
ANALYSIS OF THE NEED FOR LEGAL PROTECTION FOR DOCTORS IN TELECONSULTATION SERVICES TOWARDS THE COVID-19 ENDEMIC IN INDONESIA

* Mila Fitriana, **Anhari Achadi

* Master Program in Hospital Administration, Department of Health Policy and Administration, Faculty of Public Health, Universitas Indonesia

** Department of Health Policy and Administration, Faculty of Public Health, Universitas Indonesia

E-mail: mila.fitriana@ui.ac.id

Abstract. Teleconsultation is a form of telemedicine that has developed rapidly during the COVID-19 pandemic. Clinical teleconsultation provides remote clinical consultation services to assist in establishing a diagnosis, and/or providing treatment considerations/advice. There are several issues in telemedicine, including ethical and legal issues. This study aims to find ethical and legal issues related to teleconsultation services after the COVID-19 pandemic. This research uses normative legal research methods. The laws and regulations that are reviewed by the researcher are those that are still valid in the Republic of Indonesia until June 2022. Researchers compare teleconsultation regulations and laws that were in effect during the pre-pandemic COVID-19 period with those that were in effect during the pandemic. Moreover, researchers examine ethical and legal issues that will arise during the COVID-19 endemic period. In conclusion, if the regulations during the pre-pandemic period are reimplemented during the endemic period, ethical and legal issues will arise. The issues vary from teleconsultation can only be provided by medical facilities like hospitals instead of direct consultation between doctor and patients. Furthermore, the applications must be legally issued and registered by the government, particularly from the ministry of health. Diagnosis enforcement does not follow professional standards in terms of physical examinations is also an issue. Besides, there are more issues such as electronic prescription is not allowed and doctors must be able to prove that there are no intentional factors in the cases of patients' data leakage and medical record hacking. In this way, the government is expected to make basic changes in the existing teleconsultation laws and regulations or to make specific teleconsultation laws and regulations with the purpose of providing legal protections for doctors.

Keywords: Telemedicine, Health Regulation, Teleconsultation

Abstrak. Telekonsultasi merupakan salah satu bentuk telemedicine yang berkembang pesat selama masa pandemi COVID-19. Telekonsultasi klinis memberikan pelayanan konsultasi klinis jarak jauh untuk membantu menegakkan diagnosis, dan/atau memberikan pertimbangan/saran tata laksana. Terdapat beberapa isu yang menjadi persoalan telemedicine, termasuk masalah etik dan legalitas. Penelitian ini bertujuan untuk menemukan isu etik dan legal terkait layanan telekonsultasi pasca pandemi COVID-19. Penelitian ini menggunakan metode penelitian hukum normatif. Peneliti mengkaji peraturan dan perundang-undangan terkait telekonsultasi yang masih berlaku di Republik Indonesia hingga bulan Juni 2022. Peneliti melakukan perbandingan antara peraturan dan perundang-undangan terkait telekonsultasi yang berlaku pada masa pre pandemi COVID-19 dengan yang berlaku pada masa pandemi. Kemudian peneliti mengkaji isu etik dan legal yang akan timbul pada masa endemi COVID-19. Pada kesimpulan, jika peraturan pada masa pre pandemi kembali berlaku di masa endemi, maka akan timbul isu etik dan legal, yaitu telekonsultasi hanya dapat diberikan oleh fasyankes berupa RS, telekonsultasi tidak boleh langsung antara dokter-pasien, aplikasi yang digunakan harus dari pemerintah/terdaftar di kementerian kesehatan, penegakan diagnosa menjadi tidak sesuai standar profesi dalam hal pemeriksaan fisik, tidak boleh melakukan peresepan elektronik secara terbuka, dan dokter harus dapat membuktikan tidak ada unsur kesengajaan pada kasus kebocoran data pasien dan peretasan rekam medis elektronik. Pemerintah perlu melakukan perubahan dasar hukum telekonsultasi yang sudah ada atau membuat peraturan perundang-undangan kekhususan telekonsultasi agar dokter memiliki perlindungan hukum.

Kata Kunci: Telemedikasi, Kebijakan Kesehatan, Telekonsultasi

INTRODUCTION

Telemedicine thrived during the pandemic era. On the health application platform, doctors as health

workers are important factors in telemedicine, although they face several obstacles in conducting clinical assessments. Telemedicine services are carried out by health workers who have a license to

practice at the health service facility (primary health) that administers it. Telemedicine services include teleradiology, tele-electrocardiography, tele-ultrasonography, clinical teleconsultation, and other telemedicine consulting services following the development of science and technology.

Clinical teleconsultation is a remote clinical consultation service to assist in establishing a diagnosis, and/or providing treatment considerations/advice. Clinical teleconsultation can be conducted in writing, voice, and/or video. It must also be recorded in the medical record following the provisions of the legislation.(1) The use of teleconsultation during the COVID-19 pandemic proves that it significantly and positively affects patients' satisfaction, trust, and loyalty.(2) Clinical teleconsultation services that are still carried out when the pandemic has entered an endemic period are a positive step toward improving the quality of hospital services. Regarding the role of telehealth services in developing countries, World Health Organization (WHO) stated that several issues must be handled properly, such as patient data security (3).

In the health application for teleconsultation services, general and special physical examinations cannot be carried out, but doctors must prescribe drugs. There is a gap from misperception to misdiagnosis, which is a risk of mistreatment.(4),(5)

Research conducted by Kaspersky, a global cybersecurity company, shows that only 17% of healthcare providers in 34 countries believe their physician partners have full knowledge of patient data protection when conducting remote sessions. 54% of respondents admitted that many doctors still conduct online consultations using applications not explicitly designed for telehealth, such as FaceTime, Facebook Messenger, WhatsApp, Zoom, and others.(6) Meanwhile, in Indonesia, it has been regulated in the medical code of ethics that doctors must maintain patient confidentiality (7). It means that the Doctors who service patients through teleconsultation media are responsible for ensuring patient data security.

Several issues have become the problem of telemedicine. In addition to technical issues related to network disruption, ethical and legal issues are also concerns. Some studies discuss the ethics and legality of telemedicine in the aspect of informed consent, data protection and confidentiality, malpractice and doctor's liability, laws and regulations, equality of access, quality of service, and the relations between health workers and patients. There is no standard teleconsultation procedure for transferring photos and videos. (8) Diagnosis and treatment of patients may be

inaccurate since examinations are conducted virtually without direct physical examination. 70% of diagnoses can be revealed through anamnesis. However, according to the standard of medical services, it is stated that doctors must perform a physical examination in the form of inspection, palpation, percussion, and auscultation. The legal protection of telemedicine must be adequate because many ethical and legal issues arise from this application.

The next issue that must be considered is the leakage of patient data information. Electronic or digital medical records risk falling into the wrong hands leading to legal problems and physician liability. The distribution of information must be limited to authorized people, and the application or web base used must have defenses against data hacking. (9),(10),(11),(12),(13)

An active telemedicine system with direct interaction with the user, represents a significant security risk on patients' data. However, there is an increasing interest in patients using telemedicine. Health systems using telemedicine technology deal with industry experts. Health care networks that have implemented telemedicine technology reveal that it takes quite a lot of time and resources. Administrative officers, clinicians, doctors, must be able to use the devices. Although telemedicine equipment costs money, health facilities using telemedicine will benefit over time by increasing the number of patients and having fewer employees. (14)

In the United States, data from CRICO (Controlled Risk Insurance Company) an insurance agency that provides exclusive insurance programs for Harvard-affiliated medical institutions (Harvard Medical Institution) states that two-thirds of lawsuits related to telemedicine received between 2014 and 2018 were related to diagnosis. (15) Quest Diagnostics released a report that 67% of primary care physicians surveyed who performed telemedicine services during the pandemic admitted that they were worried about missing critical signs due to inappropriate drug use. (16) A study on cases of ophthalmology triage malpractice using telephone stated that of 510 lawsuits, 3.5% met the inclusion criteria, namely 18 cases. Of the 18 cases, 17 cases of suspected delay in evaluation and/or treatment were obtained. 11 cases of suspected misdiagnosis, 7 cases related to risk explanation or consent, and 1 case of a suspected pending referral. (17)

Meanwhile, there is no data on the number of legal cases or patient complaints related to telemedicine in Indonesia. Suppose there is an error in a doctor's diagnosis during the teleconsultation service from the patient's point of view as a consumer. In that

case, the patient can take legal steps for a complaint to the Indonesian Medical Discipline Honorary Council. (5) Legal consequences, among others, are up to a maximum fine of fifty million rupiahs if proven intentionally not fulfilling the obligation to provide medical services following professional standards, standard operating procedures, and the patient's medical needs.(5)

This study aims to find ethical and legal issues related to teleconsultation services after the COVID-19 pandemic. It also attempts to reveal the needs of existing laws and regulations in Indonesia to provide legal protection to doctors in providing teleconsultation services when Indonesia determines the COVID-19 endemic period.

METHODS

This research uses normative legal research methods. The researcher examines the regulations and laws related to teleconsultation that are still valid in the Republic of Indonesia until June 2022. The researcher compares the regulations and laws related to teleconsultation that were in effect during the pre-pandemic COVID-19 period with those that were in effect during the pandemic. Then the researcher examines ethical and legal issues that will arise during the COVID-19 endemic period. The legal basis reviewed includes:

1. Pancasila (15)
2. UUD 1945(18)
3. Law no. 29 of 2004 concerning Medical Practice (5)
4. Law no. 11 of 2008 concerning Information and Electronic Transactions and Law No. 19 of 2016 concerning Amendments to Law no. 11 of 2008 regarding Information and Electronic Transactions (19)
5. Law no. 36 of 2009 concerning Health(20)
6. Indonesian Medical Council Regulation No. 11 of 2012 concerning Indonesian Doctor Competency Standards (4)
7. Indonesian Medical Council Regulation No. 74 of 2020 concerning Clinical Authority and Medical Practice Through Telemedicine During the COVID-19 Pandemic in Indonesia (21)

8. Regulation of the Minister of Health of the Republic of Indonesia No. 20 of 2019 concerning the Implementation of Telemedicine Services between Health Service Facilities (1)

9. Decree of the Minister of Health No. HK. 01.07/Menkes/4829/2021 of 2021 concerning Guidelines for Health Services Through Telemedicine During the Corona Virus Disease 2019 Period (22)

RESULTS AND DISCUSSION

Ethical and Legal Issues

In the pre-pandemic period, doctors can conduct patient consultations indirectly. Doctors who provide services must have a Practice License according to their health facilities, both as requesters for consultation and as consultants. Teleconsultation is carried out between health facilities in the form of a hospital as a consultation provider and another hospital or health facility as a requester for consultation. Teleconsultation is not carried out directly between doctors and patients.

In the Regulation of the Regulation of the Minister of Health of the Republic of Indonesia No. 20 of 2019 concerning Service Implementation Telemedicine Service Facilities Article 1 paragraph 2 states "Telemedicine Services Between Health Service Facilities, hereinafter referred to as Telemedicine Services are Telemedicine carried out between one health service facility and another health service facility in the form of consultation to establish a diagnosis, therapy, and/or disease prevention." Moreover, article 2 states "Telemedicine services are carried out by health workers who have a practice permit at the health facility that administering it". Regarding the form of health service facilities providing and requesting consultation, it is explained in Article 6 paragraph 1 "Consulting Health Service Facilities as referred to in Article 5 in the form of hospitals". Paragraph 3 "Medical facilities requesting consultation as referred to in Article 5 are in the form of hospitals, first-level health facilities, and other health facilities."

The government also stipulates that hospitals performing telemedicine must be registered with the Ministry of Health with an application registered with the Ministry of Health, as regulated in Article 12 and Article 13 of the Minister of Health of the Republic of Indonesia No. 20 of 2019 concerning the Implementation of Telemedicine Services Between Health Service Facilities.

Doctors must work according to competency standards stating that in establishing a diagnosis, doctors must also perform a physical examination whereas physical examination cannot be conducted in teleconsultation.

During the pandemic, the government issued a Decree of the Minister of Health No. HK. 01.07/Menkes/4829/2021 of 2021 concerning Guidelines for Health Services Through Telemedicine During the Corona Virus Disease 2019 Period. Under the Ministry of Health, teleconsultation services, either as providers or requesting consultations, can be carried out in wider scopes of health facilities, including clinics and private practices. Health facilities can use applications that have been developed by the health facilities themselves or in collaboration with other government or private applications. Doctors can conduct teleconsultation directly with patients. In addition, in part B, it is regulated that in establishing a diagnosis, certain physical examinations are carried out through audiovisual. The next step after establishing the diagnosis, the doctor can give an electronic prescription.

Decree of the Minister of Health No. HK. 01.07/Menkes/4829/2021 of 2021 concerning Guidelines for Health Services Through Telemedicine During the Corona Virus Disease 2019 (COVID-19) is a solution to the obstacles to doctor-patient teleconsultation due to restrictions on a legal basis in Indonesia. In part A it is stated "Health Service Facilities for Telemedicine Service Providers for telemedicine service providers during the COVID-19 pandemic, consist of hospitals, primary health, clinic, the independent practice of doctors/dentists and specialists/dentist specialist, medical laboratory, and pharmacy. Health services through telemedicine carried out by these health care facilities can use applications that have been developed by the health service facilities themselves or in collaboration with other government or private applications.

To provide legal certainty for doctors, the Indonesian Medical Council stated Clinical Authority and Medical Practice Through Telemedicine During the Corona Virus Disease 2019 (COVID-19) Pandemic in Indonesia. In article 3 paragraph 3, "Telemedicine, as referred to in paragraph (2), is carried out in the form of online mode of writing, voice, and/or live video to obtain information needed to establish a diagnosis, as well as management and treatment of patients following the provisions of the legislation. invitation." Furthermore, in paragraph 4 "Doctors and Dentists who practice Medicine through Telemedicine must have a Registration Certificate and Practice License at Health Facilities following the

provisions of the legislation". Article 4 explains that doctors must assess the patients' health condition and ensure that the patients are not in an emergency condition. Article 5 states "Patients seeking treatment through telemedicine are required to give general/informed consent following the provisions of the legislation." Article 8 regulates the authority of doctors in prescribing drugs and/or medical devices except for narcotics and psychotropics. A letter of statement regarding the health conditions of patients may also be issued with the precautionary principle in mind. Article 9, it is stated that it is prohibited to conduct teleconsultation directly without going through the health facilities.

From the Regulation of the Indonesian Medical Council Number 74 of 2020, doctors provide services in the direct online form so that information is obtained from making a diagnosis to treating patients without specific explanation regarding a substitute for an audiovisual physical examination. Patients who may be given teleconsultation services are those who have been assessed as not experiencing an emergency. Meanwhile, it is necessary for doctors providing teleconsultation to go through health facilities.

In cases of leaking patient data and hacking electronic medical records, patients who feel aggrieved can file a complaint with the Chairperson of the Indonesian Medical Discipline Honorary Council. Doctors who are found guilty will be subject to disciplinary sanctions. This is regulated in Article 66 and Article 69 of Law no. 29 of 2004 concerning Medical Practice. Then in Law no. 11 of 2008 concerning Information and Electronic Transactions and Law No. 19 of 2016 concerning Amendments to Law no. 11 of 2008 regarding Information and Electronic Transactions article 32 states "(1) Any person intentionally and without rights or against the law in any way alters, adds, reduces, transmits, damages, removes, transfers, hides an Electronic Information and/or or Electronic Documents belonging to other Persons or public property. (2) Any Person intentionally and without rights or against the law transfers in any way or transfers Electronic Information and/or Electronic Documents to the Electronic System of another person who is not entitled. (3) For the actions as referred to in paragraph (1) that result in the disclosure of a confidential Electronic Information and/or Electronic Document being accessible to the public with improper data integrity." If proven to have committed a violation, doctors can be subject to sanctions as stipulated in Article 48 paragraphs 1 to 3, with the threat of imprisonment and high fines that can reach five billion rupiah. Accordingly, in terms of patient data security, doctors must be able to prove that there is

not any intentional element that causes patient data leakage and electronic medical record hacking.

Legal Protection and Threats for Doctors Doing Telemedicine

In Law no. 29 of 2004 concerning Medical Practice Article 50 states "Doctors or dentists in carrying out medical practice have the right: a. obtain legal protection as long as they carry out their duties following professional standards and standard operating procedures." Moreover, Article 51 states that one of the doctor's obligations is "to provide medical services following professional standards and standard operating procedures as well as the medical needs of patients". If the doctor-patient teleconsultation service during the endemic period is deemed not to meet professional standards, the doctor may be subject to sanctions as stipulated in Article 79 "Criminalized with imprisonment for a maximum of 1 (one) year or a fine of a maximum of Rp. 50,000,000.00 (fifty million rupiah), every doctor or dentist who:... c. deliberately does not fulfill the obligations as referred to in Article 51 letter a, letter b, letter c, letter d, or letter e."

CONCLUSION

The use of telemedicine, especially during a pandemic, has proven that it provides health care benefits more effectively and efficiently. Teleconsultation must be further developed and implemented even though the pandemic has become endemic. However, when the pandemic has been declared endemic, and the legal basis for telemedicine returns to the regulations and legislation in the pre-pandemic period, ethical and legal issues that can arise are the following.

1. Telemedicine, including teleconsultation, can only be provided by health facilities in the form of hospitals.
2. Teleconsultation can only be conducted between health facilities. It cannot be conducted between doctors and patients.
3. Teleconsultation can only use applications issued by the government or registered at the ministry of health.
4. Enforcement of the diagnosis is not in accordance with professional standards in terms of physical examination.
5. Open electronic prescriptions are not allowed.
6. Doctors must be able to prove that there is not any intentional element in cases of patients'

data leakage and hacked electronic medical records

There is a need for changes to the existing legal basis for telemedicine. Furthermore, laws and regulations for telemedicine, especially for teleconsultation, are also required with the purpose of providing legal protections for doctors.

RECOMMENDATIONS

Conducting a policy that provides legal certainty and protection for doctors who serve teleconsultation is necessary. Reviewing telemedicine policies set to apply only during the pandemic period leads to the need for various changes and/or adjustments. There are aspects expected to exist in policies related to teleconsultation, such as: a) non-hospital health facilities as providers of teleconsultation services; b) teleconsultation carried out directly from doctor-patients, c) specific audio-visual physical examinations included in the doctor's competency standard as a specialty, d) application of electronic prescribing, and e) legal protection for doctors from liability of being responsible for leaking medical records as electronic documents in case of hacking.

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