

Doctor Authority in Online Health Consultation

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Abstract. Nowadays in the development of internet, there are many online applications in the health sector that provide online consultation services with doctors. But until now, there are no clear or specific regulations have been issued regarding online health consultation. One of authority violation is often done by doctors in online health consultation is such as giving definitive diagnoses up to giving prescriptions. Where to do these actions should be only done by the doctors when conducting direct examinations to the patients. This research is normative with descriptive research types. The collected data is then analyzed qualitatively into structured and logical sentences. This research is to find out development, the legal relationship, and doctor authority in online health consultation. Online health consultation requires elements of the agreement law. Doctors are not permitted to provide definitive diagnoses and provide prescriptions or drug therapy to patients. Because of its nature, online consultation cannot replace the direct interaction between doctors and patients. Hopefully, there will be a specific regulation about online health consultation so as to provide legal certainty and provide clear authority for doctors in giving online health consultation.

Keywords: doctor; authority; online health consultation

1 Introduction

In the current digital era, the development of technology, especially internet, is growing rapidly. The internet can provide convenience for humans in their daily activities. Many sectors nowadays have used the internet a lot so that it can simplify work and connect many people from various places so that distance is no longer a meaningful limit for now. One sector that also utilizes internet technology is the health sector. Today, many people can get various healths' information on the internet. However, health information that is spread on the internet cannot be easily trusted by many people because there are still many health information that prove hoaxes or false news, so people need a review to prove that the health information is absolutely correct.

Doctor as a professional profession in the sector of health, is one of the professions which is trusted by people to get health information. Previously, if people wanted to overcome their health problems, they had to visit the doctors directly (face to face). But due to the development of the internet, there are many online applications media in the health sector that provide online consultation services with doctors. From taking online health consultation, people can find out the cause, risk factors, possible diagnosis of the disease, management actions which can be done at home, recognize signs of emergencies and follow up actions

which should be taken by them related to their health problems. Even online health consultation can be a second opinion when someone who had consulted directly to particular doctor still does not feel satisfied with the health information, so the person can ask doctor again via online application to make it more clearly.

Besides considering the advantages, actually the use of online health consultation has been debated by several parties, with opinions ranging from overwhelming support to strong opposition. Among the concerns raised regarding online health consultation are: their reliability for making clinical decisions, protection of patient data with respect to privacy, impact on the doctor-patient relationship, and proper integration into the workplace.

Until now, there are no clear or specific regulations have been issued regarding online health consultation, especially in Indonesia. The implementation of online health consultation in Indonesia is expected to be based on the *Undang-Undang Dasar 1945*, *Undang-Undang No. 29 Tahun 2004 tentang Praktik Kedokteran*, *UU No. 36 Tahun 2009 tentang Kesehatan*, *Kode Etik Kedokteran Indonesia (KODEKI)*, *UU No. 19 Tahun 2015 tentang Informasi Transaksi Elektronik (ITE)*, and *Peraturan Pemerintah Nomor 82 Tahun 2012 tentang Penyelenggaraan Sistem dan Transaksi Elektronik (PP PSTE)*. Online health consultation also requires elements of the agreement law. The agreement includes agreements between doctors and service providers for online consultation application, agreements between doctors and patients, and agreements between patients and service providers for online consultation application. In online consultation between patients and doctors, actually is included in a therapeutic transaction, where there is a legal relationship that gives rights and obligations for both parties. By understanding to the contents of the agreement and the applicable legislation, is hoped that online health consultation can run well among doctors, patients, and service providers so there will be no parties who do not fulfill the achievement and who are harmed.

One of authority violation by doctors in online health consultation such as providing definitive diagnoses up to giving pharmacotherapy (prescriptions) for patients of online consultation application (user), even drugs that are prescript by the doctors are classified as hard drugs. Where to do these actions should be only done by the doctors when conducting direct examinations to the patients. In this case, establishing standards and policies within online health consultation will be necessary to ensure ethical and transparent conduct. Rigorous evaluation, validation, and the development of best-practice standards for an online health consultation are greatly needed to ensure a fundamental level of quality and safety when the tools are used. So, ultimately it will provide meaningful, accurate and timely information and guidance to the patients in order to serve the vital purpose of improving patients outcomes. One thing that needs to be emphasized in organizing online health consultation is the use only for consultation about health issues, not as a media for giving definitive diagnosis and giving pharmacotherapy for patients. Because of its nature, online consultation cannot replace the direct interaction between doctors and patients.

Based on the background above, the authors are interested in discussing doctor authority in online health consultation. This problem needs to be discussed further, because according to the authors' observation, this problem is still rarely discussed and the legal aspects that govern this problem are not yet clear.

2 Methods

This research is normative with descriptive research types. A normative approach is an approach through literature study by reading, quoting, and analyzing legal theories and legislation related to problems in research. Data sources were obtained from literature studies and observations in some online applications of health consultation that connect doctors and patients.

3 Results and Discussion

3.1 Development of Online Health Consultation

Along with the development of the internet, online health consultation is also experiencing growth. Online health consultation is a practice of medicine that uses technology. This kind of technology can help patient to reach the doctors for consultation. In Indonesia, the development of online health consultation began with e-Health (electronic Health) which was first created by the Surabaya City Government through the Health Office and received appreciation from many people in 2015. The presence of this e-Health application triggered the emergence of others online health applications.

The development of online health consultation started with web-based. If patients want to consult with their doctors online, patients need to visit certain health websites or consult via e-mail using a computer or laptop. Weaknesses in this system are more one-way or less interactive, where the patients tell and ask about the health problems experienced, then the doctors immediately answer the questions from the patients without the doctors doing a deeper anamnesis of the patients' health problems. In addition, the response of doctors also tend to be slower in answering patients questions because there is no time limit so patients need to wait for a doctors' reply long enough and sometimes the patients do not know when the doctors have answered the question.

The screenshot shows a chat interface with a patient and a doctor. The patient's message is on the left, and the doctor's response is on the right. The patient asks about stomach pain after drinking milk. The doctor provides a detailed explanation of acid reflux and offers several lifestyle and dietary recommendations.

Sakit perut pasca konsumsi susu kedelai.

6 April 2019, 13:43

Anggota

Dok saya wanita usia 24th., saya mau tanya kenapa setiap setelah minum susu kedelai perut sya terasa penuh, sakit, sebah kadang agak mual.. Saya memang pernah di bilang punya sakit asam lambung, entah itu berpengaruh atau tidak.. mohon penjelasannya dok

7 April 2019, 10:45

Dr. [Redacted]
Dokter

Alo Miss,
Terimakasih telah bertanya ke Alodokter.
Perut yang terasa nyeri, sebah, dan mual memang bisa menjadi salah satu portanda peningkatan asam lambung, atau dalam ranah medis disebut dengan sindroma dispepsia. Khususnya, sensasi tidak nyaman di perut yang muncul akibat kondisi ini akan terasa dominan di perut bagian atas (ulu hati, epigastrik), bisa juga menjalar hingga ke dada, tenggorokan, punggung, dan area perut lainnya. Pada kasus yang lebih berat, bisa juga penderita mengalami muntah-muntah, sesak napas, hingga penurunan nafsu makan yang cukup hebat hingga berat badan ikut menurun. Pada orang yang sensitif, kondisi ini bisa dicetuskan oleh banyak faktor, termasuk juga karena konsumsi susu pada kondisi perut yang sedang kosong.

Tidak hanya sindroma dispepsia, mungkin juga, keluhan-keluhan Anda terjadi akibat pencetus lain, contohnya intoleransi laktosa, malabsorpsi karbohidrat, keracunan makanan, alergi makanan, infeksi pencernaan, ileus obstruktif, kolangitis, pankreatitis, hepatitis, gangguan psikosomatis, dan sebagainya.
Diperlukan pemeriksaan fisik menyeluruh dan juga beberapa tes penunjang, contohnya USG, laboratorium, atau endoskopi, dalam upaya penegakkan diagnosis yang tepat. Maka dari itu, saran kami, periksakan diri Anda langsung ke dokter atau dokter spesialis penyakit dalam supaya kondisi Anda bisa ditangani dengan baik sesuai penyebab yang mendasarinya. Di rumah, Anda bisa lakukan juga trik berikut agar keluhan mereda:

- Kompres perut yang tidak nyaman dengan air hangat
- Hindari konsumsi makanan dan minuman yang bisa memicu peningkatan asam lambung, terlebih dalam kondisi perut yang sedang kosong, contohnya susu, makanan pedas, buah-buahan yang masam, kol, sawi, umbi-umbian, kopi, teh, minuman bersoda, gorengan, santan
- Makan dengan porsi kecil tapi sering
- Makan makanan yang lebih mudah dicerna
- Jangan langsung tidur usai makan
- Perbanyak minum air putih
- Jangan stres ataupun kelelahan
- Jangan sembarangan minum obat

Semoga membantu ya..

Fig 1. Consultation with Doctor via Website

However, now consultation with doctors can use online applications that can be directly downloaded via a smartphone in the Play Store or App Store so that it is more practical, interactive, fast and efficient. The patients can tell and ask about their health problems, then the doctors can do a deeper anamnesis so that the doctors can provide better and more accurate advices, plus the doctors' response is faster as we chat through the chat applications (such as

WhatsApp, Line, etc). If the patients still feel unclear to understand the explanation from the doctors, the patients can still ask directly and the doctors can directly answer the patients' question.

Some examples of online health consultation applications that can be downloaded on smartphones are Alodokter, Halodoc, KlikDokter, Go-Doc, YesDok and others. In using online health consultation, patients are not charged fees, especially if consulting a general practitioner, but if consulting a specialist, it can cost around Rp. 15,000 - Rp. 50,000.00 per one consultation session. After the patients have consulted, the patients can give a positive or negative review regarding the services provided by the doctors. Besides, providing a question and answer consultation service with doctors, these online applications also provide services to search for health information in the form of articles, the nearest doctors around the residence, the nearest hospitals, estimating the location and cost of medical treatment, offering health insurance, making emergency calls, even buying drugs.



Fig 2. Consultation with Doctor via Online Health Application

3.2 Legal Relationship between Doctor and Patient in Online Health Consultation

Online health consultation requires elements of the agreement law. The agreement includes agreements between doctors and service providers for online consultation applications, agreements between doctors and patients, and agreements between patients and service providers for online consultation applications. According to Subekti, an agreement is an event that someone promises to do something. The legal requirements of an agreement as stipulated in article 1320 of the Civil Code, the elements of which are as follows: an agreement from those who tie themselves together (toestemingva de genen die zichverbinden), the ability to make an agreement (debekwaamheid om eene verbintenis aan te gaan), concerning a matter (een bepaald onderwerp), and a cause which is permissible (eene geoorloofdeoorzaak).

According to R. Wirjono Prodjodikoro, an agreement is a legal act concerning property of wealth between two parties, in which one party promises or is considered promising to do something or to do nothing, while the other party has the right to demand the implementation

of the promise. According to Sudikno Mertokusumo, the agreement is not a legal act, but is a legal relationship between two people who agree to cause legal consequences. This is also in accordance with the theory statement (Uniting's Theory) theory of the occurrence of a contract in which the statement of agreement occurs when the party receiving the offer states that he received the offer. According to Mariam Darius Badruzaman, the element of agreement consists of bidding, namely the statement of the party offering and accepting, namely the statement of the party receiving the offer.

If a doctor and an online health consultation user (patient) have agreed on an agreement, it will cause legal consequences. An agreement will cause legal consequences, that is: the agreement binds the parties as a law or the Principle of Pacta Sunt Servanda as stipulated in Article 1338 of the Civil Code, "all agreements those are legally made apply laws for those who make them." If a patient has chosen or be willing to consult with a doctor by pressing the "start chat" button so the doctor and patient are bound by an agreement.

The above agreement between patients and doctors via online health consultation is a form of agreement through an electronic contract. Based on Pasal 47 ayat (2) *PP Nomor 82 Tahun 2012 tentang Penyelenggaraan Sistem dan Transaksi Elektronik*, electronic contracts are considered valid if: a. there is an agreement between the parties; b. performed by legal subjects who are competent or who are authorized to represent in accordance with the provisions of the legislation; c. there are certain things; d. the object of the transaction must not conflict with the laws, regulations, decency and public order.

For example, in online health consultation via Alodokter application, if the patient agrees to use the "Ask a Doctor" service, the patient is deemed to have agreed to the terms and conditions that apply to Alodokter, such as:

1. This service will not be used in an emergency, including but not limited to any medical conditions that require rapid treatment or physical examination by a doctor;
2. This service will not be used to obtain treatment dispensations from doctors in any form;
3. This service may not be considered to replace any physical examination, diagnosis or treatment by a doctor or other health care provider; and
4. Alodokter's responsibility is simply to provide technology that facilitates communication and interaction between you and the service provider.

Therefore, patients need to understand that consultation with doctors via online health consultation cannot be used to get personal diagnosis certainty about illness. The conversation within online health consultation cannot replace direct interaction with the doctors, even for emergency conditions, it is necessary to immediately see the nearest doctors or hospital. Patients are also not permitted to request treatment or prescription through an online health consultation. According to Munandar Wahyudin, the relationship between doctors and patients in collaboration is based on the patients' trust in doctors to treat and treat it as a therapeutic transaction. According to Endang Kusuma Astuti, in therapeutic transaction that become objects are efforts to cure (*Inspanningverbintenis*). Therapeutic agreement is included in the category of agreement to do certain services regulated in Article 1601 of the Civil Code.

Elaboration of the elements of the agreement of Article 1601 of the Civil Code with the therapeutic agreement as follows:

1. In a therapeutic agreement, the element that is employed is the doctor's maximum effort towards healing patients who are carried out carefully and does not promise results.
2. The service element in a therapeutic agreement is a service provided by a doctor as a health care provider.

3. Certain time elements in the therapeutic agreement.
4. The wage element in a therapeutic agreement depends on the rate set by the hospital or health care provider itself.

Sometimes, this is often a form of misunderstanding by ordinary people where the recovery of patients is the object of therapeutic transaction. Whereas the object of therapeutic transaction is actually the doctors' efforts in treating patients, not the recovery of patients because if the patients' recovery is used as an object, it will further corner the doctors. Health efforts in therapeutic transaction between doctors and patients include health efforts, namely: promotive efforts (efforts to improve health), preventive efforts (prevention efforts), curative efforts (healing or treatment efforts), and rehabilitative efforts (recovery efforts).

3.3 Doctor Authority in Online Health Consultation

In monitoring the development of online health consultation, a guideline is needed to make online health consultation stays in the good track. The U.S. Federation of State Medical Boards (FSMB) published "Model Guidelines for the Appropriate Use of the Internet in Medical Practice" in 2002. The guideline contains the rules of prescription practice, unacceptable standard of care (online questionnaire or consultation), furthermore the FSMB guideline state that electronic communications cannot replace the crucial interpersonal interaction that create the very basis of the physician-patient relationship.

Another guideline issued in 2003 by the American Medical Association (AMA). This guideline is about online prescribing medicine to patient. AMA guideline state that physician must establish or have an established a valid patient-physician relationship when they prescribed medication to the patient via internet. In the U.S., there were many states have passed laws that add prescribing without first conducting a physical examination is a form of unprofessional conduct.

There have been doctors prosecuted because of prescribing drug case using online health consultation. In the U.K. for example, Dr. Richard Franklin was found guilty by General Medical Council (GMC). The GMC sued the doctor for serious professional misconduct after prescribing drugs online. Dr. Franklin prescribed the drugs, based on the patient questionnaire that filled out by the patient when doing an online consultation. In this case, what Dr. Franklin did was wrong. The GMC also sued Dr. Franklin because he didn't carry out an adequate assessment of the patient's condition, it means that he didn't act in the best interest of his patients. Another case is from U.S. In this case, Dr. Shreelal Shindore of Florida prescribed a Schedule IV controlled substance to a patient based on the internet questionnaire without conducting a physical examination, obtaining a complete history, making a diagnosis, or establishing treatment plan. As a consequence, she lost her medical license because of this case.

In Indonesia, actually there have not been big cases about online health consultation. Even though there have not been cases that come up, we still can see it from the user experience review of the application for online health consultation. There are some reviews of dissatisfaction, such as the doctor gave prescriptions for a patient to cure cough symptoms, but after the treatment, the symptoms of the patient got worse and the patient asked about the responsivity of the doctor who gave him the treatment. Not only that, but also there was a doctor who wrote a review about his patient who suffered fever for a day, but his patient had got azithromycin (one of antibiotic that is to treat wide variety of bacterial infections) from that application. While actually that antibiotic is not directly needed, unnecessary use or misuse of the antibiotic can lead to its decreased effectiveness or risk of resistance.

In online health consultation with doctors, it is actually included in therapeutic transaction where doctors provide healing efforts, especially in promotive aspects (health improvement efforts) and preventive aspects (prevention efforts). Doctors also need to understand that the authority in this online health consultation is not absolute for curative or treatment efforts because to treat a disease cannot be arbitrary, of course further and deeper anamnesis, comprehensive physical examination directly, and even extra examinations are needed so that the doctors can make a diagnosis and provide appropriate treatments.

For example, doctors who work in the online health consultation, like Alodokter, also have authority based on agreements with the service provider of the online application in answering questions from patients so that answers from doctors are not hoped to violate agreements and harm many parties.

The doctors' guide in answering patients questions via online health consultation, Alodokter such as:

1. Greet patients with friendliness,
2. Perform anamnesis (in-depth interviews) about health problems experienced by patients,
3. Provide an explanation of the differential diagnosis (not a definitive diagnosis) regarding the possibility of a patient's illness (minimum 3 differential diagnosis),
4. Provide appropriate education and according to evidence based medicine (EBM). Providing education must be informative and fully explained, not half-hearted or just give a sentence and be in a hurry,
5. Build a pleasant atmosphere of conversation,
6. If needed only suggest green labeled drugs (free drugs), such as: Paracetamol, Antacids, OBH, and other green labeled medicines,
7. Always give home remedy (advice on handling at home),
8. Provide knowledge about the existence of Red Flag or danger signs that must be known about the conditions experienced by patients,
9. Always recommend seeing a doctor directly,
10. Do not mention any brand in the conversation in the application.

So, doctors who are already bound by an online application provider are required to follow the guidelines that have been set. In this online health consultation, the doctors act as Interactive Medical Advisors who are expected to build an atmosphere of conversation with patients comprehensively to provide explanations in easy-to-understand languages and the best advice on patients health problems. Doctors are not permitted to provide definitive diagnoses and provide prescriptions or drug therapy to patients, especially drugs other than the green logo. Enforcement of diagnosis and prescription of drugs without conducting a deeper anamnesis and without conducting a direct examination are certainly not justifiable and violates the agreement that has been in force.

Therefore, doctors still have to maintain their professionalism in answering questions from patients via online health consultation. According to the provisions of article 1234 of the Civil Code, the form of achievement can be in the form of giving something, to do something, or not to do something:

1. Giving Something
Providing something in an agreement that is giving up goods and still taking good care of the goods as appropriate to maintain their own belongings as well as caring for other property, which will not be left to others.
2. Do something

Doing something in an agreement that means doing something as specified in the agreement. So the form of achievement here is to do certain actions.

3. Don't do Something

Not doing something in an engagement that means not doing an action as agreed.

And there are four general form of agreement violations (default):

1. Do not do what is agreed to be done
2. Do what was promised but not as agreed
3. Do what was promised but late
4. Do something that is by agreement cannot be done

The achievement of the relationship between doctors and patients in therapeutic transaction in online health consultation is in the form of "doing something" in which the doctors provide an explanation or suggestion regarding the problem of the patients' disease according to guidelines set by the service provider of online health consultation. Other forms of achievement are also in the form of "doing nothing" where doctors are not allowed to provide definitive diagnoses and prescribe medicines, especially drugs classified as hard drugs.

If the doctors give definitive diagnoses and prescribe medicines to the patients via online health consultation, it means that the doctors do not fulfill the achievement well where the essence of online consultation should not replace direct interactions between doctors and patients, especially in terms of diagnosis and therapy because it is feared, there will be misdiagnosis and mistreatment that can harm patients in therapeutic transaction. Not only it violates the essence of the agreement, but it is also unethical. Because according to Article 2 KODEKI in 2012 states that a doctor must always make professional decisions independently and maintain professional behavior in the highest measure. Professional medical decision making referred to in Article 2, is carried out after conducting a thorough examination and evaluation of patients using legally recognized medical service standards or guidelines.

Determining definitive diagnoses and giving drug therapy (hard drug classes) without conducting a direct examination are not appropriate authority of doctors. In carrying out medical practice, the doctors should work based on patients complaints or problems, then proceed with tracing the medical history (anamnesis), physical examination, and extra investigation. Because doctors need to pay attention to the patients' aspects holistically and comprehensively, which generally cannot be done through online consultation. It aims to provide healing efforts and improve the patients' health status.

4 Conclusion and Recommendation

From articles above, it can be concluded into three main points:

1. The development of online health consultation in Indonesia has grown rapidly, where many online applications can be found that can be downloaded on smartphones so that they are more practical, more interactive, faster and more efficient and make it easier for people to consult with doctors about health problems experienced.
2. Online health consultation requires elements of the agreement law. The agreement includes agreements between doctors and service providers for online consultation applications, agreements between doctors and patients, and agreements between patients and online consulting service providers.
3. One form of authority violations that carried out by doctors in online health consultation is to determine definitive diagnoses and to give prescriptions of hard

drugs without conducting direct examinations of the patients. This is feared to cause misdiagnosis and mistreatment that can harm patients.

Online health consultation should be regulated in specific regulation so as to provide legal certainty and provide clear authority, especially for doctors to be able to reduce the violations of doctor ethics and errors in diagnosis and treatment.

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