allergies. Legal protection for dentists in teledentistry when facing medical risks, such as drug allergies prescribed electronically. Dentists must obtain assurance and legal certainty in providing healthcare services to patients. The conclusion drawn from this research is that in teledentistry consultation services, medical risks such as drug allergies, which are unpredictable bodily reactions of patients, cannot be predicted. Medical risk is not a kind of medical malpractice. This is because, in medical risks, one of several elements in articles 338 and 359 of the Indonesian Criminal Code (KUHP) cannot be fulfilled, namely the element of negligence.

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### 1. Introduction

The advancement of digital technology has changed the pattern of people's behavior in various fields including the use of digital technology in everyday life. Services that use digital technology are one of several things that are aspired to in the 4.0 revolution. The industrial revolution 4.0 has provided fundamental changes in human life and work, has new technological advances by uniting the biological, physical and digital worlds that have an impact on all fields, including the world of health<sup>[1]</sup>. Health services in Indonesia that respond to the 4.0 revolution include online-based health facility information, online outpatient registration, digital medical records, and telemedicine or teledentistry.

*Teledentistry* is a relatively new combination of telecommunications technology and dental care. *Teledentistry* become a revolution of 4.0 that makes medical services more efficient so that it can solve geographical constraints, increase accessibility, and provide clinical support.

<sup>1</sup>Suar, P, "Adaptation of the Industrial Revolution 4.0 in Health Services Through Telemedicine in the Era of the Covid-19 Pandemic," Jurnal Ilmiah Indonesia., 7.2 (2022), 740-753 < <https://jurnal.syntaxliterate.co.id/index.php/syntax-literate/article/view/6316/3574>>

*Teledentistry* providing remote health services by utilizing communication and information technology, including dental and oral health services in an effort to improve diagnosis early, providing ease of communication between health workers, providing timely treatment facilities for dental and oral diseases, provision of information on treatment, diagnosis, prevention of disease and injury, evaluation, on an ongoing basis to health service providers in order to improve public health [2, 3]. Public satisfaction with the use of teledentistry in Indonesia almost the same as patient satisfaction in various countries. Teledentistry can provide benefits of increasing access to dental and oral health services [4]. Clinical applications in teledentistry centered on Tele-education that is useful in efforts to continuously improve professionalism in the world of dentistry). Tele-consultation, tele-diagnostics, and tele-treatment utilized by patients and local health workers to carry out consultations with specialists, diagnose diseases and obtain treatment recommendations. Tele-support is a form of health service support that exists in remote areas, or in areas that have experienced natural disasters or are in the midst of armed conflict. Tele-monitoring is a review of several vital signs or other variables to patients after carrying out health care [5]. Teledentistry applications in Indonesia such as dental consultation services on the Mobile JKN (National Health Insurance) application, Halodoc, Yesdok, Alodokter, Klikdokter and others. Teledentistry applications are useful for the community, especially when people cannot come to health facilities due to distance and time constraints, limited health workers or national red date conditions that cause the majority of dental and oral health facilities to close.

*Teledentistry* has the potential to solve various dental and oral health service problems and revolutionize Indonesian public health. The main problem encountered related to health services in Indonesia is the limited number of doctors and its uneven distribution. The problems that arise in Indonesian health services are the financing of treatment that is less affordable, residents who have less access to doctors if they live in remote areas. The obstacle to Teledentistry is the doctor-teeth as one of several parties participating in teledentistry services, dentists in providing medical advice through the results of health problems submitted by patients or application users, are limited by time, network connectivity that can be disrupted during the consultation process, and the lack of legal regulations in the implementation of teledentistry [6].

Teledentistry services provided by doctor-teeth need to be

in line with applicable laws and regulations. The regulations on telemedicine until now are only in the Regulation of the Minister of Health Number 20 of 2019 concerning the Implementation of Telemedicine Services Between Health Service Facilities (hereinafter referred to as PERMENKES No. 20/2019), because there is no specific regulation to be a legal umbrella for both patients and doctors to apply telemedicine practices, of course it can be said that it is still very vulnerable to errors, mistakes, and even violations in its implementation [7].

Rapidly developing technology has both positive and negative effects. Positive influences are expected to improve dental and oral health in the community. Negative influences include ways of thinking and public views, especially in the field of medical services. This condition is proven by the many demands law against alleged malpractice cases from patients directed at doctors or dentists. Various alleged malpractice cases are often reported excessively by the mass media. Doctors are seen as having no responsibility and being less careful in carrying out their profession, while it is not certain that the report informs the whole truth, sometimes just a public deviation that actually needs better medical assistance. The public in general cannot distinguish between medical malpractice and medical risk [8].

According to the author, the shortcomings in the implementation of teledentistry services in Indonesia are that dentists and patients do not consult face to face, but rather through video conference media or virtual conversations, so it is not uncommon for misunderstandings to occur in understanding the language and communication between dentists and patients. Time constraints in each consultation session become an obstacle for dentists in exploring further information about the patient's systemic condition, history of allergies, and history of the course of the disease so that they are susceptible to medical risks. In general, teledentistry applications in Indonesia do not yet have an assessment form that can be filled in by patients regarding previous diseases, family history of disease, and history of drug or food allergies. In teledentistry applications in Indonesia, there is not yet a fully digital informed consent that can be filled in by patients before the consultation begins, even though both the assessment form and informed consent are very useful regarding evidence if there is a medical dispute. Dentists have the right to receive legal protection when carrying out their profession in an effort to provide dental and oral health services.

In practice, dentists when providing services to patients can face medical risks. Dentists in providing health service efforts can be faced with the emergence of medical risks. The medical risks faced include allergies to drug administration. Dentists in prescribing oral drugs either directly or via teledentistry. Medical risk is a condition that cannot be predicted, and can happen to anyone, both patients who receive services through direct or indirect contact, are directly provided with services either at the Clinic, Health Center, or at the Hospital, or indirectly with

<sup>2</sup>Riyanto, A., "Factors Influencing the Implementation of Telemedicine (Systematic Review)," Indonesian Journal of Health Information Management., 9.2 (2021), 165-174 <<https://jmiki.apfirmik.or.id/jmiki/article/view/165/248>>

<sup>3</sup>Tella A., Olanloye, O., Ibiyemi, "Potential of Teledentistry in the Delivery of Oral Health Services in Developing Countries," Ann Ib Postgrad Med, 17.2 (2019), 115-123 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7358811/>>

<sup>4</sup>Wijayanti, Z., Bahar, A., Adiatman, M., "Public satisfaction in using teledentistry during the COVID-19 Pandemic in Indonesia: Cross Sectional Study," Padjadjaran Journal of Dental Researchers and Students, 6.3 (2022), 263-275 <<https://iontar.ui.ac.id/detail?id=20518575&lokasi=lokal>>

<sup>5</sup>Mariño R., Ghanim A., "Teledentistry: a systematic review of the literature," J Telemed Telecare, 19.4 (2013), 179-183

<sup>6</sup>Brahmana, R., Karo, R., "Implementation of Telemedicine in Indonesia Based on the Values of the Theory of Dignified Justice: Regulation and Role of Doctors," Journal of the National Resilience Institute of the Republic of Indonesia, 10.4 (2023), 1-13 <

<sup>7</sup>Machrus, R., "Legal Protection of Telemedicine Patients for Doctors' Errors," SOSIALITA Journal, 1.1 (2022), 1-11 <<http://repository.untag-sby.ac.id/22969/7/>>

<sup>8</sup>Mangkey, M., "Legal Protection for Doctors in Providing Medical Services," Jurnal Lex et Societatis, 2.8 (2014), 14-21 <<https://ejournal.unsrat.ac.id/index.php/lexetsocietatis/article/view/6180>>

online consultation with teledentistry. Cases of patients who experience allergic reactions to drugs, which often result in death and can lead to lawsuits or medical disputes. The purpose of this study is to further examine the legal regulations in Indonesia regarding legal protection for dentists practicing teledentistry in dealing with medical risks in the form of drug allergies. Based on this description, the formulation of the problem is obtained, namely

1. What factors are the obstacles and how to overcome the obstacles for teledentistry practitioners in Indonesia in dealing with medical risks?
2. Legal protection for teledentistry practitioners who have medical risks in the form of drug allergies?

## 2. Research Methods

This type of research is a normative legal research method, because it uses secondary data concerning related laws and regulations regarding teledentistry. This research is descriptive, namely a study that describes in detail, clearly, and systematically about the object to be observed. Descriptive research is carried out with the aim of obtaining a complete description of the legal conditions that are taking place in Indonesia and providing an explanation and explanation related to teledentistry. The approach in this research is with normative juridical law, namely an approach through a method of examining and interpreting those related to legal provisions in order to collect various kinds of laws and regulations, various theories, and several references that are very closely related to the problems to be studied in the implementation of teledentistry and legal provisions related to medical risks.

In this normative legal research, the data needed is secondary data. Secondary data is data that has been obtained through a literature study that includes laws, as well as legal reference books or other written legal materials, namely tertiary, secondary, and primary legal materials. Primary legal materials are binding legal materials, for example, statutory regulations that correlate with this research, namely the Decree of the Minister of Health of the Republic of Indonesia Number Hk.01.07/Menkes/4829/2021 concerning guidelines for health services through Telemedicine During the Corona Virus Disease 2019 (COVID-19) Pandemic, Regulation of the Indonesian Medical Council Number 74 of 2020 concerning Clinical Authority and Medical Practice Through Telemedicine during the Corona Virus Disease 2019 Pandemic in Indonesia, Law of the Republic of Indonesia Number 36 of 2009 concerning Health, Law No. 29 of 2004 concerning Medical Practice, Regulation of the Minister of Health of the Republic of Indonesia Number: 585/Men.Kes/Per/IX/1989 concerning Consent to Medical Actions, Criminal Code Article 1, Article 359, and Article 360.

## 3. Results and Discussion

### 3.1. Factors that become obstacles and ways to overcome obstacles for teledentistry practicing dentists in Indonesia in facing medical risks.

*Teledentistry* can be accepted as a regular alternative in dental practice, but in the implementation of teledentistry there are limitations so that it becomes one of the reasons for the lack of acceptance of teledentistry by dentists, this obstacle is widely associated with the fact that infrastructure limitations in an area such as slow internet connections

especially in remote areas, software and hardware limitations, lack of proper training and lack of technical support and monitoring of the implementation of teledentistry<sup>[9]</sup>.

*Telemedicine* is the root of teledentistry. Aspects that hinder the implementation of telemedicine in Indonesia, namely the absence of proportional infrastructure and support for telemedicine services; human resources (HR) for health workers who have not been carried out properly are other aspects that are obstacles to the implementation of telemedicine in Indonesia. For recipients of consultation services, socialization and introduction are needed regarding the benefits and how to use telemedicine services properly and correctly because some patients sometimes do not understand the service<sup>[10]</sup>.

The implementation of telemedicine has an impact on various aspects, including financial and financial, culture and skills. The use of telemedicine technology is a significant development in health services, so that adaptation and application of telemedicine are needed so that its implementation is effective and in line with the needs of telemedicine technology. Various other inhibiting aspects are the problem of a rather long time to arrange an appointment between patients and doctors or vice versa, the difficulty of implementing adaptation between health workers so that it has an impact on patients because it is difficult to access the applications or sites used<sup>[11]</sup>.

Telemedicine regulations in Indonesia have not been fully stated in legislation, so that doctors and other health workers have less freedom in providing services. This is due to legislation that is not yet strong in protecting doctors and health workers<sup>[12]</sup>.

How to overcome obstacles to teledentistry and telemedicine so that they can take place optimally in Indonesia, namely improving network connectivity available in Indonesia to distribute services evenly so that the use of telemedicine becomes more optimal, providing information on supporting instruments for telemedicine, for example, mobile phones that are suitable for specifications for consulting via telemedicine<sup>[11]</sup>. Telemedicine is a trend that is widely used along with the development of technology and heterogeneous telemedicine supporting instruments<sup>[12]</sup>.

The probability of telemedicine in Indonesia is very large, but the development of inadequate infrastructure makes telemedicine not develop perfectly. Collaboration between the government and service developers must be implemented again so that the telemedicine system can be used properly so that it becomes an alternative to modern

<sup>9</sup>Suetenkov, D., Popkava, O, Kiseley, A, "Possibilities and limitations of teledentistry," Journal of Saratov State Medical University na VIRazumovsky, 57.1 (2020)

<sup>10</sup>Amalia, K., Hendryanny, E., Gama, H, "Scoping Review: Barriers to Telemedicine Implementation in Indonesia.," Bandung Conference Series: Medical Science, 2.1 (2022), 633-638 <<https://proceedings.unisba.ac.id/index.php/BCSMS/article/view/1287>>

<sup>11</sup>Febrihyza N, Abigael, Ernawaty., "Literature review: measuring the readiness of health workers in accepting telehealth or telemedicine between developed and developing countries.," Jurnal Kesehatan, 11.2 (2020), 302-310 <<https://ejournal.poltekkes-tjk.ac.id/index.php/JK/article/view/2000>>

<sup>12</sup>Riyanto, A., "Factors Influencing the Implementation of Telemedicine (Systematic Review)," Indonesian Journal of Health Information Management., 9.2 (2021), 165-174 <<https://jmiki.apfirmik.or.id/jmiki/article/view/165/248>>

health services <sup>[13]</sup>. According to the author, dentists' concerns in carrying out teledentistry practices can be reduced if there are laws and regulations regarding the rights and obligations between patients and dentists as well as an explanation of the protection of dentists contained in the law, in efforts to provide dental and oral health services.

In health services, negligence is associated with services that do not meet medical service standards (professional standards) which in their implementation must be used to differentiate between malpractice and medical risk. When a doctor has carried out a procedure based on medical service standards for a patient, but the patient then experiences serious injuries or dies, this case is a medical risk, but when the patient experiences serious injuries because the doctor provides services below medical standards, this condition is medical malpractice. In order to avoid misunderstandings regarding the occurrence of risks that cause harm to the patient, complete and clear information is needed by the doctor using language that can be understood so that it can be understood by the patient. This is where interpersonal communication is important, so that the patient or sufferer is willing to agree to the medical actions that will be carried out by the doctor for the healing of their illness in therapeutic transactions <sup>[14]</sup>. The negligence factor really has a role in determining whether or not a doctor can be punished and negligence in the medical world is really closely correlated with the implementation of the standards of the medical profession.

Medical risks to the provision of medical services cannot be estimated because medical personnel have and can only try their best in carrying out medical treatment. Medical risks cannot be ascertained, what risks the patient gets from the treatment of the medical personnel. In practice, it is not uncommon for the medical risks that arise to end in death, so that medical personnel in this condition are often considered to have carried out negligence or errors that cause patient death <sup>[15]</sup>.

In practice, dentists when providing services to patients can face medical risks. Medical risks faced include allergies to medication. Dentists in prescribing oral medication either directly or via teledentistry to patients can also experience medical risks such as drug hypersensitivity reactions, which are unexpected side effects of drugs. Side effects of drugs can be classified into type A (toxic/pharmacological) and type B (hypersensitivity). Disease manifestations in type A can be predicted, depending on the dose of the drug, the toxic effects of the drug in the recommended dose or excessive doses. Type B has clinical manifestations that cannot be estimated and are different for each person. Symptoms appear 1-6 hours after taking the drug or several hours to days with symptoms that arise can be mild symptoms such as sneezing to severe symptoms such as

anaphylaxis which can cause death <sup>[16]</sup>.

In the use of Teledentistry, according to the author, the medical risk that can occur is a drug allergy that we prescribe to patients electronically which is available in the teledentistry application. Before giving an electronic drug prescription, the dentist conducts an anamnesis to the patient regarding the systemic disease suffered by the patient as a whole and a history of drug allergies, but sometimes a lack of openness to the patient, a lack of understanding regarding the dentist's questions because they are conveyed indirectly, or the patient's dishonesty in conveying information, and limited consultation time, are one of the risks of drug allergies that can lead to death. In providing complete information between the doctor and the patient, drug allergy reactions cannot be avoided or predicted in advance.

### 3.2. Legal protection for teledentistry practitioners who have medical risks in the form of drug allergies

The legal basis for the regulation of telemedicine is first the Regulation of the Minister of Health of the Republic of Indonesia Number 20 of 2019 concerning the Provision of Telemedicine Services between Health Service Facilities and the Decree of the Minister of Health Number HK.01.07/MENKES/4829/2021 concerning Guidelines for Health Services Through Telemedicine During the Corona Virus Disease 2019 (COVID-19) Pandemic, later referred to as the Decree of the Minister of Health 4829/2021 <sup>[17]</sup>.

Minister of Health Decree 4829/2021 health services that can be implemented via telemedicine include: first, Communication, Information, and Education (KIE) Consultation, health KIE is a form of health promotion effort to obtain health information about physical fitness and exercise, diet, healthy lifestyle, information related to COVID-19, and other health information. Health KIE consultation services are not only carried out by doctors, but can also be carried out by other experienced health workers based on their authority. Second, clinical consultations provided by doctors via telemedicine include: <sup>[17]</sup>.

- a. Anamnesis, consisting of the main complaint and accompanying symptoms, current medical history, family information, risk factors and other diseases, and other relevant information to be asked by the doctor to the patient or the patient's family online;
- b. Limited physical examination conducted via audiovisual;
- c. Providing necessary advice or recommendations based on the results of a physical examination and/or certain supporting examinations. The results of supporting examinations can be carried out by the patient through the use of resources or modalities that he/she has or based on recommendations for previous supporting examinations against the doctor's instructions. Advice or recommendations can be in the form of additional health examinations at health care facilities;
- d. Diagnosis is established based on the results of examinations which are mostly obtained through

<sup>13</sup>Santoso, B., "The Development and Future of Telemedicine in Indonesia," National Conference on Information Technology and Technical Engineering (CITEE), 2015 <<<https://www.researchgate.net/publication/281497363>>>

<sup>14</sup>Budiastuti, D., Ardiansah, Triana, Y., "Legal Responsibility for Dentist Negligence Towards Patients Who Suffer Injuries Due to Medical Procedures," Jurnal National Conference on Social Science and Religion, (2022), 433-438 < file:///C:/Users/QUANTA/Downloads/7017-18849-1-PB-4.pdf>

<sup>15</sup>Ilahi, W., "Medical Risk and Medical Negligence in the Aspect of Criminal Responsibility," Jurnal Hukum Mimbar Pendidikan Hukum, 2.2 (2018), <<http://www.jurnal-umbuton.ac.id/index.php/Volkgeist/article/view/109>>

<sup>16</sup>Regulation of the Minister of Health of the Republic of Indonesia Number 20 of 2019 concerning the Implementation of Telemedicine Services Between Health Service Facilities.

<sup>17</sup>Decree of the Minister of Health of the Republic of Indonesia Number Hk.01.07/Menkes/4829/2021 number Hk.01.07/Menkes/4829/2021 concerning Guidelines for Health Services Through Telemedicine During the Corona Virus Disease Pandemic corona Virus Disease 2019 (Covid-19).

- anamnesis, limited physical examination, and supporting examinations;
- e. Treatment and management of patients are carried out based on the establishment of a diagnosis that includes pharmacological and non-pharmacological management, and medical actions to patients and families based on the patient's medical needs. In conditions where further medical actions or management are needed, patients are advised to undergo additional examinations at health service facilities.
  - f. Recording of prescriptions for medical devices and drugs, received by patients based on the diagnosis:
    1. The doctor who recording electronic prescriptions for medical devices and/or medicines must be responsible for the content and effects that may occur from the medicines written on the electronic prescription. There are exceptions in the recording of electronic prescriptions, namely psychotropic and narcotic drugs, birth control implants and injection drugs (other than insulin for individual use). Electronic prescription archives must be stored in electronic and/or printed form to become part of the medical record archive.
    2. Electronic prescribing of drugs and/or medical devices can be carried out openly or privately, through the following provisions: first, closed electronic prescribing is carried out through an application via a doctor to a pharmaceutical service facility; second, open electronic prescribing is carried out through the method of providing an electronic prescription to the patient, then the patient provides the prescription to the pharmaceutical service facility. Open electronic prescribing requires an identification code for the electronic prescription that can be tested for validity and authenticity by the pharmaceutical service facility; third, electronic prescriptions are used only for 1 (one) prescription service or to take pharmaceutical preparations, Disposable Medical Materials (BMHP), medical devices, and/or health supplements and cannot be repeated (iter);
    - g. Issuing a referral letter for further action or examination to the laboratory and/or other health service facilities based on the results of patient management.

In PMK No. 20 of 2019 concerning the Implementation of Telemedicine Services Between Health Service Facilities, Article 17 paragraphs (1) and (2) explain the rights and obligations of Health Facilities Providing Consultation to provide Telemedicine services. In Paragraph (1) obtain the right, namely to obtain medical information in the form of images, pictures, biosignals, text, sound and/or video properly through the use of electronic transmission to provide consultation answers and/or provide Expertise, and receive compensation for Telemedicine services. In Paragraph (2) Telemedicine services are obliged to provide consultation answers and/or provide Expertise based on standards, protect the confidentiality of patient data, provide clear, correct, accountable, and honest information about the results of Expertise and/or consultation<sup>[18]</sup>.

In the Regulation of the Minister of Health of the Republic of Indonesia Number 20 of 2019, it is explained that

consultations to implement telemedicine services have rights and obligations. Article 18 paragraph (1) obtains consultation answers and/or obtains Expertise based on standards and obtains clear, correct, accountable, and honest information about the results of Expertise and/or. The obligations in Article (2) are to transfer medical information in the form of imaging, images, biosignals, text, sound and/or video through the use of electronic transmission based on quality standards in providing consultation answers and/or obtaining Expertise, protecting the confidentiality of patient data, and providing clear, correct, accountable, and honest information about the results of Expertise and/or consultation with patients<sup>[18]</sup>.

Telemedicine regulations including dental and oral health services are clearly regulated in KKI Regulation No. 74 of 2020. Article (1) explains that "Telemedicine is a long-distance medical service assistance from Doctors and Dentists through the use of communication and information technology, including the exchange of diagnostic information, prevention of disease and injury, treatment, research and evaluation, and continuing education of health service providers in order to improve public and individual health. Article 3 paragraphs (1), (2), and (4) explain that in Medical Practice through an electronic system/application in the form of telemedicine is a teleconsultation or consultation service provided by Doctors and Dentists by paying attention to effective communication. Applying the principle of patient confidentiality, it is mandatory to have a STR (Registration Certificate) and SIP (Practice Permit) at the Health Facilities based on the provisions in the Laws and Regulations<sup>[19]</sup>.

In KKI Regulation No. 74 of 2020 Article 5 explains that Patients or sufferers who undergo treatment via Telemedicine must agree (General or Informed Consent) based on the provisions of statutory regulations. Article 7 paragraph (1) states that Doctors and Dentists who practice Telemedicine must keep medical records. Informed consent and medical records are very important as evidence in the event of a medical dispute. The scope that can be provided by doctors and dentists is stated in Article 8 paragraph (2), namely prescriptions for medical devices and/or drugs and medical certificates using the principle of high caution and accountability. Article 9 explains that Doctors and Dentists who practice Medicine using Telemedicine are prohibited from carrying out:

- a. Teleconsultation between patients and medical personnel directly without going through health facilities;
- b. Ordering irrelevant supporting examinations;
- c. Providing unethical, dishonest and inadequate information to patients and their families;
- d. Carrying out diagnosis and management beyond its capabilities;
- e. Carrying out acts of invasion via teleconsultation;
- f. Carrying out acts of intimidation, despicable acts, or acts of violence against patients in the implementation of medical practice;
- g. Charging fees other than the rates determined by the Health Facilities; and/or
- h. Provide a health certificate.

Medical risks in teledentistry. Physicians must understand that telemedicine systems are limited to presenting overall information about a patient's clinical condition. Physicians

<sup>18</sup>Regulation of the Indonesian Medical Council Number 74 of 2020 Concerning Clinical Authority and Medical Practice Through Telemedicine During the Corona Virus Disease 2019 Pandemic in Indonesia

must take into account that the information presented in a telemedicine system is sufficient to form a strong professional belief so that it can be followed up to determine a diagnosis and determine treatment for the patient<sup>[19]</sup>.

The bond between patients and doctors has been going on since the era of Hippocrates and has continued to grow until now. Growth always moves until there is a change in technology, social and scientific developments, this development causes a shift in methods in health services and various medical actions carried out by doctors. This condition is a challenge to various concepts and moral obligations of the majority of medical personnel and the public that are real and occur when there are patients who are sick or at medical risk for medical actions carried out by doctors. The risk of carrying out medical services cannot be anticipated because medical personnel can only try their best in carrying out medical treatment, although it can be estimated what medical risks can arise but it cannot be determined which risks the patient will get from the treatment of the medical personnel. The medical risks that occur can often end in death so that medical personnel in this situation the doctor is considered to have committed negligence or errors that cause someone's death.

Medical risks cannot be explained clearly and in detail in the available legal rules, therefore most people misinterpret medical risks so that most lawsuits are filed against doctors in court. Medical risks are implicitly mentioned in the following statements:

1. In the Republic of Indonesia Law no. 17 of 2023 Article 25 paragraph (1) the implementation of Health Efforts in the form of Health services can utilize information and communication technology (2) utilization is carried out through telehealth and telemedicine which is integrated with the national Health information system. In Article 172 (2) health service facilities can independently organize telemedicine or collaborate with electronic system organizers registered in accordance with the provisions of the law<sup>[20]</sup>.

2. In Law of the Republic of Indonesia No. 29 of 2004 concerning Medical Practice, Article 45 explains the Obligations of Doctors, which in essence, before carrying out medical procedures on patients, prior approval must be obtained after the patient has received complete information that at least includes the diagnosis and method of medical treatment, the purpose of the medical treatment carried out, other treatment alternatives and their risks, complications and risks that may arise, and the prognosis for the treatment carried out<sup>[21]</sup>.

3. In PMK No: 585/Men. Kes/Per/IX/1989 concerning Consent for Medical Actions, the terminology of risk is stated implicitly and explicitly. In Article 2 paragraph (1): Consent is given after the patient has obtained adequate information regarding the need for the relevant medical action and the risks that may be caused. In Article 3 paragraph (1) it is stated that every medical action containing high risk must have a written agreement and be

signed by those who will approve<sup>[22]</sup>.

According to the author of the various statements above, it can be concluded that medical risk is an action or medical treatment that can arise and may be less appropriate to the patient's wishes. Medical risk can arise because the risk of medical treatment occurs suddenly beyond the doctor's prediction and cannot be avoided by the dentist. Lack of understanding of the patient about the risks they experience can lead to a lawsuit to the court through the patient.

In certain medical treatments, there are often risks that can be inherent in medical care. If the doctor carries out the medical care carefully, has permission from the patient and is based on the Medical Service Standards (SPM), but it turns out that the risk still occurs, then the doctor cannot be blamed or asked for compensation<sup>[23]</sup>.

Medical care from a doctor is an important aspect that can determine whether the patient has committed negligence or medical risk. Systematics for several bases for criminal dispensation or special errors in medicine, namely:<sup>[24]</sup>

1. *Risk of treatment* (Treatment risks): allergic reactions, inherent or inherent risks, complications in the patient's body.
2. *Medical accident* (Medical accident).
3. *Non-negligent error of judgment* (Clinical judgment error).
4. *Contributory negligence*.
5. *Volenti not fit this*.

Article 1 paragraph (1) of the Criminal Code explains that an act cannot be made a crime, but is based on the strength of the provisions of the existing criminal law. In the Criminal Code, actions that result in the death or serious injury of another individual that are carried out unintentionally are stated in Articles 359 and 360 of the Criminal Code (Criminal Code). Article 359 explains that anyone who, due to his mistake (negligence) causes another individual to die, is threatened with a maximum of five years' imprisonment or a maximum of one year's imprisonment. Article 360 paragraph (1) Anyone who, due to his mistake (negligence) causes another individual to suffer serious injury, is threatened with a maximum of five years' imprisonment or a maximum of one year's imprisonment<sup>[24]</sup>. (2) Anyone who, due to his mistake (negligence), causes another person to suffer such injury that illness or disturbance occurs in carrying out a job or career for a certain period of time, is threatened with a prison sentence of up to nine months or a prison sentence of up to six months or a fine of up to four thousand five hundred rupiah<sup>[25]</sup>.

#### **Some of the elements in articles 359 and 360 are as follows**

1. There is an element of negligence or culpa.
2. There are certain forms of action.

<sup>19</sup>Mustikasari, A, "Informed Consent and Medical Records in Telemedicine in Indonesia," UNS Postgraduate Journal of Law, 8.2 (2020), 89-94 <<https://jurnal.uns.ac.id/hpe/article/view/49759>>

<sup>20</sup>Law of the Republic of Indonesia Number 17 of 2023 concerning Health

<sup>21</sup>Law No. 29 of 2004 concerning Medical Practice

<sup>22</sup>Regulation of the Minister of Health of the Republic of Indonesia Number: 585/Men.Kes/Per/IX/1989 concerning Consent to Medical Procedures.

<sup>23</sup>Pontoh, M, "Criminal Law Enforcement Against Medical Risks and Malpractice in the Implementation of Doctors' Duties," Lex Crimen, 2.7 (2013), 74-83 <<https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/3162>>

<sup>24</sup>Guwandi.2004. Medical Law. Jakarta: Faculty of Medicine, University of Indonesia. Guwandi., Medical Law (Jakarta: Faculty of Medicine, University of Indonesia., 2004)

<sup>25</sup>Criminal Code

3. There is a consequence of serious injury or death of another person.
4. There is a causal correlation between the form of action and the result of another person's death.

Based on these conditions, when comparing medical malpractice with medical risk, both medical malpractice and medical risk contain elements of a certain form of action, there is a causal correlation between the form of action resulting in the death of another person, and there is a result of serious injury or death of another person, where the action both have an impact on serious injury or death of another person, but there is 1 (one) element that has a difference from medical malpractice and medical risk, namely in medical risk there is no negligence factor, then Criminal Code 359 and 360 do not apply to medical risk, but in medical malpractice there is certainly a negligence factor, besides that, specifically in health services, negligence is also associated with services that do not meet or are below professional standards (Medical Service Standards) which in practice must also be used to provide a difference between medical malpractice and medical risk. If the patient has been treated with a procedure based on SPM, but the patient still suffers serious injury or death, this condition becomes a medical risk, on the other hand for patients who experience serious injury or death, it is the cause of the doctor carrying out services below medical standards, so this situation is medical malpractice.<sup>26</sup>

Drug allergy incidents can occur when doctors provide drug therapy during teledentistry practitioners, not the dentist's fault, because they are trying to cure. This condition can arise because the patient's body responds in various ways, so that drugs that have been matched are not responded to properly and can cause side effects so that they do not match what is desired. Incidents can be called allergies after completing the following elements, namely unexpected incidents by patients in the form of symptoms, medical complaints, diseases, diagnoses, and disabilities and have a correlation between these cases through drug therapy where this bond can be in the form of consequences through drug therapy or problems that require drug therapy as prevention or solutions<sup>[26]</sup>.

According to the author, in the healing efforts obtained, there are often medical risks that need to be undertaken. There is only one way to avoid medical risks, which is by not carrying out medical efforts completely. Generally, no healing effort is free from medical risks. According to the author, medical risks can occur to health workers who practice directly such as medical services in hospitals, health centers or clinics and indirectly using telemedicine or teledentistry applications. Informed consent is very important, if there is a medical dispute in a case caused by medical risks, the consent of the patient or the patient's family can be evidence, so the doctor cannot be blamed or asked for compensation. In the case of informed consent in teledentistry when the patient consciously wants to consult, chooses which dentist the patient wants to consult and has paid a certain amount for the consultation, then that also includes consent to the action<sup>[27]</sup>.

<sup>26</sup> Isfandyarie, A. 2005. *Malpractice and Medical Risks*. Jakarta: Prestasi Pustaka.

<sup>27</sup> Putu Maharani Ajeng Astiti, 2017, "Identification of Drug Related Problems (DRPs) in Community-acquired Pneumonia Pediatric Patients in the Inpatient

#### 4. Conclusion

*Teledentistry* providing remote health services by utilizing communication and information technology, including dental and oral health services through improved diagnosis early, providing ease of communication between health workers, providing timely treatment facilities for oral diseases, provision of information on treatment, prevention of disease and injury, evaluation, on an ongoing basis to health service providers in the need to improve the health of the community and individuals. The obstacles faced by dentists in teledentistry practice are that communication is not face-to-face and direct examination can affect the accuracy of patient diagnosis, limited consultation time makes dentists less able to dig deeper into information regarding the patient's systemic condition before administering medication.

Teledentistry practicing dentists need to ensure the authenticity of the information provided by patients and carry out their duties in accordance with professional standards, service standards and operational procedure standards, have the right to obtain a legal umbrella. To implement medical practice, dentists are required to complete electronic Informed Consent and Medical Records which serve as evidence and can release doctors from all lawsuits. Medical risks are not included in medical malpractice because there is no element of negligence so that it becomes a reason to cancel the sentence and release the doctor from lawsuits. On Criminal Code (Criminal Code) explains that an act cannot be made a crime, but is based on the power of existing criminal law provisions. In the case of drug allergies caused by the administration of drugs by a dentist during a teledentistry consultation with a patient, this action is without any element of negligence because if the administration of the drug is in accordance with the Standard Operating Procedure, it will disqualify the dentist from the criminal element as stated in Articles 359 and 360 of the Criminal Code.

#### 5. Suggestion

1. Suggestion In this study, it is necessary to create an electronic assessment form regarding the patient's systemic condition and history of drug or food allergies as well as a more complete electronic Informed Consent in the teledentistry application. This system appears at the beginning before the patient makes an online consultation, so that it can minimize medical risks and as legal protection for dentists in carrying out teledentistry practices.

2. Hoperesearchers through the existence of better legal construction in the future in providing a legal umbrella for online health services so that they have better quality and obtain guarantees for the distribution of constitutional rights and obligations proportionally.

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