

Legal Aspects of Telemedicine Health Services in the Perspective of Health Law in Indonesia in the Digital Era

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ABSTRACT

Information Technology that develops rapidly over time has brought significant influence on the way of communicating and the activities of society globally. The health sector is no exception, and the peak is during the Covid-19 pandemic which greatly affects community interactions both individually and with health workers. One of the ways health workers respond to the pandemic period is by utilizing the information technology system optimally to improve the quality of medical services so that people continue to get health services as they should. This article will discuss the development of rules for telemedicine health services in health law in Indonesia, and the extent to which they provide legal protection for health service users and health workers as health care providers. The research method used in this study, namely Normative Juridical Research, is a legal research method carried out by examining library materials or secondary materials.

The result of the discussion is legal obligations, which are strengthened by legal sanctions, aiming to realize legal certainty. However, this legal certainty should also consider the expediency of the law so that the law does not only provide legal certainty, but also provides legal benefits, namely the equitable distribution of quality health services to remote parts of the Indonesian state.

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1. INTRODUCTION

Long before the pandemic, health services in the form of telemedicine had emerged. Even in some countries its services have been practiced [1]. The practice of telemedicine began to be felt in telecommunications devices when electrocardiograph data was transmitted through analog telephone channels [2]. The development of information technology at this time includes the replacement of analog communication to digital, efficiency in financing the use of information technology so as to encourage the development of more widespread telemedicine coverage, namely telemedicine based on web applications such as email, teleconsultation and conference via the internet and multimedia approaches such as digital imagery and video [3].

According to WHO, digital health refers to the use of digital technology for health benefits, a category that includes the increased use of technology for health services. Related to digital health is telemedicine; Technological developments are considered to be utilized to create more effective health care through telemedicine, and it such a broader slice of the digital healthcare movement [4].

In Indonesia, before the pandemic, telemedicine services were only applied within the scope of health service facilities (Fasyankes). Indonesia is known as an archipelagic country because it has 16,772 islands (according to the Decree of the Minister of Home Affairs Number 050-145 of 2022), with an area of

1,892,555.5 km² stretching from Sabang to Merauke and from Miangas Island to Rote Island. The number of islands in Indonesia more or less affects the number of tribes, cultures, and languages, which can pose its own challenges in the government's efforts to empower people to live healthy lives. Based on data from the official website of the Ministry of Home Affairs <https://dukcapil.kemendagri.go.id>, on June 30, 2022 or the first semester of 2022, the total population of Indonesia was recorded at 275,361,267 people. "That number consists of 138,999,996 male residents or 54.48 percent, and 136,361,271 female residents or 49.52 percent," When compared to the second semester of December 30, 2021 which amounted to 273,879,750, then during these 6 months there was an increase in the number of residents as many as 1,481,517 people (0.54%) West Java Province has the largest population, namely 48,637,180 people. For the regency/city level, the most population is in Bogor Regency, which is 5,385,219 people. Meanwhile, North Kalimantan Province is classified as the least population, namely 709,620 people. And Supiori Regency, Papua is considered the least population at the regency/city level, which is 25,015 people. The geographical condition of Indonesia, which consists of thousands of islands, makes the distribution of population in Indonesia uneven. This affects the availability of health service facilities both provided by the government and the private sector as well as human resources in the health sector. The problem has been going on for a very long time, and has not been resolved properly even today. There are still Indonesian residents who have difficulty accessing Health Service Facilities (Fasyankes), in addition to the lack of human resources in the health sector, both medical personnel and health workers in remote areas, border areas, and archipelago areas. Another important factor that causes the lack of health degrees is the lack of support in the form of health facilities and infrastructure so that the needs of the community as recipients of health services have not been fully fulfilled [5].

Health workers are all people who are dedicated to the field of health services and have knowledge and/or skills obtained through health education, some of which require a license to practice health services (Ministry of Health, 2021). Based on their function, which is to provide services in health care facilities, the number of medical personnel in Indonesia is 173,707 people, with the highest proportion being general practitioners at 60%. As many as 63% of the total medical personnel are located in Java-Bali Island with the largest number spread in the provinces of DKI Jakarta (24,235 people), East Java (24,085 people), and West Java (23,592 people). Meanwhile, the provinces with the least number of medical personnel are West Sulawesi (485 people), North Kalimantan (558 people), and Gorontalo (627 people). In terms of the ratio of the number of health infrastructure facilities compared to the total population, outside Java is better than on the island of Java, but transportation outside Java is still very much in need of improvement because there are still many remote areas that cannot be reached by means of transportation both motorbikes and cars so that people need extraordinary efforts to be able to reach the health services needed. So that the ratio becomes meaningless when compared to the difficulty of accessing health services for people outside the island of Java.

Based on Presidential Regulation Number 63 of 2020 concerning the Determination of Disadvantaged Regions in 2020-2024, the central government has set disadvantaged areas as the main target of development. This was done as an effort to accelerate regional development. Referring to regulations, regions are lagging behind in several criteria including the community's economy, facilities and infrastructure, accessibility, human resources, regional financial capacity and regional characteristics. Disadvantaged areas include 62 regencies/cities located in eleven provinces. The fulfillment of Health Human Resources (HRK) in Disadvantaged Regions requires not only the role of the center but also the role of the provincial health office and the district/city health office by analyzing the needs of the region and submitting it to the central government [6].

The highest distribution of health workers in underdeveloped areas was nursing staff at 42.2% and midwifery at 28.5%. While the lowest are clinical psychology personnel, biomedical engineering personnel, and physical therapy personnel. The proportion of districts with the Disadvantaged Regions category is 12.1% of the total districts/cities. The distribution of HRK in Disadvantaged Areas was 3.9% (44,179) of the total HRK nationally. This number increased compared to 2020 which was 31,374 people. East Nusa Tenggara Province is an disadvantaged area with the most human resources with a total of 15,534 people spread across 13 regencies Based on geographical and human resource considerations, The utilization of information technology in the health sector, including consultation services between health care facilities through telemedicine, is an effort that can be made by the government considering the need for specialized services and to increase the performance of service at health facilities, especially in disadvantaged areas [7].

Considerations of the need for telemedicine include: 1. The heterogeneity of Indonesia's geographical conditions, including mountains, forests, islands, provides its own challenges in health development because it causes high financing in infrastructure development so that a special approach is needed in health development in Indonesia according to its characteristics 2. Large number of inhabitants, 3. Medical personnel, especially specialist doctors, are concentrated in large cities, 4. The risk of death for people in remote areas such as the previous viral case of a pregnant woman in Pinrang, South Sulawesi, was stretchered 7 km to get access to health services and eventually died, 4. The enthusiasm of the people seeking treatment abroad due to

health services that have not been maximized. The realization of telemedicine services that are safe, quality, anti-discrimination, and effective and prioritize the interests and safety of patients requires comprehensive regulation.

2. METHODS

The method in this research is carried out through a normative juridical approach, namely by examining a rule or norm in a law (statue approach). Primary legal materials include using health law laws and regulations related to the implementation of telemedicine and as well as secondary legal materials derived from various literature, journals, articles and other electronic references. Furthermore, discussing the legal protection of recipients and providers of health services in the implementation of telemedicine, the author uses a normative legal research approach using secondary legal materials that include related literature and include books, journal articles, and other related materials [8].

3. RESULTS AND DISCUSSION

One of the very important factors for human life is health, without health a person cannot fully enjoy life as a human being. Health is also an important aspect of human rights, as mentioned in the United Nations (UN) Declaration of Human Rights on November 10, 1948 Article 25 Paragraph 1 it is written that "everyone has the right to an adequate standard of living for the health and well-being of himself and his family". Health is a basic need inherent in a person that cannot be revoked and violated by anyone [9].

Health is a very important factor for human life, but it cannot be fully enjoyed as a human being when someone is unhealthy. On the other hand, health is also an important part of human rights. As previously mentioned in Article 25 Paragraph 1 of the United Nations Declaration of Human Rights on November 10, 1948, which establishes a person's right to an adequate standard of living for the health and welfare of himself and his family. Health is a basic need inherent in a person that cannot be revoked and violated by anyone [10].

The vision of Healthy Indonesia 2025 is to create an environment and healthy living behavior, the community is easier to obtain quality health services so that the degree of public health increases. The provision of adequate and affordable health facilities by the government will be the responsibility of the state for the implementation of the right to meaningful public health. The creation of these conditions is one of them by providing public facilities which are also stated in the 1945 Constitution of the Republic of Indonesia Article 28H Paragraph (1) and Article 34 Paragraph (3). This means that health services provided to the entire community must be in accordance with the quality of decent quality standards and should not be carried out carelessly without meeting regulated and nondiscriminatory quality standards, held in every region to remote areas, not only in cities that have easy access.

With regard to the use of information technology in the health sector, in the Fourth section of the UUK regulates Technology and Technology Products: Article 42 Paragraph (1) "Health technology and technology products are held, researched, circulated, developed, and utilized for public health." (2) Health technology as referred to in paragraph (1) includes all methods and tools used to prevent disease, detect the presence of disease, alleviate suffering due to disease, cure, minimize complications, and restore health after illness. (3) Provisions regarding health technology and technology products as referred to in paragraph (1) must meet the standards set forth in the laws and regulations. Article 167 (1) of the UUK also states "Health management organized by the Government, local governments and/or the community through the management of health administration, health information, health resources, health efforts, health financing, community participation and empowerment, science and technology in the health sector, as well as integrated and mutually supportive health law arrangements to ensure the achievement of health degrees as high as possible."

Information technology related to the health sector is regulated in Article 42 Paragraphs (1), (2) and (3) where information technology is organized, researched, circulated, developed and utilized for public health. Furthermore, technology is used for the purpose of detecting, preventing, alleviating curing, minimizing complications and restoring the health of patients after illness. Then, health management by the government (both central and regional) must support each other in an integrated manner in terms of administration, financing and legal arrangements in the health sector in order to ensure the achievement of high health. It can be concluded that UUK provides an opportunity for the implementation of health management carried out by technology in the health sector, in this case providing space for the development of telemedicine in the world of health to realize the best health services between doctors and patients who have limitations in many aspects.

According to the WHO, there are four elements related to telemedicine, which means that telemedicine aims to provide clinical support, provides access to overcome geographical and distance barriers, aims to improve public health, and involves the use of various types of information technology devices. Indonesia is one of the countries that is late in responding to telemedicine regulations so that the development of telemedicine has not been balanced with proper regulations [11]. The absence of regulation, will make people question the absence of the state in protecting users and providers of telemedicine services. The absence of regulation will also make investors hesitant to get into the digital health business [12]. Whereas with the uneven

distribution of health workers and facilities, telemedicine services have the potential to reduce the injustice of access to health services for the community. The government seeks to keep pace with the massive changes that occur in the development of information technology in the health sector to provide legal certainty for telemedicine services by stipulating Regulation of the Minister of Health of the Republic of Indonesia Number 46 of 2017.

The tasks of hospitals that are supported by trials of video-conference-based telemedicine service programs and teleradiology are: 1. Providing medical information (medical records) of patients to the supporting hospital for the benefit of the consultation, education and research process; 2. Obtain informed consent from the patient and/or the patient's family before carrying out a Video-Conference and Teleradiology-Based Telemedicine referral to the Supporting health service facility; 3. Providing infrastructure in the form of adequate internet networks, electricity, workspaces, etc. necessary to support the smooth running of videoconference-based telemedicine and/or teleradiology operations; and 4. Establishing standard operating procedures for videoconference-based telemedicine services and teleradiology.

At that time the Ministry of Health issued the Telemedicine Indonesia (TEMENIN) application. TEMENIN provided tele-radiology, tele-ECG, tele-ultrasound, and tele-consultation services that at that time connected 39 supporting hospitals and 115 hospitals and health centers that were in charge.

Presidential Regulation of the Republic of Indonesia Number 82 of 2018 concerning Health Insurance in Article 65 also regulates telemedicine health services, namely Paragraph (1) states "In order to provide compensation and fulfill services in regions where qualified health facilities are not yet available, BPJS Kesehatan can develop a pattern of financing health services." Paragraph (2) "The development of health service financing patterns as referred to in paragraph (1) includes financing patterns for mobile health services, telemedicine-based health services, and/or the development of other health services established by the Minister.

"BPJS Kesehatan regulates the use of telemedicine for health services in areas that do not have health facilities. However, rules on the technicalities of its implementation at the time were not yet available. Juridical provisions have not all been fulfilled thoroughly due to the rapid innovation of telemedicine in Indonesia. Important things that need to be regulated as legal protection for telemedicine health care recipients and providers because with the use of technology, it will provide the possibility of patient-doctor miscommunication, in addition to the risks and responsibilities of a doctor, there are still many unclear about the risks of consultation, diagnosis, and remote medical intervention. It is necessary to integrate related telemedicine to regulate practice, SOPs, ethics and professionalism, security, confidentiality and guarantee of information to patients [13].

Regulations relating to telemedicine have limitations as guidelines for the implementation of telemedicine services that are currently developing. Permenkes Number 20 of 2019 only regulates the implementation of telemedicine between health facilities. Meanwhile, Perkonsil 74/2020, SE Menkes Nomor 303 Tahun 2020 and Kepmenkes 4829 Tahun 2021 limit the implementation of telemedicine health services during the pandemic. If the Covid-19 pandemic situation is revoked by the Government, there will be a legal vacuum as a guideline for the implementation of telemedicine. The implementation of telemedicine cannot be delayed anymore, the Government needs to immediately formulate more comprehensive arrangements. Laws related to health services must be adjusted to the needs and developments in information technology, including Law No. 29 of 2004 concerning Medical Practice, Law No. 36 of 2009 concerning Health and Law No. 44 of 2009 concerning Hospitals.

The need for adjustments to at least three such statutes indicates the need for telemedicine regulation. Telemedicine arrangements need to pay attention to the interests and safety of patients as well as protection for medical and health personnel [14]. This arrangement is expected to not only make it easier for patients to access health services, but also provide legal certainty and clear guidelines for medical and health personnel while maintaining the quality of services. Some of the material that was in the previous instrument is still relevant to be rearranged in the instrument that needs to be formed later. Other materials that need to be regulated include telemedicine providers, rights and obligations of parties in telemedicine services, scope of telemedicine services, aspects of quality assurance, service responsibilities, service management, protection and guidance of medical and health personnel, management of medical records, supervision and public education [15].

The current development of telemedicine can be seen as an opportunity to open wide access for people to get health services. On the other hand, it presents new challenges to adapt to various kinds of health services for the community. Therefore, the government needs to immediately prepare a comprehensive regulatory tool. Learning from other sectors, delays in anticipation and adaptation to the rapid development of information and communication technology will create new, more complex problems [16].

In 2022 the Ministry of Health launched a new regulation, namely Permenkes 24 of 2022 concerning Medical Records. This new FMD aligns with technological developments and people's need for a single health data. So digital medical records will connect health facilities with one large data container called SATUSEHAT. SATUSEHAT will be a digital platform within one health region. In addition to storing data,

SATUSEHAT, like other servers, must also be accessible to data owners with applications available in the community. Currently, PeduliLindungi is only related to the Utilization of Electronic Medical Records. Some notes that can be given against the Regulation of the Minister of Health of the Republic of Indonesia Number 24 of 2022 concerning Medical Records:

Regulation of the Minister of Health of the Republic of Indonesia Number 24 of 2022 imposes an obligation on all health service facilities (including independent practice places organized by health workers and medical personnel) to organize electronic medical records in accordance with these regulations, no later than December 31, 2023. The Minister of Health through the Director General of Health Services of the Ministry of Health may impose administrative sanctions (written reprimand and/or recommendation for revocation or revocation of accreditation status) on health service facilities that commit violations. Legal obligations, which are strengthened by legal sanctions, aim to realize legal certainty. However, this legal certainty should also take into account the expediency of the law. This is because the geographical conditions of the Indonesian state are very wide, varied and plural. Therefore, the Ministry of Health must consider the situation and condition of health workers and medical personnel on duty in remote parts of Indonesia, with limited infrastructure (especially internet and computer networks). The Ministry of Health must provide optimal assistance and proportional facilitation for health workers and medical personnel on duty in health service facilities located in remote parts of Indonesia. The goal is that the law will not only provide legal certainty, but also provide legal benefits, namely the equitable distribution of quality health services to remote parts of the Indonesian state;

Regulation of the Minister of Health of the Republic of Indonesia Number 24 of 2022 gives great authority to the Ministry of Health, especially over data and contents of electronic medical records and electronic medical record delivery systems. Health care facilities must open access to all electronic medical records to the Ministry of Health and the entire electronic medical record delivery system must be registered with the Ministry of Health. This great authority must be balanced with great responsibility because until now, personal data protection in Indonesia is still weak. Medical secrets are not only personal data that must be protected, but also a foundation and philosophical foundation for health workers and medical personnel in carrying out their profession. Therefore, there needs to be a strengthening of regulations regarding the secrets of medicine, both through harmonization and synchronization;

Regulation of the Minister of Health of the Republic of Indonesia Number 24 of 2022 is a legal protection for the implementation of electronic medical records. Because it is a "legal umbrella", this regulation is macro and must be translated again in the form of micro-regulations (for example: Standard Operating Procedures or Electronic Medical Record Implementation Handbook). The aim is to prevent misinterpretation of the provisions contained in the Regulation of the Minister of Health of the Republic of Indonesia Number 24 of 2022 or describe comprehensively [15].

4. CONCLUSION

Indonesia's geographical location as an archipelagic country presents its own health development challenges because in addition to the high cost of infrastructure development, it also faces various health problems that are identical to developing countries so that it requires a special approach. health development in Indonesia according to its characteristics. The Indonesian government has made efforts to bring special health services closer and improve the quality of health services, especially in remote areas, among others through the use of information technology in the health sector in the form of consultation services between health institutions through telemedicine.

The Health Service Law No. 36 of 2009 offers the possibility to implement health services using health technology in the health sector, which in this case provides space for the development of telemedicine to provide the best health services between the doctor and the patient. However, The need to adjust the rules related to other materials including telemedicine providers, the rights and obligations of the parties in telemedicine services, the scope of telemedicine services, aspects of quality assurance, service responsibilities, service management, protection and guidance of medical and health personnel, management of medical records, supervision and public education. In terms of regulation, there needs to be a strengthening of regulations regarding micro-medical secrets (for example: Standard Operating Procedures or Manual for the Implementation of Electronic Medical Records) either through harmonization or synchronization, Then these rules must take into account the situation and condition of health workers and medical personnel on duty in remote parts of Indonesia, with limited infrastructure. The goal is that the law will not only provide legal certainty, but also provide legal benefits, namely the equitable distribution of quality health services to remote parts of the Indonesian state.

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