

Juridical Analysis of Health Service Regulation Through Telemedicine in Indonesia

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Abstract. Information communication technology development very fast in all aspects of human life, including the health sector which is still lagging behind in the regulation as a guide in using Telemedicine which is part of health services. During the Covid-19 pandemic, the use of Telemedicine as an alternative in health services experienced a 600 percent jump, according to Katadata data. Users of health services through the Telemedicine application rose from 4 million users to 15 million during the Covid-19 pandemic; report from ATENSI (Indonesian Telemedicine Association). Telemedicine as part of an effective, safe and inexpensive health service is very useful for Indonesian people. Although there are some rules to be able to accommodate the digitalization era of the health world in Indonesia, there is still a legal vacuum related to health services through telemedicine which is increasingly widespread, it is urgently needed regulations that specifically regulate real time telemedicine for the protection of patients and legal certainty for perpetrators, users or operators of telemedicine application.

Keywords: Telemedicine; Telemedicine settings

1 Preliminary

One goal of the Unitary State Republic of Indonesia listed in the fourth paragraph of the opening Invite The 1945 Constitution of the Republic of Indonesia is advance well-being general. Progress parameters well-being general of them is advance welfare in the field of health for citizen. Confession to right on service health as right basic man has recognized globally and declared in Article 25 Universal Declaration of Rights Right basic Man 1948 (UDHR). Confession to right on service health as right basic humans have also accommodated in change Second, the 1945 Constitution of the Republic of Indonesia.

Article 28 H of the 1945 Constitution of the Republic of Indonesia states that: that everyone has the right life prosperous physically and mentally, located stay, and get environment good and healthy life _ as well as entitled get service health. Article 34 of the 1945 Constitution of the Republic of Indonesia states that: that the State is responsible answer on provision facility service health and facilities service general worthy. _

Country is not only responsible answer on provision facility health only, however every facility service health they must fulfil standard national with good quality and guaranteed. Forget service quality health care, patients also have right for get information health. In article 7 of the Law Invite Republic of Indonesia Number 36 of 2009 concerning health mentioned that everyone has the right for get information and education about balanced and responsible health _ answer. In article 167 of the Law Invite the same mentioned management health organized by

the government through management knowledge and development technology in the field of health. Utilization technology in the field of health this could be interpreted as one form of effort in service health.

Giving service health through technology audiovisual communication between doctor or practitioner health with patient distance far away, send medical data patient with use infrastructure existing telecommunications such as internet, satellite and so on called with telemedicine. Regulation of the Minister of Health of the Republic of Indonesia Number 20 of 2019 concerning Organizing Telemedicine Services Between Facility Health Services article 1 paragraph (1) states that Telemedicine is gift service health distance away by professionals health with use technology information and communication covers exchange information on diagnosis, treatment, prevention disease, research and education sustainable provider service health for interest enhancement health individuals and society. With the above understanding, telemedicine includes: interaction transmission information health between facility service health and interactions distance far Among doctors and patients.

Indonesia with its geographical area consisting of from mainland remote, island that stretches in part in part cleavage equator with unfinished development evenly, resulting in part people living on the island islands and in remote corners from urban experience obstacles for reach facility service health every moment. On the side other, public the city is busy too so that for reach facility even close health requires no time short.

Development technology moment this drive fast, almost whole activity man has touched with technology, including field health. Telemedicine is breakthrough technology for resolve problem deployment facility service poor health evenly distributed power medical that is not evenly distributed and collected in the city big. by philosophical, with good implementation of telemedicine so the country's efforts towards fulfillment principal Justice in service health, fulfillment service non-discriminatory health, and fulfillment service cheap and expected health affordable. However, service online health is available weakness like happening service with substandard quality, vulnerable fraud especially related with qualification executor service.

Permenkes Number 20 of 2019 mentions that service health through telemedicine includes exchange diagnostic information, is service between facility service health. This thing shows that Settings the use of telemedicine in Indonesia has not yet accommodate the perpetrators service health by individual or group.

2 Aspects of Telemedicine in Indonesia

Form implementation standard profession supreme medicine consist from history taking, examination physical until inspection support for establish a diagnosis. Suite the need stare face and not could achieved through consultation on line. Implementation online consultation no could say in accordance with standard profession highest medicine that has mentioned in Article 2 KODEKI (Code of Ethics Indonesian Medicine). The process of making a diagnosis is not a simple process. Avoid misdiagnosis is not quite enough answer highest in profession sublime medicine. If doctor feel proof subjective and objective from history and examination physical no enough for make a diagnosis, doctor need inspection support.

Article 44 paragraph (1) of the Law Invite Number 29 of 2004 concerning Practice Medical mentions " Doctor " or Dentist in organize Practice Medical must follow standard service medicine ". This thing clarified in article 2 of the Code of Ethics Indonesian Medicine (KODEKI) which mentions that " One " doctor must always try doing his profession in accordance with standard the highest profession". Violation on Thing the is door enter violation law. Right patient will achieve when doctor operate one of the obligations is obligation doctor

for work with standard profession highest. No online consultation could said in accordance with standard profession highest ever _ mentioned in Article 2 of the Code of Ethics Indonesian Medicine. _

Moment it's available in Indonesia application provider service consultation service online medical like Halodoc, Alodoc, Grab Health, Klik Doctor, Grab Health and so on. On service medical online, clear diagnosis _ have limitations and no in accordance standard profession medicine. Patients and doctors no face to face, so doctor no could do inspection physical for evaluate condition objective patient or condition real patient. _

Terms and conditions application provider service consultation medical online mention _ that they are company technology that provides communication media, not media providers service health. Negligence provider service causing there is gap protection law for doctor nor patient user application this. Although application this owned by company information media technology, but what happened moment this application online consultation provides service consultation medical and provider service consultation is practitioner medical that is doctor. Service consultation medical is a form practice medicine.

Service medical online in Indonesia when this implemented by Home sick or facility health and by the Agency not facility health. On service medical online conducted by Rumah _ sick or facility health there is record medical patient, meaning there is basic data patient, all doctor who works at home Sick or facility health have a Registration Certificate (STR) and a Permit Practice (SIP), accountability law doctor, pharmacist clearer. Service online medical hosted by Rumah Sick or facility health beneficial for patient disease chronic which has had record medic at home sick or facility health that.

On service medical online carried out by non - profit agencies facility health like Halodoc, Alodoc, Grab Health, Klik Doctors, Yesdok and other platforms difficult do identification patient, because patient new and not known, doctor have a Registration Certificate (STR) issued by the Council Indonesian Medicine (KKI) but no have a license Prakti (SIP) so that accountability law no clear. On the side other, service online medical makes it easy patient on the spot remote and cost cheap.

So that patient safety achieved, the doctor who did service at the clinic online health should be subject to rules and codes ethics profession. Besides have a license Related practices _ with Permission Facility health (not permission company communication) is below _ supervision organization profession, namely Bond Indonesian Doctor (IDI). This thing for prevent fraud or counterfeiting. Clinic online health must prioritize right patient, where Thing this is obligation doctors and facilities health.

Circular of the Minister of Health of the Republic of Indonesia Number HK.02.01/MENKES/303/2020 of 2020 concerning maintenance Health Services Through Utilization Technology Information and Communication In frame Prevention The spread of Corona Virus Disease – 19 (Covid -19) is necessary proposed for perfected. In this Circular of the Minister of Health at point 3 it is stated the doctor who gave telemedicine services to patient responsible answer to service the health it provides, including ensure security of patient data access telemedicine services. In point 5 d it is mentioned diagnosis is carried out based on results partial inspection _ big got from history, examination physical certain or inspection peninjang. At point 5 f is mentioned writing recipe drug or tool health given to patient in accordance with the diagnosis.

In point 6 it is mentioned the doctor who wrote recipe electronic medicine and tools health must responsibly answer to possible content and impact _ arise from written medicine _ in recipe electronics. Writing recipe electronic excluded for drug group narcotics and psychotropics. Copy of prescription electronic must save in form print or electronic as part document record

medical. by law Thing this corner doctor, contrary with principal risk medical in Medical Law. by simple risk medical could interpreted as obligation bear loss by patient on outside action _ error doctor in transaction therapeutic. Definition risk medical no formulated by explicit in regulation legislation existing invitations. _ Risk on run service medical is not very could predictable because doctor only can try as much as possible for do handling medical. Even though could predictable what just risk medical that can happen, keep just no could confirmed which risk will obtain patient consequence handling medical that. Not seldom risk medical happening _ ends in death so that doctor suspected do error or negligence resulting in Dead someone.

Violation in service online health includes violation ethics, violation discipline and violation law. Violation ethics covers neglect work by artist ledge or on purpose work by not optimal, no work with standard profession highest in accordance code ethics Indonesian medicine, and work with minimal information. When violate ethics, beware violate standard profession. Violation law is closely related with counterfeiting and fraud, work without umbrella law sufficient, and if there is no effect _ expected will go through the legal process.

When occur lawsuit, difficult protect doctor nor patient user application. Application service online consulting published by the company technology and not by facilities health or provider service health, because that no responsible answer on action, carelessness, omission or careless provider service. On service health from House Sick or Clinic or Health Facilities then the doctor who performs service medical must have a Registration Certificate (STR), Permit Practice (SIP), and facilities health must have permission operational. Many things are not yet set make doctor be in position weak when face to face with lawsuit law.

3 Telemedicine Settings in Indonesia

Invite Number 36 of 2009 concerning Health, article 5 states: that (1) everyone has equal rights _ in get access on source power in the field health (2) Everyone has right in get service health that is safe, quality and affordable (3) Everyone has the right by independent and responsible answer determine alone service necessary health _ for himself. In article 54 it is stated that maintenance health implemented by responsible, safe, quality, and equitable and non-discriminatory.

Adib Khumaidi in the book about Telemedicine, recommendations Bond Indonesian doctors for the future digitization health in Indonesia says Telemedicine originated from Greek, consisting of from the word tele which means far and medically meaningful _ service health by energy health. Experts _ define telemedicine as merging technology information communication with expertise medical for give service health without limited room or implemented from far away.

Types of telemedicine in implementation is real time Telemedicine that is activity service health through ongoing telemedicine Among patient and doctor in time together through application media and Telemedicine store and forward, namely: activity service health via telemedicine between facility service health covers collection of medical data, and sending of data to a doctor specialist at the right time for evaluation offline.

Regulation of the Minister of Health Number 46 of 2017 concerning Strategy E – Health and Number 20 of 2019 concerning maintenance Telemedicine Services Between Facility Service health only arrange maintenance service health Telemedicine between facility service health, not yet arrange service health Among perpetrator service health live with society. It means Minister of Health Regulation No. 20 of 2019 does not arrange service health via

telemedicine between giver service and recipient service health by direct, but must through facility service health already _ integrated with device Ministry of Health.

Product the law that becomes base operational related service health through telemedicine in Indonesia is Invite Law No. 29 of 2004 concerning Practice Medical Article 17 paragraph (2) contains oath the doctor who stated will always respect tall knowledge medical or medical teeth and dan maintain as well as increase quality service doctor or doctor teeth. Thing this clarified in article 2 of the Code of Ethics Indonesian Medicine which mentions that. " a doctor must always try doing his profession in accordance with standard profession highest "... Form implementation standard the highest profession consists from history taking, examination physical until inspection support for establish a diagnosis. Suite the need stare face and not can achieved through consultation by online. Implementation consultation online no _ could said in accordance with standard profession highest mentioned _ in Kodeki.

Invite Number 11 of 2008 concerning Information and Transactions Electronics Article 1 point 6 states maintenance System electronic is utilization system electronically by state administrators, people, business entities or society. Organizer system electronic is every person, state administrator, business entity and community that provides, manages and operates system electronic good by alone or together same to user system electronic for necessity herself or necessity party other. Invite Law No. 19 of 2016 revised from Invite Number 11 of 2008 concerning Information and Transactions Electronic load stipulations governing _ about transaction electronics going on in telemedicine services. Load about organizer, digital footprint and deployment information. Besides it also distinguishes the connecting platform (application) with telemedicine provider (personnel) health). Invite Number 36 concerning Health, article 167 states: that utilization technology is one _ form effort health. Regulation government Number 46 of 2014 concerning System Health Information regulates the media used for do service health distance remote and function mrdis debuted. Regulation Council Indonesian Medicine (Perkonsil) Number 74 of 2020 article 9 states: doctors and doctors which teeth _ doing practice medical through telemedicine is prohibited do teleconsultation Among power medical with patient by live without through facility service health.

Regulation Council Indonesian Medicine (KKI) Number 74 of 2020 concerning Authority Clinical and Practice medical Through Telemedicine During the Covid-19 Pandemic in Indonesia and Circulars Ministry of Health of the Republic of Indonesia Number HK 02.01/Menkes/303/2020 regarding maintenance Health Services Through Utilization technology Information and Communication In frame Prevention The spread of Covid- 19 only character conditional (as long as Covid-19 pandemic). Decree of the Minister of Health of the Republic of Indonesia Number HK.01.07/Menkes/4829/2021 regarding Guidelines Service health Via Telemedicine During the Corona Virus Disease 2019 (Covid-19) Pandemic apply conditional, once finished.

Development technology moment this is so fast so that service media appears health in real time. Telemedicine arrangements in Indonesia currently this not yet arrange by whole so that need regulation legislation invitation about the appropriate telemedicine with need society and not conditional.

4 Construction of Telemedicine Regulation in Future Health Services

Article 2 Law Invite Number 36 of 2009 concerning health state development health must held with based on humanity, balance, benefit, protection, respect to rights and obligations, justice, gender, non- discrimination and norms religious norms. Principle protection means that

development health must could give protection and assurance law on giver and receiver service health.

In skeleton implementation certainty law maintenance service health via telemedicine, required Invite Law that includes all parties involved _ in service health through the appropriate telemedicine with need society. Decree of the Minister of Health of the Republic of Indonesia Number HK.01.07/MEMKES/4829/2021 concerning Guidelines Health services through telemedicine yet be equipped with regulation implementation for clarify limitation service practice medicine that can conducted with telemedicine. Required product clear law and can _ used, apply keep going continuously in order to help implementation service quality health. _ Service health through telemedicine has many limitations when compared to with practice consultation doctor conventional. Limitations this could cause loss for patient nor doctor. Certainty laws and ordinances _ _ implementation service health via telemedicine required for ensure protection to right patient and reassurance law for organizer.

Article 42 of Law Number 36 of 2009 concerning health show that telemedicine can accepted as method service health. Moment this telemedicine arrangements in Indonesia only Settings telemedicine service between facility service health. Telemedicine arrangements between doctor with patient by live not yet there is, except covid-19 patients (People without Symptoms and symptoms light). In the Decree of the Minister of Health of the Republic of Indonesia No. 4829/2021 and Circular Letters Council Indonesian Medicine No. 2256 / 2021 telemedicine no could conducted Among doctor and patient by straight away, except Covid-19 patients.

Required Settings for fill in emptiness existing law. _ Required regulation about telemedicine directly national with high gradation _ that is Regulation government. Telemedicine or service medical online should be set in Regulation Government Or At least Rules President with consideration Article 167 of the Law Health Act. Permenkes character instruction technical operational with optimizing Article 35 paragraph (2) of the Law Invite Number 29 of 2004 concerning Practice Medicine that mentions Besides authority as referred to in paragraph (1) authority other set with Regulation Council Indonesian Medicine. While wait, government area could publish Regional Regulation as form autonomy area. For arrange authority clinical doctors and doctors tooth required regulation Council Indonesian Medicine (KKI) with expansion meaning Article 35 (2) Law Invite Number 29 of 2004 concerning Practice Medicine.

Challenge biggest in the legal aspect is existence Article 35 of the Law Invite Number 29 of 2004 concerning Practice Medicine that mentions about authority clinical doctor includes history taking, examination physical examination _ support, establish a diagnosis, determine management and treatment patient, do action medical or medical teeth, write recipe medicine and tools health, publish letter description doctor, save drug in allowable amount and type, mix and deliver _ medication to the patient for those who practice in the area remote and not there is pharmacy. Regulation of the Minister of Health, Decree of the Minister of Health does not can contrary with Invite Invite this.

Required harmonious rules _ in operational. way out best not to violate Invite Invite is Council Indonesian Medicine (KKI) can set it up in accordance Article 35 (2) Law Invite Number 29 of 2004 concerning Practice Medicine. In the Regulation of the Minister of Health of the Republic of Indonesia No. 1438/2010 about Standard Service Medical mentioned that government with organization profession do coaching and supervision to implementation standard service medicine / medicine teeth. Telemedicine arrangements for certainty law need endorsement comprehensive for make it easy society.

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