THE PRINCIPLES OF LIABILITY ON TELEMEDICINE PRACTICES

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Abstract

The main objective of this research is to find a proper legal principles of liability on the law of telemedicine. To reach this objective, the statute, conceptual, comparative and case approach are used as tools of the research. Some legal materials, such as Burgerlijk Wetboek (BW), Government Gazette No. 23 of 1847, Law No. 36 Year 2009 on Health, and Law No. 29 of 2004 regarding Medical Practice in conjunction with Regulation of the Minister of Health of the Republic of Indonesia Number 2052/Menkes/PER/X/2011 on the Licence of Medical Practice, and Law No. 44 Year 2009 on Hospitals are used as the factoring point of the research, and also the law of telemedicine implemented by some other countries are used as the legal comparison to review such principles of the present laws and to propose the future telemedicine law.

As the fact that the law of telemedicine still does not exist in Indonesia, it might be some problems for Judges to decide cases related to liability of risk on the practice of telemedicine. Pursuant to Article 24 paragraph (1) of the 1945 Constitution and Article 5 (1) of Law Number 48 of 2009 on Judicial Authority, to decide a case that appearing to him, the judge should explore and understand the legal values, as well as the social justice. Thus, the application of paragraph 3 of Article 1367 BW and Article 46 of Law Number 44 of 2009 on Hospital, should be in the context of proportional justice, where the needs of the patients for the safety medical services meets with the professional liability of the telemedicine practitioners.

The theory of this dissertation is structured by the relationship among code of ethics, professional standards, service standards and standard operating procedures that regulates the telemedicine practitioners which his or her actions are legitimated by the delegation of power of the primary care physician (PCP). By this structure, the liability of risk arises from the telemedicine practice of the subordinate does not necessarily to be based on fault by the primary PCP or primary nurse as it is stated by doctrine of vicarious liability. Concept of "proportional liability" on this dissertation means the balance distribution of rights and obligations of the professionals linked to a telemedicine practices, where the proportion liability to each party's is based on equitability, appropriate, reasonable and fair valuation. In line with the previous concept, the liability should based on viewpoint of interactive justice, that means based on the values of professional expertise, austerity, responsibility, and collegiality. This concept dedicated for the desire to do good for the sake of healing a patient (doing good).

Keywords: Liability, Medical Practice, Telemedicine