



Formulation of Alternative Medical Dispute Resolution Models in Telemedicine Services in Hospitals

Rekyan Pandansari; Sukarmi; Patricia Audrey

Law Faculty, Universitas Brawijaya, Malang, Indonesia

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Abstract

The purpose of this article is to analyze the forms of medical dispute resolution in hospitals that can be taken and the most ideal for resolving them for the disputing parties. Remote medical services or what is called telemedicine in Indonesia have several methods including applications, video-conferencing to teleradiology. Although it seems that it is still relatively new, actually it has been known since around 1990, namely by telephone. However, telemedicine services do not yet fully have a clear and definite legal umbrella. Technology is growing and health services are required to be able to adapt to it, including in hospitals. Various factors influence the emergence of medical disputes in telemedicine services in hospitals so it is unavoidable and increasingly diverse. The research in this article uses normative juridical research. The results of the study indicate that medical solutions within the scope of telemedicine do not yet have a definite legal umbrella and referral. The forms and types of medical disputes in hospitals determine the solutions that can be taken to achieve legal certainty that still pays attention to the principle of patient safety. In resolving medical disputes as evidenced by the Indonesian Health Mediation Institute, it is 60-80% more effective using non-litigation methods. Thus, it is possible to resolve telemedicine medical disputes alternatively with mediation carried out remotely, or called ODR (Online Dispute Resolution).

Keywords: *Telemedicine; Medical Dispute Resolution; Hospitals*

Introduction

Medical disputes can be caused by patient dissatisfaction with hospital services, both for the services provided by medical personnel and health workers in carrying out treatment efforts. Dissatisfaction usually occurs due to alleged violations of patient rights, alleged errors or negligence by medical personnel and health workers in carrying out their duties to allegations of malpractice, so that the patient feels aggrieved. According to Munir Fuady, medical malpractice is any medical action carried out by a medical doctor or another health worker under the supervision of a doctor, or a health care facility for a patient, both in terms of therapeutic diagnosis and disease management, which violates law, compliance, decency and ethical principles. Professionalism, whether done intentionally or because they are not careful, causes doctors or health workers to be responsible administratively, civilly, or criminally. However, medical disputes are not only caused by malpractice by medical personnel or health workers, medical disputes can be caused by affiliated parties.

The Big Indonesian Dictionary states that a dispute is something that causes differences of opinion, quarrels, or can be referred to as disputes or disputes. It is stated that disputes are a natural thing that occurs in a social interaction between two or more people in society and then in certain situations they have different perceptions, desires and interests towards an event and situation. The things that trigger disputes are differences in interpretation, goals, misunderstandings, dissatisfaction with other parties, actions that are considered inappropriate and deviating, unclear arrangements, suspicion, cheating or dishonesty, arbitrariness and injustice, until something happens. which was unexpected.

Another thing that can become a medical dispute is the patient's lack of understanding about the therapeutic agreement between medical personnel and health workers and the patient himself. In its implementation in health services in hospitals, this engagement is formed in the form of Informed Consent or explaining before medical action. In its development, informed consent is not always in written form on paper, such as in telemedicine health services. There are still many patients who think that if a doctor fails in their efforts to provide medical healing services or it is stated that the patient does not recover quickly and/or even dies, then the doctor is deemed not to have fulfilled his performance obligations to the patient. In fact, according to the law of therapeutic agreements, the doctor-patient relationship is an agreement whose object is in the form of medical services or efforts to cure a disease. Legal terms in the agreement become a reference in the validity of a therapeutic agreement in providing telemedicine services.

Telemedicine is the provision of medical health services remotely by health facilities, in this study in hospitals. Several types and types of telemedicine can be provided by hospitals. Therefore, in telemedicine services between medical personnel and health workers in hospitals and patients, there is no gap for medical disputes to occur, even according to the author in telemedicine services the possibility of medical disputes will be even greater. Efforts in resolving a medical dispute must be carried out and pursued as well as possible before taking the path of litigation, namely by alternative efforts to resolve medical disputes. In this article, the authors analyze and find medical dispute resolution formulations in telemedicine services in hospitals with various obstacles and challenges faced considering that there is no comprehensive regulation in telemedicine agreements.

In this article, the author conducts an assessment using a juridical-normative approach to the appropriate form of settlement for medical disputes in hospitals that support patient safety efforts with legal certainty.

Method

This article uses a type of normative juridical research. Normative juridical research is a process to find legal rules, legal principles, and legal doctrines to answer the legal issues at hand. In this normative juridical research, this article will examine secondary legal material which is then followed by research on primary data in the field to answer problems which are the focus of research that conceptualizes law as a rule or norm which is a standard of human behavior that is considered appropriate. This normative juridical research does not need to start the hypothesis stage. Thus the terms independent variable and dependent variable are not recognized in normative juridical research which is used as an attempt to bring the issues raised closer to the nature of normative law. Normative legal research focuses on positive law inventory, legal principles and doctrine, legal discovery in concreto cases, legal systematics, level of synchronization, comparative law, and legal history. With this method, this article analyzes the forms of medical dispute resolution in hospitals that can be taken in resolving them for the disputing parties in statutory regulations as legal material.

Results and Discussion

The digital era 5.0 disrupts all aspects of life that are influenced by digital technology, including in the health sector. Provision of health services, which was originally provided by a professional expert, both medical personnel and health workers by meeting and examining patients only face to face, with the current of digital globalization providing the possibility of carrying out health services using remote methods. Besides that, with the emergence of the COVID-19 pandemic, all health service facilities are required to be able to always provide complete health services, including in hospitals. On the other hand, the hospital is an advanced-level health facility or referral which is a place with a high risk of transmitting the virus. So that hospitals can continue to provide health services to the community according to their goals, hospitals offer innovative online-based remote health services or what is known as telemedicine. According to health ministry legislation (Permenkes) No. 20 of 2019 concerning the Implementation of Telemedicine Services between Health Service Facilities:

"Telemedicine is the provision of remote health services by health professionals using information and communication technology, including the exchange of information on diagnosis, treatment, prevention of disease and injury, research and evaluation, and continuing education of health service providers for the benefit of improving individual and community health."

In practice, the forms or types of telemedicine service delivery have developed and varied in line with developments in information technology and medical science. There are several types of telemedicine in its application, namely:

1. Tele-expertise: telemedicine services that link communications between general practitioners and specialists or communication between specialists and other specialists, for example, second opinion consultations and interpretation of radiology results;
2. Tele-consultation: telemedicine activities that provide consulting medical services by connecting patients with their doctors or specialists;
3. Tele-monitoring: telemedicine services in which doctors and/or health workers monitor and monitor various body parameters of patient health developments virtually or remotely;
4. Tele-assistance: telemedicine services in which doctors and/or other health workers provide directions to patients to make efforts in their medical recovery efforts, for example in the rehabilitation process
5. Tele-robotics: medical healing telemedicine services to patients utilizing remote control of one or more robots, generally used in telepathology or telesurgery.

The implementation of telemedicine services in hospitals must remain in the effort of patient safety which guarantees patient rights, one example is patient medical information or medical records. The use of medical information requires careful management of the information contained therein. This caution is based on the information contained in it, following Article 3 of the Regulation of the Health Minister (hereinafter referred to as the Minister of Health) that Medical Confidentiality is a patient's right to privacy consisting of identity, examination history, and other matters. In implementing telemedicine in hospitals, there is very little regulation that can guide telemedicine operations. Referrals and the legal basis that form the basis of implementation have not been regulated completely and in detail, and there is not even online dispute resolution for health service providers, including doctors and other medical personnel. Medical disputes on telemedicine are starting to emerge day by day which causes no legal protection for patients. Medical disputes between patients and healthcare providers are inevitable. According to Bernhard H. Sianipar, the lack of policies governing patient personal data and confidentiality of medical records related to transfer (sending patients to other health facilities), storage and sharing of data between health professional service providers, as well as authentication of professionals health, especially in the application of electronic mail and the risk of medical liability for doctors and health workers in implementing telemedicine services. In addition, the telemedicine system

used is complex, so there is the potential for damage to occur which can trigger software or hardware failure. This can increase the morbidity or mortality or death of the patient and the responsibility of the hospital as a service provider. Legal issues can arise from system failures, or when there is no guarantee of payment for a service. Disputes in system failures can occur on any side, examples of disputes arising from damage to sensors or equipment, network outages, or cables damaged during maintenance. Legal disputes may arise in telemedicine practices as to who should be responsible for incidents of fraud and accidents that cause complex problems to be resolved. This is also because health workers, especially doctors, do not meet in person when conducting anamnesis and administering drugs to patients.

The first thing that can be done to unravel the legal problem is a medicolegal analysis by looking for the root causes of the case together. This is very important to determine the next step. Claims for compensation by patients are a form of patient and family rights as stated in article 32 of the Law of the Republic of Indonesia No. 44 of 2009 concerning Hospitals namely in the chapter on Patient Rights. In telemedicine, patients and doctors make a long-distance therapeutic agreement through a communication medium that has been determined by the service provider and of course must fulfill the validity of making the agreement. Regarding medical service standards, telemedicine services must also fulfill this obligation, namely the obligation to fill out informed consent online. In many cases in medical disputes, patients do not know and understand the importance of filling out informed consent before carrying out medical services, they tend to only fill in based on their knowledge without asking the service provider, especially the patient when he is sick. Informed consent is a form of therapeutic agreement between the patient and the doctor. However, in its development the filling and forms of online informed consent have developed according to technology, especially in telemedicine services.

Non-fulfillment of therapeutic agreements in filling out informed consent is also the basis for medical disputes. About 85% of medical personnel choose to resolve medical disputes and are considered to be solutive by means of non-litigation legal remedies. This is because many cases of medical disputes with non-litigation legal remedies, namely mediation have proven to be the best way that can be taken to realize and fight for patient rights. Besides that, hospitals as health service providers and medical personnel also get equal rights in accordance with Law Number 44 of 2009 Chapter VIII concerning obligations and rights even though the reason for a win-win solution is the basis for service providers in telemedicine dispute resolution.

Re-evaluation of Medical Dispute Resolution in Telemedicine Services to Patients

The problem of medical disputes in legal science is called malpractice nomenclature. From the origin, the term malpractice was not only used in the health profession but also in other professions, but nowadays because it is being used more and more in the health profession, the term is now more inclined or identically aimed at the medical or health professions. The definition of malpractice is any professional misconduct or unreasonable lack of skill or fidelity in professional or fiduciary duties, evil practice or illegal or immoral conduct. The definition and understanding of medical malpractice is still not standardized and has not been regulated in laws and regulations, so there is no legal certainty. Thus the handling and resolution of medical malpractice problems also becomes uncertain. This problem is also caused by the absence of standardization of health professional service standards. What causes the lack of standardization is that health problems are very complex, ranging from the impact of applying health services to different people to various technologies in each health care facility and hospital, as well as the ability of each doctor or other health worker.

The non-uniformity of service standards for the medical profession (between different collegiums) and other health professions, as well as the number of hospitals that autonomously impose service standards that are different from other hospitals, causes experts to find it difficult to distinguish malpractice from accidents, negligence, and even failure of efforts. Deliberate medical in the field. This is

exacerbated if patients take treatment at different hospitals, causing malpractice evidence to be increasingly difficult to identify at points and at which stage the mishandling occurred. Thus, currently the most appropriate and considered to have the right to determine errors in the standard of health professional services are the Medical Committee and the Legal Ethics Committee in each of the hospitals concerned. The authority of the Medical Committee is not only to supervise in detail the standards of the community of doctors, other health workers and the technology available at the hospital, but to determine the details of the clinical authority of the medical profession that will provide services at the related hospital, apply professional discipline, and so on.

Medical collegiums and health workers in the event of a medical case seem to protect each other among professions where it causes a violation of the code of ethics or the failure to achieve law enforcement, This will cause obstacles in the search for objective dispute resolution between the parties, so that cases of medical malpractice meet deadlock, can not be resolved, and there is no legal certainty, especially for the patient. As a result, the patient believes that the doctors and health workers involved just want to be free from the responsibility for their actions, are superior and immune to the law by taking refuge in the medical code of ethics and the ethics of other health workers. On the other hand, from the side of doctors, health workers, and hospitals, they are of the view that the patient's position is very strong to be able to sue or sue doctors, health workers, or hospitals when it is judged that the treatment goals have not been achieved in accordance with their expectations.

It can be seen that to identify a medical act that is considered wrong, whether it is a medical malpractice or not, it must be carried out with a special approach, namely by using a medical or medicolegal legal approach and proportional legal science. If a patient suspects and demands that the doctor and/or medical personnel have committed medical malpractice, then the patient must be able to prove the fulfillment of 4 elements, including:

1. The duty of care was owed by the physician;
2. The physician contravene the applicable standard of care;
3. The individual who experienced a compensable physical issue; and
4. The injury was caused indeed and generally brought about by the unsatisfactory lead. The weight of demonstrating these components is on the offended party in Negligence claim. The purpose of this statement is:
 1. There has been an obligation to provide health services from medical personnel to patients,
 2. Medical personnel violate standard medical operational procedures (medical standard of care) for the types of health services provided by health workers to patients or medical actions
 3. The patient suffers injury, both physical and psychological injury, or suffers death which can be compensated in the form of compensation, and
 4. Other injuries that can be in the form of physical or psychological injuries or death, are directly caused by medical actions by doctors or other health workers

Sutan Remi said that medical personnel have by law "the duty of care" or the obligation to provide health services from medical personnel to patients, namely when doctors and other medical personnel are willing to provide health services, whether the willingness is given in full, verbally, orally. or implied, the proof is actually not difficult to describe, but what is more important and more complicated is to prove that the losses and injuries suffered by the patient, both in the form of physical and psychological losses and injuries, or perhaps until the patient dies, are the direct result of medical action. By doctors or medical personnel to patients.

Settlement of medical disputes is divided into 2 (two) ways, namely non-litigation and litigation. In a medical dispute, the most important thing before carrying out settlement efforts is the analysis of the

position case. Every side and angle of a medical dispute must be analyzed and reviewed from a medical and legal technical point of view so that the main problem can be identified. It is hoped that the analysis of telemedicine dispute cases can identify the main problems that caused it, whether caused by damaged human resources (human error) or technical damage (technical error). If human error is found, then it is identified whether in the case of negligence (duty, delection of duty, damage, and direct causalship) or medical malpractice. In telemedicine services, apart from the problem of human resources for medical personnel, technical error or errors caused by technical implementation are also very important things to consider. Most of the technical errors are caused by gaps in communication tools, networks, and limited knowledge of technology.

Settlement of medical disputes by litigation or bringing the matter to court based on research results is considered inappropriate in terms of trying to resolve medical disputes. This can be proven by any party who has been involved in efforts to resolve disputes with the litigation or court system. According to Nomensen Sinamo, the reasons for resolving disputes through mediation are widely chosen by the disputing parties because: (1) The dispute resolution process is relatively fast, (2) The cost is cheap (in expensive), (3) It is confidential, (4) Fair settlement through compromise, (5) Cooperative relationship, (6) win – win solution and (7) Not emotional.

Formulation of Alternative Medical Dispute Resolution Models in Telemedicine Services in Providing Legal Protection for Patients

Alternative Dispute Resolution, hereinafter referred to as APS, is an alternative dispute resolution outside the court (general court) through a process of negotiation, mediation, and arbitration. By considering and taking the model on international agreements, the mediation method was chosen as the most ideal medical dispute resolution effort to be taken with the hope of achieving a win-win solution (win-win) for the disputing parties. Mediation is a way of resolving disputes through a process of discussion and negotiation by the disputing parties and assisted by a mediator appointed to assist the dispute resolution process so that a mutual agreement is obtained. Mediation itself can be done through the court or outside the court by using a mediator who already has a mediator certificate. The mediator is a neutral party who does not take sides with either party and assists the parties in the discussion process to find various possible dispute resolutions without violating or forcing the agreement.

Medical disputes caused and originating from remote service activities through a communication medium or online, so that it is possible to settle through online media as well. This settlement through online mediation is known as ODR or Online Dispute Resolution (ODR). ODR is known and born through the synergism of the combination of Alternative Disputes Resolution (ADR) and Information of Computer Technology (ICT) as a method or step to resolve disputes that arise in the online transaction process when it is felt that traditional dispute resolution is very ineffective and impossible to implement. In Indonesia, ODR does not yet have a “legal umbrella” and reference especially for medical dispute resolution as a *lex specialis*, but actually the *lex generalis* already has a regulatory framework, namely Law Number 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 (hereinafter abbreviated as UU ITE) as the basis for dispute resolution in electronic transactions. Regarding non-litigation dispute resolution, it is also regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution (hereinafter abbreviated as Arbitration Law and APS). Then regarding telemedicine is also regulated in the Minister of Health Regulation No. 409 of 2016 concerning Trial Hospitals for Video-Conference and Teleradiology-Based Telemedicine Service Programs, so that arrangements regarding ODR in terms of the types of dispute resolution are still within the scope of commercial law settlement which must be resolved peacefully. The same concept as the scope of medical settlement, where the initial goal of dispute resolution is a peaceful and win-win solution.

There are 4 types of ODR, the first is Online Settlement, which is a method of settlement with a sophisticated automated system to be able to resolve dispute issues; secondly Online Arbitration, dispute resolution by using the website as an arbitration media facilitated by a registered and qualified arbitrator; third, Online Resolution of Consumer Complaints, namely in the implementation of dispute resolution with most e-mail media to resolve complaints from consumers; fourth is Online Mediation where the use of the website as a place of mediation with the support of a qualified mediator.

In the case of online dispute resolution assisted by a mediator, he not only helps in discussing and coordinating between the disputing parties but tries to find a middle way and provides a resolution to the problem while still returning the final decision to each party. Here, the mediator mostly uses electronic mail (e-mail) as a means of communication with the two disputing parties, although this method is not absolute, so that the mediator can find out the statements of each party. The mediator tries to achieve expectations that are acceptable to both parties and becomes a bridge. In addition to email, group chat rooms and video conferencing are also commonly used for dispute resolution. Lately with advances in technology and better internet network connections, video conferencing helps in the ease of communicating. Video conferencing not only enables live conversations, but also provides a personal connection due to virtual face-to-face interactions. However, the choice of using email, group chat and/or video conferencing depends on the **nature of the dispute and the availability of the parties**.

Online dispute resolution is developing not only to be used to resolve disputes arising from online communications but also to resolve offline disputes, not limited to online disputes. Overseas in particular, there are already many professional companies that provide ODR services to their clients. Companies offer ease of access and the cost of their services is also transparent, quite competitive and balanced with the services provided. The mediator appointed by the company or mediation institution acts as a facilitator as well as an evaluator. Sometimes, the mediator guides the disputing parties and directs them to reach an agreement. Hammond conducted a study on the mediation process and online mediators and showed that a medical mediator primarily needed skills in communicating keeping in mind that settlements were carried out online. For mediators, good listening skills and the ability to ask questions that are relevant and to the point are very important to provide clarity to the parties involved.

There are several things that underlie the success of a mediation in medical disputes: (1) Self-determination, in the way of mediation the parties to the dispute voluntarily agree, and are aware of their respective positions. The parties carry out mediation in the hope that each can find the best solution for them. (2) Neutral - the mediator must be neutral, impartial and side with anyone so that the parties have the trust and credibility of the mediation process. Often in mediation there is an imbalance of "power", so the mediator must pay attention to the position of the patient while taking care not to become an advocate for the patient; (3) Flexible – the solution must be according to the type of dispute and in accordance with what is expected by the parties. The mediator must be creative and the parties must be willing to find different solutions. Examples are apologies, donations to charity, free medical care and education of children; (4) Confidential – it is very important that anything said during medical mediation is kept confidential between the parties, other than that the parties are strictly forbidden to know because it involves medical confidentiality and patient privacy protection. If this is not implemented, of course it will be very difficult to hold mediation and in-depth and honest discussions, because the parties will worry that what they say can be used in court if mediation fails.

Efforts to resolve electronic transaction disputes are regulated in Article 18 paragraph (4) of Law Number 11 of 2008 concerning Information and Electronic Transactions, which regulates the choice of law and choice of forum in which the disputing parties are given the authority to choose which law to use. In the settlement of the dispute, and the agreed place for the settlement of the dispute, whether in court or out of court such as arbitration and other alternative dispute resolution institutions.

According to Boule, there are 12 (twelve) steps for a successful mediation process, namely: (1) establishing good relations with the disputing parties; (2) in guiding the mediation process, one should be able to select and determine a suitable strategy; (3) investigate the history and background of the dispute and then analyze it; (4) Prepare a mediation plan; (5) In its implementation, it is very important to build trust and cooperation between the parties; (6) Initiating a mediation session; (7) Develop an agenda list and formulate problems; (8) able to reveal personal and hidden motives in its implementation; (9) ensure and convey the most appropriate and appropriate dispute resolution options; (10) Analyzing dispute resolution options; (11) Bargaining process; and (12) Final (formal) agreement.

On the one hand, the implementation of this ODR has a positive side in medical disputes, namely for the mediator to maintain and deliver a dialogue regarding the confidentiality of each party. With an online system, it will be easier to control the things conveyed by each party. There are two types of negotiations in the medical mediation process, namely positional based bargaining and interest best based bargaining. The type of positional-based bargaining mediation begins with offering a solution. Each party offers a solution and bargaining can occur until both or more parties to the dispute get a result that is accepted by the other party. Then proceed with discussions and negotiations regarding the disputed interests and maintain mutual relations. The parties are open to each other and convey to each other about the things they need and jointly solve problems based on their needs/interests, so it can be said that the alternative dispute resolution that arises between doctors, hospitals, patients and other parties is the most suitable to be able to taken is through mediation, except in pure criminal cases such as sexual harassment, disclosure of medical secrets, abortion and gross negligence, false statements, fraud and others. Settlement through litigation is considered to be detrimental to both parties. Moreover, it is quite difficult to meet the four criteria for medical malpractice, namely the existence of a duty that must be carried out, the existence of a dereliction/breach of that duty (a deviation of obligations); The occurrence of damage / damage and proof of a direct causal relationship between the violation of obligations and losses. Another positive effect of the mediation process is that the doctor-patient relationship will always be well maintained. Because after all, both parties need the same interests even in their respective contexts and responsibilities.

Conclusion

Legal certainty is the goal in the resolution of medical disputes chosen by the parties in telemedicine services. The fulfillment of *rechtsidee* in the form of legal certainty can be fulfilled in the provision of telemedicine services is an important thing to be guaranteed in a regulation. Legal certainty can protect the rights of patients, hospitals, and medical personnel. Medical dispute resolution is more effectively resolved by non-litigation legal remedies, namely by mediation, negotiation, or even arbitration. It is proven by the Indonesian Health Mediation Institute and all parties who have had medical disputes that the resolution of medical disputes using litigation does not provide a good solution for the disputing parties, including not cheap so mediation is the most widely taken for settlement.

Within the scope of telemedicine, hospitals provide long-distance health services using information technology media, so the resolution of medical disputes that arise will be more effective for the parties in their resolution if done online in the form of Online Dispute Resolution (ODR). However, it is necessary to formulate a regulation that can accommodate the use of ODR which will later be stated in the medical agreement clause as a dispute resolution. The use of ODR which places the parties not as parties to the dispute but through a win-win solution is expected to fulfill legal certainty in protecting the rights of the parties in the medical field in dispute. In Indonesia, the procedures for implementing electronic mediation have just been formulated in the Supreme Court of the Republic of Indonesia Number 3 of 2022 last May. So that in practice now we can follow the procedures following these rules. However, it is still necessary to formulate rules that can provide legal certainty in these matters so that the goal of providing health services, namely patient safety, can be achieved.

Parties who choose legal remedies through ODR usually use various media in the form of email, video conferencing/video calls, chat applications, and even chat groups. Future formulations of legal arrangements that become the juridical basis for the resolution of medical disputes so that patient rights, health workers' rights, and hospital rights can be guaranteed and get the best solution for the disputing parties by formulating legal regulations in the medical field to clauses in the medical field medical appointment.

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