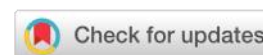




Research Article



Indonesian Telemedicine Regulation to Provide Legal Protection for Patient

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Received: February 25, 2023/ Revised: April 25, 2023/ Accepted: May 13, 2023.

Abstract: *The objective of this study is to identify the underlying factors contributing to the absence of legal safeguards for patients in Indonesia with respect to Telemedicine arrangements. Additionally, this research endeavors to develop an optimal framework for Telemedicine arrangements in Indonesia that would ensure legal protection for patients. The present study constitutes a normative legal research. The author posits that in order to provide legal protection for optimal patients, it is necessary to regulate telemedicine services. This can be achieved by implementing a system that guarantees measurable and certified competence in telemedicine services. The proposed framework includes several key components. Firstly, it emphasizes the importance of clearly defining domain areas. Secondly, it underscores the obligation to record telemedicine service practices and protect such recordings. Thirdly, it outlines regulations pertaining to informed consent. Fourthly, it incorporates arrangements for dispute resolution in the context of health services provided to patients via telemedicine.*

Keywords: Legal Protection; Patient; Regulation; Telemedicine;



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INTRODUCTION

The progression of human thought evolves over time, as evidenced by numerous scientific and technological advancements that strive to enhance the overall standard and quality of human existence. The impact of scientific and technological advancements on medical science, the healthcare profession, and health services is noteworthy. Indonesia, a developing country in Southeast Asia, is striving to keep up with the advancements in healthcare services in the era of the Fourth Industrial Revolution. One of the approaches being taken is the implementation of telemedicine, which utilizes the progress in information and communication technology.¹ As we enter the 21st century, the world is confronted with the emergence of new technologies in the field of medicine that enable doctors to practice in virtual environments. The right to health is a fundamental human right as stipulated in Article 28 H of the 1945 Constitution of Indonesia, which asserts that "every person has the right to live in physical and mental well-being, to reside in a good and healthy environment, and to have access to healthcare services." As stipulated in a specific law, namely Article 4 of Law Number 36 of 2009 concerning Health, "every individual has the right to health." Furthermore, it is stated in Article 5, paragraph (2) that "every individual has the right to access safe, high-quality, and affordable

¹ Rian Saputra, M Zaid, and Silaas Oghenemaro, 'The Court Online Content Moderation : A Constitutional Framework', *Journal of Human Rights, Culture and Legal System*, 2.3 (2022), 139–48 <https://doi.org/10.53955/jhcls.v2i3.54>



healthcare services." The aforementioned right implies that the government is obligated to create conditions that enable every individual to live a healthy life, by providing adequate healthcare facilities and affordable healthcare services to the public.²

According to data from the Indonesian Central Statistics Agency (BPS), as of 2020, the population of Indonesia amounted to 270.20 million individuals across 34 provinces, with a diverse range of genders. Additionally, Indonesia is comprised of over 17,000 islands. The data obtained from the Human Resources Development and Empowerment Agency of the Ministry of Health in 2020 regarding the Recapitulation of Health Human Resources utilized in Indonesian Hospitals across 34 provinces reveals several healthcare service-related data that will be presented in tabular form by the author.

Table 1
The number of general practitioners and specialists in Indonesia.

The number of hospitals.	2.457
General Practitioner	27.205
A dentist	4.819
A specialist physician in internal medicine	5.279
A specialist physician in the field of obstetrics and gynecology.	6.118
A pediatrician is a medical specialist who focuses on the health and well-being of children.	5.327
A specialist doctor in surgery.	3.707
A radiology specialist physician.	2.336
A specialist in anesthesia.	3.670
A specialist doctor in clinical pathology.	1.554,
A specialist in the field of anatomical pathology.	595
A medical specialist in the field of rehabilitative medicine.	462
A medical specialist in a different field.	17.837
A dental specialist with expertise in the field of dentistry.	2.325.

The distribution of specialized doctors is more concentrated in the provincial capital of Java Island compared to other provincial capitals in other islands. This uneven distribution of healthcare services, particularly specialized doctors, poses a challenging obstacle to overcome in Indonesia. In addition to the aforementioned issues, it is noteworthy that a significant number of Indonesian citizens seek medical treatment abroad.³ The current situation poses a significant challenge for the government to enhance healthcare development in Indonesia, which is a crucial objective of national development. The aim is to increase awareness, willingness, and ability of every individual to live a healthy life in order to achieve the highest possible level of public health and to serve as a socially integrated workforce with economic

² Sapta Aprilianto, 'Peran Majelis Kehormatan Disiplin Kedokteran Indonesia (MKDKI) Terhadap Dugaan Kelalaian Medis Dokter', *Yuridika*, 30.3 (2015), 435 <https://doi.org/10.20473/ydk.v30i3.1954>

³ Muhammad Hatta, 'The Position of Expert Witnesses in Medical Malpractice Cases in Indonesia', *Ah-kam*, 18.1 (2018), 47 <https://doi.org/10.21580/ahkam.2018.18.1.2306>



productivity as an investment in human resources for development.⁴ The Chairman of the Indonesian Medical Association (hereafter referred to as IDI) has stated that nearly one million individuals seek medical treatment or other medical needs abroad annually, resulting in an expenditure of up to 20 trillion rupiah per year.

Telemedicine is considered as one of the solutions to address the healthcare crisis in rural and border areas in Indonesia, providing an effective and efficient solution for healthcare service delivery. The implementation of telemedicine has the potential to enhance public access to healthcare, improve healthcare quality, and reduce healthcare costs. The term Telemedicine originates from the Greek language, consisting of the prefix "tele-" meaning distant, and "medicus" meaning healthcare services provided by healthcare professionals. Telemedicine has been defined by experts as the integration of information and communication technology with medical expertise to provide healthcare services without spatial limitations or from remote locations. The provision of healthcare services through Telemedicine can be facilitated via telecommunication means and audio-visual tools that connect healthcare service providers.⁵

On September 30, 2007, the World Medical Association (hereafter referred to as WMA) issued recommendations regarding telemedicine, which state:⁶ "The WMA and National Medical Association should encourage the development of national legislation and international agreements on subjects related to the practice of telemedicine, such as e-prescribing, physician registration, liability, and the legal status of electronic medical records".

The translation of the aforementioned statement is that "WMA and National Medical Association should promote the development of National legislation and International agreements on subjects related to telemedicine practice, such as physician registration, electronic prescriptions, obligations, and legal status of electronic medical records." Several countries have established regulations regarding telemedicine. For instance, Malaysia has the Telemedicine Act of 1997, India has the Telemedicine Act of 2003, and the state of California in the United States has the Telehealth Advancement Act of 2011, which replaced the Telemedicine Development Act of 1996.⁷ The development of telemedicine regulations in Indonesia began in 2015 with the issuance of Minister of Health Regulation No. 409 of 2016 concerning Pilot Hospitals for Telemedicine Services Based on Video-Conferencing and Teleradiology. Subsequently, the implementation of Minister of Health Regulation No. 46 of 2017 concerning the National E-Health Strategy, in which the E-Health

⁴ Dwi Resti Prabandari, Achmad Busro, and Ery Agus Priyono, 'Tinjauan Yuridis Wanprestasi Dalam Penyelesaian Sengketa Medik (Studi Kasus Putusan Mahkamah Agung Nomor 2863K/PDT/2011)', *Diponegoro Law Journal*, 8.2 (2019), 1014–25.

⁵ Muh Endriyo Susila, 'The Use Of Amicable Settlement For Resolving Medical Malpractice Disputes In Indonesia', *Medicine, Law & Society*, 14.1 (2021), 119–34 <https://doi.org/10.18690/mls.14.1.119-134.2021>

⁶ Frans Santosa and others, 'Sikap Etis Dokter Terhadap Pasien Yang "Mendiagnosis" Diri Sendiri Menggunakan Informasi Internet Pada Era Cyber Medicine', *Jurnal Etika Kedokteran Indonesia*, 2.2 (2018), 53 <https://doi.org/10.26880/jeki.v2i2.16>

⁷ Santosa and others.



Strategy is a comprehensive approach to the utilization of information and communication technology in the field of health at the national level.

The implementation of telemedicine is regulated by the Minister of Health of the Republic of Indonesia Regulation No. 20 of 2019 concerning the Provision of Telemedicine Services between Health Service Facilities (hereinafter referred to as the Minister of Health Regulation 20/2019). The considerations behind the issuance of the Minister of Health Regulation regarding telemedicine are aimed at providing specialized healthcare services and improving the quality of healthcare services, particularly in remote areas. Additionally, the regulation aims to establish safe, high-quality, non-discriminatory, and effective telemedicine services that prioritize the interests and safety of patients.⁸ However, the regulation of telemedicine in the Minister of Health Regulation No. 20/2019 is only carried out between healthcare facilities and does not concern telemedicine services between doctors and patients.

As is commonly known, during the COVID-19 pandemic declared as a national disaster, telemedicine healthcare services play a crucial role in large-scale social distancing efforts aimed at accelerating the handling of COVID-19. In response to the legal vacuum in the implementation of healthcare services through telemedicine between doctors and patients, the Minister of Health has issued Circular Letter No. 303 of 2020 regarding the Provision of Healthcare Services through the Utilization of Information and Communication Technology in the context of preventing the spread of Corona Virus Disease 2019. (COVID-19).⁹ In an effort to strengthen the implementation of telemedicine, the Indonesian Medical Council Regulation No. 74 of 2020 on Clinical Authority and Medical Practice has been introduced. This regulation aims to grant clinical authority to doctors in providing telemedicine healthcare services. This Circular Letter from the Minister and Council only applies during the COVID-19 pandemic period.

In actuality, telemedicine in the form of online health applications has been present well before the COVID-19 pandemic. However, it has become increasingly prevalent and a popular choice among the public in recent years due to the COVID-19 pandemic. This service facilitates the public to consult with a doctor via smartphone without having to visit a hospital.¹⁰ The provision of online health application services represents a form of development from telemedicine. Regarding the provision of online health application services, consultations between doctors and patients are limited to virtual spaces, which may result in diagnostic errors that do not correspond to the patient's illness. In accordance with Law Number 29 of 2004 concerning Medical Practice, Article 15 stipulates that in establishing a diagnosis, a physician must conduct anamnesis, physical examination, and supporting examinations to eliminate potential diagnoses before prescribing medication.¹¹

⁸ Wahyu Andrianto, 'Tinjauan Perbandingan Penyelenggaraan Telemedicine Antara Indonesia Dan Amerika Serikat', *Jurnal Hukum Kesehatan Indonesia*, 1.2 (2021), 1–10.

⁹ Doli Gozali Shinta Lestari, 'Narrative Review: Telemedicine Dan Implementasinya Dalam Membantu Perawatan Pasien Corona Virus Disease 2019', *Jurnal Teknologi Perangkat Medis*, 19.3 (2021), 63–72.

¹⁰ Saputra, Zaid, and Oghenemaro.

¹¹ Andrianto.



In 2007, a case involving the provision of online healthcare services occurred in California. A telemedicine physician from Colorado consulted with a patient in California regarding their depression via online means. The physician prescribed fluoxetine, which is one of the antidepressants utilized. Several weeks later, the patient was discovered to have committed suicide by means of carbon monoxide poisoning. Alcohol and fluoxetine were detected in their bloodstream. Although this is possible in conventional face-to-face medical services, the risk can certainly be minimized through comprehensive and holistic psychiatric evaluation.¹² There is a possibility that the patient may already be at high risk for suicide during consultation, and this can be determined through face-to-face interaction, allowing the physician to provide a combination of psychiatric medication, psychotherapy, inpatient care advice, among others. The physician in the aforementioned case was sentenced for administering hazardous medication without prior physical examination.¹³

The current regulations regarding telemedicine services in Indonesia are limited to the provisions outlined in Minister of Health Regulation 20/2019. This regulation solely pertains to the implementation of telemedicine services between healthcare facilities, and does not address telemedicine services between doctors and patients or between healthcare providers and patients. Therefore, the legal protection of patients is a crucial matter that warrants inquiry. The urgency of such protection is evident given the various medical actions that require licensing or permits for doctors or healthcare professionals practicing telemedicine, medical service equipment, informed consent for medical procedures, patient health information security and confidentiality (medical record), all of which necessitate clear regulations. Legal policy refers to the direction, form, and content of the law.

Despite the fact that the general regulation of patient protection has been extensively discussed in the Indonesian context. Several regulations governing the protection of patients can be found in Law Number 36 of 2009 concerning Health, Law Number 29 of 2004 concerning Medical Practice (hereinafter referred to as Law 29/2004), and other Technical Regulations. The legal protection aspect for patients can be observed in Article 29 paragraph (1) of Law 29/2004, which stipulates that in a medical procedure to be carried out by a doctor on a patient, the patient's consent must be obtained.¹⁴ The aspect of patient protection can also be observed in Article 45 Paragraph 1 of Law 29/2004, which stipulates that "physicians are obliged to provide a comprehensive explanation regarding the diagnosis as well as the potential risks and complications that may occur to the patient."¹⁵

¹² Irwan Jasa Tarigan and others, 'Crime Aspect of Telemedicine on Health Technology', *International Journal of Civil Engineering and Technology*, 9.10 (2018), 480–90.

¹³ Afrizal Vatikawa and Amnawaty Amnawaty, 'Medical Record Data Counterfeiting by Doctors in Indonesia Reviewed from the Ethics, Discipline, and Legal Aspects', *FIAT JUSTISIA: Jurnal Ilmu Hukum*, 12.3 (2018), 224 <https://doi.org/10.25041/fiatjustisia.v12no3.1324>

¹⁴ Vatikawa and Amnawaty.

¹⁵ Nurul Ummah, Fifik Wiryani, and Mokhammad Najih, 'Mediasi Dalam Penyelesaian Sengketa Medik Dokter Dengan Pasien (Analisis Putusan Pn No. 38/Pdt.G/2016/Pn.Bna Dan Putusan Mahkamah Agung No. 1550 K/Pdt/2016)', *Legality: Jurnal Ilmiah Hukum*, 27.2 (2019), 205–21 <https://doi.org/10.22219/ljih.v27i2.10158>



In accordance with Article 46 (1), (2), and (3) of the Medical Practice Act 29/2004, healthcare providers are required to promptly create medical records containing essential information such as the patient's name, time of service, and the signature of the healthcare provider who administered the treatment or procedure. In the event that a medical practitioner intentionally engages in practice without possessing a practice permit, they may be subject to a maximum penalty of three years' imprisonment (Article 76) and a fine of IDR 100,000,000. (seratus juta rupiah). The obligation of physicians to create medical records is regulated in Article 46 paragraph 1. Failure to fulfill this obligation in accordance with Article 51 may result in imprisonment for a maximum of 1 year or a fine of up to IDR 50,000,000 (fifty million rupiah), as stipulated in Article 79 on medical practice in 2004.¹⁶

METHOD

This study is a normative legal research that employs both legislative and conceptual approaches.¹⁷ The legislative approach is conducted by examining all the legal regulations related to telemedicine in Indonesia,¹⁸ followed by an evaluation and interpretation of whether the current national provisions in Indonesia are sufficient to provide legal protection for patients and users of telemedicine services.¹⁹ Following an understanding of the legal protection for patients or users of telemedicine services, a conceptual approach is undertaken by dissecting related concepts and connections in order to provide a regulatory design that is expected to provide legal protection for telemedicine users in the future.

RESULT AND DISCUSSION

The Future Implementation of Telemedicine in Order to Provide Legal Protection for Patients

Maintaining good health is a crucial factor for every individual in ensuring the continuity of life on earth. The benefits of good health are significant for everyone, and activities that involve situational factors can be achieved effectively if health is consistently maintained throughout the process.²⁰ The situational factor encompasses the environmental factors in which humans reside or inhabit, including physical, social, cultural, economic, political, and other related factors.²¹ On the contrary, if an individual is unable to maintain their health due to situational factors during the

¹⁶ A.S. Albahri and others, 'A Systematic Review of Trustworthy and Explainable Artificial Intelligence in Healthcare: Assessment of Quality, Bias Risk, and Data Fusion', *Information Fusion*, 96.March (2023), 156–91 <https://doi.org/10.1016/j.inffus.2023.03.008>

¹⁷ Rian Saputra, 'Development of Creative Industries as Regional Leaders in National Tourism Efforts Based on Geographical Indications', *Bestuur*, 8.2 (2020), 121–28 <https://doi.org/10.20961/bestuur.43139>

¹⁸ Rian Saputra and Resti Dian Luthviati, 'Institutionalization of the Approval Principle of Majority Creditors for Bankruptcy Decisions in Bankruptcy Act Reform Efforts', *Journal of Morality and Legal Culture*, 1.2 (2020), 93–102 <<https://doi.org/10.20961/jmail.17i1.41087>>.

¹⁹ Rian Saputra and others, 'Reform Regulation of Novum in Criminal Judges in an Effort to Provide Legal Certainty', *JILS (JOURNAL OF INDONESIAN LEGAL STUDIES)*, 6.2 (2021), 437–82 <https://doi.org/10.15294/jils.v6i2.51371>

²⁰ Ulul Adzemi Romansyah, et.all., Pemenuhan Hak Konstitusional Warga Negara Indonesia : Studi Kasus Jaminan Kesehatan Nasional. *Justitia Jurnal Hukum* Volume 1 No.1 April 2017

²¹ Lego Karjoko and others, 'The Urgency of Restorative Justice on Medical Dispute Resolution in Indonesia', *Al-Ihkam: Jurnal Hukum Dan Pranata Sosia*, 16.2 (2021), 362–92 <https://doi.org/10.19105/al-lhkam.v16i2.5314>



process of an activity, the intended outcome of said activity may be delayed or even fail. "Health is a crucial issue that must be faced by every nation as it directly correlates with the development of personal integrity of each individual in order to live with dignity."

Therefore, the development of the health sector is essentially aimed at increasing awareness, willingness, and ability to live a healthy life for everyone to achieve optimal health status as one of the elements of welfare as mandated by the preamble of the Constitution of the Republic of Indonesia 1945. The realization of health as a human right entails the provision of various health efforts to the entire population through the implementation of quality and accessible health development. The health of the community is a fundamental pillar in the development of a nation. Health is one of the fundamental needs of human beings. The significance of health is often emphasized to the extent that it is commonly stated that health is everything, rendering everything meaningless without it. Thus, every activity and effort aimed at enhancing the health status of the community to the highest possible level is implemented based on the nondiscriminatory, participatory, protective, and sustainable principles that are of great significance for the formation of Indonesia's human resources, improvement of the nation's resilience and competitiveness, and national development.²²

As it is widely known, Human Rights have been substantially regulated within the 1945 Constitution of Indonesia. One of the human rights that is regulated is the right to health. Article 28H, paragraph (1) of the Constitution of 1945 unequivocally asserts that "every person has the right to obtain healthcare services." The inclusion of the right to health in the constitution has officially established the right to health as a positive legal right protected by the government. It is mandatory for the government to fulfill the right to health of its citizens through tangible and concrete efforts.²³

This is consistent with the objectives of the Indonesian state as stipulated in the Preamble of the 1945 Constitution, which aims to "protect the entire Indonesian people and all parts of Indonesia, promote the general welfare, enhance the intellectual life of the nation, and participate in the establishment of a world order based on freedom, eternal peace, and social justice." The aforementioned objectives can be achieved through various means, one of which is through development. Development is a fundamental requirement in a state. The public can obtain and utilize public facilities as a result of the aforementioned development, thereby indirectly providing positive impacts for the community.²⁴

It is important to note that the right to health has a broader scope, encompassing not only the individual's right to health per se, but also all factors that contribute to a healthy life, such as environmental issues, nutrition, housing, and others. The rights to

²² Fauziah Angraini, 'Pro Kontra Penegakan Etik Secara Internal Dan Eksternal', *Jurnal Konstitusi & Demokrasi*, 1.1 (2021), 37–63.

²³ Sulava Sururi Ramadhani, 'Upaya Penyelesaian Malpraktek Medis Dengan Menghadirkan Payung Hukum Tindak Pidana Medis', *Wijayakusuma Law Review*, 4.2 (2022), 21–26.

²⁴ Naomi Jessica Hartanto, Arlene Agustina, and Klarika Permana, 'Criminal Violations of the Medical Ethics Code by Dr. Bimanesh', *FIAT JUSTISIA: Jurnal Ilmu Hukum*, 12.4 (2018), 329 <https://doi.org/10.25041/fiatjustisia.v12no4.1378>



health and medical services, which are patient rights, constitute a more specific aspect of the right to health. It has become a consensus in the Indonesian constitution that the right to health is a fundamental human right. The fundamental philosophy behind the guarantee of the right to health as a human right is the *raison d'être* of human dignity. (human dignity). Health is a fundamental right of every human being. Hence, every individual, family, and community is entitled to receive protection for their health, and the government is responsible for regulating and safeguarding the fulfillment of the right to a healthy life, including for impoverished communities who are unable to afford it.²⁵

The legal framework concerning health is specifically regulated in Law Number 36 of 2009 concerning Health (hereinafter referred to as the UUK) as a written legal basis in Indonesia. As per Article 1, Number 1 of the Health Law, health is defined as a state of physical, mental, spiritual, and social well-being that enables individuals to live socially and economically productive lives. One of the efforts to improve the quality of health, whether at an individual or community level, is through healthcare services. Healthcare services involve the provision of medical care by healthcare professionals, such as doctors, and the pursuit of health by patients. The subject matter of medical law pertains to the relationship between doctors and patients, which indirectly forms both a medical and legal relationship. The legal relationship between a doctor and a patient is not specifically regulated within the Indonesian Civil Code. The relationship of trust that occurs between doctors and patients is often referred to as therapeutic transaction, where the service is based on the patient's full trust in the doctor's ability to provide assistance, and the doctor provides assistance in accordance with their expertise or skills in the field. The provision of healthcare services by medical personnel or doctors must be supported by adequate equipment in carrying out healthcare service efforts.²⁶

The advancement of knowledge in this era, particularly the rapidly advancing technology, has resulted in both positive and negative consequences for the wider community, particularly in the field of healthcare. In addition to the increasingly sophisticated tools that support development in the field of healthcare, there is also online healthcare services available through the internet or online media commonly referred to as Telemedicine. The term Telemedis is derived from the prefix "tele," meaning "distance," and the word "medis," which pertains to the field of medicine. The provision of healthcare services through online media, without face-to-face interaction or physical presence, is defined as telemedicine. Telemedicine refers to the practice of remote medicine, in which actions, diagnostic decisions, treatments, and recommendations are based on data, documents, and other information transmitted through telecommunications systems. One form of this is online clinics, where doctors provide health consultations, listen to patient complaints, diagnose patients, and prescribe medication through online media. Online clinics engage in online

²⁵ Henny Yuningsih and others, 'Philosophical Foundation of Chemical Castration for Offenders of Sexual Violence against Children', *Sriwijaya Law Review*, 4.1 (2020), 62–78 <https://doi.org/10.28946/slrev.Vol4.Iss2.221.pp62-78>

²⁶ Nur Hafizal Hasanah and Eko Soponyono, 'Kebijakan Hukum Pidana Sanksi Kebiri Kimia Dalam Perspektif HAM Dan Hukum Pidana Indonesia', *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)*, 7.3 (2018), 305 <https://doi.org/10.24843/jmhu.2018.v07.i03.p03>



transactions, and therefore engage in legal actions in this regard through computer services or electronic media connected to the internet. All payment processes, ranging from service fees to medication payments, are conducted through online banking transfers or mobile banking without the need for face-to-face interactions, unlike conventional healthcare services.²⁷

This statement is deemed appropriate and supportive in the sociological context that is being considered for telemedicine technology. Based on data from the Human Resources Development and Empowerment Agency for Health (BPPSDM), Ministry of Health in 2011, the number of medical personnel reached 417,832 individuals spread across 33 provinces in the country. The total number of medical personnel is 59,492 individuals, comprising of 16,836 Specialist Doctors, 32,492 General Practitioners, and 10,164 Dentists. The total number of nurses is 234,176, consisting of 220,575 general nurses and 13,601 dental nurses. The number of midwives amounts to 124,164 individuals. The number of healthcare workers in Indonesia continues to increase annually. Demikian pula dengan pengguna internet. Over time, the number of internet users in Indonesia has been increasing day by day. According to statistical data from December 2011 and as stated by Budi Setiawan, Director General of Post and Information Technology Resources (SDPP) at the Ministry of Communication and Information Technology, the number of internet users in Indonesia has reached approximately 55 million people. The figure has experienced a significant increase of 30.9% compared to the previous year, with Indonesia emerging as the largest market for the development of information and communication technology. (TIK). Meanwhile, based on Nielsen's research, Indonesia also ranks highest in terms of mobile phone usage with a percentage of 48%.²⁸

However, the development of online healthcare services does not necessarily bring only positive impacts, as there are also negative effects associated with this development. One of the issues pertains to the inadequate maintenance of patient confidentiality or medical records in the context of online medical consultations. Additionally, the absence of face-to-face interaction in the diagnostic process of online medical consultations poses a significant risk of diagnostic errors. In the event of a misdiagnosis, it is incumbent upon the physician to be held accountable for their actions. The aforementioned concerns are deemed reasonable given that the health of the Indonesian population is one of the objectives of the Indonesian government. Article 34 paragraph (1) of the 1945 Constitution establishes philosophically that healthcare services are the responsibility of the State. Satu Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, The provisions mentioned in Article 28 H paragraph 1 govern the citizens' right to get medical care. The provision of healthcare services is related to the values that uphold the dignity of Indonesian human beings, while the establishment of the right to access healthcare services is a manifestation of the principle of social justice that realizes equality. The various legal aspects of healthcare are intricately linked to both public and private law, which are directed towards the healthcare subsystem within society.

²⁷ Suhadi and others, 'Efektivitas Penanganan Keluhan Pasien Pelayanan Kesehatan Di Rumah Sakit Bahteramas Sulawesi Tenggara The Model Effectiveness Problem of Services Handling Complaints At', *Jurnal MKMI*, 15.4 (2019), 400–407.

²⁸ Andrianto.



As it is commonly known, health law encompasses various legal aspects, including civil law, criminal law, and administrative law. The field of health law encompasses various legal aspects related to healthcare. The initial regulation of health law was established in 1992, under Law No. 23 concerning Health. This was later repealed in 2009 and replaced by Law No. 36/2009 concerning Health. This change was made due to the advancement of time, rendering the previous regulations unsuitable for application. Consequently, a new Health Law was deemed necessary. The Health Law No. 36/2009 accommodates better to current developments.²⁹

Health efforts refer to systematic, consolidated, and sustainable activities aimed at maintaining and improving public health through disease surveillance, health promotion, treatment, and healing as defined in Article 1 number 12 of the Health Law. Meanwhile, the Law Number 29/2004 concerning Medical Practice (hereinafter referred to as UUPK) specifically does not regulate health services. The objective of medical practice is to provide protection to patients, maintain and improve the quality of care provided by healthcare professionals, and ensure legal certainty for both the public and healthcare professionals as stated in Article 3 of the Medical Practice Act. The regulation of healthcare services through telemedicine is implicitly determined in the legislation. It is stipulated that prior to being distributed for public health utilization, technologies and technological products must be researched. The aforementioned healthcare technology encompasses all methods and tools that can aid in preventing or treating health issues, and all tools must comply with the general regulations related to the matter. Further provisions regarding the regulation of telemedicine are stipulated in Article 42 of the University Act, as follows: The technology and health technology products are established, researched, distributed, developed, and utilized for the benefit of public health. The term "health technology" as referred to in paragraph (1) encompasses all methods and tools utilized for preventing the occurrence of diseases, detecting the presence of diseases, alleviating suffering caused by diseases, curing diseases, minimizing complications, and restoring health after illness. The provisions regarding technology and health technology products as referred to in paragraph (1) must comply with the standards set forth in the legislation and regulations.³⁰

The aim of research and development in the field of health science and technology is to generate health information, technology, technological products, and health information technology (HIT) to support health development. The development of technology, technological products, information technology (IT), and health information is carried out in accordance with the provisions of intellectual property rights. (HKI). The technology of health referred to in Article 42 of the Higher Education Law encompasses the means, methods, processes, or products resulting from the application and utilization of scientific disciplines in the field of health that generate value for the fulfillment, sustainability, and improvement of human life

²⁹ Sofian Syaiful Rizal, 'Penjatuhan Kebiri Kimia Bagi Pelaku Kejahatan Seksual Anak Dalam Perspektif HAM', *Legal Studies Journal*, 2021, 54–69 <https://www.ejournal.unuja.ac.id/index.php/ljsj/article/view/2023>

³⁰ Didith Prahara, 'Penyelesaian Dugaan Kelalaian Medik Melalui Mediasi (Studi Pasal 29 Undang-Undang No. 36 Tahun 2009 Tentang Kesehatan)', *Jurnal Ilmiah Ilmu Hukum De Jure*, 17.740 (2017), 429–43.



quality.³¹ One of the implementations of Article 42 is the production of technological products, such as the online clinic, which assists the public in providing health analysis and remote examinations to patients. This platform also offers the convenience of online prescription and medication purchase.

The author assesses that the Health Law is sufficiently responsive, considering the nature of medical practice and the function of hospitals as one form of the healthcare industry. Hospitals have evolved in accordance with civilization, transforming in the digital era in response to the demands of knowledge and technology of their time. One significant factor that affects hospitals is the availability of competent resources, adequate facilities, and synergy with the community network as users of health services. The implementation of the National Social Security Law Number 40 of 2004, which includes the provision of health insurance for all Indonesian citizens, has placed a demand on the healthcare industry to be prepared to provide excellent services. The influx of patients has been increasing, while hospitals must strive to match it with an adequate number of medical personnel. The provision of healthcare services in hospitals fundamentally relies on the implementation of medical practices in accordance with scientific knowledge and technology.³²

The current operational telemedicine involves the utilization of System Application and Product to provide integrated healthcare solutions for healthcare industry companies in Indonesia. At Eka Hospital, this system is utilized for healthcare programming, logistics, and financial management. The primary objective of this project is to optimize patient care while streamlining all back-office processes to ensure seamless integration with front-line activities. The same approach is also utilized by Mitra Keluarga Hospital, which implements an integrated system of Electronic Medical Records and Business Process Management. For a healthcare industry that is not limited to hospitals or clinics, including pharmaceutical and medical equipment industries, the utilization of digital systems can be considered as an efficient and effective option for marketing their products and services. This is due to the integrated nature of the system, which encompasses finance, procurement, inventory, patient management, billing, and electronic medical records. (Electronic Medical Records).

The author's explanation above regarding the practical implementation of telemedicine usage implies legal issues, specifically the need for a telemedicine regulation concept in Indonesia that can protect various stakeholder interests in the healthcare industry, particularly patients. The author refers to the implementation of regulations that serve as a means of legal protection for healthcare providers and patients as recipients of healthcare services. Thus far, based on the previously outlined Minister of Health Regulation No. 20/2019, the regulation of telemedicine tends to lack in terms of patient protection as recipients of healthcare services. Therefore, the

³¹ Erwin Asmadi and others, 'Efektivitas Pemanfaatan Teknologi Informasi Dalam Persidangan Perkara Pidana Selama Pandemi Covid-19', *DE LEGA LATA: Jurnal Ilmu Hukum*, 6.2 (2022), 465–75 <https://doi.org/10.30596/delegalata.v6i2.5057>

³² Panji Purnama and Febby Mutioara Nelson, 'Penerapan E-Court Perkara Pidana Sebagai Salah Satu Upaya Terwujudnya Integrated Judiciary Dalam Sistem Peradilan Pidana Di Indonesia', *Rechhts Vinding*, 10.1 (2021), 97–116.



author conducts an analysis in order to provide input regarding the ideal concept of telemedicine regulation in Indonesia moving forward.

The Formation of a System Provision Of Telemedicine Services.

In accordance with Article 2 of Law Number 29 of 2004 concerning Medical Practice (Medical Practice Law in Indonesia), it is stipulated that medical practice is based on the principles of Pancasila and grounded in scientific values, benefit, justice, humanity, balance, as well as patient protection and safety. In Article 3, it is emphasized that the practice of medicine aims to provide protection to patients; maintain and improve the quality of medical services provided by physicians and dentists; and provide legal certainty to the community, physicians, and dentists. The scientific value of medical practice is acquired through an educational process that must be possessed by a physician and a dentist. The lengthy and costly educational process is often confronted with exclusivity in medical services, resulting in expensive public health service products that subsequently impact values of justice, humanity, and balance. However, upon further examination, it becomes evident that achieving such a standard in the field of medicine is not an easy feat, as medical practice is a complex process that involves a range of activities, including patient history-taking, physical examination, diagnostic testing, and holistic and comprehensive management, which is carried out collaboratively with other healthcare professionals.³³

Telemedicine is considered as a practical and cost-effective alternative, as it eliminates the need for patients to physically visit hospitals for consultations. However, this does not address the actual medical needs of patients. Adequate healthcare services encompass holistic and comprehensive care, which entails addressing the patient's whole body system, including their physical and spiritual well-being. This approach is not solely organ-oriented, but rather patient and family-oriented, and views humans as bio-psychosocial beings within their ecosystem. Additionally, nutrition is a crucial component of this approach. The term comprehensive implies a focus not only on curative measures, but also on prevention, encompassing health promotion, specific protection (primary), early case detection, prompt treatment (secondary), and disability limitation/rehabilitation (tersier).³⁴

The conventional medical service is indeed positioned diametrically opposite to telemedicine. In telemedicine, patients perceive the physician as highly skilled and competent as they are able to provide remote treatment without the need for additional diagnostic procedures. The success of this is closely correlated with whether the patient is able to articulate in detail the symptoms or illness they are experiencing, or whether they are able to photograph physical symptoms of the illness, which of course cannot yet be confirmed for accuracy. This will obscure the identity of medical practice based on humanistic and just values. The next issue pertains to authority. In accordance with Article 35 paragraph (1) of the Indonesian Medical Practice Act, authorized physicians are those who possess a Certificate of Registration. (STR). Based

³³ Fikri Hadi and Farina Gandryani, 'Status Darurat Kesehatan Akibat Pandemi Covid-19 Dalam Perspektif Hukum Tata Negara Darurat Di Indonesia', *Arena Hukum*, 15.3 (2022), 582–609 <https://doi.org/10.21776/ub.arenahukum.2022.01503.7>

³⁴ Soetedjo Soetedjo, Julitasari Soendoro, and Pukovisa Prawiroharjo, 'Tinjauan Etika: Dokter Sebagai Eksekutor Hukuman Pidana Yang Menyebabkan Kematian, Kecacatan, Atau Gangguan Kesehatan', *Jurnal Etika Kedokteran Indonesia*, 1.1 (2017), 19 <https://doi.org/10.26880/jeki.v1i1.5>



on the Medical Practice Act, doctors are authorized to practice medicine according to their education and competence, which includes interviewing patients, conducting physical and mental examinations, determining diagnostic tests, establishing a diagnosis, determining patient management and treatment, performing medical or dental procedures, prescribing medications and medical devices, issuing medical or dental certificates, storing medications in permitted quantities and types, and compounding and dispensing medications to patients in remote areas where there are no pharmacies. There are 10 distinct authorities of physicians that, upon careful examination, are often overlooked in the realm of telemedicine, particularly in the process of establishing a diagnosis.

The steps involved in establishing a diagnosis include obtaining a medical history, conducting a physical examination, performing diagnostic tests, and arriving at a diagnosis. However, factors that contribute to diagnostic errors can begin with an inaccurate medical history. A physician can potentially guide diagnostic possibilities for a patient through a thorough medical history taking. A good anamnesis should refer to systematic questions, guided by four fundamental principles (The Fundamental Four), which include: Present Illness History (PIH), Past Illness History (PIH), Family Health History, Social and Economic History; and Seven Sacred Pearls of Anamnesis (The Sacred Seven), namely Allocation of complaints, Quality, Quantity, Time (onset, duration, frequency, and chronology), Aggravating factors, Alleviating factors, and Associated complaints. Humans are multidimensional creatures. The existence of human beings, both in spirit and physical form, is intertwined within a historical record. It is not feasible to instantly gather a comprehensive medical history. This stage is crucial as an initial step to comprehend and understand the patient. It is possible for a doctor to utilize a brief anamnesis obtained through written or oral interviews as initial data to conclude a patient's illness, either through daily experiences of interacting with patients or due to their seniority.³⁵

The regulation of Medical Practice is stipulated in Articles 36-38, as follows: Article 36 stipulates that every physician and dentist who practices medicine in Indonesia is required to possess a practice license. According to Article 37, it is stipulated that: a. The practice permit letter as referred to in Article 36 is issued by the authorized health officer in the district/city where medical or dental practice is carried out; b. The practice permit letter for doctors or dentists as referred to in paragraph (1) is only granted for a maximum of 3 (three) places; c. One practice permit letter is only valid for 1 (one) practice location. The subsequent provision, Article 38 paragraph (1), stipulates that in order to obtain a license to practice as a medical doctor or dentist, one must possess a valid registration certificate as a medical doctor or dentist, have a place of practice, and obtain a recommendation from a professional organization.

The interpretation of legal norms in these articles is as follows: In reference to clauses (1), (2), and (3) of Article 36 of the Law on Medical Practice, it can be inferred that a physician's authority is limited to practicing in one to three specific locations, with a clear domicile. The Law does not mention the world of the internet. This

³⁵ Lalu Mariawan Alfari and Baiq Fitria Maharani, 'Perlindungan Hukum Bagi Konsumen Terhadap Kelalaian Apoteker Dalam Memberikan Resep Obat Pada Pelayanan Kesehatan', *Medika: Jurnal Ilmiah Kesehatan*, 2.1 (2022), 1-9.



passage cannot be interpreted to mean that therapeutic contract transactions can be conducted via the internet at the place of domicile. The subsequent article's requirements are clear, indicating that the law has yet to provide protection for telemedicine. Protected locations for medical practice are physical locations with a verifiable address, as opposed to internet domains. From a legal perspective, the therapeutic contract that occurs between a doctor and a patient differs from the transaction in a contract (agreement) as regulated in civil law.³⁶

The therapeutic contract in telemedicine cannot be equated with e-commerce. The crux of the matter is that the object of the therapeutic contract pertains to the holistic human being (a monodualistic creature comprising both body and soul), whereas in e-commerce, the object pertains to tangible or intangible objects (*zaak*). The understanding that humans are not objects and therefore do not have legal protection in the event of a dispute. Patients are not consumers. The patient is an active agent who decides for themselves as a legal subject who creates rules for themselves. In this context, the patient is unable to file a legal claim against the doctor on the basis of consumer protection laws. The patient is considered a legal subject with equal standing and balance to the doctor, both of whom come to an agreement. The occurrence of injuries in contract therapy that give rise to disputes must be placed within the terminology of business agreements. (*inspaning verbinten*).³⁷

The establishment of hospitals as corporate entities providing medical practice services can be viewed from a juridical perspective, and may take on various forms of business entities. According to Law Number 44 of 2009 concerning Hospitals, there are various forms of hospitals, namely Public Hospitals and Private Hospitals. Public hospitals can be managed by the Government, Local Government, and non-profit legal entities. Public hospitals managed by the Government and Local Government are organized based on the management of Public Service Agency or Regional Public Service Agency in accordance with the provisions of laws and regulations. Public hospitals managed by the Government and Local Government cannot be converted into private hospitals. On the other hand, Private Hospitals are managed by legal entities with a profit-oriented objective, in the form of either a Limited Liability Company or a State-Owned Enterprise.³⁸

Private hospitals, which are managed by legal entities with the aim of generating profit, typically employ digital systems for administrative services as well as the use of medical equipment. The categorization of hospital ownership has an impact on the emergence of various forms of creativity and innovation in the field of medical services. The demand for excellent service quality also encompasses the resources within it, including doctors. At the level of termination, where telemedicine offers efficient and economical forms, it has become a preferred option. Telemedicine is a medical service delivery method that is marketable and conducted by doctors, including other healthcare professionals, either individually, in a specific community

³⁶ Santosa and others.

³⁷ Rossi Suparman, 'Perlindungan Hukum Dan Tanggung Jawab Rumah Sakit Terhadap Dokter Dalam Sengketa Medis', *Syiar Hukum: Jurnal Ilmu Hukum*, 17.2 (2020), 188–215 <https://doi.org/10.29313/shjih.v17i2.5441>

³⁸ Deri Mulyadi and others, 'Medical Negligence Dispute Settlement in Indonesia', *Indian Journal of Forensic Medicine and Toxicology*, 14.4 (2020), 4229–33 <https://doi.org/10.37506/ijfmt.v14i4.12304>



of doctors, or within institutional settings such as hospitals or other healthcare service units.

The author's intention regarding the necessity of establishing a clear system in the provision of telemedicine services to provide protection for patients in the form of standardization of the competence of a telemedicine healthcare facility is contextualized in this manner. Thus far, in Minister of Health Regulation No. 20/2019, only one article (specifically Article 13) regulates this matter, which is also in the realm of regulation regarding the registration of Healthcare Facility Services. Specifically, every Consultation Provider Healthcare Facility and Consultation Requester Healthcare Facility that has met the requirements must be registered. The registration referred to in paragraph (1) shall be submitted to the Minister through the Director General. The submission of registration as referred to in paragraph (2) is accompanied by the attachment of documents fulfilling the requirements and/or the application used.

The Legal Certainty of Doctor's Domain Area.

As previously stated by the author, the organization of medical practice is regulated in articles 36-38 of the Medical Practice Act, as follows: Article 36 stipulates that every physician and dentist who practices medicine in Indonesia is required to possess a practice permit. According to Article 37, it is stipulated that: a. The practice permit letter as referred to in Article 36 is issued by the authorized health official in the district/city where medical or dental practice is carried out; b. The practice permit letter for doctors or dentists as referred to in paragraph (1) is only granted for a maximum of 3 (three) places; c. One practice permit letter is only valid for 1 (one) practice location.³⁹

The subsequent provision, Article 38 paragraph (1), stipulates that in order to obtain a license to practice as a medical doctor or dentist, one must possess a valid registration certificate as a medical doctor or dentist, have a place of practice, and obtain a recommendation from a professional organization. The concept of domain jurisdiction serves as an analogy to the requirement of a clear locus indicated by a Registration Certificate in conventional medical practice. Similarly, in the virtual world, it is crucial to establish such a framework.

The regulations pertaining to the obligation of recording in telemedicine service practice have been stipulated in Article 14 of the Minister of Health Regulation 20/2019 concerning expertise. The consulting provider of healthcare facilities must convey consultation responses and/or issue expertise to the requesting healthcare facility. The response to the consultation as referred to in paragraph (1) shall consist of medical considerations from a specialist physician/subspecialist physician and/or other relevant experts regarding the actions or management of the patient in clinical teleconsultation services. The response to the consultation and/or issuance of Expertise as referred to in paragraph (1) must include at least the name of the requesting physician, the specialist physician/subspecialist physician or other relevant expert who created the Expertise, patient identification data, and other necessary information. The response to the consultation and/or issuance of Expertise as referred

³⁹ Susila, 'The Use Of Amicable Settlement For Resolving Medical Malpractice Disputes In Indonesia'.



to in paragraph (1) must be printable and be part of the patient's medical record. In terms of communication, if the required written, visual, video, audio, or other information is not clearly received, the consulting specialist physician/subspecialist physician or other expert as referred to in paragraphs (2) and (3) may request for re-examination or re-sending as needed.⁴⁰

However, the question at hand is whether this can be categorized as medical records. As per the nomenclature, it is stated in Article 13 Paragraph (4) of the Ministry of Health Regulation 20/2019 that the aforementioned is a part of the medical record. If so, to what extent are the responsibilities of healthcare providers and doctors in providing protection against such matters, an important question to be raised given that based on the author's research, there are no further provisions regarding the responsibilities of healthcare providers and telemedicine practitioners towards the medical records in question.⁴¹

Compared to the general protection of patient medical records, the absence of provisions for protecting recorded results as part of medical records is an error. The doctor-patient relationship involves an element of trust in which the doctor is expected to provide medical services and be trusted to maintain the confidentiality of the patient's medical information and other private matters.⁴² In this matter, the physician bears the ethical obligation of the medical profession (Doctor's Oath) as well as the legal obligation of the provisions of the legislation above to maintain the confidentiality of the contents of the patient's Medical Records, as regulated in Article 51 of the Medical Practice Act which contains the obligations of physicians or dentists in carrying out medical practice, namely: a. providing medical services in accordance with professional standards and standard operating procedures as well as the medical needs of patients; b. referring patients to other physicians or dentists who have better expertise or abilities, if unable to perform an examination or treatment; c. maintaining confidentiality of everything known about the patient, even after the patient has passed away; d. providing emergency assistance on the basis of humanity, unless he is convinced that there is someone else who is responsible and capable of doing so; and e. increasing knowledge and following the development of medical or dental science.

In the third clause of Article 51 of the Medical Practice Law, it is explicitly stated that doctors are obliged to maintain confidentiality of all information they acquire about their patients, even after the patient's demise. This is consistent with Article 47 of the same law, which regulates medical records and states that: a. Medical records documents as referred to in Article 46 belong to the doctor, dentist, or healthcare facility, while the contents of the medical records belong to the patient; b. Medical records as referred to in paragraph (1) must be kept and maintained confidentially by

⁴⁰ Muh Endriyo Susila, 'Criminal Prosecution Of Doctors In Indonesia: Issues And Problems', *IJUM LAW Journal*, 23.3 (2015), 439–58.

⁴¹ Pukovisa Prawiroharjo and others, 'Dapatkah Keputusan Kemahkamahakan Etik Majelis Kehormatan Etik Kedokteran Bersifat Terbuka?', *Jurnal Etika Kedokteran Indonesia*, 2.2 (2018), 45 <https://doi.org/10.26880/jeki.v2i2.15>

⁴² Anggraeni Endah Kusumaningrum, 'Mediasi Dalam Penyelesaian Sengketa Medis Sebagai Upaya Perlindungan Pasien', *Hukum Dan Dinamika Masyarakat*, 14.1 (2016), 70–78 <https://doi.org/10.36356/hdm.v14i1.445>



the doctor or dentist and the management of the healthcare facility; c. The provisions regarding medical records as referred to in paragraphs (1) and (2) are regulated by the Ministerial Regulation.

Thus, it can be concluded that there is a correlation between patient privacy in medical records and the responsibility of doctors or dentists to maintain its confidentiality. Violations of patient privacy may result in ethical sanctions based on the professional code of ethics for doctors or dentists, as well as legal sanctions in the form of civil and/or criminal lawsuits. Negligence in maintaining medical confidentiality may result in charges under Article 322 of the Criminal Code concerning the disclosure of official secrets. On the other hand, violations of the right to privacy cannot be prosecuted criminally but are more likely to be considered as an unlawful act, which can be sued under Article 1365 of the Civil Code. Therefore, based on the aforementioned presentation, in the author's view, the regulation of telemedicine services in the future, in addition to the obligation of recording, should include the obligation to maintain the confidentiality of medical records in the form of such recording as a means of protecting patients' privacy rights.

In response to the positive effects of the aforementioned regulation, all forms of healthcare provision should prioritize the interests of patients. The importance of patient rights is clearly stipulated in Law Number 44 of 2009 concerning Hospitals, which includes the constitutional rights and obligations of patients that are implemented by physicians. The Patient's Rights Act (Article 52 of the Indonesian Health Law) stipulates the following provisions: a. The patient is entitled to receive a comprehensive explanation regarding medical procedures; b. The patient has the right to seek a second opinion from another physician or dentist; The patient is entitled to receive medical services that meet their needs; The patient has the right to refuse medical treatment; c. The patient is entitled to access the contents of their medical records.

The complete fulfillment of patient rights necessitates the existence of medical action report documentation. In the context of telemedicine, it is imperative that patients are provided with comprehensive documentation of their consultations, regardless of whether they are guided through the process via smartphone, video call, Skype, teleconference, social media messaging, or a standard consultation without the use of a camera. Failure to do so would result in an incomplete fulfillment of the patient's rights. Currently, there is a lack of Manual Procedure or Standard Operating Procedure (SOP) in the field of telemedicine. Assuming that this report has been conducted through visual recording, it would be incongruent with the provisions outlined in the Regulation of the Minister of Health of the Republic of Indonesia No. 69 of 2014 concerning the Obligations of Hospitals and Patients, which stipulates that patients, their families, and visitors are prohibited from documenting/photographing/recording medical/nursing procedures in any way and for any reason without written permission from the hospital.

In Article 53 of the Health Law, patients are obligated to provide complete and honest information regarding their health issues, comply with the advice and instructions of their physician or dentist, adhere to the regulations in the healthcare facility, and provide compensation for the services received. The patient's full



entitlement to rights and responsibilities is not always fully obtained. Oleh karena itu, Informed Consent secara tertulis menetapkan bahwa pasien tidak dapat menuntut jika terjadi kesalahan dalam tindakan medis. Telemedicine is based on the understanding that the essence of medical practice is a comprehensive physical examination, which cannot be replaced by intermediary media. Errors made by patients in illustrating or describing clinical complaints and symptoms can have fatal consequences for the diagnosis provided. This serves as a legal protection for both parties involved.

Providing legal protection is an obligation of every state to its citizens. In accordance with legal principles, responsibility pertains to the act of an individual wherein consequences arise as a result of their freedom to act. The concept of accountability can be divided into two categories, namely risk and liability based on civil law.⁴³ There are three principles of accountability, namely accountability based on fault and no-fault which can be referred to as risk responsibility or absolute responsibility.⁴⁴ The principle of accountability based on error dictates that an individual must take responsibility for their actions if they have caused harm to others through their mistakes. On one hand, the responsibility for risk lies with the defendant as the producer who will ultimately be held accountable for business risks. On the other hand, the plaintiff consumer is not obligated to assume responsibility. According to C. Berkhouwer and L.D Vorstam, there are three factors that contribute to errors in professional tasks: a) inadequate or insufficient expertise, b) limited experience, and c) inadequate understanding or comprehension.

From the perspective of professional ethics, particularly in the field of healthcare, a high level of precision is a fundamental requirement supported by specific regulations or Standard Operating Procedures (SOPs) for medical personnel. Committing a mistake entails violating established rules. The errors committed by a physician can be examined from various legal perspectives, namely private law and public law.⁴⁵ The two legal aspects are interrelated. Thus, a physician can be deemed culpable if examined from the initial step of therapeutic transactions, subsequently evaluated from the perspective of the three aforementioned legal aspects. Due to the lack of specific regulations regarding the legal responsibilities of doctors, the Consumer Protection Law currently serves as the legal basis for protecting patients who feel that they have been disadvantaged.

The patient, as stipulated in the Consumer Protection Law, namely Law Number 8/1999 (hereinafter referred to as the Consumer Protection Law), can also be referred to as a consumer who utilizes the services of a doctor. On the other hand, doctors in the field of healthcare are considered as business operators. As stipulated in Article 19 paragraph 1 of the Consumer Protection Law, compensation can be demanded by a patient if a medical practitioner causes harm due to medical treatment. The provision of financial compensation, replacement of goods, or provision of aid represents a

⁴³ Rian Saputra and Silaas Oghenemaro Emovwodo, 'Indonesia as Legal Welfare State : The Policy of Indonesian National Economic Law', *Journal of Human Rights, Culture and Legal System*, 2.1 (2022), 1–13 <https://doi.org/10.53955/jhcls.v2i1.21>

⁴⁴ Saputra and others.

⁴⁵ Kartono Kartono and Aji Mulyana, 'The Implementation of Chemical Castration Penalties towards Paedophilia Crime Perpetrators', *FIAT JUSTISIA: Jurnal Ilmu Hukum*, 13.4 (2019), 321 <https://doi.org/10.25041/fiatjustisia.v13no4.1683>



form of restitution that patients may request in accordance with applicable legislation. Article 19 paragraph 2 stipulates provisions regarding compensation for losses.⁴⁶

The responsibility for medical malpractice in telemedicine lies with the system provider, as explicitly stated in Article 15 of the ITE Act, which defines electronic system providers as entities that bear the responsibility for electronic system management. In relation to this, a series of activities in online buying and selling that are conducted by the recipient and sender through an Electronic System are also referred to as electronic transaction providers, as regulated in Article 1 paragraph 14 of the Government Regulation of the Republic of Indonesia Number 82/2012 concerning the Implementation of Electronic Systems and Transactions.

However, based on the textual analysis of the Ministry of Health Regulation No. 20/2019, it has not yet included provisions regarding the aforementioned matter, nor has it established a dispute resolution mechanism in the event of conflicts between patients and healthcare facilities or doctors in the future. As it is commonly understood, the positions of the parties involved in therapeutic transactions are equal or equivalent, resulting in legal responsibilities for both the physician and the patient. The presence of therapeutic transactions often leads to patient-doctor issues. The legal basis for patients to file a lawsuit is to demand accountability that includes breach of contract (*wanprestasi*) under Article 1239 of the Civil Code and Article 1365 of the Civil Code, which serve as the legal basis for unlawful acts. If a doctor provides medical treatment that does not align with what was promised, it may result in a breach of promise in healthcare service. The actions of a physician in cases of carelessness or negligence may contravene therapeutic objectives. The elements of breach of promise in healthcare services are as follows: a. Therapeutic contract due to the binding relationship between the doctor and the patient; b. The doctor violates the purpose of the therapeutic contract in providing healthcare services; c. The doctor causes harm to the patient due to the doctor's own actions.

Online media conversations serve as evidence in telemedicine healthcare services regarding the existence of a therapeutic contract. Apabila terdapat fakta perbuatan melawan hukum, maka dapat diajukan gugatan perbuatan melawan hukum meskipun tidak ada perikatan. Hal ini didasarkan pada Pasal 1365 KUHPerdara. a. The patient incurred losses due to the actions of the doctor. Error committed by a physician. There is a causal relationship between the cause and effect of losses. The act is unlawful. However, it is important to note that not all disputes arising from telemedicine services need to be resolved through such means. This is ultimately a consequence of the absence of a dispute resolution mechanism in the regulation of telemedicine services or a legal vacuum in the resolution of telemedicine medical disputes. In the context of the author's research on the repressive protection aspect of telemedicine patients in Indonesia, it is important to distinguish which dispute resolution models will be utilized, given that each conflict possesses varying complexities. Therefore, cultural values that have developed within the community as local wisdom must be considered in conflict resolution. (local wisdom).

⁴⁶ Salahuddin Gaffar and others, 'The Concept of Procedural Law Regarding the Implementation of Collective Agreements with Legal Certainty in Termination of Employment in Indonesia', *Heliyon*, 7.4 (2021), e06690 <https://doi.org/10.1016/j.heliyon.2021.e06690>



Therefore, in terms of developing a concept for telemedicine service regulation that is oriented towards legal protection for patients, the author argues several points, including: Initially, the formation of a system is necessary to ensure measurable competencies and certifications in the provision of telemedicine services. Secondly, the Clear Domain Regions. Thirdly, the obligation to record telemedicine service practices and protect the recorded outcomes. The fourth provision pertains to the regulation of informed consent, while the fifth provision includes regulations regarding dispute resolution in healthcare practices for patients through telemedicine.

CONCLUSION

The author posits several points regarding the ideal regulation of telemedicine services, which should prioritize legal protection for patients, based on research findings. The establishment of a system is imperative in guaranteeing quantifiable proficiencies and accreditations within the realm of telemedicine services. Secondly, the regions of clear domain. Thirdly, it is imperative to document telemedicine service practices and ensure the protection of the recorded results. The fourth aspect pertains to regulations concerning informed consent, while the fifth aspect involves the incorporation of provisions related to dispute resolution in healthcare practices for patients utilizing telemedicine.

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