

CHAPTER I

INTRODUCTION

A. Background of Research

Health services is a component of public welfare that the government must consider and realize in accordance with the ideals of the Indonesian nation as commonly referred to in the 1945 Constitution, namely protecting the entire Indonesian nation and the entire native land of Indonesia, as well as advancing the public welfare, educating the nation's life, and participating in the execution of world order, which is characterized by freedom, perpetual peace, and social justice.¹

The digital revolution had a significant impact on all sectors of life in the era of globalization, where humans need the latest information that is fast, practical, efficient, accurate, and reliable, particularly in the health sector.² Telemedicine is one type of digital revolution in the healthcare sector. Telemedicine is a form of long-distance service that requires technology to accelerate the improvement of access and quality of health service.³ World Health Organization (WHO) describes telemedicine as “delivery of healthcare services where distance is a factor by all healthcare

¹ Muhammad Hutomo, Kurniawan, et al. 2020, “*Perlindungan Hukum terhadap Pasien Pengguna Jasa Layanan Kesehatan Internet*” Vol.8 No.3

² Budi Setiawan Santoso, et al, 2015, "Development and Future of Telemedicine in Indonesia", National Conference on Information Technology and Technical engineering (CITEE).

³ *Ibid*

professionals using ICT for the exchange of valid information for disease diagnosis, treatment, and prevention, research, and evaluation”.⁴

The Indonesian Internet Service Provider Association (APJII) recorded a significant increase in internet users in Indonesia, namely 34.9% in 2014, 54.68% in 2017, and 64.8% in 2018. In 2017, 51.06% of people used the internet to find information related to health and 14.05% consulted health professionals.⁵ The use of telemedicine in Indonesia is increasing along with the outbreak of the COVID-19 disease which requires people to follow social restrictions.

According to the APJII, 64.8% of Indonesians used the internet in 2018, and telemedicine usage increased by 44% during the COVID-19 pandemic.⁶ Since limited media are available to perform physical examinations of patients in telemedicine, a thorough history is required to make a diagnosis. However, as technology advances, more tools will become available that can be used in telemedicine to perform physical examinations and supporting examinations remotely. Patients' treatment and therapy can be targeted to improve their quality of life after proper diagnosis.⁷

⁴ World Health Organization, 2010, *Telemedicine: Opportunities and Developments in Member States, report on the second global survey on eHealth*, <https://iris.who.int/handle/10665/44497> (Accessed on 08 April , 2022)

⁵ Ganiem, “Efek Telemedicine Pada Masyarakat” (Kajian Hukum Media McLuhan: Tetrad). Interaksi: *Jurnal Ilmu Komunikasi*, Vol.9, No. 2, (2021), p. 87

⁶ *Ibid*

⁷ Lengkong, et all, “Optimalisasi Telemedicine Untuk Menegakkan Diagnosis Sebagai Inovasi Pelayanan Rumah Sakit selama Pandemi COVID-19: Tinjauan Sistematis”, *Jurnal Kesehatan Vokasional*, Vol. 7, No. 2, (2022), p. 7

Telemedicine has improved the methods and speed of healthcare services.⁸ However, it is important to realize that the use of telemedicine has the potential to cause legal issues. The improvement of information and communication technology has raised issues regarding the protection of personal data.

Personal Data is data about an identified or identifiable person individually or in combination with other information either directly or indirectly through electronic or non-electronic systems.⁹ Personal data misuse involving patient privacy occurred during telemedicine consultations in 30% of cases reported by healthcare providers.¹⁰ The existence of personal data leakage cases in the use of telemedicine has raised public concerns regarding privacy, access rights, and the use of personal data.¹¹

The case of personal data leakage makes the form of legal protection and responsibility of the parties noteworthy considering the form of loss and default that can be caused.¹² Protection of personal data is the overall effort to protect personal data in the processing of personal data in order to guarantee the constitutional rights of personal data subjects.¹³

⁸ Fatmawati, 2021, *The Role of Telemedicine for Health Workers in the New Normal Era*, Kota Baru, Insan Cendekia Mandiri, p. 22.

⁹ *Ibid*

¹⁰ Desi Setyowati, 2022, *Riset: 30% Layanan Telemedicine Sebut Pegawai Bahayakan Data Pasien*, <https://katadata.co.id/>, (accessed on 17 January, 2022)

¹¹ Fitriani Nur Damayanti, et al, "Issue Etik dan Hukum dalam Penggunaan Layanan Kesehatan Berbasis Online (E-Health)", *Soepra Jurnal Hukum Kesehatan*, Vol. 6, No. 1, (2020), p.18

¹² Muhammad Hutomo, et al, "Perlindungan Hukum terhadap Pasien Pengguna Jasa Layanan Kesehatan Online", *Jurnal Education and Development*, Vol.8, No.3, (2020), p.974

¹³ Article 1 Paragraph (2) of the Law Number 27 of 2022 on Personal Data Protection.

The protection of personal data is mandated by Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia, which states that " Every person has the right to protection of person, family, honor, dignity, and property and shall have the right to feel secure against and receive protection from the threat of fear to do or not do something that is a human right."

According to Article 15 of Law Number 19 of 2016 on Electronic Information and Transactions (EIT), every electronic system operator must operate an electronic system reliably and safely and be responsible for the proper operation of the electronic system. Concerns about privacy violations that individuals or legal entities may face raise the topic of personal data protection.

This legal issue is important because personal data can be misused by the data provider or a third party, then this contradicts basic human rights, namely the protection of privacy and personal data. Therefore, in telemedicine services, it is necessary to have legal rules to protect patient personal data. Reviewing the importance of confidentiality of patient personal data for the services provided, this research focuses on "**PERSONAL DATA PROTECTION IN TELEMEDICINE SERVICES**".

B. Research Problem

There are several problems from this research, namely:

1. How is personal data protection in telemedicine service governed in Indonesia?

2. What are the legal consequences of personal data misuse?

C. Objective of Research

There are several objective of this research, namely:

1. To find out telemedicine services governed in Indonesia.
2. To find out the legal consequences of personal data misuse.

D. Benefits of Research

There are several benefits of this research, namely:

1. Theoretical Aspect

This research provides benefits to know in depth about the legal principles of telemedicine in medical practice and for the development of science, especially in the concept of utilization of telemedicine as a tool for health services that were originally carried out face-to-face mediated by communication technology.

2. Practical Aspect

This research provides a better understanding and practice of the legal rules of telemedicine in medical practice to protect and provide rights to patients to use online health services.

E. Research Method

1. Type of Research

The type of this research is normative legal research, that examines secondary data.

2. Types of Data

The type of data used in this study is secondary data. In the form of legal

materials that can be classified as follow:

a. Primary Legal Materials

Primary legal materials include legal documents and laws and regulations that have relevance to the research must be obtained, namely:

- 1) The Law Number 29 of 2004 on Medical Practice Medicine.
- 2) The Law Number 36 of 2009 on Health.
- 3) The Law Number 19 of 2016 on Amendments to the Law Number 11 of 2008 on Electronic Information and Transactions.
- 4) The Law No. 27 of 2022 on Personal Data Protection.
- 5) The Government Regulation Number 46 of 2014 on Health Information System Health Information System.
- 6) The Government Regulation Number 47 of 2016 on Health Service Facilities.
- 7) The Regulation of Minister of Health Number 36 of 2012 on Medical Confidentiality

b. Secondary Legal Materials

Secondary legal materials consist of legal materials that provide explanations of documents related to the topic, such as:

- 1) Books related to the research;
- 2) Journals;

3) Documents and articles relevant to the issues to be discussed;

4) Seminar papers related to the research.

c. Tertiary Legal Materials

Tertiary legal materials are complementary materials that provide an explanation of primary and secondary legal materials, such as dictionaries and encyclopedias.

3. Method of Collecting Data

Legal materials were collected by means of literature studies relevant to the problem under study. Following the research problem, legal materials were obtained through an inventory process recognition of laws and regulations, as well as labeling and systematizing legal materials. Therefore, the data collection method used in this analysis is a literature study. A literature study is carried out by reading, studying, and recording the making of reviews of literature materials related to the utilization of information technology in the world of health.

4. Data Analysis

The research material is analyzed systematically using qualitative juridical which connects legal principles, conventions, and other regulations with the subject matter of this research.