

LEGAL PROTECTION FOR PATIENTS DUE TO MISDIAGNOSIS IN ONLINE HEALTH SERVICE PLATFORMS (TELEMEDICINE) BASED ON POSITIVE LAW IN INDONESIA

Ronald Suryaprawira, Erikson Sihotang, Ni Ketut Wiratny

Universitas Mahendradatta, Indonesia

dr.rons@yahoo.com, eriksonsihotang1@gmail.com, wiratny@gmail.com

ABSTRACT

Health regulations in guaranteeing legal protection for patients regarding misdiagnosis in online health service platforms based on positive law in Indonesia. Protection is contained in the provisions in Article 3 paragraph (2) and paragraph (4), as well as Article 7 of Medical Council Regulation Number 47 of 2020. Prohibitions For doctors who practice medicine via telemedicine, it is regulated in Article 9 of the Medical Council Regulation Number 47 of 2020, which is confirmed by Article 2 of the Minister of Health Regulation Number 20 of 2019. In addition, for Health Facilities providing and requesting consultations, they must register and submit it to the Minister of Health, through the Directorate General of Health Services. Resolving legal disputes between patients and online health service providers if a misdiagnosis occurs can submit a complaint to the Indonesian Medical Discipline Honorary Council in accordance with the provisions of Article 66 of the Medical Practice Law. Resolving legal disputes between patients and online health service providers can settlement through court or outside court.

Keywords: *Legal Protection, Doctors and Patients, and Legal Dispute Resolution.*

This article is licensed under [CC BY-SA 4.0](https://creativecommons.org/licenses/by-sa/4.0/) 

INTRODUCTION

The development of information technology is running and being accepted by the public so quickly, causing the law to limp to catch up. It should be realized that it is important for service providers and service recipients to know the capacity and implementation limits to avoid misuse of this media. The online consultation method only relies on digital devices to communicate without face-to-face and physical examinations. In terms of ethics to legality and licensing, online consultation still does not have clear provisions and limits. This legal vacuum on the implementation of online doctor consultations can harm doctors and threaten the violation of patients' rights.

By looking at the above background, a formulation of problems can be drawn, including: 1) Health regulations in ensuring legal protection for patients related to diagnostic errors in online health service platforms (telemedicine) based on positive law in Indonesia; 2) Legal dispute resolution mechanism between patients and online health service providers in the event of a misdiagnosis. This study aims to find out about health regulations in ensuring legal protection for patients related to diagnostic errors in online health service platforms (telemedicine) and the mechanism for resolving legal disputes between patients and online health service providers (telemedicine) in the event of diagnostic errors.

METHOD

The research method used in this study is a normative research method using various types of primary legal materials in the form of laws and regulations and secondary legal materials in the form of literature materials related to health regulations in ensuring legal protection for patients related to diagnostic errors in online health service platforms (telemedicine) based on positive law as a source of research materials. Johnny Ibrahim argues

that normative legal research is a form of scientific research aimed at finding the truth based on legal scientific logic reviewed from the normative part, or which is in the form of legal discovery efforts that are adjusted to a particular case (Ibrahim, 2006).

RESULTS AND DISCUSSION

A. Health Regulations in Ensuring Legal Protection for Patients Related to Diagnostic Errors in Online Health Service Platforms (Telemedicine) Based on Positive Law in Indonesia

Doctors as professionals not only have professional obligations based on their code of ethics that must be fulfilled, but as legal subjects in doctors also have rights and obligations arising from legal relationships in the implementation of their profession. Doctor's liability is a legal liability or better known as medical liability (Abdulkadir Muhammad, 2021). The legal responsibility of doctors is based on the professional code of ethics, the development of a professional code of ethics to be obeyed and implemented by its supporters contains 3 (three) objectives, namely: a) A professional code of ethics makes it easier to make decisions efficiently; b) Individually, the practitioners of this profession often need direction to direct their professional behavior; c) Professional ethics creates a pattern of behavior that is expected by its customers professionally (Muchsin, 2009).

Examining legal arrangements related to online health platforms (telemedicine) is held based on the Regulation of the Minister of Health No. 20 of 2019 concerning the Implementation of Telemedicine Services Between Health Service Facilities (Permenkes No. 20 of 2019). Referring to Article 1 number 1 of the Minister of Health Regulation No. 20 of 2019, it is determined that what is meant by telemedicine is "the provision of telemedicine services by health professionals using information and communication technology, including the exchange of information on diagnosis, treatment, prevention of diseases and injuries, research and evaluation, and continuous education of health service providers for the benefit of improving the health of individuals and communities." Regarding telemedicine services according to Article 2 of Permenkes No. 20 of 2019, it is "carried out by health workers who have a practice license at the organizer's health facility."

According to Article 3 paragraph (1) there are several types of telemedicine services including teleradiology, teleelectrocardiography, teleultrasound, clinical teleconsultation, and other telemedicine consultation services in accordance with the development of science and technology. In this legal product, it is also explained that the infrastructure in telemedicine is adequate electricity and internet network in accordance with Article 11 paragraph (2). The online health service platform as telemedicine is organized with an application that can be downloaded via a computer or mobile phone, apart from the various telemedicine applications that are online health platforms, the important thing to heed is related to the provisions that there must be an adequate data security and safety system in the application as mandated by Article 12 paragraph (1) of the Minister of Health Regulation No. 20 of 2019. Referring to Article 12 paragraphs (2) and (3) of Permenkes No. 20 of 2019, it is determined that the telemedicine application provided by the Ministry of Health can be a telemedicine provider, but it is also given space for telemedicine to be held independently as long as it has been registered with the Ministry of Health. In the implementation of telemedicine in accordance with the provisions of Article 20 paragraph (1) of Permenkes

No.20 of 2019 "supervision and guidance are carried out by the Ministry of Health, provincial health offices, and district/city regional health offices.". The FisDok application is still relatively new and is only in the trial stage. Examining Indonesia's positive law, health services are determined in the Health Law which is regulated in Article 1 Health service provisions in the perspective of the Health Law consisting of promotive health services, preventive health services, curative health services, rehabilitative health services, and traditional health services.

Legal protection is an effort made by the ruler or law enforcer with a series of existing regulations to protect human rights harmed by others and legal protection is given to the community so that all their rights can be enjoyed. The legal protection regulated in the Consumer Protection Law aims to provide protection for consumer rights. (Wulandari, 2022) Including consumers of health services from the FisDok application. Patients have rights that must be fulfilled after they carry out their obligations in paying health service fees. According to Joko Wiyono, patient rights are personal rights that every human being has as a patient. Patients as consumers in the health sector have self-protection from all possibilities against irresponsible health service efforts such as neglect, patients also have the right to safety, comfort and security of the health services obtained, with these rights a consumer will feel protected from any professional practices that can threaten health or safety (Lestari, 2021).

Regarding legal protection for patients in telemedicine, it is necessary to understand the provisions in Article 3 paragraph (2) of Medical Council Regulation Number 47 of 2020 concerning Clinical Authority and Medical Practice Through Telemedicine During the Corona Virus Disease 2019 (Covid-19) Pandemic in Indonesia, which states that: "Medical practice through an electronic application/system in the form of telemedicine as referred to in paragraph (1) is a consultation or teleconsultation service provided by doctors and dentists by applying the principle of patient confidentiality", then in Article 3 paragraph (4) of the Medical Council Regulation Number 47 of 2020, it is stated that: "Doctors and dentists who practice medicine through telemedicine must have a Registration Certificate and a Practice License at Health Facilities in accordance with the provisions of laws and regulations".

Based on the provisions of Article 3 paragraph (2) and paragraph (4) of the Medical Council Regulation Number 47 of 2020, the patient's personal information is confidential, no other party can know the patient's information, except the doctor and the patient himself. Regarding patients as users of health services in the health platform itself, their rights as consumers have been guaranteed through Article 4 of Law No. 8 of 1999 concerning Consumer Protection (UUPK), one of which is to ask for compensation in the event of inconvenience, safety problems and losses suffered from the use of goods and/or services by consumers. Based on this, related to misdiagnoses that occur on one of the online health platforms, it can be included as a violation of consumer rights as guaranteed in the UUPK so that this legal problem can be resolved out of court in accordance with the provisions of Article 47 of the UUPK or by litigation by referring to the provisions of Article 48 of the UUPK (FALSE, 2021).

B. Legal Dispute Resolution Mechanism Between Patients and Online Healthcare Providers (Telemedicine) in the Event of Diagnostic Errors

The legal problems that arise can be caused by the mistakes or negligence of health workers or due to errors in applying policy to regulations and also due to the lack of knowledge of the officers about the Health Law or laws and regulations in the health sector. The current development is that the public is increasingly aware of their rights which automatically demand transparency in health services, especially in relation to the relationship between doctors and patients and concerns complaints experienced by patients as well as therapy and treatment carried out by doctors on patients. A very basic thing in health services that is always a problem for the community, patients is related to openness, transparency, service quality, application of rules, time discipline, so that it is often suspected of medical negligence or clinical disasters.

The principles in the implementation of a health service are the principle of legality, the principle of balance, the principle of openness and the principle of justice. The principle of legality emphasizes that the health services provided must be carried out based on the provisions of laws and regulations in Indonesia by having a health practice license. Furthermore, the principle of balance emphasizes health services that can build public health in a balanced way between physical and mental. The principle of openness in health services is intended that there is information that must be clearly provided in the provision of health so as to create a relationship of trust between patients and doctors.

Based on the Circular Letter of the Minister of Communication and Informatics Number 5 of 2016 concerning Limitations and Responsibilities of Platform Providers and Merchants of Trade Through Electronic Systems (Electronic Commerce) in the form of User Generated Content, platform providers are legal subjects of the ITE Law, namely as the operator of their electronic systems responsible for the operation of electronic systems as they should, but their liability does not apply to force majeure or from the user. Application service providers also need to pay attention to the obligations and prohibitions listed in the Circular Letter of the Minister of Communication and Informatics Number 3 of 2016 concerning the Provision of Application Services and/or Content Over the Internet (Over The Top). The civil legal liability of doctors in Telemedicine services can be based on Article 66 of the Medical Practice Law. Any person who knows or has an interest in being harmed by the actions of a doctor or dentist in practicing medicine can complain in writing to the Chairman of the Honorary Council of Indonesian Medical Disciplines, the complaint does not eliminate everyone's right to report the alleged criminal act to the authorities and/or sue for civil damages to the court. This regulation can be a reference for patients as recipients of health services if they are harmed by the actions of doctors or dentists in carrying out the practice of Telemedicine, can apply for compensation and if the doctor is proven to be negligent in carrying out the obligation to carry out the implementation of the medical practice, then the doctor must be directly responsible for compensating for the loss.

Article 58 of the Health Law is also clearly regulated regarding the protection of health service recipients (patients). It is interpreted that if health workers and/or health providers in providing health services result in a loss due to error or negligence, then everyone in this case the recipient of health services/patients has the right to claim compensation. However, this is excluded in life-saving measures or in the prevention of a person's disability in an emergency. However, as far as the author is concerned, it is not clear how to protect the law for people who provide health services. The guarantee of legal protection in this Law is

intended only for people who provide health services in disaster conditions. Legal protection for health service providers, in this case Health Workers, is regulated quite clearly in Law Number 36 of 2014 concerning Health Workers. The scope of protection is emphasized for health workers who provide direct and indirect services to the community. As stated in Article 4 letter c, the government has the responsibility to provide protection to health workers in carrying out their practices and has the right to obtain legal protection as long as they carry out their duties in accordance with Professional Standards, Professional Service Standards, and Operational Procedure Standards and obtain complete and correct information from health service recipients or their families. This regulation also explains that if a dispute arises due to negligence committed by health workers that causes losses to health service recipients, it must be resolved first through dispute resolution outside the court (The Nation, 2001) (Indonesia, 2004) (State Secretariat, 2008) (Artioko, 2022) (Kesuma, 2024).

CONCLUSION

Health regulations in ensuring legal protection for patients related to diagnostic errors in online health service platforms (telemedicine) based on positive law in Indonesia are contained in the provisions in Article 3 paragraph (2) and paragraph (4), as well as Article 7 of the Medical Council Regulation Number 47 of 2020 which emphasizes Article 2 of the Minister of Health Regulation Number 20 of 2019. Legal dispute resolution between patients and online health service providers (telemedicine) in the event of a diagnosis error can submit a complaint to the Indonesian Medical Discipline Honorary Council in accordance with the provisions of Article 66 of the Medical Practice Law.

REFERENCES

- Abdulkadir Muhammad, S. H. (2021). *Hukum Perusahaan Indonesia*. PT Citra Aditya Bakti.
- Artioko, F. R. (2022). Pengadopsian Partisipasi Masyarakat Yang Bermakna (Meaningful Participation) Dalam Undang-Undang Nomor 13 Tahun 2022 tentang Perubahan Kedua Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan. *Al-Qisth Law Review*, 6(1), 52–83.
- Ibrahim, J. (2006). Teori dan metodologi penelitian hukum normatif. *Malang: Bayumedia Publishing*, 57(11).
- Indonesia, R. (2004). Undang-Undang Nomor 29 Tahun 2004 tentang Praktik Kedokteran. *Jakarta: Republik Indonesia*.
- Kesuma, S. I. (2024). Ulasan Undang-Undang No. 17 Tahun 2023 Tentang Kesehatan. *Jurnal Nusantara Berbakti*, 2(1), 253–261.
- Lestari, R. D. (2021). Perlindungan Hukum bagi Pasien dalam Telemedicine. *Jurnal Cakrawala Informasi*, 1(2), 51–65.
- Muchsin, A. (2009). Perlindungan Hukum Terhadap Pasien Sebagai Konsumen Jasa Pelayanan Kesehatan Dalam Transaksi Terapeutik. *Jurnal Hukum Islam*, 7(1), 31–45.
- Negara, P. K. U.-U. D. (2001). Republik Indonesia Tahun 1945. *Jakarta, Indonesia: Www.Mpr. Go. Id*.
- SALAH, Y. M. K. A. (2021). *Perlindungan Hukum Terhadap Pasien yang Menderita Kerugian Akibat Salah Diagnosis Dalam Platform Layanan Kesehatan Online*.
- Sekretariat Negara, R. I. (2008). *Undang-Undang No. 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik*. Jakarta.

Wulandari, D. E. (2022). Respon Publik Terhadap Sertifikasi Halal LP-POM-MUI dan Implikasi Hukumnya. *ILTIZAMAT: Journal of Economic Sharia Law and Business Studies*, 1(2), 104–111.