

Comparison of Legal Protection of Telemedicine Services in Indonesia and Malaysia

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ABSTRACT

The purpose of this study is to compare the legal protection of telemedicine in Indonesia and Malaysia. The research method uses normative legal research using a statutory approach and concept approach. The results of the study obtained the conclusion that the results of the study obtained the conclusion that health services through telemedicine have a greater risk than health services through face-to-face or in person, for example in terms of diagnosis the doctor will be better and more precise if done directly between the doctor and the patient. In Indonesia and Malaysia, each has regulations to provide legal protection for patients in telemedicine services as well as for telemedicine service providers. The implementation of telemedicine services in Indonesia by health facilities while Malaysia directly by hospitals in coordination with clinics and health centres because doctors can only conduct virtual consultations with people who are already patients this can be seen as a continuation of care.

Keywords:

Comparison, Legal Protection, Services, Telemedicine

INTRODUCTION

The development of the times and increasingly sophisticated technology presents a health service model in the form of Telemedicine. According to the *World Health Organization* (WHO), the term "Telemedicine" was first coined in 1970, which literally means "distance healing" (Wahyu Andrianto, 2021). When translated, telemedicine can be defined as the delivery of health care services, where distance is a critical factor, by all health care professionals using information and communication technologies for the exchange of valid information for the diagnosis, treatment and prevention of disease and injury, research and evaluation, and for the continuing education of health care providers, all for the benefit of advancing the health of individuals and their communities (Wahyu Andrianto, 2021).

Telemedicine is a technology-based service in the healthcare industry that enables users to consult with doctors about health issues without the need for in-person meetings. This allows for healthcare services to be provided to patients regardless of distance and time constraints, making it a flexible option for the general public. Additionally, telemedicine is utilized for sending patient data, monitoring health conditions online, offering advice on managing health concerns, and providing diagnoses. It has become an essential strategic approach in delivering healthcare services amidst the Covid-19 pandemic.

The convenience offered and provided by telemedicine health services certainly brings new problems and challenges in the world of health. In the process of health consultation through telemedicine, of course, doctors and patients interact with each other online to ensure the patient's condition according to the symptoms given, of course, it is done through indirect examination so that the possibility of misdiagnosis is very likely to occur and this will be very detrimental to the patient regarding the treatment and diagnosis given. In addition, the confidential data belonging to the patient must certainly remain confidential and be maintained by the

doctor concerned because basically the patient's personal data is a form of patient confidentiality that should not be known by other people, even other doctors (Eman Sulaiman, et al, 2021).

Numerous early telemedicine projects faced initial setbacks due to inadequate infrastructure, rudimentary technology, premature termination of funding, and limited acceptance. Despite significant investment in piloting and experimenting with telemedicine services, only a handful of applications have progressed beyond the initial phase of initiative, research, and development. There have been several instances worldwide where telemedicine was introduced but swiftly abandoned, primarily because it failed to integrate seamlessly into the healthcare and business ecosystem. The challenges often lie not only in software-related issues but also in the human aspect of implementing the system, which can impede its effective utilization despite extensive efforts in trialing and experimenting with telemedicine services.

When utilizing communication technology for medical care, it is crucial for doctors to undergo sufficient training and possess the necessary skills to effectively manage patients through telemedicine. It is imperative for doctors to adhere to ethical and legal obligations, such as obtaining valid consent from the patient. Additionally, doctors must ensure that their identity, place of practice, and registration status are known to the patient, and that the patient's identity is verified during each consultation. Furthermore, it is essential to disclose and obtain consent from the patient regarding the identity of all other participants involved in the telemedicine encounter, and to document this information in the patient's record. Lastly, doctors should utilize appropriate technology that complies with legal requirements regarding privacy and security, as well as any necessary accreditation standards, to accurately determine both the doctor's and patient's locations.

The limitations of virtual consultation through the medium of telemedicine are: Be careful when giving prescriptions or other treatment recommendations to patients they have not personally examined. Doctors can only conduct virtual consultations with people who are already their patients, this can be seen as a continuation of the treatment. This is a concern in the implementation of telemedicine, as it will only benefit a small percentage of patients, as it prevents doctors from conducting telemedicine consultations on new patients who do not have access to hospitals during the pandemic. There are also concerns about the legality of online prescriptions, as in the past, prescriptions were required to be stamped with the seal of the medical board (How Kit Thong, 2021).

This is due to concerns that arise if problems occur for lower-class telemedicine users, or when legal problems arise, especially those related to criminal law, then of course the first step is to identify or study problems based on reports or complaints to law enforcement officials, in this case the police as investigators or investigators for further legal intervention as stipulated in the legislation. (Heriyanto, 2022).

According to a report by the WHO, the availability of telemedicine services varies between 13% and 33% across different countries. This indicates that high-income countries tend to offer telemedicine services more frequently compared to countries with lower income statuses. Notable examples of high-income countries that have successfully implemented telemedicine programs include the United States, the United Kingdom, and several European nations. However, these

countries often encounter challenges related to patient privacy, confidentiality, competing healthcare priorities, reimbursement, and infrastructure. On the other hand, financial constraints have primarily hindered the widespread adoption of telemedicine services in low- and middle-income countries.

METHOD

This study employs the normative juridical form of research. In terms of its characteristics, this study adopts the descriptive research type. The data utilized in this study is secondary data acquired from literature reviews, encompassing primary, secondary, and tertiary legal materials. The document study is employed as the data collection tool. As for the data analysis approach, the qualitative data analysis method is employed.

RESULTS AND DISCUSSION

In Indonesia, the primary objective of telemedicine was to enhance healthcare services for remote communities. This initiative was based on article 15 of Permenkes Number 90 of 2015, which focuses on the implementation of health services in health facilities located in remote and very remote areas. As the healthcare system evolved, telemedicine-based health services became one of the patterns adopted to cater to the needs of these communities. Additionally, article 19 emphasizes that telemedicine-based health services, as mentioned in article 15 letter d, aim to improve the accuracy and speed of medical diagnosis and consultations at both first-level health service facilities and advanced referral levels where specific healthcare professionals may not be available.

According to Regulation Number 20 of 2019 issued by the Minister of Health, telemedicine is described as the delivery of healthcare services from a distance by healthcare professionals utilizing information and communication technology. This includes sharing information related to diagnosis, treatment, disease prevention, research, education, and evaluation to enhance the health of individuals and communities.

In Malaysia, the inaugural telemedicine blueprint was introduced in 1997 and was recognized by the government as one of the 7 flagship applications within the Multimedia Super Corridor project. Subsequently, the government initiated 4 significant pilot projects, focusing on teleconsultation among doctors from various specialties and healthcare facilities to cater to the shortage of specialist care in remote regions. The Telemedicine Act 1997 was enacted in Malaysia to oversee and manage the implementation of telemedicine and its associated issues.

The Malaysian government through this Act provides several provisions related to the implementation of telemedicine. Medical practitioners who are allowed to perform telemedicine services are medical practitioners who are fully registered under Section 14 of the Medical Act 1971, hold a practising certificate under Section 20 of the Medical Act, are provisionally registered under Section 12 of the Act, registered medical assistants, registered midwives and registered nurses, other than those not allowed. (Suhaiza Zailani et al, 2014).

To obtain a telemedicine certificate, a medical practitioner either from within or outside Malaysia must fill out a form through the Medical Council, complete the documents and pay the prescribed fee. Upon completion of all requirements, the Medical Council will issue a telemedicine certificate for a period not exceeding three

years. The Medical Council may at any time cancel the issued telemedicine certificate, if the medical practitioner contravenes the terms and conditions specified in the certificate. Any person aggrieved by the refusal, of the Medical Council to issue a telemedicine practice certificate or cancellation of a telemedicine practice certificate may appeal to the Minister. A medical professional who has acquired a telemedicine certification must secure written consent from the patient in order to engage in telemedicine practice. The medical practitioner can inform the patient that the consent given can be revoked at any time without impacting their rights and future healthcare or treatment.

All information about the patient obtained or disclosed during the telemedicine interaction is subject to existing confidentiality protections. The patient's consent is required before any images or information that can be identified as belonging to the patient are disseminated. The consent and written statement of the patient is part of the patient's medical record. If the patient is a minor or has a mental disability that renders him/her incapable of giving consent, the consent may be given by the patient's guardian. Any healthcare professional who violates this provision and is convicted of this crime may face a fine of up to one hundred thousand ringgit or a maximum of two years in prison. (Telemedicine ACT 1997)

According to Article 3, paragraph (2) and (4) of the Medical Council Regulation Number 74 of 2020 in Indonesia, it is clearly stated that patient data and personal information are strictly confidential. Only the doctor and the patient involved are authorized to access this information, and no other party is permitted to have knowledge of it. The Registration Certificate and Practice Permit are an obligation for every doctor in Indonesia to have a Registration Certificate and Practice Permit as proof and legality that the doctor has permission to practice medical examinations on patients and also has an obligation to protect the patient's personal data and information. The Registration Certificate is officially made and issued by the Indonesian Medical Council which has been registered, so that no other party is able to trick or act as a doctor and carry out illegal medical actions which are certainly detrimental to patients. (Anna Jannati, 2022).

Because of the Registration Certificate, a doctor has a licence and legal force in the eyes of the law. Along with being registered and possessing a Registration Certificate, a physician is required to hold a Practice Permit granted by authorized health authorities in the district/city where their medical practice is located. This permit serves as official documentation allowing the doctor to perform healthcare procedures and offer government-approved health services within the confines of the law. With a Practice Licence, a doctor can be trusted by the public as a medical professional who is able to diagnose patients, maintain data confidentiality and provide treatment to patients legally (Syulham Soamole, 2022).

Based on Medical Council Regulation Number 74 of 2020, article 7 stipulates that doctors practicing telemedicine are required to create patient medical records. According to paragraph (1), these records can be in the form of manual written records or electronic transcripts for each patient. The medical records must be stored at the health facility in compliance with the relevant laws and regulations. In telemedicine, medical records play a crucial role in providing continuous care and treatment by analyzing the patient's medical history. Furthermore, these records serve as valuable evidence in legal matters, for research purposes, and as a fundamental reference for determining healthcare budgets. Medical records are

essential for patients, doctors, hospitals, and all parties involved in medical practice and patient care. They enable doctors to identify the necessary solutions or treatments for patients, especially in emergency situations. (Ayda Rizza, 2022).

In 2019, Malaysia saw the Malaysian Ministry of Health introducing teleconsultation through video consultation technology at 5 public primary care clinics to enhance healthcare accessibility and alleviate congestion. Bookdoc (Health4U Solutions Sdn Bhd), the primary platform authorized by MOH Malaysia for teleconsultation services, utilizes HIPAA-compliant tools in partnership with Twilio (TwilioInc). The Malaysian Medical Council Advisory on Virtual Consultation, especially during the Covid19 pandemic, adheres to the Medical Act 1971 (Amended 2012) governing the registration and practice of medicine in Malaysia, along with the Malaysian Medical Council's Code of Professional Conduct. Imposing limitations on Virtual Telemedicine consultations, where doctors can only engage in virtual consultations with their existing patients, can be viewed as a means of ensuring continuity of care.

Malaysia has been commended by various entities, including Leonard R. Grazioplene, President of The Centre for Rural Resurgence, inc. The nation is recognized for its affordable services. The integration of telemedicine into the world's first virtual private network with nationwide coverage marks a groundbreaking achievement. This network facilitates patient access from 37 service points, including clinics and district hospital health centers, connected to four major hospitals (Adriana Pakendek, 2022).

As for Indonesia, telemedicine has been increasingly developing in the wider community, marked by the emergence of various online health service applications such as alodokter, halodoc, klikdokter, grab health and so on. In addition to its application in transmitting patient data, telemedicine is utilized for remotely monitoring the health status of patients, offering guidance on managing health issues reported by patients, and delivering diagnoses for various health problems.

Legal protection for patients using telemedicine in Indonesia is outlined in the Medical Council Regulation Number 74 of 2020. According to Article 3, paragraph (2), telemedicine is defined as a form of health consultation or teleconsultation services provided by doctors and dentists through applications or electronic systems. The regulation emphasizes the importance of maintaining patient data and personal information confidentiality. Furthermore, Article 3, paragraph (4) states that doctors practicing telemedicine must possess a Registration Certificate and a License to Practice in Health Facilities, as required by relevant laws and regulations. This ensures that telemedicine practitioners adhere to the established standards and guidelines. (Ni Luh Dina Yuliana, 2021).

In order to safeguard patients receiving healthcare services via telemedicine in Indonesia, the Medical Council Regulation Number 74 of 2020 has implemented Article 9, which outlines the restrictions imposed on doctors practicing telemedicine:

- 1) Teleconsultation is conducted directly without the intermediary of the health facility;
- 2) Doctors provide dishonest and inadequate information and clarity of information or diagnosis to patients and their families;
- 3) Assigning diagnoses to patients beyond their competence and qualifications;

- 4) Asking patients to participate in unnecessary and irrelevant supporting examinations;
- 5) Performing despicable acts, disrespectful acts, acts of intimidation or acts of violence to patients when performing medical practice actions in order to provide health services to patients;
- 6) Performing invasive actions on the teleconsultation medium during telemedicine with the patient;
- 7) Charging consultation or treatment fees that are abnormally high or beyond the rates set by the health facility;
- 8) Declaring a health certificate without conducting a direct examination of the patient (falsifying the patient's health information).

The prohibition of certain actions by doctors is further strengthened and reinforced by "Article 2 of the Minister of Health Regulation Number 20 of 2019 regarding the Implementation of Telemedicine Services between Health Service Facilities". This article clarifies that telemedicine services must be organized and conducted by licensed healthcare professionals affiliated with healthcare providers. As a result, telemedicine can only be provided by doctors who have established partnerships with healthcare facilities. This ensures that patient safety remains the top priority for both doctors and the healthcare facilities involved, highlighting the key benefits and virtues of telemedicine. Health services provided to patients through telemedicine still pay attention to standard operational procedures, standards of practice and standards of service competence to ensure the quality of health services provided by doctors to patients. (Richard Wootton, 2012).

Regarding legal protection for patients in telemedicine, there are several rights and obligations of patients contained in laws and regulations, which are expressly stated in "Article 18 paragraph (1) of the Minister of Health Regulation Number 20 of 2019", namely:

- 1) Health facilities are responsible as consultation intermediaries in conducting telemedicine health services and have the right to get answers to consultations according to established health service standards. and receive information that is clear and can be honestly accounted for regarding the results of the consultation obtained.
- 2) In providing telemedicine services, medical institutions use electronic transmission to send and convey medical information in the form of images, pictures, text, biological signals, videos, and sounds, in accordance with quality standards to request consultations. Demanding expertise, maintaining the confidentiality of patient data, and providing patients with information that explains the clarity and truth.(Permenkes, 20/2019).

Regarding violations of the implementation of health care practices by doctors through telemedicine which have an impact on the incidence of harm to patients, patients can make complaints to the Indonesian Medical Discipline Honour Council (MKDKI). This is clearly and explicitly stated in "Article 66 of Law Number 29 of 2004 concerning Medical Practice", which explains that "every person who understands that his interests are harmed by the actions of doctors and dentists when practicing medicine in the health services provided can propose a complaint in writing to the Chairman of the Indonesian Medical Disciplinary Honour Council. Of course, the

complaint is based on the patient's interests that must be protected in holding the doctor accountable for the medical actions he performs and provides". (Sherly Primavita, 2021).

The doctor can be held accountable for any indication or violation of their practice through telemedicine, which may lead to the patient filing a lawsuit in court. Furthermore, if the doctor offers services that are not in line with their qualifications and competence, as prohibited by "Article 9 of the Medical Council Regulation Number 74 of 2020," the patient can still file a lawsuit for negligence, even without any formal engagement. If there is evidence of unlawful actions, a lawsuit can be initiated based on Article 1365 of the Criminal Code. This article states that the patient must have suffered losses due to the doctor's negligence or mistakes during or after telemedicine, there must be a clear causal relationship between the losses and the doctor's actions, and the doctor's actions must clearly violate the law (I Gede Perdana Yoga, 2018).

Amidst the Covid-19 pandemic, the Malaysian Medical Council Advisory released guidelines regarding virtual consultations, emphasizing that telemedicine involves providing medical services remotely through technology, without the need for in-person interactions with a physician. It is important to note that the Medical Council's focus is on regulating doctors, rather than the technology itself. The Council also stresses that despite the use of technology, ethical, professional, and legal standards for healthcare delivery remain unchanged (Mohamad Intan Sabrina, 2021).

Malaysia implemented the Personal Data Protection Act Number 709 of 2010 (PDPA Malaysia), which consists of 7 principles derived from the EU Data Protection Directive, OECD Guidelines, or APEC Framework. The enactment of PDPA 2012 in Malaysia has significantly enhanced the security of personal data for internet users. Additionally, Malaysia's PDPA prohibits the transfer of personal data outside the country without prior approval from the Minister of Information, Culture, and Communications, ensuring that the receiving country or entity offers data protection standards equivalent to those outlined in the PDPA (Fanny Priscyllia, 2019).

In Indonesia, health facilities that provide online health service platforms (telemedicine) are obliged and responsible for preventing their users from losses in accordance with "Article 39 of Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions".

Telehealth is projected to experience significant growth in the upcoming years, particularly in Malaysia and other Asia Pacific nations. However, the progress of telehealth platforms may face obstacles. Challenges include data security concerns, the need for a proficient technical team to manage health data electronically, privacy issues, and technology-related issues. Malaysia currently has over 25 healthcare laws that require updating to align with advancements and support emerging start-ups. Additionally, regulators should review laws pertaining to healthcare data, data privacy, and medical devices to ensure a conducive environment for telehealth development (Fatiha Bouziane, 2022).

In unique situations, telemedicine virtual consultations must adhere to ethical standards to protect patient rights. The Code of Professional Conduct emphasizes the necessity of a physical examination. Healthcare services are primarily tailored to urban populations, but efforts are being made to improve the health of disadvantaged rural communities, including the rural poor, women, infants, children,

and the disabled. In Malaysia, the Ministry of Health serves as the main healthcare provider for rural areas, with general medical professionals playing a supporting role. The establishment of rural health clinics has increased access to modern healthcare and referral services for rural communities. Additionally, mobile teams and village medical professionals offer door-to-door healthcare services in remote areas. While there has been a notable enhancement in the health status of rural communities through universal health indicators, a significant health disparity still exists between urban and rural areas.

Telemedicine, a novel technological advancement in developing nations, holds immense potential to revolutionize healthcare delivery. It can be regarded as a crucial service sector in both national and global economies. While telemedicine is still in its nascent stages in Malaysia, the country has witnessed a growing number of programs and services in its healthcare system. The acceptance of telemedicine by public hospitals in Malaysia is influenced by various factors such as government policies, top management support, perceived usability, and computer efficiency. Additionally, the relationship between government policy and perceived usefulness on the acceptance of telemedicine by Malaysian hospitals is moderated by the health culture prevalent in the country (Suhaiza Zailani, et al, 2014).

CONCLUSION

Telemedicine is a technology-based service in the healthcare industry that enables users to consult with doctors about health issues without the need for face-to-face meetings. Providing health services through telemedicine carries higher risks compared to in-person consultations, especially in terms of diagnosis accuracy and precision. Indonesia and Malaysia have established regulations to protect patients and healthcare providers offering telemedicine services. In Indonesia, health facilities implement telemedicine services, while in Malaysia, hospitals coordinate with clinics and health centers to provide such services. Due to limitations, virtual consultations are only available for existing patients, ensuring continuity of care.

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