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Legal Protection of Patients in Telemedicine Services in Indonesia

Made Ayu Mirah Dewanti

Faculty of Law, Warmadewa University, Denpasar, Indonesia

* Corresponding Author: **Made Ayu Mirah Dewanti**

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Abstract

The Health Law in regulating the use of telemedicine/telemedicine is much more general than the regulations in the Kepmenkes and Permenkes. Because the Health Law is much more general and only mentions a few provisions in the mechanism of running telemedicine, namely only related to definitions, health efforts, and health service facilities. Based on the three rules described above, none of the provisions regulate the rights of patients or the legal protection of patients who use the utilization of telemedicine. The type of research used in this study is normative juridical research. Furthermore, the research approach in this study uses a stana approach. This research is descriptive, which makes a systematic description, regulation of telemedicine and patient protection in telemedicine services. The author concludes, first, Based on the three rules, no one mentions the existence of legal protection regarding patient rights in using telemedicine, but the legal protection referred to in the Health Law is only to patients in general. Second, the vagueness regarding the protection of these rights specifically in the implementation of telemedicine. So that the regulation related to the protection of patients' rights in the implementation of telemedicine still has several gaps that need to be regulated further.

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Introduction

Health is an important indicator for the achievement of community welfare, including in Indonesia. The state is obliged to provide health services to every citizen in fulfilling health needs which is their right as a citizen through the fulfillment of public services in accordance with the "1945 Constitution of the Republic of Indonesia". Fulfillment of needs in the health sector carried out by the government towards the community is a form of adequacy of health needs in accordance with health principles and standards and applicable regulations. Service is an action that is provided both commercially and non-commercially. Commercial services are generally provided with the basis or aim of making a profit which is often managed by the private sector. Non-commercial services are generally provided with the aim of serving the community, nation or state and are not used for profit. This type of service is generally managed by the government (Anggraeny, 2013) ^[1].

Along with the times and technology in the era of technological digitalization, health services have developed quite rapidly, namely the emergence of health services in the form of telemedicine, the existence of telemedicine in Indonesia, was initially proposed to be regulated due to the spread of Corona Virus Disease (hereinafter referred to as: COVID-19). Telemedicine is a service in the health sector that is based on technology and allows users to be able to consult regarding health problems with doctors without having to meet face to face. Telemedicine is carried out to provide diagnostic consultations to patients related to health care and services to patients that are carried out without being limited to distance and time.

Regulations regarding telemedicine in Indonesia are relatively new as can be seen from several existing laws and regulations, namely, first, Decree of the Minister of Health Number HK.01.07/MENKES/4829/2021 concerning Guidelines for Health Services Through Telemedicine During the Covid-19 Pandemic (hereinafter referred to as: Kepmenkes). Second, 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 (hereinafter referred to as: Permenkes). Third, Law Number 17 of 2023 concerning Health (hereinafter referred to: Health Law) (Sholikin, 2022) ^[2].

These regulations still regulate general matters and are considered essential, considering that the implementation of telemedicine only began to be regulated in 2019 through a regulation of the minister of health. Until now, there is no legislation that regulates the implementation of telemedicine between doctors and patients in a comprehensive manner, which does not only apply during a pandemic. The laws and regulations governing the implementation of telemedicine in the conditions of the Covid-19 pandemic are also still classified as general and have not been regulated in detail per health sector. Including in the latest law in the Health Law which regulates telemedicine, there are only a few provisions. The Health Law in regulating the use of telemedicine/telemedicine is much more general than the regulations in the Kepmenkes and Permenkes. Because the Health Law is much more general and only mentions a few provisions in the mechanism of running telemedicine, namely only related to definitions, health efforts, and health service facilities. Based on the three regulations described above, there is not a single provision that regulates the rights of patients or legal protection for patients who use the utilization of telemedicine. Even if there is in the Permenkes, it is still only limited to general guidelines regarding the rights and obligations of the provider and requestor of the consultation, not specifically mentioning the rights and obligations of the doctor and patient along with legal protection. And what is no less important is that it does not regulate the procedures for its implementation, but only mentions the health service facilities. However, the legal protection of patients in general has been mentioned in the Health Law, but it is not explained or emphasized if in the case of the implementation of telemedicine regarding the similarity of legal protection and/or the rights of patients in general.

Based on this background, this study aims to analyze the protection of patients in telemedicine services, this paper will formulate several problem formulations, including, first, how is the legal regulation related to telemedicine in Indonesia? and second, how is the legal protection of patient rights in telemedicine services?

Method

The type of research used in this study is normative juridical research which describes legal research that examines positive legal norms as the object of study. Normative legal research is also aimed at legal systematics, namely identifying the main meaning in law such as legal subjects, rights and obligations, legal events in laws and regulations, one of which is in patient protection in telemedicine services. Furthermore, the research approach in this study uses the Stata approach. This research is descriptive, which makes a systematic depiction, in this case the regulation of telemedicine and patient protection in telemedicine services. And this research prescribes because there is a proposal in it and will be analyzed qualitatively (Amiruddin and Asikin, 2016:175) ^[4].

Results and Discussion

Legal or Regulatory Arrangements Related to Telemedicine in Indonesia

Telemedicine or the idea of health checks through the use of technology is not a new thing in the medical world, but it has been commonly used since the era of technology or electronic communication was invented. As it was used in the United States in medieval times from the patient's family who sent

urine samples for diagnosis. It can be said that telepatology is not yet telemedicine, because real telemedicine was used when communication technology was developed. Telemedicine comes from the Greek language, which consists of the words tele meaning far; and medical meaning health services by health workers. Therefore, experts define telemedicine as a combination of information communication technology and medical capabilities to provide health services that can be delivered remotely. It is also accompanied by other developments that affect the way telemedicine is implemented (Muttaqien, *et al*, 2018:23-25) ^[5].

The existence of telemedicine in Indonesia was initially proposed to be regulated due to the spread of Corona Virus Disease (hereinafter: COVID-19). This is not only happening in Indonesia, but also in all parts of the world. As is known, the COVID-19 virus outbreak is included in a non-natural national disaster. Based on Article 1 point 3 of Law Number 24 of 2007 concerning Disaster Management, non-natural disasters are "Disasters caused by non-natural events or series of events which include technological failure, modernization failure, epidemics, and disease outbreaks". The disaster caused by the COVID-19 virus has had a huge impact on the Indonesian nation, and not a few people have become victims of the COVID-19 outbreak. Due to the disaster of the COVID-19 outbreak, the government issued a policy to carry out physical distancing to reduce the risk of transmission of COVID-19 (Nurhalimah, 2020:545) ^[6]. Because of this, the existence of COVID-19, which the World Health Organization (WHO) officially declared a global pandemic on March 11, 2020, has caused the need and interest in telemedicine to increase rapidly.

Based on the description above, in terms of law or regulation regarding telemedicine in Indonesia, it is relatively new as seen from several existing laws and regulations, namely, first, Decree of the Minister of Health Number HK.01.07/MENKES/4829/2021 concerning Guidelines for Health Services Through Telemedicine During the Covid-19 Pandemic (hereinafter referred to as: Kepmenkes). Second, 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 (hereinafter referred to as: Permenkes). Third, Law Number 17 of 2023 concerning Health (hereinafter referred to: Health Law) (Sholikin, 2022) ^[7].

In the regulation of the Kepmenkes which regulates telemedicine specifically during the COVID-19 pandemic in accordance with the mention of its provisions, namely guidelines for health services through telemedicine during the 2019 corona virus disease (COVID-19) pandemic. The contents of the provisions of the Kepmenkes include the stipulation of the Kepmenkes based on the Ministerial Decree that the guidelines for telemedicine services during the COVID-19 pandemic are used as a reference for the central government, local governments, doctors and other health workers, health service facilities, those responsible for telemedicine applications, and related stakeholders in the implementation of health services through telemedicine during the COVID-19 pandemic. Health services through telemedicine during the COVID-19 pandemic are remote health services provided through the use of information and communication technology to provide health information, diagnosis, treatment, prevention of complications, and evaluation of patient health conditions, including monitoring

COVID-19 patients undergoing independent isolation.

The Kepmenkes regulation was actually made solely for COVID-19 patients, not for general patients with complaints of diseases other than COVID-19. The objectives of the Decree include: a. Implementation of efforts to prevent and control the spread of COVID-19 between doctors and patients in health care facilities through the use of information and communication technology in the form of telemedicine; b. Implementation of online monitoring of COVID-19 patients who carry out independent isolation by doctors and other health workers through optimal and effective telemedicine; and c. Controlling the referral of COVID-19 patients to hospitals, through preventing worsening of the health condition of COVID-19 patients who carry out independent isolation. However, at this time or more precisely in 2023, the President has revoked the status of COVID-19 through Presidential Decree of the Republic of Indonesia Number 17 of 2023 concerning the Determination of the End of the Status of the 2019 Corona Virus Disease Pandemic (COVID-19) in Indonesia. But from this incident or can be said to be a phenomenon, namely the spread of COVID-19, it makes a new alternative health discovery, especially in Indonesia by using telemedicine which can take advantage of technological developments that are rapidly developing in the world of health in the modern future.

Unlike the Kepmenkes regulation above, the Permenkes regulates telemedicine in general, which is called the implementation of telemedicine services between health services. Based on Article 1 point (1) of the Permenkes, "telemedicine is the provision of remote health services by health professionals using information and communication technology, including the exchange of information on diagnosis, treatment, prevention of disease and injury, research and evaluation, and continuing education of health service providers for the benefit of improving individual and public health". Broadly speaking, the Permenkes regulates the implementation of telemedicine services between health service facilities (hereinafter referred to as: Fasyankes) starting from the types of services provided, costs, rights and obligations between health facilities that request consultations and health facilities that provide consultations, funding of telemedicine services provided, and guidance and supervision.

Speaking of the relationship between doctors and patients, telemedicine in the Permenkes is not regulated regarding the procedures for its implementation, but only the health service facilities. In addition, the rights and obligations and/or legal protection of patients in telemedicine services have not been regulated clearly and in detail in the Permenkes. It can be seen based on CHAPTER IV regarding the rights and obligations of Articles 17 and 18 of the Permenkes, that the consulting health facility has the right to receive medical information in the form of images, images, text, biosignals, video and/or good sound using electronic transmission to answer consultations and/or provide expertise, and receive compensation for telemedicine services. Furthermore, the consulting health facility has the obligation to deliver consultation answers and/or provide expertise according to standards, maintain the confidentiality of patient data, provide correct, clear, accountable, and honest information regarding the results of consultation and/or expertise; and provide consultation time 24 (twenty-four) hours a day, 7 (seven) days a week.

Meanwhile, the requesting health facility has the right to

obtain consultation answers and/or receive expertise according to standards and receive correct, clear, accountable, and honest information about the results of consultation and/or expertise. Furthermore, the requesting health facility has the obligation to send medical information in the form of images, imaging, text, biosignals, video and/or sound using electronic transmission according to quality standards to request consultation answers and/or obtain expertise, maintain the confidentiality of patient data and provide true, clear, accountable and honest information about the results of consultation and/or expertise to patients.

These regulations still regulate general matters and are considered essential, considering that the implementation of telemedicine only began to be regulated in 2019 through a regulation of the minister of health. Until now, there is no legislation that regulates the implementation of telemedicine between doctors and patients in a comprehensive manner, which does not only apply during a pandemic. The laws and regulations governing the implementation of telemedicine in the conditions of the Covid-19 pandemic are also still classified as general and have not been regulated in detail per health sector. Including in the latest law in the Health Law which regulates telemedicine, there are only a few provisions. In the Health Law, it no longer uses or mentions telemedicine in its writing, but is called telemedicine. In meaning, there is no difference, but it may just be to make it look friendlier with the Indonesian designation. Article 1 point (22) of the Health Law states that telemedicine is the provision and facilitation of clinical services through telecommunications and digital technology. The latest Health Law has shown a firm commitment that in the future the implementation of health efforts will utilize information and communication technology (Article 25 of the Health Law), one of which can be implemented through telemedicine. Furthermore, Article 25 paragraph (4) states that the provision of clinical services is carried out through telemedicine in the form of medical/clinical care and/or health consultation services.

The Health Law in regulating the use of telemedicine/telemedicine is much more general than the regulations in the Kepmenkes and Permenkes. Because the Health Law is much more general and only mentions a few provisions in the mechanism of running telemedicine, namely only related to definitions, health efforts, and health service facilities. Based on the three regulations described above, there is not a single provision that regulates the rights of patients or legal protection for patients who use the utilization of telemedicine. Even if there is in the Permenkes, it is still only limited to general guidelines regarding the rights and obligations of the provider and requestor of the consultation, not specifically mentioning the rights and obligations of the doctor and patient along with legal protection. And what is no less important is that it does not regulate the procedure for its implementation, but only mentions the health service facilities. However, the legal protection of patients in general has been mentioned in the Health Law, but it is not explained or emphasized if in the case of the implementation of telemedicine regarding the similarity of legal protection and/or the rights of patients in general.

Legal Protection of Patient Rights in Telemedicine Services

In terms of regulations, the implementation of telemedicine in Indonesia is currently guided by 3 laws and regulations. Until now, there is only one law that regulates telemedicine

in general, namely Permenkes No. 20 of 2019. In the Permenkes, the types of telemedicine services explicitly mentioned include teleradiology, teleelectrocardiography, teleultrasonography, and teleconsultation. This does not mean that other types of telemedicine services are prohibited or not recognized because it is then stated that other telemedicine consultation services that are in accordance with the development of science and technology are also included in the scope of telemedicine services in Indonesia (Azhar and Handayani, 2023:51-65) ^[8].

Previously, from several related regulations, there is actually no specific law in Indonesia that specifically regulates telemedicine (Andrianto, *et al*, 2022:230) ^[10]. Reviewing the Health Law Number 23 of 1992 and the renewal of Law Number 36 of 2009, there is no concrete legal protection for telemedicine victims. However, after the issuance of the latest regulation regarding health, namely Law of the Republic of Indonesia Number 17 of 2023 concerning Health (hereinafter in this paper referred to as the Health Law), telemedicine has been regulated. Article 1 point 22 states that Telemedicine is the provision and facilitation of clinical services through telecommunications and digital communication technology.

Telemedicine is further addressed in Article 25 which essentially states that the implementation of health efforts in the form of health services can utilize information and communication technology integrated with the National Health Information System. One of them is telemedicine as a method of providing clinical services. This article also states that further provisions regarding the implementation of health efforts that utilize information and communication technology are regulated by Government Regulation.

Theoretically, Telemedicine in its implementation can be divided into two forms or types, namely with the concept or method directly / real time (synchronous) and indirectly / store-and-forward (asynchronous). Real time telemedicine (synchronous telemedicine) can take a simple form such as the use of a telephone or a more complex form such as the use of a surgical robot. Synchronous telemedicine requires both parties to be present at the same time, therefore a medium is needed between the two parties that can offer real time interaction so that one party can perform health treatment (Andrianto and Fajrina, 2022:74) ^[10].

While store-and-forward telemedicine (asynchronous telemedicine) involves collecting medical data and sending this data to a doctor at a convenient time for offline evaluation. This type of telemedicine does not require both parties to be present at the same time. Dermatologists, radiologists, and pathologists are the specialists who usually utilize this asynchronous telemedicine. Medical records in proper structure should be a component in this transfer (Pengurus Besar Ikatan Indonesia, 2018:13) ^[11].

Based on the results of interviews with Prof. Budi Wiweko, Sp. OG, MPH, in fact, in Indonesia, the form of telemedicine that has been more developed is the real time form (synchronous telemedicine). This is because its direct implementation is easier to use through applications or platforms owned by private parties or startup companies, such as halodoc or alodokter. In addition, other media such as zoom, skype, or googlemeeets can also be used in conducting direct online interactions for videocalls or videoconferencing. However, this also does not mean that the store-and-forward form (asynchronous telemedicine) does not work, according to Prof. Budi Wiweko, Sp. OG, MPH, the

store-and-forward form (asynchronous telemedicine) or better known as 'non-instant' has also been implemented in several hospitals and other health applications or platforms (Andrianto, *et al*, 2022:228) ^[10].

In fact, according to Dr. Ira Melati, M.K.M., from the Health Services Division of the Ministry of Health of the Republic of Indonesia, in the Indonesian Telemedicine Program (TEMENIN) developed by the Ministry of Health, in practice the store-and-forward form is more often used in Expertise request services to Hospitals or Health Facilities, because it is easier and more effective in sending patient photos or consultations to doctors at Hospitals or Health Facilities (Andrianto, *et al*, 2022:228) ^[10].

Based on these opinions, it can be concluded that the existence of telemedicine by utilizing information and communication technology or ICT will bring goodness and great changes in the world of health, whether it will improve public health access, improve health quality, or reduce health costs. However, in reality, the use of telemedicine services, which is still relatively new, often has challenges and obstacles in the development of telemedicine, especially when viewed from the aspect of legal protection of patient rights, especially in the use of telemedicine.

In fact, the spirit to provide protection has been embodied in Article 3 of the Health Law. The purpose of Health Management is to provide protection and legal certainty for patients, health human resources, and the community. Continued later in Article 4 paragraph (1) which states that every person in this case including patients has the right to obtain information and education about health that is balanced and responsible, obtain health care in accordance with health service standards, gain access to health resources, determine their own health services needed for themselves independently and responsibly, obtain confidentiality of their personal health data and information, obtain information about their health data, including actions and treatment they have received or will receive from medical personnel and / or health workers, and get protection from health risks.

As explained in the article above, it can be interpreted that things that are the rights of patients have been listed in the Health Law. However, the existing interpretation still creates an ambiguity regarding the protection of these rights specifically in the implementation of telemedicine. For example, in relation to the right to obtain information and education about health that is balanced and responsible. Does the existing regulation guarantee the existence of this right in the implementation of telemedicine? Of course, this right can be fulfilled with qualified communication support tools. The same applies to asking for other doctors' opinions. There are many elements that need to be regulated, one of which is hardware and software standards that can fulfill this right (Susilo, 2022:57-58) ^[12].

A patient's consent to any medical treatment is essential. Informed consent will fulfill the patient's right to determine the action on himself and the right to what information he will receive. With telemedicine, doctors cannot provide direct action / medical skills. So that basic services are usually mostly education and administration of drugs. But if in the future this is needed, then digital informed consent needs to be regulated for legal certainty that protects patients and doctors. On the other hand, in this case the organizers of health affairs should be obliged to ensure the protection of patient rights. In the Health Law, it has been regulated but only to the extent of the obligations of health service

facilities. In the Health Law, there is no regulation regarding the obligation to guarantee legal protection for patients' rights in telemedicine by health providers based on digital platforms/applications established by startup companies. Therefore, the author believes that in the regulation related to the protection of patients' rights in the implementation of telemedicine, there are still some gaps that need further regulation. These arrangements can be through Government Regulations as accommodated in Article 25 or with other legal instruments that are deemed appropriate in accommodating the implementation of telemedicine and legal protection of patient rights comprehensively.

Conclusion

Legal or regulatory arrangements related to telemedicine in Indonesia began because of the COVID-19 virus outbreak which requires prioritizing the use of technology in health services. Based on existing regulations, there are several laws and regulations governing telemedicine, including the Decree of the Minister of Health Number HK.01.07/MENKES/4829/2021 concerning Guidelines for Health Services Through Telemedicine During the Covid-19 Pandemic, 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 and Law Number 17 of 2023 concerning Health. Based on these three regulations, there is no mention of legal protection regarding patient rights in using telemedicine, but the legal protection referred to in the Health Law is only for patients in general. Previously from several related regulations, there is actually no specific law in Indonesia that specifically regulates telemedicine. Reviewing the previous Health Law, there was no concrete legal protection for telemedicine victims. However, after the issuance of the latest regulation on health, namely Law of the Republic of Indonesia Number 17 of 2023 concerning Health, telemedicine has been regulated. Indeed, the spirit to provide protection has been embodied in Articles 3 and 4 of the Health Law. However, the existing interpretation still creates an ambiguity regarding the protection of these rights specifically in the implementation of telemedicine. Therefore, the regulation related to the protection of patients' rights in the implementation of telemedicine still has some gaps that need to be further regulated either through Government Regulations or other legal instruments that are deemed appropriate in accommodating the implementation of telemedicine and the legal protection of patients' rights comprehensively.

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