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The Legal Protection of Patients as a Victim of Medical Malpractice by Physicians on Telemedicine Services

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Abstract*. The development of health services has developed in the last few years and continues to grow to the point of giving rise to telemedicine as a term for electronic services medium between patients and health service providers. The purpose of this research is to find the formal legal truth on the protection rights of a patient who used telemedicine services based on the Indonesian Civil Code, Health Law, and other relevant legal material sources, the study aims to determine the legal certainty of the patient using telemedicine services and legal remedies available to patients injured due to telemedicine malpractice. The research method used is normative or doctrinal and involves relevant approaches such as the statute approach, conceptual approach, theoretical approach, and analytical approach which use various legal material sources including primary and secondary legal material, particularly such as legislation, regulation, various legal theories, legal principles, doctrine, and scientific works of scholars including journals, articles, and practice guides*.

Keywords*: Telemedicine, Medical Malpractice, Health Law.*

INTRODUCTION

The healthcare facility has an important role in providing health services to patients which the purpose of developing public health is also contained in Indonesia's constitution, Article 28 H paragraph (1) of the Constitution of the Republic of Indonesia of 1945 ("UUD 1945") states: "*Each person has a right to a life of well-being in body and mind, to a place to dwell, to enjoy a good and healthy environment, and to receive medical care*". Therefore, it reflected that the Indonesian Constitution is intended to protect Indonesian citizens or the public to receive adequate health care access. With this constitutional courage, the Indonesian Government regulates the general principles and objectives of health care access which were implemented in Law Number 17 of 2023 concerning Health ("**Law 17/2023"**).

In Article 1 paragraph (3) of Law 17/2003, health services are defined as medical services to provide health services to individuals or the community, to maintain and improve public health, through a promotive, manner to prevent diseases or injuries, and curative, rehabilitative, and palliative measures. Indonesian healthcare services have increased and developed rapidly, particularly amidst the Coronavirus Disease 2019 (COVID-19) pandemic, as a result, many healthcare facilities keep rendering their services with long-distance communication technology to avoid face-to-face services directly in healthcare facilities.

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The healthcare services industry collectively builds its platform or electronic media to ease the patient to obtain health care although constrained by geographical barriers, this concept of the services namely telemedicine, is defined by WHO as the rendering of healthcare services which method of exchange of valid medical information between medical professionals utilize information and communication technologies. This method is used for various purposes such as the diagnosis, and treatment, also prevention of diseases and injuries, research and evaluation, and the continuing education of healthcare providers, telemedicine efforts are solely aimed at advancing the health of individuals and largest communities for the common good."[1]

On 27 April 2020, the patient as a consumer who uses the telemedicine provided by the health care facilities has reached more than 300.000 people.[2] Furthermore, the Indonesian government and medical experts have begun to recognize and regulate telemedicine services.

Patient safety is an important thing and main concern in health care services. Ensuring patient safety is important as it is a major world concern, and inaccurate or delayed diagnosis is one of the primary causes of harm to patients, affecting millions of people worldwide, according to the notion delivered by the World Health Organization (WHO).[3] In light of that view, the legal protection of the patient who uses telemedicine services became a legal issue and concern when the health care facilities misconduct or neglect to serve the patient through telemedicine, hence resulting in a disadvantage for the patient commonly known as telemedicine malpractice.

Therefore, there are two problems of the research as follows: 1) How does the legislation stipulate the legal protection of patients as the victims of telemedicine malpractice?; and 2) What legal remedies can be taken to protect patients' rights as victims of telemedicine malpractice by physicians?

This legal research uses the method of normative legal research which is also known as doctrinal legal research to analyze, synthesize, interpret, and find positive legal materials sources to provide theories and answer the problems. [4]The approaches used by the researcher in this paper consist of the statute approach, conceptual approach, theoretical approach, and

[1] Misha Kay, Jonathan Santos, and Marina Takane, *Telemedicine: opportunities and developments in Member States: report on the second global survey on eHealth 2009.* (Geneva: WHO Press, 2010), p. 9.
[2] Tim Komunikasi Publik GT Nasional "Melalui Layanan Telemedicine, Masyarakat Tak Perlu ke Rumah Sakit", *covid19.go.id* (27 April 2020), https://covid19.go.id/p/berita/melalui-layanan-telemedicine-masyarakat-tak-perlu-ke-rumah-sakit, accessed 25 Oct 2020.
[3] World Health Organization "10 facts on patient safety", *who.int* (26 August 2019), https://www.who.int/features/factfiles/patient_safety/en/, accessed 24 Oct 2020.
[4] Hutchinson, Terry & Duncan, Nigel, "Defining and Describing What We Do: Doctrinal Legal Research", *Deakin Law Review*, vol 17, no. 1 (2012), p. 83-119.

analytical approach which use various legal material sources including primary and secondary legal material, particularly such as legislation, regulation, various legal theories, legal principles, doctrine, and scientific works of scholars including journals, articles, and practice guides.[5].

1. Telemedicine Services Under Indonesian Laws And Regulations

Article 1 paragraph (22) of Law 17/2023 gives a more simplify understanding that defines telemedicine as the delivery and facilitation of clinical services through telecommunications and digital communication technology, and then Article 172 of Law 17/2023 states telemedicine services must be provided by a medical professional or health professional who has obtained the practice license. In this case, the physician is categorized as a medical professional who conducts medical procedures, particularly in telemedicine. Furthermore, Article 1 paragraph (1) of Ministry of Health Regulation of the Republic of Indonesia Number 20 of 2019 on The Organization of Telemedicine Services Through Health Care Facilities ("**MHR 20/2019**") defines Telemedicine as "*The provision of long-distance health services by health professionals by utilizing information and communication technology, consisting of information exchange on diagnosis, medication, disease and injury prevention, research and evaluation, and sustainable education of health service providers to improve individual and public health*".

Moreover, under Article 3 of MHR 20/2019, services scopes allowed conducted by health care facilities and particularly by medical professionals who own practice licenses are as follows: 1) Tele-radiology, 2) Tele-electrocardiography, 3) Tele-ultrasonography, 4) Tele-consultation; 5) Other telemedicine consultation. Under MHR 20/2019, the mechanism of telemedicine is divided into two roles, healthcare facilities of consultancy-providing and healthcare facilities of consultancy-requesting. Moreover, the healthcare facilities that conduct telemedicine services must comply with requirements under MHR 20/2019. On the other hand, the health care facilities of consultancy-requesting required to comply with as following: 1) determine the human resources in implementing the Telemedicine Services; 2) determine the standard operating procedures for the Telemedicine Services through a decision of the head of the health care facilities; 3) filing document of the telemedicine services in the medical record by laws and regulations; and 4) provides telemedicine services by the cooperation agreement. The

[5] Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum: Normatif dan Empiris* (Jakarta: Kencana, 2016), p. 176.

healthcare facility is obliged to determine professional procedures including the human resources and standard operational, and filing medical records. In terms of human resources, the regulation only allowed professionals to handle telemedicine services such as physicians, medical specialists/medical sub-specialists, other health workers, and other workers who are competent in the information technology sector. However, the MHR 20/2019 does not explicitly regulate telemedicine procedures between healthcare facilities with an individual as a patient.

Implementation of Applicable Laws and Regulations Regarding Telemedicine Practice by Physicians in Indonesia

Telemedicine term is recognized in MHR 20/2019, however, the regulation is quite inadequate, which the regulation does not regulate the telemedicine used as a tool or medium, where patients have direct access to a physician as a telemedicine provider during the COVID-19 pandemic. Coupled with that view, the Indonesian health authorities have been issued a circular letter number HK.02.01/Menkes/303/2020 for the year 2020 concerning the implementation of health services through the utilization of information technology and communication for COVID-19 spreading prevention ("**Circular No. 303/2020**"), which stipulates the relationship of patient and physician used telemedicine platform. According to Circular 303/2020, the physician has the authority to provide telemedicine services directly as an individual, as follows: 1) Anamnesis of the patient including the main complaint, comorbid complaints, medical history of current illness, other disease or risk factors, family information, and other related information be asked by the physician to the patient or relatives by online; 2) Certain physical examinations that are performed through audiovisual assessment. 3) Providing advice needed based on the results of supporting examinations and/or the results of certain physical examinations. The results of supporting examinations can be carried out by the patient using his modality/resource or based on the previous recommendation by investigations with the physician's instructions. Medical advice in the form of further health assessment to health care facilities. 4) The diagnosis is made based on the results of the examination, which are mostly obtained from anamnesis, certain physical examinations, or additional investigations; 5) Management and treatment of patients, carried out based on the establishment of the diagnosis insist of non-pharmacology and pharmacology management, and another necessary medical treatment according to the patient's medical needs. In case medical action is required or further management, patients are advised to carry out a further examination at healthcare

facilities; 6) Writing prescriptions for drugs and/or medical devices, given to patients following diagnosis; 7) Issuance of a reference letter for examination or further action to the laboratory and/or health care facilities according to patient management results.

Also, under Circular No. 330/2020, only the physician who has a physician's registration certificate (STR) is allowed to provide or conduct telemedicine services to the patient. Indeed, the Indonesian health authorities have been issued Circular No. 303/2020 to accommodate telemedicine activities, nevertheless, under the perspective of state administrative laws which are particularly regulated under Law Number 12 of 2011 and Law Number 15 of 2019 concerning the establishment of legislative regulations, the circular letter has not the force of law to binding or in other words, the circular letter has no place in Indonesian laws hierarchy based on Law Number 12 of 2011 concerning Hierarchy of Laws and Regulations ("**Law 12/2011**") and Law Number 15 of 2019 concerning amendment on Law Number 12 of 2011 ("**Law 15/2019**"). Moreover, there distinction between telemedicine the concept between Circular No. 303/2020 and MHR 20/2019. Briefly, Circular No. 303/2020 has a scope to regulate the direct relation between physicians as telemedicine providers and patients, notwithstanding the MHR 20/2019 merely regulating the telemedicine activities between healthcare facilities.

Another key provision to remember, under Articles 8 and 9 of Law Number 29 of 2004 concerning physicians' practice, the Indonesian Physician Council has authority to regulate physician's treatment guidelines, provided that the Indonesian Physician Council issued an Indonesian Physician Council Regulation Number 74 of 2020 concerning the authority of clinics and medical practice through telemedicine during COVID-19 pandemic ("**PCRN 74/2020**"). Under this regulation, telemedicine services conducted by the physician have restrictions and prohibited conduct violations, as follows: 1) teleconsultation between medical personnel and the patient directly without going through the health care facilities; 2) to provide dishonest, unethical, and dishonest explanations inadequate (inadequate information) to the patient or his family; 3) to carry out diagnosis and management beyond their competence; 4) to request irrelevant supporting examinations; 5) to commit disgraceful acts, acts of intimidation or acts of violence against patients in the implementation of medical practice; 6) to conduct invasive treatment through teleconsultation; 7) to charge medical treatment cost beyond the tariffs set by the health care facilities; and/or; 8) to provide a healthy statement letter.

With all these things considered, the issue that may emerge in the implementation of telemedicine is whether the PCRN 74/2020 is considered law. PCRN is issued by the

Indonesian Physician Council. If we step further to Law Number 29 of 2004 concerning Physician's Practice ("**Law 29/2004**"), we figure that Article 8 of the Law 29/2004 states the authorities of the Indonesian Physician Council are as follows: 1) approve and reject requests for registration of physicians and dentists; 2) issue and revoke physician and dentist registration certificates; 3) legalizing the competency standards of physician and dentists; 4) conduct tests on the registration requirements of physician and dentists; 5) legalizing the application of the branches of medicine and dentistry; 6) conduct joint coaching of physician and dentists regarding implementation professional ethics established by professional organizations, and 7) make records of physician and dentists who are subject to sanctions by a professional organization or its apparatus for violating the provisions of professional ethics. In the final analysis, the PCRN 74/2020 confers an authority on the physician to work under healthcare facilities to conduct telemedicine practice based on Law 29/2004 which states the Physician Council is entitled to issue the Physician Council Regulation to guide any physician to conduct telemedicine services.

2. Legal Relationship Between Physician And Patient In The Implementation Of Telemedicine

Agreement between Patient and Physician (Therapeutic Agreement)

In terms of telemedicine, the contractual relationship between physician and patient is not engaged when a patient enters the health care facilities, instead, the contractual relationship is established when the physician and patient state their willingness by a verbal statement or implied statement with an attitude of consent.[6] Hereinafter physicians and/or healthcare facilities that provide telemedicine are referred to as telemedicine providers. Principally, Article 293 of Law 17/2023 emphasizes that the patient is entitled to be informed regarding the medical diagnoses and further medical treatment will be taken by the physician. When using telemedicine or a platform in various forms, for instance, telemedicine using a website, android, or iOS application, the patient should be asked for their consent. Furthermore, Article 2 of Minister of Health Regulation Number 290/MENKES/PER/III/2008 concerning approval of medical action ("**MHR 290/2008**") states that all medical treatment must obtain verbal or implied consent statement or written consent statement from the patient. In its implementation, the agreement must be preceded by informed consent by the patient regardless of the

[6] Periksa Sofwan Dahlan, *Hukum Kesehatan Rambu-Rambu Bagi Profesi Dokter*, (Semarang: BP UNDIP, 2000) p. 32-33.

medium or platform used between the physician and the patient. According to the expert namely Bambang Poernomo, informed consent means the prior consent arising from the information provided to the patient that is considered clear by a patient to render any medical measures that will be performed on the patient for diagnosis and/or medical treatment.[7] Furthermore, the agreement between patient and physician is commonly known as the term "therapeutic agreement", however, the term of the therapeutic agreement is not recognized in the Indonesian Civil Code. Under Article 1319 of the Civil Code, the therapeutic agreement is classified as an agreement that is subject to general regulations.

In this case, concerning the law's principle of *lex specialis derogat lex generali*, the therapeutic agreement consent is also subject to Indonesian medical laws and regulations, thus therapeutic agreement has a specific requirement stipulated in MHR 290/2008 and Article 1320 of Civil Code as general law and other certain regulation may be applied as a legal basis which therapeutic agreement must meet requirements as follows: 1) There must be the consent of the parties who are bound thereby. It means that the agreement required mutual consent between parties by free consensus (meeting of minds) that deliberately consented to agree on an agreement. Based on Article 1321 of the Indonesian Civil Code, consent is not valid if it is the result of unlawful matter including error, coercion, and fraud.[8] Other than that, we must take notice the telemedicine services or therapeutic agreements are conducted with the electronic agreement which is subject to Law Number 19 of 2016 concerning amending Law Number 11 of 2008 concerning Information and Electronic Agreements ("**Law 19/2016**") and Government Regulation Number 71 of 2019 concerning the Implementation of Systems and Electronic Agreements (**"GR 71/2019"**).

3. Telemedicine Malpractice

Medical malpractice, as defined in US literature, refers to any act or omission by a physician during medical treatment that deviates from accepted norms in the medical community. This deviation causes an injury to the patient and is categorized as a specific subset of tort law that deals with professional negligence.[9] In the meantime, Indonesia does not recognize any malpractice definition, however, Articles 276 and 193 of Law 17/2023 implicitly provide an opportunity for patients to fulfill their right to claim

[7] Bambang Poernomo, *Hukum Kesehatan*, (Yogyakarta: Program Pasca Sarjana IKM Universitas Gajah Mada, 1988) p. 23.
[8] Sudargo Gautama, *Essays in Indonesian Law*, (Bandung: Citra Aditya Bakti 1991) p. 188 - 189.
[9] B. Sonny Bal, "An Introduction to Medical Malpractice in the United States", *Clinical orthopaedics and related research*, vol. 467, no. 2 (2009), p.340.

compensation because of errors or negligence within malpractice understanding regarding the health services they receive.

Confusion about the malpractice definition has occasionally occurred during law enforcement implementation, according to that overview Soerjono Soekanto said "If the definition of malpractice can be used as a temporary guide, then the benchmark for the occurrence of malpractice or not, lies first of all on whether the perpetrator is a professional or not. If it can be determined that the person concerned is a professional, then if he makes a mistake (either intentionally due to negligence), the incident or event is called malpractice. This needs to be underlined because so far in Indonesia there is a tendency to link malpractice only with health workers, especially physicians, even though a lawyer and accountant, for example, may commit malpractice."

To enrich our insight on malpractice understanding, under the World Medical Assembly which was held in Spain in September 1992, medical malpractice is a violation of procedure caused by a physician who fails to perform under a certain standard of professional care to treat a patient's condition, or in other words the physician has the inadequate skill to care the patient which causes negligence in providing such care to the patient, and cause of an injury or harm to the patient.[10] According to the Great Dictionary of the Indonesian Language, malpractice is defined as "*medical practice that is wrong, inappropriate, violates the law or the ethics code.*" According to Hubert W. Smith, medical malpractice includes 4-D of negligences, as follows: 1) There is a duty, in this element, there is no negligence if there is no obligation, therefore the first element states that there must be a legal relation under the law between the patient and the physician or healthcare facility. 2) There is a deviation in the implementation of duties (dereliction), where a physician performs an obligation to a patient who deviates from the professional standard. 3) Irregularities will result in direct caution, in this element there is a clear causal relationship between the medical action taken by the physician and the damage suffered by the patient. 4) The physician will cause damage (damage), namely that the physician's medical action undertaken was the direct cause of losses to the patient[11]. Also, malpractice includes the following criteria: 1) There are regulations on the law; 2) There is a legal relation or jural relationship between the parties; 3) There is a violation

[10] World Medical Assembly "World Medical Association Statement on Medical Malpractice", *Statement on Medical Practice* (23 March 2017) https://www.wma.net/policies-post/world-medical-association-statement-on-medical-malpractice/, accessed 29 May 2021.

of rights and obligations; 4) There are legal consequences that result.[12] Based on the definitions mentioned above, malpractice could be recognized as a failure of physician performance which fulfills the elements of violated action that lead to non-performance and/or tort action and/or criminal offense due to negligence or deliberately which one even though telemedicine provider considered as a professional yet violated applicable law, ethics code, and medical discipline that results in patient injury.

In the context of the telemedicine era, telemedicine malpractice may be the occurrence of physician's malpractice over distance during the conduct of clinic authority of telemedicine under law particularly according to PCRN 74/2020. Additionally, the health care services are solely allowed to provide telemedicine service under physician practice, on the contrary, physicians are not allowed to provide telemedicine directly without health services facilities, thus the main liability is addressed to physicians and healthcare facilities and this notion conforms with Article 193 of Law 17/2023, the hospital has a legal liability to provide tort remedies caused by its medical professional who works under their employment.

4. Legal Remedies And Liability

In any case, where telemedicine malpractice occurs, the patient may take several preference legal actions against the healthcare facilities and/or physician. Principally, the legal basis stipulated in Article 276 of letter g Law 17/2023 bestowed the rights of the patient to claim compensation due to errors or negligence in medical treatment provided by health services.

Civil Lawsuit and Vicarious Liability

Henceforth, the following preferences of the legal basis that telemedicine malpractice victims may take to defend their rights. Firstly, Tort act lawsuit, according to Article 1365 of the Indonesian Civil Code ("**ICC**"), a person who has suffered damage or loss is entitled to obtain remedies and compensation as stated: *"A party who commits a tort act which causes damage to another party shall be obliged to compensate therefor"*. In this matter, the issues are not addressed to the agreement between health care facilities or physicians with the patient. Another key thing to remember is that a tort act consists of the following elements: a) There is a legal action; b) the action is against the applicable law or unlawful; c) Wrongness or fault; d) Injuries; and e) the casualty

[12] Hubert W. Smith, *Kesalahan Dokter atau Tindak Malpraktik*, (Jakarta: Penerbit Buku Kedokteran EGC, 2008) p. 40.

connection between the act and the injury.[13] If the patient and telemedicine provider do not agree, this lawsuit can exercise to claim compensation regarding malpractice while considering these tort act elements as previously mentioned.

In terms of liability, Indonesia in civil law or concerning tort law as states 1365 Indonesian Civil Code 1367 paragraph (1) states A person may be held responsible not only for their actions but also for the actions of their dependents or goods under their control, which encompasses the concept of vicarious liability. Vicarious liability is a person's responsibility for wrongful acts committed by another person (the legal responsibility of one person for the wrongful acts of another). This means the healthcare facility can be burdened by the responsibility of its physicians who commit malpractice to the patient, hence the patient can file a lawsuit against physicians and healthcare facilities simultaneously. This liability concept is confirmed in Article 193 Law 17/2023 that the hospital as one of the recognized healthcare facilities must take responsibility for loss caused by its employees.[14] Secondly, if the patient and physicians have a therapeutic agreement that stipulates the obligation and risk regarding telemedicine, the patient may pursue legal remedies with the breach of contract lawsuit, this legal remedy is intended to protect rights between disputed parties who have concluded in certain agreement regulated under Article 1243 of ICC which stressed elements of non-performance as follows: a) Total failure to perform the agreement; b) Failure to performs the agreement within the agreed timeframe and c) Failure to perform the agreement properly. In light of these elements, we have a better understanding of non-performance lawsuits, which means that they can only be taken if the patient and telemedicine provider have come to a therapeutic agreement. [15]

Criminal Charges

A criminal charges is *ultimum remedium* which means the latest resort to settle the dispute between patient and physician, one of the Criminal Law principles recognized in Indonesia, within that view, the Criminal charge is the last legal effort in the case all Civil law is unable to provide justice to the patient or victim and the violation has complied all element stipulated in criminal offense.

[13] Rosa Agustina et al, *Hukum Perikatan (Law of Obligations)*, (Jakarta:Universitas Indonesia, Universitas Leiden, Universitas Groningen, 2012) p. 8

[14] Pery Kurnia, "The Application of Strict Liability and Vicarious Liability Principles in The Corporate Responsibility System in Corruption Criminal Cases in Indonesia" *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)*, vol 5, no 3 (2022), p. 21671

[15] Rosa Agsutina dkk, *Hukum Perikatan (Law of Obligations)…,* p. 121

Law 17/2023 provides specific regulations to charge the physician who conducts violations such as malpractice action, Article 440 paragraphs (1) and (2) states: "*(1) Every Medical Personnel or Health Personnel who commits negligence which results in a patient being seriously injured will be punished with imprisonment for a maximum of 3 (three) years or a fine of a maximum of Rp. 250,000,000,000 (two hundred and fifty million rupiah). (2) If the negligence as intended in paragraph (1) results in death, each Medical Personnel or Health Personnel shall be punished with imprisonment for a maximum of 5 (five) years or a fine of a maximum of Rp. 500,000,000.00 (five hundred million rupiah).*". With all things considered, it seems reasonable to assume that a criminal charge is preferable if the telemedicine provider committed malpractice that caused death or bodily harm and complies with all criminal offense elements accused. While civil law uses vicarious liability, the criminal charge as mentioned in Article 440 paragraphs (1) and (2) Law 17/2023 clearly states crime responsibility solely to the individuals who commit the crime, which means the healthcare facility as the company where they practice does not hold any responsible in criminal charges for the violation that classified as a crime.

Above all, it seems the tort lawsuit and criminal charges can be taken simultaneously if conditions allow and necessary due to the complexity of violations committed by telemedicine providers which fulfill entire elements of a tort lawsuit or criminal charge. However, Article 308 Law 17/2023 requires a recommendation from the Indonesian Medical Disciplinary Board, if the patient is willing to press a criminal charge or file a civil lawsuit against the physician.

Alternative Dispute Resolution

Under the new paradigm as stated in Article 310 Law 17/2023, in case there is a dispute between a medical professional or health professional about health services that is caused by tort action and leads to loss suffered by the patient, the dispute shall be submitted to alternative dispute resolution rather than court. Article 310 Law 17/2023 states:*"In the event that a Medical Personnel or Health Personnel is suspected of making a mistake in carrying out their profession which causes harm to the Patient, the dispute arising as a result of the mistake is resolved first through alternative dispute resolution outside of court."*This means the current legal framework promotes the settlement of disputes between patients and physicians to be submitted to alternative dispute resolution.

Alternative dispute resolution notion has been recognized and implemented in several regulations. Alternative dispute resolution that a patient may take means that the patient may settle and claim the rights without court or adjudicative processes[16]. Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution ("**Law 30/1999**") stated explicitly the kind of method used in Alternative Dispute Resolution ("ADR") to settle the disputes through procedures or amicably manner agreed upon by the parties outside the courts as follows: 1) arbitration; 2) consultation; 3) negotiation, 4) mediation, 5) conciliation, and 6) expert determination.[17] Therefore with this in mind, the next chapter discusses ADR that patients or victims may take to defend their rights. Firstly, the ADR provides Article 5 of Law 30/1999 states the dispute that only can be submitted to arbitration if the dispute is regarding the commerce sector. However, the problem that may arise from this point is that Article 5 Law 30/1999 seems contradictive to Article 310 Law 17/2023. If the writer analyzes further, Article 5 Law 30/1999 does not stipulate any matter other than the commerce sector, which means arbitration to settle health services matters is not yet allowed or regulated. Nevertheless, if the arbitration is allowed to settle the dispute between the patient and physicians, and the parties have to sign an arbitration agreement or express their consent to agree that the dispute will be brought to arbitration.

CONCLUSION AND RECOMMENDATION

In the final analysis, it is important to understand telemedicine's legal standing. Indeed, telemedicine has been sufficiently regulated in PCRN 74/2020 and Law 17/2023. More derivative rules such as Government Regulations provide certainty to protect patients as telemedicine users. In summary, telemedicine only can be operated by medical professionals who obtain practice licenses and work under a registered healthcare facility.

Importantly, in case the patient suffers loss caused by the malpractice or negligence while using telemedicine, the patient as a telemedicine user has several preferences of legal action if suffers a disadvantage due to telemedicine malpractice: a) Civil lawsuit against the healthcare facility as telemedicine provider and physician as a medical professional under ICC and Law 17/2023; and b) press criminal charges according to Article 440 of Law 17/2023 on negligence committed by the physician.

[16] Krystyna Blokhina Gilkis, "Alternative Dispute Resolution", *law.cornell.edu* (8 June 2017), https://www.law.cornell.edu/wex/alternative_dispute_resolution, accessed 12 July 2021.
[17] Frans Hendra WInarta, *Hukum Penyelesaian Sengketa-Arbitrase Nasional Indonesia & Internasional*, (Jakarta:Sinar Grafika Offset, 2011) p. 7.

However, Article 310 of Law 17/2023 does not clearly state whether ADR is mandatory to be through by the parties before bringing the health dispute to the court, but if the patients or victim will to file a lawsuit or press criminal charges on the physician, then it requires MKDKI recommendation as mentioned in Article 308 Law 17/2023. Moreover, the ADR methods such as can be used for health disputes are consultancy, mediation, negotiation, conciliation, and expert determination, except the arbitration which explicitly states solely for commerce sector matters which the health sector is not one of the categories mentioned in Law 30/1999.

The researcher opines that is important to revise or issue specific derivative regulations such as Government Regulations as implementation rules under Law 17/2023 to establish independent arbitration to settle health disputes between the disputed parties. This legal certainty will give the opportunity between the parties to avoid the litigation process such as court which will take a long time.

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