

Patient Legal Protection in the Digital Era and Study of Telemedicine Services in Indonesia

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Abstract

The development of digital technology has brought significant transformations in the health sector, including in the implementation of telemedicine. Telemedicine allows interaction between doctors and patients through electronic media, which offers convenience in health services, especially in remote areas. However, the practice of telemedicine also poses various challenges, especially related to legal protection for patients. This study aims to examine the legal protection provided to patients in the digital era, especially in the context of telemedicine in Indonesia. In addition, this study also evaluates the telemedicine regulations that apply in Indonesia. Government Regulation No. 28 of 2024 is an implementing regulation of Law Number 17 of 2023 concerning Health. Regulation of the Minister of Health Number 20 of 2019 regulates the Implementation of Telemedicine Services Between Health Service Facilities. Through a normative juridical approach, this study highlights various legal issues related to patient data privacy, health service standards, legal responsibilities of medical personnel, and guarantees of legal protection for patients in telemedicine services. The results of this research are expected to contribute to the development of more comprehensive regulations and ensure that patients' rights are protected in the digital era.

Keywords: Legal Protection, Patients, Digital Era, Telemedicine, Regulation, Indonesia.

INTRODUCTION

The rapid development of information and communication technology (ICT) has had a major impact on various sectors, including the health sector. In this digital era, telemedicine has emerged as one of the significant innovations that facilitate access to telehealth services through digital media. Reflecting on technological advances that facilitate all activities, medical practice has experienced rapid development, especially in its implementation. One of the technological advances that has a significant impact is the presence of telemedicine services. Telemedicine makes it easy for patients to consult a specialist doctor according to their complaints without having to meet in person.

This service relies on remote communication and consultation, where doctors can provide health services without distance constraints. In general, telemedicine is an online-based health service, where patients can consult through an application with a doctor who is an expert

in their field without having to be in the same location. As a country of law, Indonesia has regulated telemedicine services in laws and regulations. Article 1 number 1 of the Regulation of the Minister of Health of the Republic of Indonesia Number 20 of 2019 concerning the Implementation of Telemedicine Services Between Health Service Facilities explains that telemedicine is a health service that is carried out remotely using information and communication technology. (Permenkes RI, 2019)

These services include the exchange of information related to diagnosis, treatment, disease and injury prevention, research and evaluation, and continuing education for health workers for the improvement of individual and community health. In practice, telemedicine services are organized by health workers who have a practice license at health service facilities that provide telemedicine. The organizer facilities are divided into two, namely consultation providers and consultation requesters. (Andrianto & Athira, 2022)

Consultation facilities are usually private hospitals, hospitals owned by the central and regional governments, as well as private partners such as Halodoc, Alodokter, KlikDokter, LinkSehat, and telemedicine services from hospitals, such as public hospitals. Based on a survey by the Katadata Insight Center (KIC), Halodoc is the most widely used telemedicine application by the Indonesian people, with a percentage of 46.5%. (Isnaini, 2022)

Although telemedicine offers various conveniences, its implementation also presents various challenges, especially related to legal protection for patients and medical personnel. In Indonesia, the regulations governing telemedicine are still in the development and adaptation stage. The lack of clear operating standards of procedures and comprehensive regulations poses a risk of legal uncertainty, which can be detrimental to both patients and medical personnel. The main issues that arise from the use of telemedicine are related to the security of patient data and the privacy of health information. Patients have the right to protection for their data privacy as well as healthcare services that are of the same quality as conventional services. In addition, medical personnel also need legal certainty in order to be able to provide optimal services without fear of facing unwanted legal risks, such as malpractice claims due to diagnoses that may be inaccurate.

This research is relevant considering the ongoing digital transformation in Indonesia, especially in the health sector. In the context of legal protection, there is still a gap between technological developments and existing regulations. Health Law No. 17 of 2023, together with Minister of Health Regulation No. 20 of 2019 concerning the Implementation of Health Services through Telemedicine between Health Service Facilities, has tried to answer some of these challenges, but still does not comprehensively regulate the legal protections needed in the practice of telemedicine, especially for patients and medical personnel. (Presiden RI, 2023)

One of the problems faced is the difficulty in proving cases of medical negligence in telemedicine. The inability to perform a physical examination in person can increase the risk of misdiagnosis, which in turn can be detrimental to the patient. In addition, the lack of clarity about the limits of legal liability in digital interactions between doctors and patients adds to the complexity of legal challenges in telemedicine. Furthermore, the issue of data privacy and security is a major concern in telemedicine services. Patients often feel concerned about how their personal data and medical information are managed and protected. In this digital era, protection against data breaches must be strictly regulated to maintain public trust in the digital-based health system. (Budiyanti & Herlambang, 2021)

This study will not only examine existing regulations, but will also examine how they can be improved to ensure that patients' rights are properly protected. By taking a normative juridical approach, this study will explore the legal steps necessary to ensure justice and protection for all parties involved in telemedicine practice in Indonesia. In the end, this research is expected to make a significant contribution to the development of more effective and

efficient policies in supporting telemedicine services in Indonesia, so as to be able to provide more equitable and safe access to health for the wider community.

RESEARCH METHODS

This research uses normative legal research methods, which include analysis of various library sources or secondary data. This approach examines various related legal regulations such as . Government Regulation No. 28 of 2024 is an implementing regulation of Law Number 17 of 2023 concerning Health. Regulation of the Minister of Health Number 20 of 2019 regulates the Implementation of Telemedicine Services Between Health Service Facilities, and the Central Government. As well as literature that contains theoretical concepts that are relevant to the problem being researched. The collection of legal materials is carried out through literature research techniques, by collecting primary and secondary legal materials that support each other to answer research questions.

The data obtained from this study, both primary and secondary legal materials, will be processed and analyzed qualitatively to gain a deeper understanding. The thinking method used in analyzing legal materials is a deductive method, starting from general things to reach specific conclusions.

DISCUSS AND ANALYSIS

Legal Relations and Telemedicine-Based Health Services

Telemedicine in the digital era has become a solution in expanding access to health services, especially in remote areas. However, the presence of telemedicine also poses new legal challenges related to the relationship between patients, doctors, and telemedicine platform providers. This legal relationship is regulated through various regulations in Indonesia, providing a legal basis for the implementation of telemedicine and protection for the parties involved.(Andrianto & Athira, 2022)

1). Legal Basis of Telemedicine Services

Telemedicine services in Indonesia are regulated by several main regulations. Health Law No. 17 of 2023 defines telemedicine as the provision and facilitation of clinical services through telecommunication and digital communication technology. In addition, the Minister of Health Regulation No. 20 of 2019 specifically regulates telemedicine services between health facilities. This regulation covers different types of services that can be organized through telemedicine, such as teleradiology, teleelectrocardiography, teleultrasound, and teleconsultation.(Budiyanti & Herlambang, 2021)

Telemedicine services themselves also have digital contracts or electronic contracts, according to Thomas J. Smedinghoff, electronic contracts have the meaning of a bond or legal relationship that is carried out electronically by combining a network of computer-based information systems with electronic email systems, or can be combined with other electronic communication media, in this model the agreement that occurs subsequently is called a user agreement that contains rights and obligations of the user as a patient in telemedicine.(Bahreysi, 2018)

2). Legal Relationship Between Doctors and Patients

Legally, the relationship between doctors and patients is a contractual relationship involving the rights and obligations of both parties. However, in the context of telemedicine, there are unique challenges, especially in terms of diagnosis. Telemedicine limits the ability of doctors to perform physical and mental examinations in person, which is an important part of the traditional medical diagnosis process. Without physical contact, the accuracy of the diagnosis can be affected, so doctors have to rely on limited information from remote

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interactions. While technology such as video calls can help, physical examinations still have limitations.

Regulations regarding telemedicine stipulate that medical personnel who provide services must meet the requirements of licensing and applicable authority. In addition, the Minister of Health Regulation No. 20 of 2019, which regulates telemedicine between health care facilities, emphasizes the importance of governance standards, data protection, and technical requirements to maintain the quality of health services. With the presence of Law No. 17 of 2023 and implementing regulations such as Government Regulation No. 28 of 2024, it is hoped that telemedicine regulations will grow, including covering direct relationships between doctors and patients which are increasingly common in line with the digitization of health services. (Bollmeier et al., 2020; Elliott & Yopes, 2019)

3). Telemedicine Platform and Electronic Systems

Telemedicine platforms such as Halodoc, Alodokter, and others operate as electronic system operators in accordance with applicable regulations. This system serves as a liaison between patients and doctors, thus creating a new legal relationship involving the platform as a third party in the implementation of health services.

Based on the Electronic Information and Transaction Law (UU ITE), the legal relationship between patients and platforms is realized through electronic contracts. Article 1 number 1 of the 2024 ITE Law defines an electronic agreement as an agreement made by the parties through an electronic system. Patients who use telemedicine services on the platform must agree to the terms and conditions set by the platform, including terms regarding payment for services and access rights to health information. (Fields, 2020)

4). Legal Protection for Patients and Medical Personnel

Health Law No. 17 of 2023 provides legal protection for patients in telemedicine services by ensuring that the services are provided by medical personnel who have a valid practice license. In addition, the Electronic Information and Transaction Law (UU ITE) 2024 also provides a legal basis for the implementation of electronic systems, including the security of patient data and medical information. Rules regarding *informed consent* in telemedicine it still needs clearer arrangements. Absence of a physical signature from the patient in the process *informed consent* Telemedicine services can pose a legal risk to doctors.

Therefore, it is necessary to update regulations that regulate the mechanism of granting *informed consent* electronically to protect the rights of patients and medical personnel. Legal relations in telemedicine services are regulated by various regulations aimed at providing protection for patients and medical personnel. However, there is still room for improvement, especially regarding the *informed consent* electronically and further regulation regarding the authority of doctors in conducting remote diagnosis. Strong and comprehensive legal protection will be an important foundation for the development of telemedicine in Indonesia. (Tioline, 2023)

Violations of the Law on Telemedicine

1). Lack of Special Regulations on Telemedical Malpractice

The main problem in dealing with telemedicine malpractice in Indonesia is the absence of specific regulations that regulate malpractice in the context of telemedicine. Until now, existing regulations, such as the Health Law and the Electronic Information and Transaction Law (ITE), have not specifically addressed aspects related to malpractice in telemedicine. These regulations, while providing a general legal framework, do not provide clear guidelines in defining and handling cases of telemedicine malpractice.

- a) Health Law No. 17 of 2023 regulates the provision of health services, including telemedicine. However, this law focuses more on the implementation of health services

in general and does not specifically discuss malpractice in telemedicine. (Presiden RI, 2023)

- b) ITE Law Number, 1 of 2024 regulates electronic systems and electronic transactions, but does not detail the problem of malpractice that occurs in telemedicine services that rely on technology. (Presiden RI, 2024)

2). Challenges in the Proof System

The criminal and civil evidence system in Indonesia has not fully accepted electronic-based evidence, including evidence generated from telemedicine services. This is a major obstacle in the case of telemedical malpractice, where evidence of electronic medical records and digital communication is important.

- a) Government Regulation No. 1 of 2024 concerning the Implementation of Electronic Systems and Transactions touches on aspects of electronic systems, but has not yet regulated details about proof in the context of telemedicine.

3). Regulations Related to Electronic Medical Records

- b) Regulation of the Minister of Health No. 24 of 2022 concerning Electronic Medical Records regulates the management of medical records in electronic format. The regulation provides a framework for the management and access of electronic medical records, but it does not explicitly address how electronic medical records can be used in handling malpractice cases. (Permenkes No. 24, 2022)

Electronic medical records allow for continuous evaluation of patients' clinical status and remote monitoring, which is important in the context of telemedicine. However, this regulation requires health care facilities to provide access to medical records to the Ministry of Health, but does not specify the protection of personal data or potential information leakage.

4). Authority and Responsibilities in Telemedicine

In telemedicine, doctors have the authority to provide medical advice based on the information provided by the patient. However, due to the limitations of direct interactions, the potential for misdiagnosis or treatment becomes a risk that needs to be managed.

- a) Government Regulation No. 47 of 2016 concerning Health Service Facilities regulates health service facilities, but does not cover the aspect of legal protection in telemedicine specifically. (Presiden Republik Indonesia, 2023)

5). Legal Protection and Informed Consent

One of the drawbacks of telemedicine is the lack of adequate *informed consent* mechanisms. Patients do not always sign written consent before receiving telemedicine services, which can potentially cause legal problems in the event of malpractice.

- a) Health Law No. 17 of 2023 includes general principles on patient rights and the responsibilities of health care providers. However, it has not yet regulated in detail how *informed consent* should be carried out in the context of telemedicine.
- b) The ITE Law also does not specifically address the mechanism of *informed consent* in telemedicine services, resulting in a lack of legal protection for doctors and patients.

The legal issue of telemedical malpractice in Indonesia requires special attention regarding existing regulations and their regulation. The lack of specific regulations on telemedicine malpractice, challenges in electronic-based proof systems, and the need for clear regulations on *informed consent* are major issues. To address this problem, regulatory updates are needed that include specific guidelines on telemedicine malpractices, stricter protection of personal data, and improved infrastructure to support telemedicine services in a fair and secure manner.

Legal Protection in Telemedicine-Based Health Services in Indonesia

1). *Informed Consent* and Legal Protection for Medical Professionals

Informed consent is a fundamental legal principle in health services, including telemedicine services. Without any *informed consent*, both patients and medical personnel can face legal

risks. Informed consent ensures that the patient understands and consents to the medical action to be performed. In the context of telemedicine, which involves digital communication, the importance of *informed consent* becomes clearer because the ambiguity or uncertainty of information can affect medical decisions and patient rights. (Abduh, 2021)

- a) Law Number 17 of 2023 concerning Health stipulates that every medical procedure must be carried out with the consent of the patient. Article 293 of the Health Law states that medical personnel must obtain the patient's consent before performing health measures. However, the implementation of this principle in telemedicine requires adjustments to ensure that consent is made legally through digital platforms.

2). Legal Aspects of the Absence of *Informed Consent*

In civil law, the absence of *informed consent* can be viewed from various aspects of law:

- a) **Absence of Agreement Terms:** According to Article 1320 of the Civil Code, one of the conditions for the validity of an agreement is the consent of the parties involved. Without *informed consent*, a medical treatment agreement may be deemed ineligible.
- b) **Breach of Contract:** The absence of *informed consent* can be categorized as a breach of contract, where medical procedures without clear consent can be considered a violation of the health service agreement.
- c) **Unlawful Acts:** Based on Article 1365 of the Civil Code, an act without valid consent can be considered an unlawful act, which may give rise to an obligation to pay compensation. (Tiolinec, 2023)

3). IT Data Protection and Forensics

Telemedicine-based healthcare requires special attention to the protection of personal data and evidence in court. Patient health data, as a means of evidence, must be well protected.

- a) Law Number 1 of 2024 concerning Electronic Information and Transactions (UU ITE) provides a legal framework for the protection of electronic data. Article 38 paragraph (1) regulates the rights of electronic system users, including the right to file a lawsuit in case of losses due to the use of inappropriate systems.
- b) **IT Forensics:** To ensure the validity of digital evidence, IT forensics expertise is required. IT forensics is a discipline that studies the security and analysis of digital evidence, which is essential in the context of telemedicine to investigate and prove cases of malpractice.

Legal Protection for Patients in the Digital Age: Focus on Telemedicine in Indonesia

In the ever-evolving digital era, telemedicine services are increasingly popular as a solution to improve access and efficiency of healthcare services. However, this development also presents new challenges in terms of legal protection for patients. In Indonesia, legal protection in telemedicine is regulated by several regulations to ensure that patient rights are maintained in the context of technology-based health services. (Tiolinec, 2023)

Health service facilities that provide telemedicine services have legal responsibility as operators of electronic systems and controllers of patient personal data. Legal protection of personal data in telemedicine is regulated by Law No. 27 of 2022 concerning Personal Data Protection (PDP Law). In accordance with Article 65 paragraph (1) of the PDP Law, everyone is prohibited from illegally collecting personal data for personal gain that can harm the subject of personal data.

The criminal liability of health service facilities in the event of this violation is explained in Article 67 of the PDP Law. Anyone who deliberately and unlawfully collects or uses personal data that does not belong to them can be sentenced to up to 5 years in prison and/or a fine of up to Rp 5 billion. Unauthorized data disclosure can be punished with imprisonment for a maximum of 4 years and/or a fine of up to Rp 4 billion. Meanwhile, falsifying personal data for personal gain can be punished with up to 6 years in prison or a fine of up to Rp 5 billion.

The case of data leakage in telemedicine has raised public concerns, especially related to the confidentiality and security of patients' personal data. Therefore, healthcare facilities must have strong regulations and legal umbrellas to protect patient data, including medical records, in the data processing process. Unlawful acts related to the use of personal data will be subject to sanctions in accordance with applicable regulations, both to individuals and corporations. If the violation is committed by a corporation, Article 70 of the PDP Law stipulates that the parties who can be held liable include the administrators, control holders, or order-givers in the corporation. Violating health facilities can be subject to criminal fines and additional sanctions in the form of freezing businesses, revoking licenses, or dissolving corporations.

In the implementation of telemedicine, health service facilities have a role as personal data controllers and electronic system operators. Legal protection of patient personal data is strictly regulated in Law of the Republic of Indonesia Number 27 of 2022 concerning Personal Data Protection (PDP Law). Article 65 of the PDP Law provides for a prohibition on unlawful collection or disclosure of personal data. Violation of this provision can be subject to criminal penalties, as stipulated in Article 67 of the PDP Law, namely imprisonment for up to 5 years and/or a fine of up to Rp 5 billion, if the perpetrator is proven to have collected or used personal data that does not belong to him for personal gain or harm to the data subject.

Public concerns about data leaks are increasing, especially with the many cases of data privacy violations in recent years. This poses a major challenge for healthcare facilities operating telemedicine services to ensure that patients' personal data and medical records are strictly protected in accordance with applicable regulations. The sanction regulated in the PDP Law for health service facilities as a corporation is a criminal fine, as mentioned in Article 70. If the violation is committed by a corporation, the party who can be held accountable is the administrator, the controlling person, or the orderer. In addition to criminal fines, health service facilities can also be subject to additional sanctions, such as freezing business licenses, closing part or all of their operations, and dissolving corporations.

This provision reflects the application of the theory of relative or objective criminalization (Doel Theorien), which focuses on preventing crime and providing a deterrent effect for perpetrators. This punishment not only aims to punish, but also improve the behavior of the perpetrator so that he does not repeat crimes that harm others. In the case of healthcare facilities, this approach aims to maintain public trust in telemedicine services and protect patients' rights to their data privacy. Thus, the implementation of telemedicine in Indonesia must adhere to the principle of strict protection of patient personal data, and any violation of these rights will be subject to criminal sanctions in accordance with the provisions of the PDP Law.

Legal Obstacles in the Implementation of Telemedicine Services in Indonesia

The implementation of telemedicine services in Indonesia offers various benefits, such as increased accessibility and efficiency in health service delivery. However, there are several legal obstacles that must be overcome in order for this service to function optimally and provide adequate protection for patients and medical personnel. The two main obstacles that are often discussed are data security and the responsibility of medical personnel.

Personal data security is a crucial issue in telemedicine services, considering the high risk of information leakage and data misuse. Although Law Number 27 of 2022 concerning Personal Data Protection (PDP Law) provides a legal framework for personal data protection, the implementation and compliance with these regulations often face challenges. One of the main obstacles is the limited technological infrastructure in many healthcare facilities, especially in remote areas, which may not have adequate data security systems. In addition, the lack of knowledge and awareness among telemedicine service providers regarding data protection can result in negligence in implementing the necessary security standards. The risk of data leakage is also high, both from cyberattacks such as hacking and malware, as well as

from internal leaks due to human error or malicious intent. Inadequate oversight and lack of regular audits of data security systems also exacerbate this situation.

The responsibilities of medical personnel in telemedicine require special attention because the interaction is carried out without a direct physical examination, which can increase the risk of misdiagnosis. Law Number 17 of 2023 concerning Health emphasizes that medical practice standards remain valid in telemedicine, despite challenges such as misrecording medical information that can affect the proof of medical actions. In addition, informed *consent* in digital format faces challenges related to legal validity, especially the use of electronic signatures. This can raise questions about whether patients really understand the risks and benefits of the service.

Law enforcement against medical personnel in telemedicine is also complex, especially in assessing medical errors that occur due to the limitations of remote interaction. Dispute resolution forums should be able to assess telemedicine cases in a different way compared to in-person practice.

To address these challenges, better regulation, safer technology deployment, and more consistent enforcement are needed. Cooperation between the government, service providers, and the community is essential to create safe and law-compliant telemedicine.

Recommendations for Telemedicine Services to Improve Equitable Protection

The development of telemedicine regulations in Indonesia is very important to ensure adequate legal protection for patients and medical personnel. For this reason, it is recommended that the government draft a special law that regulates fundamental aspects of telemedicine, including digital consent, service standards, professional responsibility, and personal data protection. This new regulation must be integrated with existing regulations, such as the Health Law, the Personal Data Protection Law (PDP Law), and the Electronic Information and Transaction Law (ITE Law), in order to create legal harmony and compliance.

In addition, the establishment of clear and comprehensive standards of telemedicine practice, as well as the provision of guidance for medical personnel on best practices in the use of technology, is urgently needed. Improving data security policies with the application of advanced technology is also important to protect patient information. Providing patients with transparent information about the risks and benefits of telemedicine services, as well as providing effective dispute resolution mechanisms, will help create a safe and compliant telemedicine service environment. With these steps, it is hoped that legal protection for all parties can be guaranteed, so that telemedicine services can run effectively and fairly.

CLOSURE

Conclusion

Patient legal protection in telemedicine has major challenges, especially in terms of personal data security, *informed consent*, and medical professional responsibility. Existing regulations, such as the PDP Law, the Health Law, and the Minister of Health's Regulation, provide a legal framework, but consistent implementation and adaptation to technological developments are still needed.

The digital agreement in telemedicine that has been approved by the patient as a telemedicine user itself is a binding agreement between the user and the service provider, this contract is legally binding, standard and legal, also has the same legal level as conventional contract agreements, can be received via email or displayed directly in the application before it can be used.

Although telemedicine offers various benefits, its implementation in Indonesia is still faced with legal constraints, especially related to data security and the responsibility of medical personnel. Limited technological infrastructure, lack of knowledge about data protection, and

lack of specific regulations governing telemedicine are the main obstacles that need to be overcome.

The development of more comprehensive and specific regulations for telemedicine is urgently needed to ensure adequate legal protection. This includes drafting specific legislation, improving data security policies, increasing transparency, enforcing professional responsibilities, and improving supporting technological infrastructure.

Suggestion

Stricter Digital Agreement in the Use of Telemedicine: Digital agreements in telemedicine, also known as *service agreements* on telemedicine applications, need to be given further attention to telemedicine users, because this agreement is a standard and legally binding contract, in the form of an *informed consent* which can provide the rights that the client will get in the use of telemedicine and can also provide legal protection if the service provider violates the agreed digital agreement.

Drafting Special Regulations for Telemedicine: The government needs to formulate specific laws governing telemedicine, including digital approvals, service standards, and professional responsibility. These regulations should be integrated with existing regulations to ensure better alignment and compliance.

Improving Data Security and Law Enforcement: It is necessary to strengthen the implementation of the PDP Law with an emphasis on encryption, authentication, and regular auditing policies. In addition, healthcare providers must be provided with training on best practices in keeping patient data secure.

Improving Infrastructure and Access to Technology: Investments in the development of internet networks in remote areas as well as the improvement of telemedicine supporting facilities and technologies are essential to ensure that these services are accessible equally and with quality. Financing models that support telemedicine also need to be developed to ensure the affordability of services.

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