

## Telemedicine on the Legal System in Indonesia: Legal Protection of Patients and Health Workers

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### ABSTRACT

*Technological developments in the use of telemedicine have many benefits and advantages, but the practice of telemedicine also has vulnerabilities related to certainty, justice and legal usefulness as a form of legal balance in providing legal protection for patients and health workers. This study aims to analyze telemedicine practices in Indonesia with the variables of protecting the rights of patients, health workers, and data security in the formulation of national policies after the enactment of Law Number 17 of 2023 concerning Health and also Government Regulation Number 28 of 2024 as its Implementing Regulations. The research methods used are doctrinal research with an analytical approach, and a conceptual approach. The results of the study show that after the enactment of Law Number 17 of 2023 concerning Health, there is a progressive direction towards telemedicine regulation which will be regulated in derivative regulations of the Law. From the review of responsive law, the state has the responsibility to be present to provide legal protection for the use of telemedicine for both patients and health workers, this is solely to*

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*achieve the principle of Gustav Radbruch's legal goals with certainty, justice, and legal benefits.*

***Keywords: Health Law; Omnibus Law; Responsive Law***

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## **I. INTRODUCTION**

The practice of telemedicine in Indonesia is still reaping polemics in terms of pros and cons, this is because the use of technology as a means of accessing health still poses a vulnerability related to security and legal certainty of the procedures carried out. In some countries such as Malaysia, India, or the United States, there are regulations that regulate the telemedicine mechanism as the use of technology in the health sector, but it is different in Indonesia which does not have rules on the use of telemedicine.<sup>1</sup>

The use of telemedicine is so massive when the world is experiencing the attack of the Covid-19 Pandemic which has caused restrictions on direct human interaction and prioritizes the use of technology to carry out various activities including access to health services. However, the obstacles that arise are related to legal certainty as a reference for protection both from the side of patients and health workers. For example, the Decree of the Minister of Health Number HK.01.07/Menkes/4829/2021 concerning Guidelines for Health Services Through Telemedicine during the Corona Virus Disease 2019 Pandemic, which in practice only runs during the pandemic, so that in the post-Covid-19 there are no strict regulations regulating this mechanism. One aspect that shows the strengthening of telemedicine in Indonesia is the issuance of Minister of Health Regulation Number 24 of 2022 concerning Medical Records which repeals the previous regulation in the Minister of Health Regulation Number 269 of 2008 with the consideration that the regulation is no longer relevant to technological developments in the world of health.<sup>2</sup>

The existence of telemedicine still raises pros and cons with various considerations, namely unclear regulations, the readiness of supporting facilities, and guarantees regarding the security of telemedicine as access to technology-based health

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<sup>1</sup> Arman Anwar. "Legal Aspects of the Use of Telemedicine," *Faculty of Law, Pattimura University*, 16 May 2024, <https://fh.unpatti.ac.id/aspek-hukum-penggunaan-telemedicine/>.

<sup>2</sup> Septa Adi Prasetya. "Telemedicine' dan Transformasi Kesehatan Pascapandemi." *detikNews*, 31 January 2023, <https://news.detik.com/kolom/d-6543448/telemedicine-dan-transformasi-kesehatan-pascapandemi>.

services.<sup>3</sup> Although from a progressive perspective, the development of digital health services will certainly encourage the transformation and acceleration of the reach of health access to remote areas.<sup>4</sup> In 2023, the Government together with the House of Representatives have passed the Health Bill into Law Number 17 of 2023 concerning Health, the future related to telemedicine in Indonesia has begun to be discussed and will be regulated into a derivative regulation, namely a Government Regulation.<sup>5</sup> In alignment with this, the Decree of the Minister of Health No. HK.01.07/MENKES/1280/2023 concerning the Development of a Digital Health Ecosystem through the Regulatory Sandbox introduces a forward-thinking approach to addressing these challenges. The Regulatory Sandbox allows new digital health services, including telemedicine, to be tested within a controlled environment, ensuring that potential issues, such as regulatory clarity, infrastructure readiness, and security are assessed and addressed before full-scale implementation. This framework provides a pathway for more adaptive and responsive regulations, ensuring telemedicine can develop safely and effectively within Indonesia's healthcare system.

A review of the literature related to telemedicine in Indonesia shows that the aspect of legal protection for patients is still partially regulated in several regulations such as Medical Council Regulation No. 47 of 2020, the Decree of the Minister of Health No. 20 of 2019, and Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2024 concerning Information and Electronic Transactions.<sup>6</sup> A comparative study with the United States, for example, telemedicine practices in the country have been regulated based on a special classification, unlike in Indonesia which has not been specifically regulated and is still general-partial.<sup>7</sup> Partial regulation of telemedicine in Indonesia

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<sup>3</sup> Kharisma Firda Amaliaz, et.al. "Scoping Review: Hambatan Penerapan Telemedicine di Indonesia." *Medical Science*, Vol. 2, No. 1, 2022, <https://doi.org/10.29313/bcsms.v2i1.1287>.

<sup>4</sup> Admin. "Telemedicine Applications Have the Potential to Revolutionize Health Services in Indonesia." *Balitbangkes Baturaja*, <https://labkesmas-baturaja.go.id/read-aplikasi-telemedicine-berpotensi-merevolusi-pelayanan-kesehatan-di-indonesia>.

<sup>5</sup> Siti Nadia Tarmizi. "Derivative Regulations of the Health Law Regulating the Implementation of Health Through Telehealth and Telemedicine." *Ministry of Health of the Republic of Indonesia*, 21 September 2023, <https://www.kemkes.go.id/id/rilis-kesehatan/peraturan-turunan-uu-kesehatan-atur-soal-penyelenggaraan-kesehatan-melalui-telekesehatan-dan-telemedisin>.

<sup>6</sup> Anna Sylva Roudlotul Jannati. "Legal Protection for Patients in Telemedicine Services in Indonesia." *JURISTIC*, Vol. 3, No. 2, 2022, p. 210, <https://doi.org/10.35973/jrs.v3i02.3184>.

<sup>7</sup> Wahyu Andrianto and Atika Rizka Fajrina. "A Comparative Review of Telemedicine Implementation Between Indonesia and United States." *Journal of Health Law Indonesia*, Vol. 1, No. 2, 2021, pp. 70–85, <https://doi.org/10.53337/jhki.v1i02.7>.

leaves significant gaps in legal protection, accountability, data security, and standardization of care. It creates an uncertain environment for healthcare providers and patients alike, hampering innovation and growth while posing risks to patient safety and privacy. A comprehensive and cohesive regulatory framework is essential to address these challenges, foster trust, and ensure the sustainable development of telemedicine in Indonesia.

Broadly speaking, the regulation and form of accountability of a doctor has three areas of legal responsibility, namely civil, criminal, and administrative.<sup>8</sup> The need for legal protection in telemedicine practice can be reviewed from the potential vulnerabilities and security related to diagnosis, patient data, and the guarantee of fairness of rights between patients and doctors.<sup>9</sup> If we trace the milestones marking the birth of Health Law in Indonesia, a pivotal legal issue that first brought attention to therapeutic agreements was the *Setyaningrum* case, which occurred on January 4, 1979, at the official residence of the Wedarijaksa District Health Center in Pati, Central Java. This case underscored the importance of regulating the relationship between doctors and patients through therapeutic agreements, and it highlighted the need for legal mechanisms to address potential disputes arising from such interactions. This landmark case laid the foundation for ongoing efforts to resolve legal issues in healthcare when problems occur.<sup>10</sup>

From the various descriptions above, the significance of this paper will explain and analyze the practice of telemedicine in Indonesia with the variables of protecting the rights of patients, health workers, and data security in the formulation of national policies after the enactment of Law Number 17 of 2023 concerning Health. One of the crucial issues in telemedicine is its intersection with the Information and Electronic Transactions (ITE) Law, particularly regarding data privacy and cybersecurity. The absence of comprehensive regulation leaves gaps in the protection of sensitive health data, making it vulnerable to hacking, fraud, and misuse. Additionally, patient rights, including informed consent and confidentiality, as well as the legal protection of health workers,

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<sup>8</sup> Sherly Primavita and Nayla Alawiya. "The Legal Responsibility of Doctors in Telemedicine Services." *Soedirman Law Review*, Vol. 3, No. 4, 2021, <https://doi.org/10.20884/1.slr.2021.3.4.103>.

<sup>9</sup> Dionisius Surya Ernawan. "Doctors' Liability Due to Misdiagnosis of Patients in Telemedicine Health Services." *Jurist-Diction*, Vol. 5, No. 5, 2022, pp. 1711–24, <https://doi.org/10.20473/jd.v5i5.38434>.

<sup>10</sup> Verdi Ferdiansyah. "Kasus Dokter Setyaningrum." 21 April 2011, <https://verdiferdiansyah.wordpress.com/2011/04/12/kasus-dokter-setyaningrum/>.

are at risk due to unclear liability frameworks. These challenges highlight the need for stronger national policies to safeguard all parties involved in telemedicine.

This study uses a library research model. Data obtained from secondary data searches include primary legal materials, namely laws and regulations, and secondary legal materials in the form of journal articles, books, and digital-based information sources. The approach used is juridical-normative including analytical approach and conceptual approach.<sup>11</sup> The analysis method used is descriptive-qualitative, namely by explaining the main problem and arranging arguments based on data obtained through data reduction, data presentation, and conclusion drawn.<sup>12</sup>

## **II. DISCUSSION**

### **2.1 Telemedicine and Crucial Issues in the Health Legal System in Indonesia**

On August 8, 2023, the House of Representatives of the Republic of Indonesia has successfully passed the draft Health Law into Law No. 17 of 2023 concerning Health. This new law repeals Law of the Republic of Indonesia Number 17 of 2023 concerning Health revokes 11 Laws including: Law Number 419 of 1949 concerning the Prescription Drug Ordinance (Staatsblad 1949 Number 419); Law Number 4 of 1984 concerning Infectious Disease Outbreaks; Law Number 29 of 2004 concerning Medical Practice; Law Number 36 of 2009 concerning Health; Law Number 44 of 2009 concerning Hospitals; Law Number 18 of 2014 concerning Mental Health; Law Number 36 of 2014 concerning Health Worker. Before being passed by the House of Representatives, this bill had received various pros and cons from the public, especially various health professional organizations. One of the things that causes controversy from this bill apart from the substance is the approach method taken by the House of Representatives in discussing the law, namely the Omnibus Law. This method is considered a bad step due to the lack of participation from the community and health workers. Even Prof. Susi Dwi Harijanti, S.H., LL.M., PhD. who was presented at the JR trial at the Constitutional Court regarding meaningful participation said that participation in the formation of the Health Law is only to fulfill formal procedural requirements (tokenistic policy, only presenting

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<sup>11</sup> Joanedi Efendi and Jhonny Ibrahim. *Normative and Empirical Legal Research Methods*. Jakarta, Kencana, 2016, pp. 130-135.

<sup>12</sup> Matthew B. Miles, et.al. *Qualitative Data Analysis A Methods Sourcebook Edition 3*. United State of America, SAGE Publications, 2014, p 30.

physical participation without participation of ideas). In addition, health professionals said that there was no urgency from the formation of the health bill which had violated the Principle of Establishment of Laws and Regulations, namely the principle of clarity of purpose as per Article 5 of Law No. 12 of 2011 jo. Law No. 13 of 2022. However, this urgency was denied by the Ministry of Health and the House of Representatives of the Republic of Indonesia by stating that the new Health Law is a legal umbrella that protects medical personnel and the public from the overlap of various regulations in the health sector.<sup>13</sup>

One of the problems according to the Indonesia Doctors Association or IDI in the process of discussing Indonesia's health bill on health is the criminalization of doctors.<sup>14</sup> Regarding criminal sanctions, this Assembly assumes an investigative role traditionally carried out by law enforcement officers, as stipulated in Article 308 (6) of Law Number 17 of 2023 concerning Health. The Assembly's extensive authority is further underscored by the provision governing the examination period, which mandates that if the Assembly fails to issue a recommendation within 14 (fourteen) working days from the receipt of an application, it is considered to have automatically granted a recommendation for a criminal investigation. This is outlined in Article 308 (7) and (8) of the same law.

The issue of rights for doctors and other health workers has become even more vulnerable due to technological developments that are included in the scope of health known as telemedicine. This online health service does have many conveniences and benefits such as time efficiency and other advantages. However, the development of this technology also poses various high risks for doctors and patients, so there is a need for legal and regulatory protection that covers the practice of health services through telemedicine more specifically.<sup>15</sup> One of the problems in digital health services is related to legal ethics because in practice, the process of health services through telemedicine

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<sup>13</sup> Adi Broto Hazelli Elfrida. "Revolution in the Health Sphere: Expecting a Balance Between Innovation and Legal Certainty." *Institute for Scientific Studies, Faculty of Law, University of Indonesia*, 2023, <https://lk2fhui.law.ui.ac.id/portfolio/revolusi-dalam-ruang-kesehatan-mengharapkan-keseimbangan-antara-inovasi-dan-kepastian-hukum/>.

<sup>14</sup> Andi M. Arief. "Unraveling 6 Points in the Health Bill that Reaps Pros and Cons from the Public." 8 June 2023, <https://katadata.co.id/ira/berita/64814d890e02a/mengurai-6-poin-dalam-ruu-kesehatan-yang-tuai-pro-dan-kontra-publik?page=2>.

<sup>15</sup> Rinna Dwi Lestari, et.al. "The Concept of Justice in the Reconstruction of Legal Protection Regulations for Doctors and Patients in Health Services through Telemedicine." *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)*, Vol. 6, No. 1, 2023, <https://doi.org/10.33258/birci.v6i1.7493>.

occurs because of a right and obligation that needs to be fulfilled.<sup>16</sup> In this right, the Ministry of Health of the Republic of Indonesia issued regulation HK.01.07/MENKES/1280/2023 concerning the Development of a Digital Health Ecosystem Through the Regulatory Sandbox. The rules are designed to be a safe testing ground to demonstrate innovation capabilities to potential investors and the public, test the protection of personal data privacy (including medical), and provide feedback from the public and regulators (including advocacy support).

According to the Civil Code Law, it is stated that an agreement contains the principle of consensualism where the conclusion of an agreement alone can be the basis for an agreement. In the case of telemedicine, the recipients or patients and the service providers or doctors can be considered legal subjects because the two enter into an agreement in the realm of health services. However, this brings challenges when applied in telemedicine settings, where standardised contracts and clear terms for liability, confidentiality, and data protection are crucial. The remote nature of telemedicine complicates the enforcement of these contracts, especially in maintaining the same level of care, ensuring informed consent, and securing sensitive medical data. Hence, creating and implementing standardised contracts tailored to telemedicine is essential to address these challenges and ensure both legal clarity and patient safety.

Further, due to the large number of e-health platforms and telemedicine service regulations that have not been tightened, various legal protection problems have arisen. On the other hand, the scope of therapeutic transaction agreements is not only the technical aspect of doctors when providing patient treatment, but also includes promotive, preventive, curative, rehabilitative, and palliative and various other measures that lead to its characterization as an agreement therapeutic.<sup>17</sup> So, with these complex problems, it is necessary to have a legal basis in the process of telemedicine services in order to protect the rights of patients to get their rights, namely to obtain health services and every treatment carried out must be the same age as the standards in the medical profession which includes knowledge, skills and professional behavior because every negligence,

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<sup>16</sup> Muhammad Hutomo, et.al. "Legal Protection for Patients Using Online Services." *Journal of Education and Development*, Vol. 8, No. 3, 2020, <https://doi.org/10.37081/ed.v8i3>.

<sup>17</sup> Resita Lukitawat and Widodo Trisno Novianto. "Digital Health Service Regulation in Indonesia: Ethical and Legal Challenges." *AJUDIKASI: Journal of Law*, Vol. 7, No. 2, 2023, <https://doi.org/10.30656/ajudikasi.v7i2.7862>.

accident and other mistakes resulting from the process of medical action can be making patients feel dissatisfied and end up suing doctors through legal channels. Meanwhile, doctors also have an obligation to provide information related to the type of disease namely a diagnosis and also medical actions to be taken, including risks and other possibilities arising from the medical treatment. The form of consent between the doctor and the patient before performing a medical procedure is called informed consent.<sup>18</sup>

Because the form of agreement made by patients and doctors on the e-health platform is in the form of electronic transactions, the new Health Law also has other challenges, namely related to data protection or privacy. One of the significant changes caused by technological advancements is Big Data. In the health space, Big Data means a set of medical information on a very large scale, including personal health data and a person's health status. The amount of data collected in the process of digital medical services requires a huge protection of patient data.<sup>19</sup> Moreover, in telemedicine health platforms or applications that usually consist of not only medical personnel but also non-medical personnel who help optimize and maximize the services provided, in terms of data protection and medical records, concrete arrangements are needed to regulate who has access to use the data that has been provided by patients.

Reflecting on the dissemination of information about Indonesia's first COVID-19 patient in 2020, which sparked a wave of negative stigma and public backlash, underscores the critical need for stringent data protection in telemedicine. While the ITE Law (Law No. 19 of 2016) provides a framework for safeguarding personal data and addressing electronic transactions, it is not sufficiently comprehensive to handle the nuanced requirements of telemedicine, where the protection of highly sensitive medical information is paramount. In telemedicine, where patient records and health data are transmitted electronically, the risk of data breaches, unauthorized access, and misuse is significantly higher, making it essential to go beyond the general provisions of the ITE Law. On the other hand, the virtual world has a vulnerability if it is not strongly protected against the possibility of leaking patients' personal data and medical records. Other ethical and legal problems can also occur if negligence is found on the part of the implementing

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<sup>18</sup> Kasiman Kasiman, et.al. *Legal Review of Informed Consent on Legal Protection of Doctors in Health Services*. Thesis University of Muhammadiyah Surakarta, Solo, 2023.

<sup>19</sup> Meher, et.al. "The Use of Personal Health Data in the Big Data Era: Legal and Policy Challenges in Indonesia." *Jurnal Ners*, Vol. 7, No. 2, 2023, <https://doi.org/10.31004/jn.v7i2.16088>.



party in the health sector, so it requires the attention of policy makers.<sup>20</sup> South Africa is advancing telemedicine as part of its telehealth strategy, focusing on improving healthcare access efficiently while ensuring legal clarity. The emphasis on legality is crucial to avoid issues that could harm patients, providers, and the healthcare system. In contrast, Indonesia's telemedicine regulations are still fragmented and incomplete, spread across various laws. This creates uncertainties for healthcare providers, particularly around data protection and liability. Legal clarity is essential for building trust, protecting patient rights, and ensuring healthcare providers operate safely. For Indonesia to fully benefit from telemedicine, a more specific and unified legal framework is needed, similar to South Africa's approach.<sup>21</sup>

The discourse on telemedicine must consider the inevitable role of technological advancements in modern healthcare. Since the Covid-19 pandemic, health services have had to adapt swiftly to these changes. However, alongside these innovations, protecting healthcare workers and ensuring legal and ethical safeguards are crucial to prevent malpractice and violations.<sup>22</sup> The most pressing issue in telemedicine is securing patient data and managing the limitations of virtual interactions between patients and healthcare providers, ensuring that these digital services uphold safety, privacy, and professional standards in medical practice.<sup>23</sup>

On the other hand, the government asserts that the formation and ratification of the new Health Law, Law of the Republic of Indonesia Number 17 of 2023, represents a significant improvement over the previous health legislation. This new law introduces several provisions that reflect a shift in the government's legal and policy approach:

a) Healthcare facilities are now permitted to offer Telehealth and Telemedicine services.

Telemedicine can be provided both between healthcare facilities and between

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<sup>20</sup> Barry Solaiman. "Telehealth in the Metaverse: Legal & Ethical Challenges for Cross-Border Care in Virtual Worlds." *Journal of Law, Medicine & Ethics*, Vol. 51, No. 2, 2023, pp. 287–300, <https://doi.org/10.1017/jme.2023.64>.

<sup>21</sup> A Le Roux. "Telemedicine: A South African Legal Perspective." *Tydskrif Vir Suid-Afrikaanse Reg*, Vol. 2008, No. 1, 2008, <https://ssrn.com/abstract=2435547>.

<sup>22</sup> C. Gil Membrado, et.al. "Telemedicine, Ethics, and Law in Times of COVID-19. A Look towards the Future." *Revista Clínica Española (English Edition)*, Vol. 221, No. 7, 2021, pp. 408–410, <https://doi.org/10.1016/j.rceng.2021.03.002>

<sup>23</sup> Giulio Nittari, et.al. "Telemedicine Practice: Review of the Current Ethical and Legal Challenges." *Telemedicine and E-Health*, Vol. 26, No. 12, 2020, pp. 1427–1437, <https://doi.org/10.1089/tmj.2019.0158>.

healthcare facilities and the community. This marks a key change in making healthcare more accessible and convenient.

- b) The law strengthens the obligations of healthcare facilities, particularly in emergency situations. Facilities are prohibited from refusing patients, demanding advance payments, or prioritizing administrative procedures that could delay medical treatment in emergencies. This ensures timely and effective emergency care.
- c) The leadership of hospitals can now be held by Medical Personnel, Health Personnel, or professionals with hospital management competence, expanding the pool of qualified candidates who can lead hospitals.
- d) Hospitals are now required to implement a hospital information system integrated with the National Health Information System (SIKN), enhancing transparency and efficiency in healthcare management.
- e) Teaching hospitals are allowed to organize specialist and subspecialist programs as primary education providers, subject to the Minister of Education's approval. This provision applies exclusively to specialist and subspecialist education, fostering the development of advanced medical expertise in Indonesia.
- f) Health Human Resources (HR) are categorized into three groups: Medical Personnel (doctors and dentists), Health Personnel (11 categories of health workers), and Supporting Health Personnel, who work in health facilities or related institutions.
- g) A significant update in this law is that the Registration Certificate (STR) for medical personnel, issued by the Council on behalf of the Minister of Health, is now valid for life.
- h) The Practice Permit (SIP) is issued by District/City Governments or the Ministry of Health under certain conditions, without requiring recommendations from professional organizations, simplifying bureaucratic processes.
- i) There are provisions for utilizing Indonesian and foreign Medical Personnel and Health Personnel who graduated from abroad. Indonesian citizens must have practiced for at least two years, and foreign nationals for five years, or be experts in specific health services, allowing for a more competitive health workforce.
- j) The law introduces a new structure for enforcing the discipline of Medical and Health Personnel through a Council established by the Minister of Health, whose decisions can be subject to review by the Minister.

Apart from the pros and cons of accepting the new Health Law in the community, in the process of ratifying it, it was approved by the majority of the factions in the parliamentary session, namely the Indonesia Democratic Party of Struggle (PDI-P), the Golongan Karya Party (Golkar), the Greater Indonesia Movement Party (Gerindra), the National Awakening Party (PKB), the United Development Party (PPP), and the National Mandate Party (PAN). Meanwhile, the only factions that rejected were the Democratic Party and the Prosperous Justice Party (PKS). For the National Democratic Party (NasDem), it received a note related to the budget allocation in the health sector (mandatory spending).<sup>24</sup>

In terms of legal politics, the establishment of the Health Law through the Omnibus Law process shows the existence of Indonesia's current ideals to carry out various revisions and also harmonize regulations and laws nationally to improve legal progress and legal certainty.<sup>25</sup> The outline of legal politics in the practice of telemedicine is how state law will function to achieve the goals that have been set by paying attention to the social reality that gives birth to legal products and their implementation in the field.<sup>26</sup> Whether the legal product, in this case, the Health Law, will be a law that is responsive to the reality of the development of people's lives, it will be seen from the dynamics that have been described earlier. However, the issue that must be seen in the future is how the derivative legal products of the Health Law can properly accommodate the practice of telemedicine so as not to cause other increasingly complex problems.<sup>27</sup>

## **2.2 Responsibility for the Protection of the Rights of Patients and Health Workers in a Telemedicine System**

The various conveniences and efficiencies provided by telemedicine; it comes with inherent challenges. Traditionally, doctors rely on direct, in-person interactions with patients, supported by various professional procedures and tools to accurately diagnose health conditions. In the context of online consultations, this face-to-face evaluation is

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<sup>24</sup> AP. "Pros and Cons of the Ratification of the Health Law in the Aspect of Health Worker Protection." *Klik Legal*, 16 August 2023, <https://kliklegal.com/pro-kontra-pengesahan-uu-kesehatan-dalam-aspek-perlindungan-tenaga-kesehatan/>.

<sup>25</sup> Benyamin Dicson Tungga. "The Role And Responsibility Of Government In Health Services Post The Level Of The Omnibus Law On Health." *Nusantara Hasana Journal*, Vol. 3, No. 2, 2023, pp. 287–300, <https://doi.org/10.59003/nhj.v3i2.940>.

<sup>26</sup> Moh. Mahfud MD. *Politics and Law in Indonesia*. Jakarta, Rajawali Pers, 2017, p. 9.

<sup>27</sup> Satjipto Raharjo. *Law*. Bandung, Citra Aditya Bakti, 2006, p. 352.

absent, making it difficult for healthcare providers to assess the patient's condition comprehensively. If a misdiagnosis or improper treatment occurs due to the limitations of virtual interactions, it can cause significant harm to the patient. This raises concerns about fairness, as doctors may bear undue responsibility for errors caused by the lack of physical examination.<sup>28</sup>

For doctors and patients in health services like this, legal protection is needed because there can be medical risks and malpractice incidents in digital health services that are carried out accidentally and can harm both parties. In terms of telemedicine practices in Indonesia today, the form of preventive protection that can be done is for doctors to have an obligation to provide services in accordance with Professional Standards, Service Standards, and Standard Operating Procedures (SOP) and minimum service standards. If something undesirable occurs in the practice that has been given, the service provider or service provider is obliged to provide repressive legal protection to solve the problem outside the court. To ensure patients are properly protected in telemedicine, clear measures must be in place to prevent malpractice. Doctors must follow Professional Standards, Service Standards, and Standard Operating Procedures (SOPs) to provide safe and reliable care. Patients should also be fully informed about the risks and benefits of their treatment. Regular audits of telemedicine platforms and strict enforcement of data protection laws are needed to prevent the misuse of sensitive information. If malpractice occurs, patients must have access to a fair and easy-to-use complaint system.

One form of protection of doctors and patients is informed consent. It ensures that every individual has the right to receive transparent information before undergoing any medical procedure. According to Minister of Health Regulation No. 290/MENKES/PER/III/2008, informed consent is defined as the patient's or their family's consent after receiving a complete explanation of the medical or dental procedure to be performed. Additionally, Law No. 17 of 2023 on Health, specifically Article 293, mandates that all medical actions must be preceded by consent, which must

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<sup>28</sup> Rinna Dwi Lestari, et.al. "The Concept of Justice in the Reconstruction of Legal Protection Regulations for Doctors and Patients in Health Services through Telemedicine." *Op.Cit.*

cover key aspects such as diagnosis, treatment options, risks, complications, alternative measures, and prognosis.<sup>29</sup>

However, the process of obtaining informed consent in telemedicine differs significantly from in-person consultations. In traditional, face-to-face settings, doctors can engage in more thorough, interactive discussions with patients, often using physical examinations and visual cues to enhance communication. This direct interaction allows patients to ask questions, receive immediate clarification, and form a clearer understanding of the medical procedure. In contrast, telemedicine may limit these dynamics due to the remote nature of communication, potential technical issues, or the inability to perform physical examinations. As a result, the level of understanding and consent may not be as comprehensive, posing challenges in ensuring that patients are fully aware of the risks and implications of their treatment. Despite these differences, ensuring that the process of obtaining informed consent in telemedicine adheres to the same ethical and legal standards is critical to safeguarding the rights of patients and protecting doctors from legal claims.

In the context of Criminal Law, informed consent has a very vital role because it is related to the principle of legality. Patients have the right to refuse or agree to medical actions that will be carried out after getting a complete explanation related to the disease they suffer, so that this informed consent is enough to provide legal protection for doctors and patients in health services for unexpected consequences that are impossible to avoid even though doctors have carried out treatment as much as possible in accordance with Professional Standards, Service Standards, and Standard Operating Procedures (SOPs) and caution.<sup>30</sup> In addition, the approval contained in the informed consent strengthens the position of doctors to obtain legal protection as stated in Article 273 paragraph (1) letter a of the Health Law, which emphasizes that medical personnel and health personnel in carrying out their practice are entitled to legal protection as long as they carry out their duties in accordance with Professional Standards, Service Standards, Standard Operating Procedures (SOPs), and professional ethics, as well as patient health needs. So, in the

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<sup>29</sup> Dewi Atriani and Ade Yusuf Yulianto. " The Legal Power of Informed Consent in the Practice of Euthanasia in Indonesia," *Law Treatise*, Vol. 19, No. 2, 2023, <https://e-journal.fh.unmul.ac.id/index.php/risalah/article/view/1307>.

<sup>30</sup> Kasiman Kasiman, et.al. "The Role of Informed Consent Against Doctor's Legal Protection in Health Services." *SOEPRA*, Vol. 9, No. 1, 2023, pp. 1–8, <https://doi.org/10.24167/sjhc.v9i1.8715>.

event of a medical malpractice, medical personnel and doctors will still receive legal protection as long as the mistakes made are still within the range of the worst estimate of the action taken because medical malpractice like this is also part of health services and is not a criminal act.<sup>31</sup>

Talking about the development of technology and telemedicine has various implications that need to be considered. In addition to making it easier for patients to reach the health services they need, the convenience of this technology can also be a means to commit crimes. One of them is crimes that arise in terms of personal data, due to the lack of privacy limits, it is very easy for this personal data to be spread and obtained by irresponsible people to commit fraud, hacking, eavesdropping and other data manipulation. To face the challenges of technological developments, Indonesia has committed to preventing and handling them by passing Law No. 27 of 2022 concerning Personal Data Protection. Meanwhile, in the realm of health, the PDP Law faces interoperability and data standardization problems. In addition, the management of personal health data requires more serious handling related to medical ethics. So that not only data security certainty is needed but also integrity and ethical values are needed in accordance with the needs of the health area.<sup>32</sup>

Facing these problems, Law No. 17 of 2023 seeks to provide certainty in Article 25 that the implementation of telemedicine must be integrated with the National Health Information System and subsequently in Article 347 paragraph (2) states that the Health Information System must be implemented by testing the feasibility of the system; maintain data confidentiality; determine data access rights policies; have a system reliability certification; and conduct regular audits. This shows that the state is very concerned about the confidentiality of patient and citizen data, not only that this Health Information System also regulates related to the right to data access policy, so that not everyone can access the Information System without the authority given.

Regulations regarding the confidentiality of medical data and records are also regulated in the Minister of Health Regulation Number 24 of 2022 concerning Medical

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<sup>31</sup> Albertus D Soge. "Analysis of the Handling of Medical and Health Profession Errors in Law Number 17 of 2023 concerning Health from the Perspective of Health Law." *Caraka Justicia Law Journal*, Vol. 3, No. 2, 2023, <http://dx.doi.org/10.30588/jhcj.v3i2.1690>.

<sup>32</sup> Alaikha Annan. "Juridical Review of Personal Data Protection the Health Sector Based on Law No. 27 of 2022." *Synergy: Multidisciplinary Scientific Journal*, Vol. 1, No. 4, 2024, <https://e-journal.naurendigiton.com/index.php/sjim/article/view/1040>.

Records, especially in various articles in it. The principle of electronic medical records in Article 20 states that the storage of electronic medical record data must ensure the integrity, confidentiality and availability of electronic medical records. In terms of looking at data, it is also only allowed for internal personnel of health service providers only for service and administrative purposes. Regarding health ethics in maintaining data confidentiality in the provision of health services, non-medical personnel take an oath which emphasizes that all non-medical personnel also have the responsibility to maintain the confidentiality of patient data using the application, which if violated, can be punished under the Personal Data Protection Law with a threat of 8 (eight) to 10 (ten) years in prison or a maximum fine of Rp. 2 billion or Rp. 5 billion.<sup>33</sup> This is directly linked to the Minister of Health Regulation Number 36 of 2012 concerning the Obligation to Maintain Medical Confidentiality, particularly in Article 5, which stresses that medical confidentiality applies to both medical and non-medical personnel. Confidentiality can only be breached under specific conditions such as for the patient's health interests, law enforcement requests, or with patient consent, ensuring a unified framework for protecting patient information in both legal and ethical contexts.

This aligns with Minister of Health Regulation of the Republic of Indonesia Number 36 of 2012 concerning Medical Confidentiality, particularly in Article 5, which states that medical confidentiality can only be disclosed for the patient's health interests, to fulfill a request by law enforcement in the context of law enforcement, at the patient's request, or based on statutory provisions. This underscores that both medical and non-medical personnel share the same responsibility in maintaining patient confidentiality, except in situations regulated by law. In addition to the regulations in the health sector, Law No. 19 of 2016 concerning Information and Electronic Transactions (ITE Law) also plays a critical role in protecting the confidentiality of medical data. The ITE Law addresses issues of unauthorized access, manipulation, and distribution of electronic data, classifying such actions as violations. It provides penalties for breaches, enhancing the legal framework established by health regulations. The ITE Law ensures that any misuse of electronic health information, including patient data within telemedicine, is punishable

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<sup>33</sup> Kasiman Kasiman, et.al. "Legal Review of Informed Consent on Legal Protection of Doctors in Health Services." *Op Cit.*

under Indonesia's broader cybercrime legislation, thereby offering further protection for all stakeholders involved in telemedicine services.

The phenomenon of legal protection for doctors and patients above seen from the perspective of Nonet-Selznick's responsive law shows that Law No. 17 of 2023 has tried to answer social problems that have changed due to technological developments by providing regulations aimed at protecting various parties, both doctors and patients, from the vulnerability of conditions that occur due to health services with a new model, namely telemedicine. In line with what Nonet-Selznick said, the law serves the needs, problems and social interests found in the life of its people.<sup>34</sup> Addressing the legal protection for doctors and patients through a responsive legal framework, as suggested by Nonet-Selznick's theory of responsive law, Law No. 17 of 2023 has taken steps to adapt to technological developments by regulating telemedicine. The Regulatory Sandbox, as outlined in the Minister of Health's Decree No. HK.01.07/MENKES/1280/2023, offers a practical framework to tackle the complexities of these issues.

The Regulatory Sandbox approach allows new digital health innovations like telemedicine to be tested in a controlled environment, providing benefits to both users and healthcare providers:

1. **User Protection:** This sandbox ensures that the privacy and security of user data are rigorously tested before full-scale implementation, addressing concerns such as hacking and data breaches. By establishing clear regulations on data privacy and security, the sandbox strengthens user trust in digital health platforms.
2. **Advocacy Space for Users:** The sandbox provides users with a platform for advocating their concerns regarding digital health innovations. This collaborative environment between users and developers ensures that data privacy and security concerns are addressed while new technologies are still in the testing phase.
3. **Product Education:** Through the regulatory sandbox, users are educated about the new digital health products and services available. This increases transparency and allows users to make informed decisions about the health services they choose to use, thereby enhancing the trust and accountability in telemedicine.
4. **Healthcare Worker Protections:** For healthcare workers, the regulatory sandbox tests the security and legality of telemedicine platforms, ensuring that both doctors and

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<sup>34</sup> Philippe Nonet and Philip Selznick. *Responsive Law, Choice in Transition*. Jakarta, HuMa, 2003.



patients are legally protected. Informed consent becomes an essential part of the telemedicine process, ensuring that medical professionals are not held liable for unforeseen issues outside their control.

The presence of telemedicine as a form of technological advancement has significantly simplified access to various health information and services, providing an easy and efficient way for the public to obtain medical care. Through the integration of new health regulation practices with the National Health Information System, telemedicine users are increasingly assured of the security of their personal data across various health platforms. This assurance is further strengthened by the application of the Regulatory Sandbox model, as stipulated by Minister of Health's Decree No. HK.01.07/MENKES/1280/2023, which ensures that digital health innovations undergo stringent testing in a controlled environment.

The sandbox allows for the evaluation of data privacy, security, and interoperability issues before these technologies are implemented at scale, thus fostering greater public trust in telemedicine. With this framework, users can also actively advocate for improvements, ensuring that their privacy concerns are addressed as technology evolves. Moreover, through continuous education on digital health services, patients are empowered to make informed choices, enhancing transparency and accountability. In addition, informed consent provides legal protection to both patients and healthcare professionals in unforeseen situations. By ensuring that patients are fully aware of the risks and benefits of using telemedicine, this consent process shields medical personnel from liability in incidents beyond their control. For healthcare workers, the regulatory sandbox ensures that they are working within a secure, tested, and compliant system, further protecting them from risks related to data breaches or malpractice.

Thus, telemedicine represents a significant and positive revolution in the health sector, one that must continue to be developed and supported. The regulatory frameworks in place, particularly through the Regulatory Sandbox, provide both adaptability and protection, building high levels of public trust in the use of these platforms. Therefore, the law's purpose must be understood not just in terms of legal certainty but also in delivering justice and broad benefits to society, ensuring that both patients and healthcare providers are well-protected in this rapidly evolving digital landscape.<sup>35</sup>

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<sup>35</sup> Fuady Munir. *Grand Theories in Law*. Jakarta, Kencana, 2013, pp. 171-173.

### **III. CONCLUSION**

The development of telemedicine in Indonesia has reshaped healthcare practices but faces challenges due to the lack of comprehensive regulations, raising concerns over patient rights, data security, and legal risks for healthcare professionals. The enactment of Law Number 17 of 2023 and Government Regulation Number 28 of 2024 marks a significant step toward addressing these gaps by providing a legal framework to regulate telemedicine practices. These regulations, supported by the Regulatory Sandbox mechanism, aim to balance innovation with safeguards for security, privacy, and efficacy. Using Gustav Radbruch's legal philosophy of certainty, justice, and legal benefits, this framework seeks to protect patients and healthcare providers while fostering trust in telemedicine. The robust governance provided by these laws ensures telemedicine's sustainable and secure integration into Indonesia's healthcare system.

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