

## **LEGAL PROTECTION OF PATIENTS WHO SUFFER DAMAGES DUE TO WRONG DIAGNOSIS IN ONLINE HEALTH SERVICES PLATFORM**

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### **ABSTRACT**

The purpose of this study is to increase public knowledge about the legal regulation of the implementation of online health platforms in Indonesia and to provide understanding to the public, especially users of online health platform services, regarding legal protection specified in laws and regulations. This normative legal research examines the problem of norms, namely norm obscurity that occurs based on statutory control and a conceptual approach. The results of the study show that the legal arrangements for implementing online health platforms are based on the Health Law as part of the provision of health services and Permenkes No. 20 of 2019 which further regulates telecommunications operations. Furthermore, concerning the legal protection provided on online health patient platforms as consumers of health service users, they can sue for harm to the platform following the provisions of the Consumer Protection Law. Users of online platform health services can choose the desired solution either by litigation under Article 47 of the Consumer Protection Law or non-litigation stipulated in Article 48 of the Consumer Protection Law. Then following to misdiagnosis made by doctors on the online platform, they can also be held accountable by submitting complaints to the Honorary Council of Indonesian Medical Discipline by what has been confirmed in Article 66 of the Medical Practice Law.

Keywords: Legal Protection, Patients, Online Health Platform.

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### **Introduction**

#### **Background Of The Problem**

Technology that is getting more and more sophisticated every day makes it possible doing various things through the internet. Various conveniences that arise from The existence of new creations or innovations in the use of technology makes many changes in the order of modern society today. In the current flow of technological developments so fast that it seems as if there are no boundaries between one person and another to communicate or disseminate information through internet social networks. Appearance Various social media are becoming a separate phenomenon that is increasingly gaining a place in the world in the community such as whatsapp, line, facebook and twitter. In another perspective the existence of various online platforms that are engaged in profiting from trade in services is another form of digital commercialization. 1 In the field For example, there are Go-Jek and Grab platforms that dominate as platforms online that provides services in the field of transportation. In reality the field Health itself cannot escape from the rapid advances in technology that create a need for ease of access to services health that

can be done any time and anywhere without having to go to school Hospital. The need for this service then encourages the emergence of various types of services online health platform that provides services in the health sector. In simple terms, online health

platforms are service providers health services carried out online with internet facilities as a support In general, online health services are commonly called telemedicine. Multiple platforms online health services that are often used by Indonesian people are Alodokter, HaloDoc, KlikDokter.com, Practo, and HiDok. Regarding the use of online health platforms This is done by first downloading the health service application on the computer or mobile phones with certain specifications. Actually in a state The outbreak of the Covid-19 outbreak that occurred, made the government more incessant to issued various policies to limit community activities, one of which is through the slogan “stay at home” and several local government policies that limit community activities in the hope of tackling the spread of Covid-19. Afraid the community will spread Covid-19 makes people reluctant to go to the hospital to check his health condition.<sup>3</sup> This is what is then increasingly encouraging the popularity of online health services through health platforms. The problem that What then emerges is related to the process of providing health services that are done online, making it impossible to check the patient's condition online directly by the doctor on the online health platform so it is likely Errors in the diagnosis of the patient's disease can occur. Happening The event of an error in diagnosing a patient will certainly cause harm to the patient patients as users of the telemedicine health services. There are several previous research that has the theme of a similar problem, namely M. Nurdin with the title “Legal

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Protection of Patients for Malpractice Victims”<sup>4</sup>, which discusses about the settlement methods that can be taken by patients who experience losses as a result of malpractice events in the treatment process. Next Arman Anwar with the title “Legal Aspects of the Use of Telemedicine”<sup>5</sup>, dissects related issues principles that must be met in providing health services with the concept of telemedicine in Indonesia.

Based on some of the things described previously, it can be understood that the object of study in this study has a novelty that specifically examines related to the legal arrangements for the implementation of online health platforms in Indonesia and the forms of legal protection provided in the event of a loss due to the use of services telemedicine health services on an online health service platform, so this research have urgency to do so. Then the author raises the problem this law with the title "LEGAL PROTECTION OF PATIENTS WHO SUFFERING LOSS DUE TO WRONG DIAGNOSIS IN THE PLATFORM ONLINE HEALTH SERVICES”.

## **Method**

This normative legal research examines the normative problems that occur, namely: obscurity of norms or vague of norms of legal protection arrangements for patients users of online health platform services in Indonesia. The research contains two sources of law, namely primary and secondary legal materials. Then the approach that used in this study is a conceptual approach that dissects the concept of telemedicine health services while the legislative approach used to examine legal issues raised based on Indonesian positive law perspective. Document study technique is a collection technique legal material in this research. In relation to the process of analyzing the discussion of the problem done deductively.

## **Result**

### **Legal Arrangements Of Legal Online Health Platforms Positive Indonesia**

The existence of an online health platform certainly cannot be separated from the existence of a business providing health services to the community. Theoretically according to Levey service Health is an effort to maintain health, cure disease and restore the health of individuals, families and communities in the broadest sense its implementation can be done alone or together through an organization Hendrojo also provides an understanding of health services, namely as a business based on good intentions to maintain, improve, treat and prevent

disease in the community.<sup>9</sup> Examining the positive law of Indonesia for health services specified in Law no. 36 of 2009 concerning Health (Health Law) which is regulated in Article 1. Provisions of health services in the perspective of the Health Law consist of services promotive health, preventive health services, curative health services, rehabilitative health, and traditional health services. Referring to Article 1 point 12 The definition of promotive health service is determined, namely "an activity and/or" a series of health service activities that prioritize activities that are health promotion." Furthermore, preventive health services according to Article 1 number 13 are: "a preventive activity against a health problem/disease." Service curative health in Article 1 number 14, namely "an activity and/or a series of activities". treatment aimed at curing disease, reducing suffering due to disease, disease control, or disability control so that the quality of the patient can be maintained as optimally as possible." Furthermore, what is meant by rehabilitative health services in Article 1 point 15 is "activities and/or a series of activities to restore" former patients into society so that they can function again as members of the community society that is useful for himself and society as much as possible in accordance with his abilities." Regarding traditional health services, it is explicitly determined through Article 1 point 16 as "a treatment and/or treatment with methods and drugs that" refers to empirically hereditary experiences and skills that can be accounted for and applied in accordance with applicable norms in the community. "The principles in the implementation of a health service are the principles of legality, the principle of balance, the principle of openness and the principle of justice.<sup>10</sup> The principle of legality emphasizes that the health services provided must be based on provisions of laws and regulations in Indonesia by having a practice license health.

Furthermore, the principle of balance emphasizes health services that can build public health with a balance between physical and mental. The principle of openness in health services is meant that there is information that must be clearly provided in the provision of health so as to create a relationship of trust between patients with doctors.<sup>11</sup> Then the principle of justice focuses on health services that given fairly to all levels of society at an affordable cost. Regarding the understanding of online health platforms, it can be easily understood as an implementation of health services that are carried out online with the following facilities: the internet as a basic support. The concept of online health services is generally known as telemedicine. Telemedicine is the use of technology and communication who combine medical science expertise so that they can give birth to a service online health services which

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consist of various features such as consultation, diagnosis and treatment medical treatment. According to Soegijoko, telemedicine is the use of communication technology and information includes electronics for sending or receiving medical information to provide clinical services in the form of diagnosis and therapy.<sup>12</sup> Within the theoretical framework Telemedicine comes from the Greek "tele" which means far or a distance It can be understood that telemedicine is a long-distance health service. Based on The conceptual approach of telemedicine can be dichotomized into two concepts, namely:

asynchronous and synchronous. The asynchronous concept is a telemedicine concept that collect and send medical data to a specialist doctor for online evaluation. Specialist doctors who often use the concept of telemedicine are radiologists, pathologists and dermatologists while synchronous are the concept of telemedicine organized by telephone or by other means complex. Examining legal arrangements related to online health platforms is held based on the Regulation of the Minister of Health no. 20 Years 2019 regarding the Implementation of Telemedicine Services Between Health Service Facilities (Permenkes No. 20 of 2019). Referring to Article 1 point 1 Permenkes No. 20 years In 2019, it was determined that what is meant by telemedicine is "service delivery". remote health care by health professionals using information technology and communication, including the exchange of information on diagnosis, treatment, disease prevention and injury, research and evaluation, and continuing education of health care providers for the benefit of improving individual and community health." Associated with telemedicine services in accordance with Article 2 of the Minister of Health No. 20 of 2019 is "implemented by" health workers who have a license to practice at the organizing Health Facilities." Meanwhile, according to Article 3 paragraph (1) there are several types of telemedicine services including: "teleradiology, teleelectrocardiography, teleultrasonography, clinical teleconsultation, and consulting services other telemedicine in accordance with the development of science and technology." In This legal product also explains that the infrastructure in telemedicine is electricity and electricity adequate internet network in accordance with Article 11 paragraph (2). Online healthcare platform as telemedicine is organized with an application that can be downloaded via computer or mobile phone, apart from the various telemedicine applications that online health platform, the important thing to heed is related to the provisions there must be an adequate data security and safety system in the application This is in accordance with

the mandate of Article 12 paragraph (1) of the Minister of Health Regulation No. 20 Year 2019. Referring in Article 12 paragraph (2) and (3) Permenkes No. 20 of 2019 it is determined that the application telemedicine provided by the Ministry of Health can become a telemedicine provider, will but space is also given for the implementation of telemedicine independently throughout registered with the Ministry of Health. In the implementation of telemedicine according to the provisions of Article 20 paragraph (1) of the Minister of Health Regulation No. 20 of 2019 "supervision and guidance carried out by the Ministry of Health, the provincial health office, and the health office district/city area."

### **Legal Protection for Patients Who Suffered Losses Due to Wrong Diagnosis In Online Health Platform**

According to Muchsin, legal protection within the theoretical framework is an effort to provide protection for the individual by striking a balance between the Rules with the relationship of values embodied in actions and attitudes to Create order in people's lives.<sup>14</sup> Examine the issue of protection Law against patients in the provision of health services in the health platform online, of course, it is necessary to first understand the rights and obligations attached to Patients in accordance with statutory provisions. Explicitly Article 18 paragraph (1) Permenkes No. 20 of 2020 stipulates several rights of requesters for consultation, namely "a. Obtain consultation answers and/or receive Expertise according to standards; and b. Accept Correct, clear, accountable, and honest information regarding the results of the consultation And/or Expertise", while regarding the obligations of the telemedicine consultants service provider Includes "a. Send medical information in the form of images, imaging, text, biosignals, videos And/or voice by using electronic transmission according to quality standards for ask for consultation answers and/or gain Expertise; b. Maintain data confidentiality patient; and c. Provide correct, clear, accountable and reliable information honest about the results of the consultation and/or Expertise to the patient. "

Based on the actual legal approach in the midst of COVID-19 has been stipulated by the Indonesian Medical Council Regulation No. 74 of 2020 concerning Clinical Authority and Medical Practice Through Telemedicine During the Corona Virus Period Disease 2019 (Covid-19) in Indonesia which determines through Article 9 that there are There are several prohibitions that must be obeyed by doctors and dentists in carrying out their practice Medicine with the concept of telemedicine namely "a. Teleconsultation between medical personnel and the

patient directly without going through the Health Facilities; b. Give dishonest explanations, unethical, and inadequate (inadequate information) to patients or their families; c. Perform diagnosis and treatment beyond their competence; d. Ask for inspection irrelevant support; e. Commit a disgraceful act, an act of intimidation or acts of violence against patients in the implementation of medical practice; f. To do invasive measures via teleconsultation; g. Withdraw fees beyond the predetermined rate By Fasyankes; and/or h. Provide a health certificate. In the case of errors in providing a diagnosis of disease by a doctor thus causing a loss suffered by the platform service user as a patient, Efforts can be made in the form of a complaint submitted to the Assembly Indonesian Medical Discipline Honorary (MKDKI). It has been explicitly regulated in Article 66 of Law no. 29 of 2014 concerning Medical Practice (Medical Practice Law) which reads that "Everyone who knows or his interests are harmed by the actions of a doctor or dentist in carrying out medical practice can complain about in writing to the Chairperson of the Indonesian Medical Discipline Honorary Council." Complaint This is based on holding doctors accountable. Theoretically responsibility according to the law is a consequence of the consequences of one's legal freedom because of his actions related to ethics, morals and law.

Furthermore, legal responsibility is also interpreted as an obligation to suffer a result based on legal provisions from human awareness of their intentional or unintentional actions.<sup>16</sup> Besides complaints made against doctors who gave the wrong diagnosis to MKDKI, the doctor can also be asked legal liability on the basis of an unlawful act through a lawsuit against The court, if in the process of administering telemedicine, the doctor gives: consulting services that are not in line with its competition as prohibited based on Article 9 letter c of the Indonesian Medical Council Regulation No. 74 Year 2020. Examining other perspectives on online health platform providers as providers the actual system also has an obligation to prevent every user of the platform in order to avoid losses as stipulated in Article 39 paragraph (1) Government Regulation No. 71 of 2019 includes "prudence, security and integration of information technology systems, security control over Transaction activities Electronics, cost effectiveness and efficiency and consumer protection in accordance with the provisions legislation."

Relating to patients as users of health services on the platform Their rights as consumers have been guaranteed through Article 4 of Law no. 8 years 1999 concerning Consumer Protection (UUPK), one of which is to ask for compensation losses in the event of inconvenience, safety issues or losses suffered

from the use of goods and/or services by consumers. Based on things related to a misdiagnosis that occurred on one of the online health platforms can including as a violation of consumer rights as guaranteed in the UUPK so that this legal problem can be resolved out of court in accordance with the provisions of Article 47 UUPK as well as in litigation by referring to the provisions of Article 48 UUPK.

## Conclusion

Based on the statutory approach to the relevant legal arrangements The implementation of an online health platform is based on the Health Law which determine health services. Then Permenkes No. 20 Year 2019 regulates more related to health services carried out through online health platforms (telemedicine). With regard to the legal protection provided to patients who suffer losses due to getting the wrong diagnosis by a doctor can submit a complaint to the MKDKI in accordance with the provisions of Article 66 of the Medical Practice Law, Furthermore, patients can also solve the problem of losses suffered as a result of The use of these health services is in accordance with the provisions of the UUPK, namely through the process of non-litigation settlement (vide Article 47) and litigation (vide Article 48).

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