

RESPONSIBILITIES OF HEALTH PERSONNEL IN PROVIDING TELEMEDICINE IN MEDICAL PRACTICES IN INDONESIA

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Abstract

Legal relationships in telemedicine practice can be differentiated based on timing, the moment when information is transmitted or interactions between individuals involved in telemedicine practice occur . So telemedicine practice can be divided into two types , namely real time (synchronous telemedicine) and store-and-forward (asynchronous telemedicine). Research Problem Formulation (1) How is the Legal Protection of Patient Personal Data in Health Information Technology Based Health Services? (2) What are the responsibilities of health workers in providing telemedicine in medical practice services in Indonesia? (3) What are the regulations for implementing telemedicine in medical practice services in Indonesia? This type of research is normative juridical legal research, which is a process of discovering legal rules, legal principles and legal doctrines in order to answer the legal issues faced. The service trade model is called the cross border mode of supply , which is a way of providing services across regional boundaries where the service provider and service recipient are in their respective countries, but the service exceeds/passes the country's territorial boundaries. Developing ICT infrastructure for e-health . Building collaboration with the private sector and profit institutions to support e-health. Develop e-health that can reach the community, especially those who are vulnerable to health problems (vulnerable) and according to their needs, Mobilize cross-sector collaboration in adopting e-health norms and standards, evaluation, cost-effectiveness principles in e-health to guarantee quality, ethics and security while still prioritizing confidentiality, privacy, equity and equality . Developing a center of excellence and e-health network , developing a public health information system model for surveillance, response and emergencies. From the formulation of the WHO resolution as mentioned above, it can be seen that the meaning of state responsibility that must be carried out by each government is very large in efforts to develop the nation's health. The government is responsible for planning, organizing, organizing, fostering and

supervising the implementation of e-health services by preparing everything necessary, including health administration, legal and regulatory framework, infrastructure and resolution mechanisms. The WHO resolution requires the government to develop e-Health to provide value. benefits for marginalized communities, especially those prone to health problems (vulnerable) and in accordance with their needs.

1. Introduction

National development is a form of sustainable development effort that covers aspects of the life of society, the nation and the state as a whole with the aim of carrying out tasks in order to realize national goals as formulated in the Preamble to the 1945 Constitution of the Republic of Indonesia. Promotional and preventive efforts (preventive), healing (curative) and recovery (rehabilitation) are currently equipped with technological facilities to make health services more effective, efficient and easier for patients. This aims to be in accordance with the program that has been launched by the government based on the basis of Health Development, as well as in order to realize the Vision of Healthy Indonesia 2025. This vision is also established through the Health Development mission, namely increasing and empowering health resource aspects which include health workers, financing aspects, as well as the availability of pharmaceuticals and medical devices. Health resources also include mastery of health/medical science and technology, as well as data and information whose role is increasingly important. One use of information technology in the health sector that is in line with globalization is health services based on Health Information Technology, especially in the current era of industrial revolution 4.0 which presents real challenges in the health sector.

The use of Information and Communication Technology (ICT) to integrate society with Community Health Centers and Hospitals using electronic health (e-health) applications has become a global issue and is one of the discussions in the Action Plan for the World Summit on the Information Society (WSIS) Geneva 2003. The use of e-health applications has benefits for patients in interacting with health service resources such as hospitals, clinics, health centers, medical practitioners both doctors and therapists, laboratories, pharmacies, insurance in order to increase access, efficiency, effectiveness, as well as the quality of medical processes. However, in practice, E-health applications often collect a number of consumers' personal data, which is sensitive personal data, which has the potential to give rise to new legal problems, where there are questions to what extent health service providers can protect patients' personal data. Every person has the right to keep their personal health conditions confidential which have been disclosed to health service providers (Article 57 paragraph (1) Law No. 36 of 2009 concerning Health). When using telemedicine, the protection of patients' privacy rights regarding their health data recorded electronically at health service facilities needs to be regulated so that it is not easily accessed by unauthorized parties. The right to health is a state of physical, mental and social well-being that enables every person to be economically productive as intended in Article

1 Paragraph 1 of Law No. 36 of 2009 concerning Health, therefore health is the basis for recognizing human decline. , without our health a person becomes conditionally unequal and cannot obtain other rights, and the right to life will naturally be reduced. In short, one cannot fully enjoy life as a human being.

Telemedicine as a form of E-Health is by definition taken from Minister of Health Regulation Number 20 of 2019 which states that the provision of telemedicine services between health service facilities is the provision of long-distance health services by health professionals using information and communication technology. Features that generally exist in telemedicine applications include the exchange of diagnostic information, treatment activities, disease and injury prevention efforts, research and evaluation, as well as continuing education of health service providers for the benefit of improving individual and community health. Based on this definition, the term telemedicine can be interpreted simply as a health service effort carried out by health workers, in this case doctors, to their patients remotely using information and communication technology facilities.

The implementation of telemedicine during the Covid-19 pandemic has been regulated in the Decree of the Minister of Health of the Republic of Indonesia Number HK.01.07/MENKES/4829/2021 concerning Guidelines for Health Services Via Telemedicine During the 2019 Corona Virus Disease (Covid-19) Pandemic. In the implementation of telemedicine practice, a doctor does not meet the patient face to face so he cannot examine and provide consultations to the patient directly. The form of consultation carried out between the doctor and the patient is by communicating through available media, for example through chat rooms, such as those available in the application to convey the complaints they are experiencing, while the doctor makes a diagnosis based on the patient's statement regarding the patient's verbal complaints.

Telemedicine has become popular because it is considered one of the best strategic steps to facilitate the provision of health services, especially during the Covid-19 pandemic. The use of Telemedicine also plays an important role in providing assistance and support to the community, especially with the social and physical limitations imposed in Indonesia. Telemedicine itself is divided into three categories, including :

1. Remote Consultation Remote meetings between medical personnel and patients, for example older adults, with a focus on diseases caused by aging can use interactive video, chat, diagnostic images, or data sharing.

2. Remote Monitoring, namely external monitoring of the patient's condition which can be carried out when the patient is being treated at home or as an outpatient, is carried out by collecting data from the user using sensors on the body, such as inertial sensors, oxygen saturation, blood pressure and heart rate, and sensors. those installed in the home (for example, optical sensors for motion detection) or diaries and questionnaires. The data that has been collected is then transferred and further analyzed by medical experts to evaluate the patient and produce a decision.
3. Distance Medical Training and Education is a form of web-based *telemedicine* with the aim of providing individuals or groups located in remote areas to improve their health. The use of this method also functions to provide patient insight which is then recorded in the medical record. Patients can self-manage their condition, making the system useful as a training base for home rehabilitation and providing medical advice.

The risks that occur in implementing telemedicine are the risk of data leakage and privacy of both patient data and health service provider data. In telemedicine practice, patient data, which usually contains elements of medical records, should be confidential. Cases of data leaks have occurred several times in Indonesia and in particular the health sector had the highest number of data leak cases in 2018. Based on these existing problems, it is felt that it is necessary to study regulations related to data leaks, which is very important to pay attention to apart from regulations and regulations regarding practices. medicine via telemedicine itself. Problems related to vulnerability . Some identification of problems based on the background above are: What are the responsibilities of health workers in providing telemedicine in medical practice services in Indonesia?

2. Research Method

The type of research method used in this scientific work research is a combination of normative legal research and empirical juridical research. Normative legal research is a type of research that is based on library and literature studies by examining problems in statutory regulations and references to other materials that are considered relevant and related to the research being carried out. Normative legal research is research that is only a study of documents and empirical juridical research, namely field reality research that is *das sein* in nature and does not correspond to the desired or expected conditions that are *das sole* in nature. In this research, what will be sought is "The Implementation of Telemedicine in Medical Practice Services in Indonesia".

In this research, the data sources used are legal materials, both primary and secondary

materials, these materials include:

- **Primary Legal Material:** in the form of rules and regulations, especially those related to this research, including:
 - 1945 Constitution;
 - Law No. 29 of 2004 concerning Medical Practice
 - Law No.36 of 2009 concerning Health
 - Law No.14 of 2008 concerning Openness of Public Information
 - Law No.11 of 2008 concerning Electronic Transmission Information
- **Secondary Legal Material:** Secondary legal materials, book materials, health law books, medical law, health service law, public service law, and personal data, draft law on patient personal data, Court Decisions, Scientific Articles .
 - literature or writing results in the form of research results consisting of books and scientific journals
 - the work of legal practitioners and expert writings
 - Legal theories and opinions of scholars through the literature used

Legal materials that provide instructions and explanations for primary legal materials and secondary legal materials such as dictionaries and binding legal materials, especially in the field of providing telemedicine health services.
- **Tertiary Legal Materials:** Tertiary legal materials are materials that provide instructions and explanations for primary and secondary legal materials, such as: (1) Legal dictionaries and (2) Indonesian dictionaries.

The data collection techniques were carried out through observation and in-depth interviews. Observation is the process of collecting data by researchers making observations and going directly to the field to observe what happens in the field. The observation technique allows researchers to see, record and be directly involved with the informants' activities. In this study, the informants were health workers and patients who used telemedicine to carry out health consultations. This data collection technique allows researchers to obtain actual data more accurately so that researchers are able to see and know the meaning of visible behavior. The location of this research is private hospitals and government hospitals, central and regional hospitals, the DPR regarding the draft law on protecting patient personal data.

3. Results and Discussion

Regulations for the Implementation of Telemedicine in Medical Practice Services

in Indonesia

There are three regulatory and policy instruments related to the implementation of telemedicine services in Indonesia which are currently being referenced. First, Minister of Health Regulation no. 20 of 2019 concerning the Implementation of Telemedicine Services between Health Service Facilities (Permenkes 20/2019). Second, Decree of the Minister of Health Number HK.01.07/MENKES/4829/2021 concerning Guidelines for Health Services Via Telemedicine During the Covid-19 Pandemic (Kepmenkes 4829). This decision revokes the Circular Letter of the Minister of Health Number HK.02.01/MENKES/303/2020 concerning the Implementation of Health Services through the Use of Information and Communication Technology in the Context of Preventing the Spread of Covid-19 (SE Minister of Health). In this regard, it is urgent that there be a legal regulation that explicitly directs the responsibilities of the parties in telemedicine services, considering that so far telemedicine is only regulated in PERMENKES No. 20/2019 which only regulates general points.

The need for adjustments to at least these three laws shows the need for telemedicine regulation in a law. Apart from that, we also remember that the scope of the regulation is to meet the basic needs of the community related to health services. Standard Operating Procedures can also be based on cases of disease and health problems which can be regulated by the Ministry of Health. Increasing the competence of doctors and SOPs for health consultation services via telemedicine can also be divided according to the services provided, namely divided into synchronous and asynchronous.

Based on the explanation above, the government as the health regulator needs to prepare legal regulations, application ecosystems, and implementation of telemedicine. These legal rules and traps are to protect the rights of patients and health consumers as well as the wider community. Several very urgent and important regulatory instruments have been made by state institutions that are competent to regulate medical practice in Indonesia (UUPK No. 29/2004, KKI Indonesian Medical Council).

Legal Protection of Patient Personal Data in Health Information Technology Based Health Services

Personal data protection law develops in parallel with the development of technology itself, especially information and communication technology. As mentioned earlier, the data protection regime emerged in Europe as a result of the absence of a clear definition of privacy and private life, which is regulated by the provisions of Article 8 of the European Convention.

The concept of protection of personal data, as mentioned in the introduction, emphasizes

that everyone has the right to determine their own "fate" such as whether a user will share data or not. If data sharing is carried out then he also has the right to determine the conditions that will be fulfilled in a community. Some personal data that is often shared publicly includes user names, e-mail addresses, account names and social media addresses and even account numbers according to requests from various application services that request user data for various purposes. Based on the provisions in accordance with Medical Council Regulation Number 47 of 2020 Article 3 paragraph (2) and paragraph (4), it is clearly stated that patient data and personal information are confidential, so that no other party is permitted to know the patient's information except the doctor and permission of the patient concerned. Another regulation in Article 57 of Law Number 36 of 2009 concerning Health also states that every person has the right to keep their personal health condition confidential.

Samuel Warren and Louis Brandeis wrote about the legal conception of the right to privacy in Harvard Law Review Vol. IV No. 5, December 15, 1890. This article entitled "The Right to Privacy" was the first to conceptualize the right to privacy as a legal right. This article itself appeared when newspapers started printing pictures of people for the first time. In this article, Warren and Brandeis simply define the right to privacy as 'the right to be let alone'. Their definition is based on two levels (1) personal honor and (2) values such as individual dignity, autonomy and personal independence. The right to data protection itself aims to protect individuals in the era of the information society. The country that first passed the Data Protection Law was Germany in 1970, which was then followed by the UK in the same year, and then a number of other European countries, such as Sweden, France, Switzerland and Austria.

The legal aspects of protecting users' personal data are also explained in Law no. 39/1999 concerning Human Rights, which in several articles guarantees the protection of citizens' rights to privacy, for example Article 14 (2), Article 29 (1) and Article 31. In general, Article 29 paragraph (1) states the recognition of everyone's rights for self-protection. personal, family, honor, dignity and property rights. This protection is not only in the context of direct relationships, but also for personal information or data. Meanwhile, Article 14 paragraph (2) states that one of the rights to self-development is the right to seek, obtain, store, process and convey information using all types of available means. This is related to Article 31 of the Human Rights Law which also regulates that freedom of confidentiality in communications via electronic means is guaranteed, unless ordered by a judge or other legal authority in accordance with statutory provisions.

Responsibilities of Health Workers in Providing Telemedicine in Medical

Practice Services in Indonesia?

Doctors in a doctor-patient relationship must maintain medical secrets. This is clearly stated in Article 48 of the Medical Practice Law and Article 51 of Law Number 36 of 2014 concerning Health Workers. In accordance with the statement that every person has the right to the confidentiality of their personal health conditions as stated in Article 57 of Law Number 36, if a violation is found they can be subject to imprisonment or a fine in accordance with Article 322 of the Criminal Code and according to Article 15 of Minister of Health Regulation 36 of 2012 concerning Medical Secrets. . Likewise, Article 66 of the Medical Practice Law, Article 58 of the Health Law, Law Number 44 of 2009 concerning Hospitals states that a patient can ask for compensation if he feels he has been harmed, one of which is in terms of medical confidentiality.

Based on these provisions, doctors who provide services via telemedicine, if they make a mistake and cause harm to the patient, are required to compensate for the losses suffered by the patient. Article 1366 of the Criminal Code also states that every person is responsible not only for losses caused by actions but also for losses caused by negligence. Meanwhile, if doctors violate regulations regarding authority and obligations in Law no. 29 of 2004 concerning Medical Practice, doctors must be legally responsible by receiving administrative sanctions as stated in Article 66 where anyone who knows or whose interests are harmed by the actions of a doctor or dentist in carrying out medical practice can complain in writing to the Chairman of the Honorary Council Indonesian Medical Disciplines. The regulations that regulate administrative responsibilities and can be applied to doctors in telemedicine services are Regulation of the Minister of Health of the Republic of Indonesia Number 2052/MENKES/PER/X/2011 concerning Practice Permits and Implementation of Doctor's Practice and Law No. 29 of 2004 concerning Medical Practice. Article 31 and Article 32 Minister of Health Regulation Number 2052/MENKES/PER/X/2011.

The concept of civil law liability for medical procedures, when considering civil law liability for medical procedures performed by nurses, several key factors need to be considered. Firstly, it is important to realize that the primary duty and responsibility for carrying out medical procedures lies with medical personnel in accordance with the Health Law. Therefore, all legal risks and losses arising from these medical procedures are of course under the responsibility of medical personnel. Based on the first point, a second supporting reason can be put forward. The nursing profession operates independently, as defined by the Nursing Act. The rights, obligations, and scope of duties and responsibilities of nurses are clearly described in these statutory regulations. When a nurse has delegated a medical procedure, her role is to assist medical

personnel in its implementation. Nurses are tasked with supporting medical personnel when they cannot directly carry out the procedure. As a result, the responsibility and legal risks associated with medical procedures remain with medical personnel rather than being transferred to nurses.

Telemedicine services still do not have specific regulations or legal basis. This is also in accordance with previous research conducted regarding the legal aspects of telemedicine and online doctor consultations. The results showed that the legal basis for implementing telemedicine at the statutory level: Law no. 36/2009 concerning Health, Law No.19/2016 concerning Information and Electronic Transactions, Law no. 14/2008 concerning Openness of Public Information, Law No., 29/2004 concerning Medical Practice, Law no. 36/2014 concerning Health Workers and Law no. 38/2014 concerning Nursing. At the Government Regulation level there are: PP No. 82/2012 concerning Implementation of Electronic Systems and Transactions and PP no. 46/2014 concerning Health Information Systems.

In accordance with the explanation that has been mentioned regarding several aspects of conventional medical services related to the implementation of telemedicine services, in this case the formation of comprehensive legislation is needed to regulate explicitly and in detail regarding the implementation of telemedicine. This is necessary so that there is no vacuum in norms that could confuse the public because the implementation of telemedicine health services cannot be absolutely equated with conventional health services. Remembering also in PERMENKES no. 20/2019 only provides a general overview of telemedicine and can also be said to not follow developments in telemedicine services which are growing rapidly over time.

4. Conclusion

1. The protection of patient personal data is mainly carried out because of various regulations that require it. This is as confirmed in Article 47 paragraph (2) of Law no. 29 of 2004 concerning Medical Practice, which states that every doctor and dentist who carries out medical practice must keep medical records and their confidentiality must be maintained by the doctor or dentist and the head of the health service facility. The principle of confidentiality is further reaffirmed in Article 10 paragraph (1) of Minister of Health Regulation no. 269/Menkes/Per/III/2008 concerning Medical Records (called Permenkes 269/2008).
2. Regarding the doctor's negligence in telemedicine, the system administrator is responsible, it is explicitly stated in Article 15 of the ITE Law and patients can ask for compensation as stipulated in Article 19 of the Consumer Protection Law. Telemedicine can simply be interpreted as

providing health services carried out remotely. This means that doctors provide services to patients directly, but use technological means to help.

3. Referring to Article 12 paragraphs (2) and (3) of Minister of Health Regulation 20/2019, telemedicine applications are provided by the Ministry of Health, however if telemedicine services use applications developed independently, the application must be registered with the Ministry of Health. Rights and Obligations in Telemedicine Services.

5. Suggestions

Apart from having to be cured, patients also need to take maximum medical action, but the patient's personal data must be respected and protected. Even though the Draft Law on Personal Data Protection is still being processed, still being drafted, the personal data of Covid-19 patients can be protected by other laws and regulations relating to health, hospitals, the ITE Law and also the Minister of Communication and Information PDPSE Regulation. So the hospital needs to do:

1. Hospital management is obliged to protect data in a way that is in accordance with the principle of dignified justice. Hospitals are required to carry out regular checks on their electronic systems, especially regarding the security of patient personal data systems and patient medical record data.
2. Hospital management is required to carry out system maintenance by collaborating with electronic security system companies to improve the medical record security system, for example by adding an encryption program to the programs used.
3. Hospital management is also obliged to provide legal awareness education to all workers, even security guards and cleaning services, not to disclose any personal data of Covid-19 patients, names, addresses, social media names.

If a personal data dispute occurs, it is best to resolve it through mediation, resolve it in a dignified manner, find a solution, find the source of the data leak and delete it immediately.

1. Hospital management is obliged to maintain the security of patient personal data, medical record history in the hospital's electronic system;
2. Hospital management is obliged to carry out system maintenance by recruiting, or collaborating with IT people who understand data system security;
3. Mass media journalists, both online and in print, are obliged to respect patients' personal data by not including real names or other data in published articles.

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