

## LEGAL ASPECTS OF TELEMEDICINE DURING COVID-19 PANDEMIC PERIOD IN BINJAI

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### ABSTRACT

*In order to prevent the transmission of Covid-19 to doctors, nurses and other health workers as well as patients visiting hospitals, the Ministry of Health urges hospitals and other health care facilities to develop and use telemedicine services in providing health services to the public. The purpose of this research is to: To analyze the regulation of telemedicine application; To analyze the legal aspects of telemedicine during the covid-19 pandemic; To analyze regulatory weaknesses related to telemedicine. Qualitative data analysis by collecting primary, secondary and tertiary legal materials. The results of the analysis based on juridical reviews obtained: Regulation of the application of telemedicine is strongly triggered by the increasing rise of the private sector as a health care provider; Regulations related to telemedicine are set forth in Permenkes 20/2019; Health services use technology called telemedicine services as stipulated in Permenkes 20/2019 and Circular Letter of the Minister of Health Number: HK.02.01/Menkes/303/2020 On The Implementation of Health Services Through the Utilization of Information and Communication Technology in order to Prevent the Spread of Corona Virus Disease (Covid-19) aims to prevent the spread of covid-19, but on the other hand that the Circular letter of the Minister of Health can not be the legal basis in carrying out law enforcement, because it is non-legaly binding with reference to Law Number: 12 year 2011 on the Establishment of Legislation where there are no legal sanctions for those who do not comply. The advice given is: It is expected that the Government issued a regulation accompanied by legal sanctions so that every health care provider such as hospitals, and or doctors can carry out their duties in accordance with their respective responsibilities so that patients who use telemedicine services can be safe when using telemedicine services.*

Keywords: Legal Aspects, Telemedicine, Pandemic, Covid-19

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### INTRODUCTION

The development of technology today affects the maximum health services to support the efficiency of resources and resources. The world of nursing is one of the professions that has an important role in technology-based health services. Based on this, in order to bring health services closer, especially for remote areas, various efforts are made, one of which is through the use of information technology in the field of health through telemedicine. The Ministry of Health issued Regulation of the Minister of Health Number: 20 Year 2019 Implementation of Telemedicine Services Between Health Service Facilities as an effort to realize safe, quality, anti-discrimination, and effective telemedicine services and prioritize the interests and safety of patients. Telemedicine services are carried out by health workers who have a license to practice in health care facilities (fasyankes) organizers consisting of teleradiology services, teleelektrokardiography, teleultrasonography, clinical teleconsultation and other telemedicine consulting services in accordance with the development of science and technology.

The success of telemedicine programs is seen from the increasing level of consultation, positive reception, and overall positive feedback from patients (Dobke, et al., 2011). Starting in 2015 telemedicine services began to be known by a wide range of people. However, due to its new age, the rules regarding its implementation were recently published. Fundamentally, there is one legal product that becomes the legal basis for the management of telemedicine. The legal product is Regulation of the Minister of Health Number: 20 Year 2019 concerning the Implementation of Telemedicine Services Between Health Care Facilities.

In order to prevent the transmission of Covid-19 to doctors, nurses and other health workers and patients visiting hospitals, the Ministry of Health urges hospitals and other health care facilities to develop and use telemedicine services in providing health services to the public. This means that health services must be done through telemedicine. Doctors who provide telemedicine services to patients are responsible for the health services they provide, including ensuring the security of data of patients accessing telemedicine services. The authority of doctors in providing telemedicine services include anamnesa, certain physical examinations conducted through audiovisual, the provision of recommendations needed based on the results of supporting examinations or the results of certain physical examinations, enforcement of diagnosis, management and treatment of patients, writing prescription drugs or medical devices, issuing referral letters for examination or further action to laboratories or health care facilities according to the results of patient management.

Haji Hendrosono Soewono's opinion that the practice of medicine using telemedicine contains potential insecurity that can cause changes in orientation, both in values and thinking because it is influenced by political, economic, social, cultural, defense and security factors as well as science and technology. The change in orientation will affect the process of organizing health development (Soewono, 2007). Muhammad Adli Ikram Arif suggested that the implementation of medical practice on online medical services is not in line with the applicable Law of Medical Practice so that the legal and ethical side is questioned because in online medical services there is an obligation of doctors not to be fulfilled, namely the obligation of doctors to have a license to practice other than that, in the law of medical practice it is clearly stipulated that the intended place of practice is a place of practice in the real world (physical) and not virtual (virtual) (Arif, 2018).

Based on Anwar's research (2013) entitled "Legal Aspects of Telemedicine Use" states that Indonesia does not yet have laws that specifically regulate the use of telemedicine, where Indonesia is only limited to regulating telematics in general. The use of telemedicine has the potential to cause various legal problems, both at the national and international level. In the research Arman Anwar has not explained clearly the legal aspects of the use of telemedicine in question while the Government of Indonesia has issued a regulation through the Ministry of Health, namely the Regulation of the Ministry of Health Number: 20 Year 2019 on the Implementation of Telemedicine Services Between Health Service Facilities where this regulation arises after the covid-19 pandemic in Indonesia so that this is considered necessary to be raised in a study. Based on the description above, the researchers want to delve into a study entitled "Aspects of Telemedicine Law During the Covid-19 Pandemic In Binjai".

## RESEARCH RESULTS

### 1. Aspects of Telemedicine Law During the Covid-19 Pandemic

The government's role in service regulation is strongly triggered by the rise of the private sector as a health care provider, ranging from independent practices, group practices, laboratories, pharmacies, clinics to hospitals. This fact further encourages the government to immediately move from a role as a service provider (with the consequences of competing with the private sector) to a role as a service regulator (with the consequences of reregulating government and private service providers). According to Ogun, there are two approaches to service regulation. The first approach is a social approach, which emphasizes the development of various standards (e.g. to ensure minimum quality and safety), both professional standards, service standards or agency licensing standards. Harding said that the goal of this approach is to improve the fairness and quality of health services. In the social approach, the variables that become the focus of regulation are market entry and quality of service. For example, a doctor to practice in an area must go through the licensing process to assess the minimum competence of the doctor and permit for his place of practice. Thus there is a process of "testing" before entering the market. The second approach is an economic approach that looks at the role of regulation in relation to market mechanisms. This approach aims to prevent the monopoly of health services, the scarcity of certain health services, or excessive services. Regulation occurs when the government seeks to control or influence the activities of individuals or institutions through price, quantity, quality and distribution. Walshe's views on regulation are more influenced by this approach. Walshe sees regulation as a continuous effort by public agencies to control activities that are valuable to the community. In the view of economists, such regulation is needed because of the failure of market mechanisms, where regulation is expected to realize what is not realized in market mechanisms such as efficiency, fairness, quality, availability and so on (Utarini, 2004).

Based on the above, it can be known that regulation is an abstract concept of complex system management in accordance with a set of rules. A set of rules or regulations defines a provision of rules or legislation designed by experts of problems or laws to enforce regulations, so that based on that, regulation is a regulation made to help control an institution / organization, group and society in order to achieve the goal of togetherness in public life. The purpose of a regulation or rule is to control people with certain restrictions. Regulations imposed in various institutions or for the public, both for the needs of the general public and for the practice of health services.

Health care is one of the most important forms of service in the community. The purpose of the health service is to improve the level of health and the ability of the community as a whole in maintaining health to achieve optimal health independently, families and communities. Therefore, in order for the purpose of health services to run as it should so that a regulation is needed that regulates the restrictions carried out by health workers, including doctors in carrying out obligations in accordance with their oaths.

In an effort to improve the quality of health, the government should be able to form legal products that support the improvement of the quality of doctors and other medical personnel as well as the development of medical technologies. These legal products must govern how health services are better and protect medical personnel and patients in order to be able to carry out their obligations and receive their rights to the maximum extent possible. Every implementation of health services is regulated by law as a guideline so that every competent in it can carry out their duties in accordance with their respective duties and responsibilities. Existing laws as legal devices whenever there is an error in their implementation. The legal basis for health services is regulated in the Health Law as well as some related regulations in it and also some circulars issued by the relevant ministries such as the ministry of health.

Budhijanto (2010) said that along with increasing social and economic activities make the constellation of world society has entered an information-oriented society. Information system technology has been used in various sectors of life, ranging from trade / business (electronic commerce, e-commerce), education (electronic education), health (telemedicine), telekarya, transportation, industry, tourism, environment to the entertainment sector.

As outlined above, regulation plays a very important role in health care. The application of health services provided by doctors to their patients is through information technology called telemedicine. In general, telemedicine is the use of information and communication technology combined with medical expertise to provide health services, ranging from consultations, diagnoses and medical actions, without limited space or implemented remotely using an information aid such as applications circulating in Indonesia.

Regulation related to telemedicine is set forth in the Regulation of the Minister of Health Number: 20 Year 2019 on Telemedicine Services between Health Care Facilities (Permenkes 20/2019). This can be seen from Article 1 Paragraph (1) Permenkes 20/2019 contains the understanding of telemedicine which is interpreted as "the provision of remote health services by health professionals

using information and communication technology, including the exchange of diagnosis information, treatment, prevention of diseases and injuries, research and evaluation, and continuing education of health care providers for the benefit of improving the health of individuals and communities while in paragraph (2) it is mentioned that telemedicine services between health care facilities and other health care facilities in the form of consultations to enforce diagnosis, therapy and / or prevention of diseases while in Article 2 mentioned that "Telemedicine services are implemented by health workers who have a license to practice in Fasyankes organizers". The fasyankes in question can be known through Article 4 paragraph (1) of Government Regulation Number: 47 Of 2016 concerning Health Care Facilities (PP No. 47/2016) consisting of: independent practice places of health workers; community health centers; clinic; hospitals; pharmacies; blood transfusion unit; health laboratories; optical; medical service facilities for legal purposes; and traditional health care facilities.

## 2. Potential Violations of The Law Against The Use of Telemedicine During the Covid-19 Pandemic

Telemedicine service is a health service performed by doctors using information and communication technology to diagnose, treat, prevent and evaluate the patient's health condition. The activity is carried out in accordance with its competence and authority as evidenced by the registration certificate (STR) while paying attention to the quality of service and patient safety. Telemedicine services are performed between the doctor and the patient, or between the doctor and another doctor. Doctors who provide telemedicine services to patients are responsible for the health services they provide, including ensuring the security of data of patients accessing telemedicine services. Later the results of telemedicine services are recorded in digital or manual records used by doctors as medical record documents and become the responsibility of the doctor. The document must be kept confidential, and used in accordance with the provisions of the laws and regulations. The authority of doctors in providing telemedicine services include anamnesa, certain physical examinations conducted through audiovisual, the provision of recommendations needed based on the results of supporting examinations or the results of certain physical examinations, enforcement of diagnosis, management and treatment of patients, writing prescription drugs or medical devices, issuing referral letters for examination or further action to laboratories or health care facilities according to the results of patient management.

The increasing use of telemedicine during the covid-19 pandemic after the issuance of regulation on the use of telemedicine can raise new problems. The Circular letter of the Minister of Health cannot be the legal basis, because the circular is non legally binding with reference to the Law of the Republic of Indonesia Number: 12 Year 2011 on the Establishment of Legislation where there are no legal sanctions for those who do not comply. Therefore, potential violations of the law on the use of telemedicine in health services, especially during the covid-19 pandemic can occur where this can be caused by several problems that can arise, namely:

- a) Practice without a Practice License  
As it is known together that since the enactment of PSBB due to the widespread spread of the covid-19 virus makes the movement narrow for many people who include it is also the health officer itself like a doctor. The narrowness of the movement is not only due to the enactment of PSBB rules but also can cause concern for everyone because it could be exposed to the deadly covid-19 virus from patients or from the doctor himself. By seeing it provides an opportunity for doctors to perform health services through telemedicine even though the doctor realizes that he does not have a license to practice the use of telemedicine so that it can be penalized as stated in Article 76 of the Law on Medical Practice which states that "Any doctor or dentist who deliberately practices medicine without having a license to practice as referred to in Article 36 shall be sentenced to a maximum imprisonment of 3 (three) years or a maximum fine of Rp.100,000,000 ,00 (one hundred million rupiah).
- b) Negligence or treatment error causes disability/death in the patient.  
In the relationship between doctors and patients is known to be a therapeutic agreement in which therapeutic agreements or therapeutic transactions are agreements between doctors and patients that authorize doctors to perform health care activities to patients based on the expertise and skills possessed by the doctor (Isfandyarie, 2006). The existence of a therapeutic agreement is a legal consequence if the doctor is negligent in carrying out his duties and this is also a medical risk that will be experienced by a patient.
- c) Negligence (culpa) for not applying the highest standards so as to cause harm to the patient (can be disability or death)  
The Indonesian Code of Medical Ethics regulates the general obligation stipulated in Article 2 which states that: "a doctor must always strive to carry out his profession in accordance with high professional standards" so that based on this, in the health service including telemedicine services performed by a doctor to his patients give rise to a legal relationship. The legal relationship will be seen when the doctor commits negligence in carrying out his medical pratek so as to cause legal consequences. However, AgusBudianto's opinion in his book "Aspects of Health Care Services in The Perspective of Patient Protection" states that negligence is not a crime if negligence does not cause harm, injury to others and the person can receive it (de minimus non curatlex= the law does not deal with trivial matters), but if the negligence results in material loss, harm even to the point of taking the life of others then it can be classified as gross negligence (culpa lata) which is contrary to the law , the consequences can be avoided and his actions can be blamed (Budianto, 2010).

## 3. Advantages and Disadvantages of Regulation On Telemedicine Services

The implementation of teleconsultation practices is also quite diverse. Generally doctors put patients who are being treated directly in hospitals or clinics, before answering teleconsultation. During consultation, patients are usually given the opportunity to inform the doctor of their medical history. Then, the patient is allowed to ask a number of questions. Similarly, specialists will later file a statement as well. Doctors with telemedicine services can hear directly the patient's condition, such as hearing the sound of coughing or seeing swollen eyes. Telemedicine is similar to regular health services, only done virtually. Most patients may feel more comfortable and flexible when choosing telemedicine. Patients can still be at home without the need to be in the middle of a

crowded hospital. There are also doctors who limit teleconsultation with patients who have consulted directly on the grounds that they already know the patient's health history, making it easier for further clinical monitoring. Taking into account the accuracy of diagnosis and therapy, most doctors screen the severity of a patient's clinical complaint first before giving teleconsultation. The doctor asks some initial questions to determine the severity of the patient's complaint at the beginning of the teleconsultation.

Similarly, DesySusilawati revealed that during the covid-19 pandemic, the government imposed Large-Scale Social Restrictions (PSBB). Many people end up staying at home, even when they are sick. In these conditions, telemedicine or teleconsultation can be a solution. Deputy CEO of Link Medisdr Fiona Amelia explained, Primaya Hospital is one of the hospitals that has implemented teleconsultation. Through the LinkSehat platform, patients can connect with a doctor or hospital. LinkSehat's flagship features are teleconsultation services, booking consultation schedules, personal medical records and medical assistance services. Doctors who serve teleconsultation covid-19 has been given a briefing to conduct early detection of covid-19 through standardized interviews that are only early screening. Doctors can only provide alternative diagnoses, some possibilities and advice for first aid, however, this diagnosis can be more accurate if the patient actually mentions the condition honestly, as asked by the doctor. If the results of the doctor's assessment turns out to require an immediate face-to-face consultation, then the patient is recommended to go to a health facility. By looking at it shows that telemedicine services during the covid-19 pandemic are very important that have their own advantages when health services are done through telemedicine and this is what prompted the Ministry of Health of the Republic of Indonesia to issue Regulation of the Minister of Health Number: 20 Year 2019 concerning Telemedicine Services between Service Facilities Health and Circular Letter of the Minister of Health Number: HK.02.01/MENKES/ 303/2020 concerning the Implementation of Health Services Through the Utilization of Information and Communication Technology in order to Prevent the Spread of Corona Virus Disease (Covid-19) related to health services through telemedicine. When the pandemic phenomenon that occurs in almost all over the world including Indonesia proves that the importance of the Government issued a regulation in the practice of health law so that every existing health facility and the public can use the technology to prevent the spread of the covid-19 virus by guided by existing rules.

Regulation made certainly has its own purpose and benefits based on the conditions of need at the time the regulation is issued by authorized officials such as the ministry level. Similarly, the regulation on telemedicine provides space for health care facilities to provide excellent health services to all Indonesians, especially in remote areas that are difficult to reach in terms of facilities and infrastructure.

Regulation related to health services using technology called telemedicine services as circular letter of the Minister of Health Number: HK.02.01/MENKES/ 303/2020 on the Implementation of Health Services Through the Utilization of Information and Communication Technology in order to Prevent the Spread of Corona Virus Disease (Covid-19) aims to prevent the spread of covid-19, but on the other hand that the Circular Letter of the Minister of Health can not be the legal basis, because it is non legal binding by referring to Law Number: 12 year 2011 on the Establishment of Legislation where there are no legal sanctions for those who do not comply.

## CONCLUSION

Based on previous studies, it can be concluded as follows:

1. Regulation of the application of telemedicine is strongly triggered by the increasing rise of the private sector as a provider of health services, ranging from independent practices, group practices, laboratories, pharmacies, clinics to hospitals. This fact further encourages the government to immediately move from its role as a service provider.
2. Regulation related to telemedicine is set forth in the Regulation of the Minister of Health Number: 20 Year 2019 concerning Telemedicine Services between Health Care Facilities (Permenkes 20/2019). The legal basis for health services is regulated in the Health Law as well as several related regulations in it and also some circulars issued by the relevant ministries such as the ministry of health and the Minister of Health Circular Number: HK.02.01/MENKES/ 303/2020 on the Implementation of Health Services Through the Utilization of Information and Communication Technology in order to Prevent the Spread of Corona Virus Disease (Covid-19).
3. Health services using technology called telemedicine services as stipulated in the Regulation of the Minister of Health Number: 20 Year 2019 on Telemedicine Services between Health Care Facilities (Permenkes 20/2019) and Circular Letter of the Minister of Health Number: HK.02.01/MENKES/ 303/2020 On The Implementation of Health Services Through the Utilization of Information and Communication Technology in order to Prevent the Spread of Corona Virus Disease (Covid-19) aims to prevent the spread of covid-19, but on the other hand that the Circular letter of the Minister of Health can not be a legal basis in carrying out legal action, because it is non legally binding by referring to the Law of the Republic of Indonesia Number: 12 of 2011 concerning the Establishment of Legislation where there are no legal sanctions for those who do not comply.

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Tentang Penyelenggaraan Pelayanan Kesehatan Melalui Pemanfaatan Teknologi Informasi dan Komunikasi Dalam Rangka Pencegahan  
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