

Indonesian Medical Confidentiality of Telemedicine

*Mulyadi Alrianto Tajuddin**, *Muhammad Saiful Fahmi*, *Gusti Ayu Utami*, and *Ricardo Goncalves Klau*

Department of Law Science, Faculty of Law, Universitas Musamus, Merauke 99600, Indonesia

Abstract. This study aims to obtain an overview of the legal protection of medical confidentiality in health services via the internet (telemedicine internet). The research method uses a normative juridical approach, the type of data uses qualitative data and the data source is secondary data, the data collection method uses library research and documentation methods. Furthermore, the data will be analyzed qualitatively and then conclusions will be drawn using a deductive approach. Legal protection for medical confidentiality in health services via the internet (telemedicine internet), is regulated through the Minister of Health Regulation Number 20 of 2019 concerning the Implementation of Telemedicine between Health Service Facilities and the Minister of Health Regulation Number 36 of 2012 concerning Medical Secrets. verbal warnings, written warnings, or revocation of registration certificates, licenses to practice health workers and/or permits for health care facilities, as well as other forms of legal protection can be given in addition to administrative sanctions, namely criminal sanctions in accordance with the Criminal Code (KUHP), namely Article 322 deals with revealing patient secrets.

Keywords: Medical Confidentiality, Telemedicine, Legal Protection.

1 Introduction

The development of science has an impact on aspects of life, one of which is the use of information technology in health services [1]. Health itself can be interpreted as a healthy state, both physically, mentally, spiritually and socially that allows everyone to live socially and economically productive [2]. Health is one of the things that is very important for humans in carrying out their lives, in other words in healthy conditions humans can live productively to be able to produce things that are beneficial for themselves and others [3]. Health services are one of the components in the national health system that are in direct contact with the community [4]. Health services provided by medical personnel to patients should be supported by adequate facilities and infrastructure. One of the phenomena of advances in technology is the existence of a type of service in the health sector via the internet (telemedicine) [5]. telemedicine is the use of information and communication technology combined with medical expertise to provide health services, ranging from consultation, diagnosis and medical treatment, without being confined to space or carried out remotely [6]. To be able to run properly, this system requires communication technology that allows the transfer of data in the form of video, sound, and images interactively which is carried out in real time by integrating it into video-conferencing support

technology [7]. The use of internet-based media in health services is seen as urgent to be optimized especially when the high presence of COVID-19 which was officially designated by the World Health Organization (WHO) as a global pandemic on March 11, 2020, has implications for increasing the need for telemedicine [8, 9].

In the use of telemedicine, it is worth noting that regarding consultations between doctors and patients, ethical issues regarding data privacy are a challenge for doctors [10, 11]. To address this ethical issue, physicians should inform patients about the limitations of their actions when using telemedicine, so that patients can choose whether or not to consent to the action. The use of telemedicine by doctors requires standard operating procedures and regulations to protect the privacy of patient data and information [12].

Legal protection in health law is contained in Law Number 29 of 2004 concerning Medical Practice, Law Number 36 of 2009 concerning Health, Law Number 44 of 2009 concerning Hospitals, and other ministerial regulations regarding medical services.

This study will discuss legal issues related to patient privacy rights data, in particular the legal protection of medical confidentiality. Protection of confidentiality of patient health data recorded electronically on medical services via the internet, as regulated in Article 57 Paragraph (1) of Law no. 36 of 2009 concerning Health as follows: "Everyone has the right to the confidentiality of his personal health condition that has been disclosed to the health service provider".

* Corresponding author: mulyadi@unmus.ac.id

The legal basis for regulating medical secrets is regulated in the Medical Practice Act and Law Number 36 Year 2009 concerning Health (Health Law). In the provisions of Article 48 of the Medical Practice Act, it is stated that:

1. Every doctor or dentist in carrying out medical practice is obliged to keep medical secrets.
2. Medical secrets may be disclosed only for the benefit of the patient's health, fulfilling the request of law enforcement officers in the context of law enforcement, the patient's own request, or based on the provisions of the legislation.
3. Further provisions regarding medical secrets shall be regulated by a Ministerial Regulation

Both medical personnel and patients who will use telemedicine are concerned about the potential challenges posed by issues related to authentication, privacy, and data security. If all this time in conventional medical records data is stored safely in medical records, then in the telemedicine model, data is spread throughout the virtual world, health data circulates without being controlled, allowing it to be used by people who are not responsible for their actions. Worries about the confidentiality of patient data and medical records are a dilemma.

The selection of research on the protection of medical confidentiality in health services via the internet (intermedicine) is according to observations, although the concept of health services via the internet is well known in Indonesia, but telemedicine is a new thing and has not received enough attention in Indonesia. Previous studies put more emphasis on the aspects of telemedicine implementation constraints [13] and aspects of the legal use of telemedicine in general [12]. The interest of this study considers the potential legal problems that will arise in the future through telemedicine, including the protection of patient privacy rights for their health data recorded electronically.

2 Research Methods

The problem approach that will be used in this research is using a normative juridical approach. The normative juridical approach is legal research carried out by examining library materials or secondary data as the basis for research by conducting a search on regulations and literature related to the problem under study [14].

The normative juridical research approach is operationally carried out with library research, in this study reviewing and analyzing based on Law Number 36 of 2009 concerning Health, Law Number 44 of 2009 concerning Hospitals, Law Number 29 of 2004 concerning Medical Practice, KUHP, Government Regulation Number 47 of 2016 concerning Health Service Facilities, Minister of Health Regulation Number 36 of 2012 concerning Medical Secrets and Minister of Health Regulation Number 20 of 2019 concerning the Implementation of Telemedicine among Health Service Facilities.

While the legal theory used is the theory of legal protection, namely protection by using legal means or protection provided by law, aimed at certain interests, namely by converting the interests that need to be protected into a legal right. In the law of "rights" is also called subjective law. Subjective law is an active aspect of the legal relationship provided by objective law, in terms of subjective law are norms/rules [15].

In this study, secondary data sources will be used, namely data obtained from library materials or literature that has a relationship with the object of research. In this study, the secondary data sources are literature, articles, journals and sites on the internet related to research [16]. Secondary data can be in the form of legal materials consisting of primary legal materials, secondary legal materials and tertiary legal materials.

2.1 Collecting Data

Data collection methods in this study, are as follows:

2.1.1 Literature Study

The data examined in the research can be in the form of data obtained through library materials and or directly from the community.

2.1.2 Documentation Method

The method of documentation in research is as a means of assisting researchers in collecting data or information by reading letters, announcements, meeting summaries, written statements of certain policies and other written materials. This data search method is very useful because it can be done without disturbing the object or research atmosphere [17].

3 Results and Discussion

Telemedicine was first organized by the National Aeronautics and Space Association (NASA) in 1960. Following its development in 1966, the U.S. National Library of Medicine established several telemedicine projects spanning over 19 years targeted at medically isolated areas-rural, urban centers, and suburbs [18]. In Indonesia, telemedicine began to develop in the 1990s, where one of the experiments applied was the experiment of a wireless-based telemedicine system that connected two health schools in Bandung, Hasan Sadikin Hospital (RSHS) and UNJANI [19]. "Tele" is a Greek word meaning "distance" and "mederi" is a Latin word meaning "to heal". Although initially considered "futuristic" and "experimental", now telemedicine has become a reality and is being applied in various parts of the world. Telemedicine has various aspects of application, including the provision of health services to patients and public health [20]. When translated the term telemedicine means "distance healing" [21].

Minister of Health Regulation Number 20 of 2019 concerning the Implementation of Telemedicine Services Between Health Service Facilities defines

telemedicine as the provision of remote health services by health professionals using information and communication technology, including the exchange of information on diagnosis, treatment, prevention of disease and injury, research and evaluation, and continuing education of health service providers for the benefit of improving individual and community health. In this (Minister of health regulation) legal protection for medical confidentiality through intermedicine can be given to related subjects referred to as health service facilities (*fasyaskes*) providing consultation, namely hospitals (hospitals belonging to the central government, local governments, and private sector). As for the health facilities receiving the consultation, the human resources include doctors, specialists/sub-specialist doctors, other health workers and competent personnel in the field of information technology. While telemedicine health services apart from these subjects, information about telemedicine health services is also provided to parties who can find out information or privacy data regarding the patient's health condition such as internet providers, intermediary server service providers, other staff of telemedicine services, hackers (hackers) and even other people who have access to the instrument (computer/laptop) that the patient uses for telemedicine services.

The legal protection for related subjects in (Minister of health regulation) 36 of 2012 concerning Medical Secrets is addressed to parties or subjects in health services, especially the obligation to keep medical secrets or medical secrets as follows, that all parties involved in medical services and/or using data and information regarding patients who are required to keep medical secrets, including doctors and information from other health workers who have access to patient health data and information, leaders of health service facilities, personnel related to the financing of health services, other personnel who have access to patient health data and information in service facilities. health.

According to Philipus M. Hadjon, legal protection is the protection of dignity and worth, as well as the recognition of human rights owned by legal subjects based on legal provisions from arbitrariness or as a collection of rules or rules that will protect one thing from another. With regard to consumers, it means that the law provides protection for the rights of customers from something that results in the non-fulfillment of these rights (8). There are two types of legal protection created to regulate order in society, namely preventive legal protection and repressive legal protection.

Preventive legal protection is protection that is given with the aim of preventing before a violation occurs in the form of making related regulations that are used as guidelines by parties involved in telemedicine in this case, namely Minister of Health Regulation Number 20 of 2019 concerning the Implementation of Telemedicine between Health Service Facilities which aims to as a regulation in the implementation of telemedicine health services in Indonesia so that the parties involved in it can work according to existing laws and regulations and according to existing boundaries to avoid possible violations. While the form of repressive legal protection is the final protection in the form of sanctions such as

finances or compensation given if a dispute has occurred or a violation has been committed.

Law Number 36 of 2009 concerning Health is the legal basis for the establishment of Minister of Health Regulation Number 20 of 2019 concerning the Implementation of Telemedicine among Health Service Facilities, in Article 188 of Law Number 36 of 2009 concerning Health, it has been explained that sanctions against violators in health services in the form of administrative actions for health workers in the form of a written warning or revocation of temporary or permanent permits. With the enactment of Minister of Health Regulation Number 20 of 2019 concerning the Implementation of Telemedicine between Health Service Facilities, the form of legal protection provided is in the form of administrative sanctions.

Law Number 29 of 2004 concerning Medical Practices and Law Number 44 of 2009 concerning Hospitals are the legal basis for the establishment of (Minister of health regulation) Number 36 of 2012 concerning Medical Secrets.

4 Conclusions

Legal protection for guarantees of medical confidentiality in health services via the internet (internet telemedicine), that so far the regulations used in the implementation of telemedicine health services in Indonesia are Minister of Health Regulation Number 20 of 2019 concerning the Implementation of Telemedicine between Health Service Facilities and Minister of Health Regulation Number 36 of 2012 about Medicine Secrets. However, there are still many obstacles and shortcomings in its implementation due to several factors, especially the problem of legal protection of patient privacy data or patient medical confidentiality. This is because the legal principle in the Minister of Health Regulation Number 20 of 2019 concerning the Implementation of Telemedicine between Service Facilities is only to regulate and explain the implementation of telemedicine in Indonesia and does not regulate the existence of sanctions or legal consequences but is only limited to guidance and supervision in the implementation of telemedicine health services in Indonesia.

To be added to the regulations governing telemedicine in Indonesia regarding the explanation of sanctions such as administrative sanctions so that it becomes a limitation for health service providers in carrying out telemedicine health services. In addition, there must be technical instructions and guidelines for the implementation of telemedicine between health service providers to facilitate implementation for health workers who carry out telemedicine services.

References

- [1] R. T. Budiyaniti and P. M. Herlambang, "Perlindungan Hukum Pasien Dalam Layanan Konsultasi Kesehatan Online," *J. Huk. Kesehat. Indones.*, vol. **1**, no. 01, pp. 1–10, (2021).

- [2] R. Indonesia, “Undang-undang Republik Indonesia nomor 36 tahun 2009 tentang Kesehatan,” *Jakarta Republik Indones*, (2009).
- [3] W. Andrianto and A. R. Fajrina, “Tinjauan Perbandingan Penyelenggaraan Telemedicine Antara Indonesia Dan Amerika Serikat,” *J. Huk. Kesehat. Indones.*, vol. **1**, no. 02, pp. 70–85, (2021).
- [4] H. Megatsari, A. D. Laksono, I. A. Ridlo, M. Yoto, and A. N. Azizah, “Perspektif masyarakat tentang akses pelayanan kesehatan,” *Bul. Penelit. Sist. Kesehat.*, vol. **21**, no. 4, pp. 247–253, (2018).
- [5] R. L. Bach and A. Wenz, “Studying health-related internet and mobile device use using web logs and smartphone records,” *PLoS One*, vol. **15**, no. 6, p. e0234663, (2020).
- [6] J. Vidal-Alaball *et al.*, “Telemedicine in the face of the COVID-19 pandemic,” *Aten. primaria*, vol. **52**, no. 6, pp. 418–422, (2020).
- [7] M. Jamil, A. Khairan, and A. Fuad, “Implementasi Aplikasi Telemedicine Berbasis Jejaring Sosial dengan Pemanfaatan Teknologi Cloud Computing,” *JEPIN (Jurnal Edukasi dan Penelit. Inform.)*, vol. **1**, no. 1, (2015).
- [8] D. Cucinotta and M. Vanelli, “WHO declares COVID-19 a pandemic,” *Acta Bio Medica Atenei Parm.*, vol. (91), no. 1, p. 157, (2020).
- [9] Z. Hong *et al.*, “Telemedicine during the COVID-19 pandemic: experiences from Western China,” *J. Med. Internet Res.*, vol. **22**, no. 5, p. e19577, (2020).
- [10] K. F. Pasaribu, D. Arisjulyanto, and B. T. Hikmatushaliha, “Pengembangan telemedicine dalam mengatasi konektivitas dan aksesibilitas pelayanan kesehatan,” *Ber. Kedokt. Masy.*, vol. **34**, no. 11, pp. 11–15, (2018).
- [11] P. L. da Luz, “Telemedicine and the doctor/patient relationship,” *Arquivos brasileiros de cardiologia*, vol. **113**. SciELO Brasil, pp. 100–102, (2019).
- [12] A. Anwar, “Aspek Hukum Penggunaan Telemedicine,” *FIKI 2013*, vol. **1**, no. 1, (2013).
- [13] C. Kuntardjo, “Dimensions of Ethics and Telemedicine in Indonesia: Enough of Permenkes Number 20 Year 2019 As a Frame of Telemedicine Practices in Indonesia?,” *Soepra*, vol. **6**, no. 1, pp. 1–14, (2020).
- [14] S. Soekanto and S. Mamudji, “Penelitian Hukum Normatif Suatu Tinjauan Singkat, cet. 16,” *Rajawali Pers, Jakarta*, (2014).
- [15] H. Suyanto and A. A. Nugroho, “Perlindungan Hukum terhadap Hak-hak Pekerja Outsourcing Berdasarkan Asas Keadilan,” *J. Yuridis*, vol. **3**, no. 2, pp. 61–74, (2017).
- [16] H. S. Salim and E. S. Nurbani, “Penerapan teori hukum pada penelitian tesis dan disertasi/Salim HS,” (2017).
- [17] J. Sarwono, “Metode penelitian kuantitatif dan kualitatif,” (2006).
- [18] M. A. Hyder and J. Razzak, “Telemedicine in the United States: an introduction for students and residents,” *J. Med. Internet Res.*, vol. **22**, no. 11, p. e20839, (2020).
- [19] S. S. T. Fatmawati and M. Keb, *Peran telemedicine bagi tenaga kesehatan di era new normal*. Insan Cendekia Mandiri, (2021).
- [20] Ganthina, “Pratikum Specialist dan Terminologi Kesehatan,” (2016).
- [21] W. Andrianto, “Telemedicine sebagai Ujung Tombak Pelayanan Medis di Era New Normal,” (2021).