



LEGAL PROTECTION OF PATIENT MEDICAL RECORD DATA IN TELEMEDICINE HEALTH SERVICES BASED ON LAW NUMBER 17 OF 2023 CONCERNING HEALTH AND LAW NUMBER 27 OF 2022 CONCERNING PERSONAL DATA PROTECTION

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Abstract

Law Number 27 of 2022 concerning Personal Data Protection, Personal Data is a fundamental right that must be protected in every healthcare service interaction and in Law Number 17 of 2023 concerning Health is the legal basis for regulating Health in addition to that until now legal clarity regarding licensing and permits that regulate Telemedicine healthcare services is also regulated in Minister of Health Regulation Number 20 of 2019 which stipulates that medical personnel and healthcare facilities must obtain a license to carry out telemedicine. In the practice of online healthcare consultations, medical data protection is highly dependent on the technological system used by the service provider. Digital healthcare platforms generally rely on website-based databases or applications connected to the internet network. Legal protection in Telemedicine services must be able to protect the dignity of recipients and healthcare providers in the implementation of Telemedicine so that their rights and obligations can be fulfilled in line with human rights inherent from birth.

Keywords: *Legal Protection, Telemedicine, Medical Records, Patients, Personal Data.*

INTRODUCTION

The Covid-19 pandemic that hit Indonesia then made telemedicine services a solution to address the current health care challenges, marked by the issuance of Minister of Health Regulation Number 14 of 2021 concerning Standards for Business Activities and Products in the Implementation of Risk-Based Business Licensing in the Health Sector and Minister of Health Decree (KMK) HK.01.07/Menkes/4829/2021 concerning Guidelines for Health Services Through Telemedicine During the Covid-19 Pandemic.¹ One of these innovations in the health sector, such as telemedicine and electronic health records (EHR), is a concrete example of technology integration in health care.²

This transformation not only increases service efficiency, ease of access, and management of patient data, but also presents a number of legal, ethical, and patient rights protection issues. Law Number 17 of 2023 concerning Health no longer uses the term "telemedicine" but instead uses the term "telemedicine." Telemedicine is also distinguished from telehealth, which is a subset of telehealth. This is because telemedicine's scope is limited to clinical services, such as consultations, which involve only two parties. Unlike telehealth, which can be conducted by a single party, such as health outreach and education, telehealth encompasses both clinical and non-clinical services.

Health services carried out by medical personnel or health workers, whether carried out directly or via telemedicine must be carried out with the patient's prior consent. Based on Article 293 paragraph (1) of Law Number 17 of 2023 concerning Health, it is explained that what is meant by consent for health service actions is that every individual health service action carried out by Medical Personnel and Health Personnel must obtain approval or also known as informed consent. What is meant by Medical Personnel as in Article 198 paragraph (1) is doctors and

¹ Firdaus Hafidz, et.al., "Kebijakan Alih Manfaat Covid-19 dalam Manfaat Jaminan Kesehatan Nasional", Jurnal Jaminan Kesehatan Nasional (JJKN), Vol. 2 Nomor 2 Tahun 2022, 10.53756/jjkn.v2i2.111, hlm. 233.

² Mia Chitra Dinisari, "Teknologi Digital dalam Dunia Kesehatan." Berita Satu, 15 Juli 2022.

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dentists, while Health Personnel as in Article 199 paragraph (1) consists of midwives, nurses, pharmacists, nutritionists, clinical psychologists and other health workers. The right to security and confidentiality of patient medical data is fundamentally a human right in the health sector. This right is guaranteed by various Indonesian laws and regulations, including regulations regarding medical records, medical confidentiality, and the obligation of healthcare professionals to maintain patient privacy. Furthermore, medical professional ethics explicitly require physicians to maintain the confidentiality of all information obtained within a therapeutic relationship. In the context of digital healthcare, this obligation remains in place despite changes in the delivery medium. In online healthcare consultations, medical data protection is highly dependent on the technology systems used by service providers. Digital healthcare platforms generally rely on website-based databases or applications connected to the internet. This differs from conventional hospital information systems, which are closed and accessible only through internal networks. Internet-based systems have a higher degree of openness and are potentially vulnerable to cyberattacks. As a result, the risk of leaks, misuse, or unauthorized access to patient medical data increases. Data security vulnerabilities in online consultation services can occur in various forms.³

LITERATURE REVIEW

International trade is defined as commercial transactions involving goods and services between one country and another (Ibrahim & Halkam, 2021). International trade is also an economic cooperation activity aimed at meeting the needs of each country and maximizing mutual benefits between the two nations (Purba et al., 2023). When viewed from the nature and scope of its binding legal force, a contract can be either a domestic contract or an international contract. A domestic contract is simply a contract entered into by two individuals (legal entities) within the territory of a single country, with no foreign elements involved. Meanwhile, an international contract is a contract that contains a foreign element (Huala Adolf, 2008: 1). The foreign element in this context refers to the connection between the legal systems of the countries involved in the contractual activity, as determined by the agreed-upon choice of law. In international trade, the WTO strives to create free international trade. This is a fundamental principle of the WTO in international trade. These efforts are carried out by removing existing barriers, both rate and non rate, through tariff binding, the elimination of quantitative restrictions, and the standstill principle. Tariff binding is an agreement to standardize customs duty rates on imported products. The elimination of quantitative restrictions is a non-tariff measure that removes maximum limits on the volume of imported goods entering another country. The principle of standstill is a principle whereby developed countries are prohibited from imposing new barriers on developing countries seeking to export potentially marketable goods from their home countries.

The Adequacy Principle is a crucial pillar in international trade and economic law, particularly regarding data protection, investment, and cross-border legal compliance standards. Within this dynamic, the Adequacy Principle emerges as a key instrument. This principle requires that trade and data flows can only flow freely if the partner country has a level of legal protection that is considered “adequate” or equivalent to the standards of the sending country. The risks of online health consultations are not only clinical but also legal and ethical. Unclear identities of medical personnel, weak verification of physician competency, and the absence of clear therapeutic contracts can harm patients.⁴ To date, regulations regarding online health consultations in Indonesia remain fragmented and scattered across various regulations. There are no specific rules that comprehensively govern digital system security standards, medical data management, and the legal responsibilities of online health platforms. This legal vacuum has the potential to create uncertainty for patients in the event of a medical data breach. Furthermore, dispute resolution mechanisms resulting from medical data leaks in online services are also unclear. This situation highlights the need for strengthened regulations that are adaptive to developments. As stipulated in Law Number 27 of 2022 concerning Personal Data Protection, personal data is a fundamental right that must be protected in every healthcare interaction. A person's medical data is highly sensitive personal information, and misuse or leakage of such data can seriously impact a patient's reputation, legal rights, and even safety.⁵ In telemedicine practice, for example, the limitations of direct observation can create ethical dilemmas if the diagnosis is inaccurate or does not

³ Kichloo, A., Albosta, M., Dettloff, K., Wani, F., El-Amir, Z., Singh, J., Aljadah, M., Chakinala, R. C., Kanugula, A. K., Solanki, S., & Chugh, S. (2020). Telemedicine, the current COVID-19 pandemic and the future: a narrative review and perspectives moving forward in the USA. *Family Medicine and Community Health*, 8(3), 1–9. <https://doi.org/10.1136/fmch-2020-000530>.

⁴ Karo Karo, R., & Pasaribu, D. (2019). Aspek Hukum Konsultasi Dokter Melalui Media Online di Indonesia. *Tadakulo Master Law Journal*, 3(2), hlm..89–112.

⁵ Laila Putri, *Perlindungan Hukum atas Data Medis Pasien di Era Digitalisasi*. Jakarta: Sinar Grafika, 2022, hlm. 33.

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fully reflect the patient's condition.⁶ Given that telemedicine is a distinct practice, the legal responsibilities of healthcare professionals must be considered in a fair and proportionate manner. Despite their technological limitations, healthcare workers remain vulnerable to lawsuits due to the lack of legislation governing telemedicine. Therefore, specific regulations and standards, adequate insurance coverage, and recognition that telemedicine differs from face-to-face practice are necessary. With proper legal protection, healthcare workers can provide the best possible telemedicine services without worrying about unfair violations. With the rise of patient data misuse in online healthcare applications, sanctions can be imposed on online healthcare applications in accordance with the provisions stipulated in Law Number 27 of 2022 concerning Personal Data Protection. Based on the background description above, the focus of the problems analyzed in this paper can be formulated as follows:

1. How are the legal protection provisions for patient medical records in telemedicine services regulated under Law Number 17 of 2023 concerning Health and Law Number 27 of 2022 concerning Personal Data Protection?
2. What are the legal responsibilities of medical personnel and electronic system providers in maintaining the confidentiality of medical records in telemedicine services?

METHOD

This research uses a normative legal approach, namely research that focuses on the study of norms, principles, and legal systems that regulate the right to security and confidentiality of patient medical data in online health consultation services.⁷ The type of research used in this study is normative legal research. Normative legal research is examined based on the validity of laws juxtaposed with legal logic and is based on legal principles, systematics, standards, and the formulation of rules that focus on the legal aspects (normative). Legal research involves the use of literature and library studies. These literature materials are obtained from laws and regulations, books, scientific articles and/or online journals, legal doctrine, and other documents related to this research.

RESULTS AND DISCUSSION

A. Legal Protection Regulations for Patient Medical Record Data in Telemedicine Services

Law Number 17 of 2023 concerning Health is the legal basis for regulating health. Furthermore, legal clarity regarding licensing and permits governing telemedicine health services is currently regulated in Minister of Health Regulation Number 20 of 2019, which stipulates that medical personnel and health facilities must obtain a license to implement telemedicine. However, there are no clear standards regarding the competencies or training required by health workers working in telemedicine services. Haleem's (2021) research shows that this regulation is important to ensure that health workers working in telemedicine services have the appropriate skills, so they can provide safe and effective services to their patients.⁸ Furthermore, based on Minister of Health Regulation Number 24 of 2022 concerning Electronic Medical Records, medical records are created by an electronic system intended for the management of medical records. This system includes important medical information such as medical history, diagnosis, treatment, prescriptions, and test results.

Personal data protection is enshrined in international regulations, namely the Universal Declaration of Human Rights (UDHR), which emphasizes that personal data is data and information relating to an individual's life and is linked to the concept of confidentiality or a person's right to privacy, which must be maintained and protected by law to create certainty, justice, and benefit.⁹ The only article that explicitly emphasizes the need for personal data protection is Article 26 paragraph (1) of the ITE Law, which states, "Unless otherwise stipulated by law, the use of any information through electronic media concerning a person's personal data must be carried out with the consent of the person concerned." This article clearly states that personal data must be protected by requiring the consent of the data owner.

⁶ Rika Roesli, *Telemedicine dan Tantangan Etik dalam Praktik Kedokteran Modern*, Jakarta: Medika Nusantara, 2022, hlm. 56

⁷ Wiwik IA, Widiarty S. *Buku Ajar: Metode Penelitian Hukum*. Publika; 2024. Hlm 162.

⁸ Abid Haleem et al., "Telemedicine for Healthcare: Capabilities, Features, Barriers, and Applications," *Sensors International* 2 (2021): 100117, <https://doi.org/10.1016/j.sintl.2021.100117>.

⁹ Syafira Agata Ramadhani, 'Komparasi Pengaturan Perlindungan Data Pribadi di Indonesia dan Uni Eropa' (2022) 3 (1) *Jurnal Hukum Lex Generalis*. Hlm.73- 77.

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Legal protection for the confidentiality of patient medical records in online healthcare services can be achieved through the implementation of statutory provisions governing the protection of personal data and medical confidentiality. This protection stems from the recognition that the right to personal protection is a constitutional right of every citizen. In online healthcare consultation practices, this protection requires an adequate data security system, such as access restrictions, user authorization controls, and responsible data management. Furthermore, service providers are required to ensure that patient medical data is not used for purposes other than healthcare services. Failure to protect medical data not only has technical implications but also legal and ethical consequences. Furthermore, Article 4, Paragraph 1, states that the personal data regulated and protected by this law is both specific and general. Broadly speaking, general personal data includes personal information such as a person's full name, gender, nationality, religion, marital status, and other personal information that can identify a person.

Law Number 27 of 2022 concerning Personal Data Protection outlines several obligations for personal data managers, including transparency and data owner rights. Data managers are required to provide notification to data owners regarding the collection, processing, and use of personal data. Furthermore, data owners have the right to access, modify, or view data. This regulation was enacted based on the consideration that personal data protection is a human right that is part of personal protection, therefore, a legal basis is needed to provide a sense of security for personal data. In the online healthcare consultation ecosystem, there are at least three main interacting parties:

- Healthcare providers (doctors, healthcare facilities),
- Digital platform providers (online healthcare consultation service operators), and
- Patients as data owners. Each has distinct but complementary roles and responsibilities.

Law Number 27 of 2022 concerning Personal Data Protection (PDP Law) regulates the protection of personal data in its entirety, including patient health data. The PDP Law emphasizes the importance of data subject consent prior to the collection, use, or disclosure of personal data, and the importance for data controllers to maintain the confidentiality and security of sensitive data. Furthermore, Law Number 17 of 2023 concerning Health regulates health information systems and emphasizes the importance of patient data protection. Article 345 of the Health Law states that the Health Information System (SIK) is organized to achieve the highest level of public health. Furthermore, Minister of Health Regulation Number 24 of 2022 concerning Medical Records regulates the management of medical records, including aspects of patient data confidentiality and security. Medical records are documents containing patient identity, examinations, treatments, procedures, and other services provided to patients. However, these three regulations do not apply to telemedicine. Therefore, additional guidelines appropriate to digital conditions are needed to implement them in the context of remote services.

B. Legal Responsibilities of Medical Personnel and Electronic System Providers in Maintaining the Confidentiality of Medical Record Data in Telemedicine Services

This study emphasizes the health and personal data contained in electronic medical records. Health data is specific, while personal data is general. Health development aims to increase awareness, comfort, and the ability of each person to live a healthy life so that it can support optimal health as an element of general welfare in accordance with the Preamble to the 1945 Constitution. In addition, to support good health development, health workers are responsible for maintaining patient medical records in telemedicine practices in health settings. Medical records are records or files containing notes or documents about patient identity, examinations, treatments, activities, and other services provided to patients. Article 19 of Law Number 27 of 2022 concerning Protection of Personal Data.¹⁰

Due to its digital nature, telemedicine requires different data security policies than conventional healthcare, according to Alex Q. Goodby's book, *Clinical Data as the Basic Staple of Health Learning: Creating and Protecting a Public Good*. The book explains that data transmission between devices and data accessibility by third parties, including technology platform providers, are key issues. Schaar suggests the use of end-to-end encryption as a crucial step to maintaining data security in telemedicine communications, as well as dual authentication policies to ensure that data is only accessible to authorized parties.¹¹ Based on the legal protections stipulated in the Personal Data Protection Act, healthcare facilities, as controllers of patient data, have policies that align with these regulations. The policy of healthcare facilities providing telemedicine services includes legal protection for patient data, including

¹⁰ Nurul Khatimah Ismatullah, dkk., *Rekam Medis Widina Media Utama* 2023, Hlm.2.

¹¹ Alex W. Goodby, LeighAnne Olsen, and Michael McGinnis, *Clinical Data as the Basic Staple of Health Learning: Creating and Protecting a Public Good: Workshop Summary* (Washington: National Academies Press, 2011).

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personal data and medical records. The principle is that in online healthcare services, patient rights must be respected, meaning they are protected by the service application owner. Patient rights are personal rights that every human being possesses as a patient and must be protected. Patients, as consumers in the healthcare sector, have the right to protect themselves from all possibilities of irresponsible healthcare services, such as neglect. Patients also have the right to safety, comfort, and data security regarding the healthcare services they receive. With these rights, consumers feel protected from professional practices that could threaten their health or safety. In terms of medical data protection, Law Number 27 of 2022 concerning Personal Data Protection regulates data controllers and data processors, but in the context of online health consultations, it is unclear whether doctors are "data controllers" or "data processors" while in the case of third parties receiving the data." Meanwhile, Law Number 17 of 2023 concerning Health states that every health service provider is responsible, but it is unclear how this responsibility is divided.

CONCLUSION

Legal protection in telemedicine services must safeguard the dignity of both recipients and providers of healthcare services, ensuring that their rights and obligations are met in accordance with inherent human rights. Currently, regulations regarding online healthcare consultations in Indonesia remain fragmented and scattered across various regulations. There are no specific regulations that comprehensively regulate digital system security standards, medical data management, and the legal responsibilities of online healthcare platforms, healthcare professionals, and patients using telemedicine. This legal vacuum has the potential to create uncertainty for patients in the event of a medical data breach. Furthermore, dispute resolution mechanisms resulting from medical data leaks in online services are also unclear. This situation demonstrates the need for strengthened regulations that adapt to technological developments. The main problem faced is the gap between regulation and legal implementation. Legal protection for the security and confidentiality of patient medical data in online healthcare consultation services still faces structural and substantial challenges. Regulatory gaps, cybersecurity risks, low digital literacy, and weak law enforcement point to the need for comprehensive reform. Currently, Law No. 27 of 2022 concerning Personal Data Protection regulates data controllers and data processors for medical data protection.

However, in the context of online health consultations, it is unclear whether doctors are "data controllers" or "data processors," while third parties receive the data. Meanwhile, Law No. 17 of 2023 concerning Health states that every healthcare provider is responsible, but it is unclear how this responsibility is divided. It has not been specifically designed to address the complexities of online healthcare. The role of digital platform providers as third parties managing patient medical data has not been regulated in detail, particularly regarding the division of legal liability in the event of a data breach. Furthermore, there is potential for overlap and regulatory gaps between health regulations, information technology, and personal data protection. This regulatory disharmony complicates effective law enforcement. This often creates confusion for healthcare professionals providing healthcare services via telemedicine. The practical impact of this regulatory gap is the variation in data management policies between platforms, potentially harming patients and Disrupting continuity of healthcare services. Patients may lose access to their complete medical history when switching doctors or platforms, risking a decline in the quality of care and patient safety.

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