

# Legal Protection Analysis for Doctors and Patients Regarding Alleged Diagnosis Errors in Telemedicine Healthcare Services in Indonesia

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## ABSTRACT

One of the advancements in the field of healthcare aimed at improving the quality of healthcare services is telemedicine. With numerous cases in healthcare services, such as diagnostic errors, there is a need for legal protection for both doctors and patients as legal subjects in telemedicine healthcare services. The aim of this research is to understand the juridical overview of telemedicine healthcare services and the legal protection for doctors and patients. The research method used in this study is normative juridical research type and the statute approach (legislation) and legal sources used are primary legal materials in the form of legislation related to Health and secondary and tertiary legal materials in the form of journals, books, and other media. The results of this research indicate that patients affected by diagnostic errors can file complaints to the Indonesian Medical Disciplinary Board or seek compensation through non-litigation processes. Law Number 17 of 2023 concerning Health does not explicitly regulate legal protection for doctors and patients in telemedicine services. Article 172 only stipulates the administration and qualified medical personnel in telemedicine services. Government regulations are expected to further regulate this matter as implementing regulations. In cases of diagnostic errors that harm patients, resolution is usually done outside the courts through non-litigation alternatives. Patients can file complaints to the Indonesian Medical Disciplinary Board. Furthermore, patients can also settle losses according to the Health Law, both through non-litigation and litigation means.

**Keywords:** Legal Protection, Doctors, Patients, Telemedicine

## INTRODUCTION

Healthcare services are a human right and a common welfare element that must be realized by the government in accordance with the nation's aspirations as stated in the Preamble of the 1945 Constitution. This includes protecting all Indonesians, advancing public welfare, education, and contributing to creating global peace and social justice.

Nura Perezkinia Pasmah (Pasmah, 2019) explains that innovation in healthcare services provides convenience and efficiency for patients in choosing healthcare services. The advancement of information and communication technology has influenced healthcare services through health information systems and telehealth and telemedicine services. Patients often consider time, distance, and cost when choosing healthcare services, so integrated information technology is used to improve the efficiency and quality of remote healthcare services. Micahel Yulius Munthe (Yulius Munthe et al., 2018) outlines that telehealth is a system that allows remote healthcare between patients and medical personnel or doctors. Telemedicine is a remote medical service by doctors and dentists using information and communication technology. Furthermore, Minister of Health Regulation No. 20 of 2019

explains that the exchange of diagnosis information, treatment, disease and injury prevention, research, evaluation, and continuous education to improve individual and public health.

The ease of access to telemedicine services attracts public interest because it saves time, effort, and costs. Telemedicine services, as regulated in Minister of Health Regulation No. 20 of 2019, must be provided by licensed healthcare personnel in healthcare facilities. Types of telemedicine services include teleradiology, teleelectrocardiography, teleultrasonography, clinical teleconsultations, and other telemedicine consultation services in line with scientific and technological advancements.

Telemedicine technology is revolutionary and currently presents significant challenges with potential and significant impacts on healthcare delivery. Based on the findings of the Kata Data Insight Center ([Annur, 2022](#)), Halodoc is the most frequently used service by Indonesians. The percentage is 46.5%, followed by telemedicine services provided by hospitals or clinics at 41.8%, Alodokter at 35.7%, and KlikDokter at 15.5% of respondents. Currently, the Ministry of Health is developing a telemedicine service called Temenin (Indonesian Telemedicine), which connects 63 supported hospitals and 174 supported hospitals or community health centers across Indonesia.

The improvement of quality and referral services implement Telemedicine and electronic medical records, where the implementation of Telemedicine between healthcare facilities such as that conducted at RSUP H. Adam Malik Medan with RSUD Parapat Kab. Simalungun (teleradiology); RSUD Kab. Biak with RSUD Kab. Supiori in the form of teleradiology and RSUD Kardinah Tegal with Puskesmas Tonjong Kabupaten Brebes, namely tele-EKG. Kharisma Firda Amalia ([Firda Amalia et al., n.d.](#)) explains that there are several barriers to the implementation of telemedicine in Indonesia, particularly inadequate supporting infrastructure for telemedicine

services and inadequate placement of human resources in the healthcare field are other factors hindering the implementation of telemedicine in Indonesia.

Another obstacle is that Indonesia still does not have legislation explicitly regulating telemedicine healthcare practices. This is regulated in Law Number 17 of 2023 concerning Health. However, telemedicine healthcare services still have shortcomings that can cause problems leading to losses for patients as users of these services. One of them is misdiagnosis. Misdiagnosis by doctors to patients can be due to doctors not knowing the patient's condition thoroughly as in face-to-face consultations because the service is provided through an online procedure. Current regulations only regulate telemedicine services between healthcare facilities, not encompassing all telemedicine developments in Indonesia. This regulation is limited to interactions among healthcare personnel in healthcare facilities, yet to accommodate emergency situations such as disasters or pandemics. Additionally, the regulation does not cover the implementation of telemedicine through e-health platforms, such as applications directly connecting patients and doctors. Therefore, this regulation is insufficient as a comprehensive reference for the implementation of telemedicine in Indonesia.

This data shows that Indonesia has a high level of telemedicine. However, looking at cases of alleged medical malpractice in Indonesia, this issue has caused various negative impacts on both social and legal levels. Criminal lawsuits open up opportunities for legal abuse and various other negative consequences. In current practice, doctors are in a vulnerable position. This vulnerable position can cause doctors to adopt a pattern of defensive medicine to anticipate the risks of legal claims and lawsuits. Defensive medicine practices in a negative sense harm patients and society as a whole and should be avoided. Andi Ervin Novara Jaya ([Ervin et al., 2022](#)) explains that the practice of defensive medicine can be

prevented, or at least reduced, if the handling system for alleged medical malpractice cases is sufficient to protect doctors, especially from unnecessary criminal claims. When a doctor makes an unintentional mistake, it is usually due to negligence. Furthermore, in Law Number 17 of 2023 concerning Health, when viewed above, the issue of doctors and patients still uses regulations that are of a general nature, while medical personnel both domestically and internationally recognized by the Government of the Republic of Indonesia in accordance with laws and regulations, meaning that the medical profession must be regulated specifically because it is a profession.

Examining the issue of legal protection for doctors and patients in telemedicine healthcare services certainly needs to be understood, especially since both are legal subjects in telemedicine practice. Therefore, this research will discuss and analyze the forms of legal protection for doctors and patients in telemedicine healthcare services in Indonesia.

## **METHODS**

This study utilizes a juridical normative research approach, which is a legal research method involving literature review by examining secondary data sources. The study employs a juridical normative aspect to examine the legal protection for doctors and patients in Law Number 17 of 2023 concerning Health.

The approach used is the statutory approach, considering theoretical aspects and legal principles in legal studies. The data utilized are secondary data from books, regulations, official documents, research reports, articles, and other relevant documents. Data collection is conducted through three types of legal materials: primary, secondary, and tertiary.

## **RESULT AND DISCUSSION**

### **Telemedicine Healthcare System in Indonesia**

According to Law No. 17 of 2023, Healthcare Services are activities or a series of activities provided directly to individuals or communities with the aim of maintaining and improving health, covering promotive, preventive, curative, rehabilitative, and/or palliative aspects.

Society is becoming increasingly critical of healthcare services, including healthcare professionals. They expect to receive good healthcare services from healthcare facilities, but the government faces limitations in meeting these expectations. Private hospitals with business orientations may be able to provide adequate healthcare services. To improve healthcare services, professional healthcare workers and good hospital facilities are required. However, not all hospitals meet these criteria, leading to complexity in the current healthcare system. The reality is that in the field, the referral healthcare system has uneven access for communities to secondary healthcare services, with the construction of hospitals mainly concentrated in big cities, and dissatisfaction with the quality of hospital services, low local doctor standards leading to medical tourism in neighboring countries. Referral service barriers are shown in the regulation of the number of hospitals based on the population ratio, which is only applied to the government, not to the private sector, implying that the private sector focuses on densely populated areas with high economic status, impacting doctor recruitment competition. Based on field problems and health regulations, one solution offered is the development of a telemedicine-based healthcare service system.

Law No. 17 of 2023 defines telemedicine as the provision of clinical services through telecommunications and digital communication technology. Telehealth, meanwhile, includes healthcare services, public health, health information, and self-services, provided through telecommunications and digital communication technology.

The development of a one-stop service or digital technology-based service is an integrated, multidisciplinary development of services in one service location, providing convenience to patients. In the Academic Text of the Health Bill ([Badan Legislasi Dewan Perwakilan Rakyat Republik Indonesia, 2023](#)) in developing the concept of one-stop service, it is carried out with criteria:

1. Services that start from registration, examination, consultation, support services, pharmacy, and administration in one location.
2. Single transaction payment system in one service episode.
3. Services carried out by a multidisciplinary team placed in one service location.
4. Online registration with online control reminder system.

By prioritizing high-volume services and requiring multidisciplinary handling, prioritized diseases, easy access to digital medical records and results of supporting examinations accessible to patients. The criteria in the concept of one-stop service can be implemented by conducting activities such as the preparation of one-stop service guidelines, guidance, and assistance to hospitals in developing one-stop service, the preparation of one-stop service grand design, fulfillment of human resources, facilities and infrastructure, periodic monitoring and evaluation, and determination of clinical and service outcomes.

Jamil, C.Z.M., Mohamed, R., Muhammad, F., & Ali, A. ([Jamil et al., 2015](#)) outlined that telemedicine is a healthcare practice involving audio, visual, and data communication for remote diagnosis, treatment, counseling, and sharing of medical information. It includes the provision of various services (clinical, educational, and administrative) through information transmission (audio, video, and graphics) using communication equipment, involving doctors, patients, and other parties. In daily use, telemedicine occurs when two

doctors discuss patient issues over the phone or other communication platforms.

One telemedicine service provided by the Ministry of Health is Temenin (Indonesian Telemedicine). The telemedicine services provided include 4 main fields: Radiology, Ultrasound (USG), Electrocardiography, and Consultation. Currently, the Ministry of Health collaborates with 63 Supporting Hospitals and 174 Supported Hospitals/Community Health Centers (PKM).

The implementation of telemedicine between healthcare facilities in Indonesia, such as that carried out at H. Adam Malik Medan General Hospital with Parapat District Hospital, Simalungun Regency (teleradiology); Biak District Hospital with Supiori District Hospital in the form of teleradiology and Kardinah tegal District Hospital with Tonjong Community Health Center, Brebes Regency, namely tele-EKG. Telemedicine services between healthcare facilities and long-distance consultation services from doctors through the KOMEN (Online Medical Consultation) application to obtain expertise, diagnosis, management, and treatment. Meanwhile, the implementation of telemedicine carried out from healthcare facilities to the community by providing long-distance consultation services for new/old outpatient clinic patients, but if further examination is required, patients still come to the hospital, as done at Dr. Kariadi Hospital with virtual clinic and virtual home care services; Dr. Sardjito Hospital with Tekon (Telemedicine Consultation); Premier Bintaro Hospital with Tele 89 Health Plus service; Mayapada Group Hospital with Tanya Dokter (Ask a Doctor) service; Siloam Group Hospital with Aido Health service. ([Badan Legislasi Dewan Perwakilan Rakyat Republik Indonesia, 2023](#))

### **Legal Regulations Regarding Telemedicine Healthcare Services**

Anis Fuad ([Fuad, 2020](#)) outlined that telemedicine plays a crucial role in the development of healthcare in Indonesia by addressing limitations in facilities,

geographic constraints, transportation, and costs. However, in the context of digital interventions for strengthening healthcare systems recommended by the WHO, Indonesia still lacks regulations regarding the use of telemedicine between healthcare facilities. A comparison with the United States shows that the country has regulated the use of telemedicine from healthcare facilities to consumers. Some challenges in implementing telemedicine in Indonesia involve doctor readiness, ethical issues, regulations, and other factors. Telemedicine services in the healthcare field using information technology provide benefits in improving the accuracy and speed of medical diagnosis and medical consultations, especially in hospitals that do not have specific specialist doctors and/or health centers in remote areas. Therefore, to accommodate cost impacts, the government needs to formulate regulations related to telemedicine.

Currently, Indonesia does not have explicit regulations governing telemedicine-based healthcare service practices. Regulations are generally embodied in Law Number 17 of 2023 concerning Health. Since 2015, the government has been attempting to develop telemedicine-based healthcare services, and in 2019, Ministerial Regulation No. 20 regulated telemedicine between healthcare facilities. Although there are some policies, further regulations such as Minister of Health Decree number 4829 of 2021 and Ministerial Regulation number 74 of 2020 only cover clinical practice authority through telemedicine during the Covid-19 pandemic.

The development of Information and Communication Technology (ICT)-based healthcare services, including Telemedicine, is relevant today. However, appropriate regulatory adjustments are crucial, in line with the principles of a rule of law as regulated in the 1945 Constitution Article 1 paragraph (3). Legal protection is considered essential in achieving the goals of ICT-based healthcare services, and some related regulations covering Telemedicine involve

laws, government regulations, and health policies. These include Law No. 17/2023 concerning Health, Law No. 19/2016 concerning Electronic Information and Transactions, Government Regulation No. 46/2014 concerning Health Information Systems, Ministerial Regulation No. 20/2019 concerning Telemedicine between Healthcare Facilities, and council decisions and regulations regarding healthcare services through Telemedicine, especially in the context of the Covid-19 pandemic.

Legislation is a part of written law that regulates social, national, and state life. Its purpose is to solve current problems or those that may arise in the future. The formation of legislation requires knowledge of the theory and techniques of drafting to be comprehensive, both theoretically and practically, related to the process of legislation formation in Indonesia. (Taib, 2017)

In Indonesian positive law, telemedicine is regulated in Law Number 17 of 2023 concerning Health. Article 172 states that Telemedicine Services conducted by Healthcare Facilities must be performed by Medical Personnel or Healthcare Personnel who have practice permits. These services include, among others, the transmission of information between healthcare facility services and between healthcare facility services and the public.

Healthcare Facilities can independently provide Telemedicine services or collaborate with registered electronic system providers in accordance with regulations. However, to date, there is no regulation explicitly governing telemedicine-based healthcare service practices. Regulation regarding telemedicine is only regulated in Ministerial Regulation Number 20 of 2019. Due to the lack of specific regulations, telemedicine practices are still vulnerable to errors or violations in their implementation, both for doctors and patients.

## **Legal Protection for Doctors and Patients Against Allegations of Diagnostic Errors in Telemedicine Healthcare Services**

### **1. Definition of Diagnostic Errors**

Diagnosis is the procedure by which a doctor determines a patient's condition and is also the outcome of evaluation. Diagnostic indicators are carried out through physical examinations, laboratory tests, or computer technology such as specially designed programs. Determining a patient's illness is the main function of diagnosis, through stages of examination starting from history taking, physical examination, to other supporting examinations.

Article 310 of Law Number 17 of 2023 concerning Health regulates diagnostic errors committed by Medical Personnel or Healthcare Personnel. Further provisions regarding the provision of Telemedicine services are regulated by Government Regulations. In cases of diagnostic errors causing harm to patients, disputes are resolved through alternative dispute resolution mechanisms outside of court. Diagnosis through telemedicine differs from face-to-face diagnosis by a doctor.

### **2. Juridical Review of Legal Protection**

Legal protection is an effort to guarantee, manage, and realize the well-being of individuals or governments and private entities in accordance with human rights, as regulated in Law Number 39 of 1999 concerning human rights. Legal protection theory is important because it emphasizes legal protection for healthcare professionals and patients.

According to Satjipto Rahardjo, the law protects the interests of individuals by providing the power of action appropriate to their interests. Legal protection theory studies and analyzes the ways and purposes of protecting legal subjects, as well as the objects of protection provided to these legal subjects by the law. As quoted from hukumonline.com ([hukumonline.com](http://hukumonline.com), 2022) several experts' opinions on legal protection are as follows:

According to Satjipto Rahardjo, legal protection is empowering individuals to act according to their interests, based on Human Rights. According to Setiono, legal protection is an effort to protect society from arbitrary actions by authorities to achieve order and enable people to enjoy their dignity. According to Muchsin, legal protection is the harmonization of values in creating order among humans. According to Philipus M. Hadjon, ([Mertokusumo, 2013](#)) legal protection is protecting the dignity and rights of human beings from arbitrariness, divided into preventive and repressive protection.

Legal protection aims to protect the dignity, honor, and human rights based on legal provisions, and to prevent arbitrariness. Protection efforts include protecting individuals from interference by others, protecting individuals suspected in criminal cases from the arbitrariness of state officials, and protecting society from actions by community members that may cause harm.

### **3. Legal Protection for Doctors and Patients in Telemedicine Healthcare Services**

According to Philipus M. Hadjon ([Hadjon, 2008](#)), legal protection is providing assistance to legal subjects through the use of legal instruments. The law regulates relationships between individuals in society and relationships between legal subjects. Kansil, C.T.S. ([Christine, 2006](#)) explains that legal subjects are individuals who have rights and capacities to act in law, or simply put, individuals recognized by the law as having rights.

Sabta Putra ([Putra, 2015](#)) explains that in the doctor-patient relationship, two important aspects are: first, doctors need to consider patient autonomy in medical decision-making; second, doctors need to build harmony through effective communication. Previously, the doctor-patient relationship was paternalistic, where the doctor held a dominant position and directed the patient. This created an "asymmetric" relationship and the "father knows best" principle emphasizing the doctor's knowledge.

As explained by Leon Duguit (Christine, 2006), ethical and legal problems in the implementation of telemedicine in Indonesia are related to the legal relationship between healthcare service providers and recipients. This relationship involves rights and obligations that must be fulfilled, creating legal acts and legal consequences. Non-fulfillment of rights and obligations can lead to legal issues.

Mohammad Hilman Mursalat, Efa Lela Fakhriah (Mursalat et al., 2022) Therapeutic transactions are agreements between doctors and patients that result in rights and obligations for both parties. The object is efforts to cure the patient. Agreements between doctors and patients are not limited to the treatment stage (curative), but also include preventive, promotive, diagnostic, and rehabilitative aspects. This agreement is known as a therapeutic agreement or therapeutic transaction. Agreements in civil law adhere to the principle of consensus, strengthened by Article 1320 of the Civil Code which regulates the requirements for the validity of agreements.

Arman Anwar (Anwar, 2015) in his dissertation explains that telemedicine also raises legal liability issues related to diagnostic errors. Legal liability is the obligation to bear consequences according to applicable law. When there is a violation of legal norms, the perpetrator can be held accountable either civilly, criminally, or administratively. For example, if a doctor provides a diagnosis through online consultation without a physical examination according to medical procedures, it contradicts the principle of caution and may lead to legal liability. Muhammad Sadi (Is, 2010) Diagnostic errors can have fatal consequences such as injury, disability, or death. However, to claim that it is criminal malpractice, elements of the crime need to be proven, such as: (i) whether the act is reprehensible (positive act or negative act), and (ii) whether the act is done with wrongful intent (*mens rea*), such as intentional, negligent, or reckless.

In telemedicine, the legal relationship between doctors and patients involves a third party, the electronic system provider or application company as an intermediary. The legal relationship between doctors and the platform is like partners, with the platform's obligation to develop application technology as a link between doctors and patients. Patients also have a legal relationship with the platform regarding usage procedures and terms, known as click and wrap electronic contracts, in accordance with the ITE Law. Article 20 of the ITE Law states that an electronic transaction occurs when an offer sent is accepted and approved by the recipient. In the case of telemedicine platforms, patients as senders of consent and platforms as recipients through actions such as clicking checkboxes or other consent statements.

Legal protection for patients in telemedicine is a necessity. If a doctor makes a diagnostic error resulting in harm to the patient, it can lead to liability based on the error. This liability requires evidence that the patient's harm was caused by the doctor's diagnostic error (causal relationship), and there was error or negligence on the part of the doctor. This is different from strict liability claims, where harm is caused by a breach of contract. In this case, the patient's harm is caused by the doctor's obligation to make a correct diagnosis in accordance with applicable law.

Patients who suffer losses due to a doctor's diagnostic error in telemedicine can file a tort claim against the doctor in court. This claim is filed when the doctor provides services outside or not in accordance with their competence, as regulated in Medical Council Regulation Number 47 of 2020. Patients protected by regulations can file claims based on Article 1365 of the Civil Code if there are facts of wrongful acts.

Patients can file tort claims against doctors who make errors in telemedicine services to the District Court. Additionally, patients who suffer losses can also report doctors to the Indonesian Medical Ethics and Honor Council (MKDKI). As consumers of doctor

services in telemedicine, patients are also protected by Law Number 8 of 1999 concerning Consumer Protection.

However, regulations regarding telemedicine services or E-health platforms conducted by doctors and patients in telemedicine services have not been explicitly regulated, resulting in ambiguity and legal gaps on this matter. This

impacts the legal protection that can be provided for patients as recipients and doctors as providers of healthcare services in the implementation of telemedicine, which is currently not clearly interpreted as the basis for the process of providing telemedicine services. Although not clearly regulated in legislation, patients who experience diagnostic errors by doctors in telemedicine can take various legal actions such as litigation, amicable settlement, and complaints to the Indonesian Medical Ethics and Honor Council (MKDKI).

## CONCLUSION

Law Number 17 of 2023 concerning Health does not explicitly regulate legal protection for doctors and patients in telemedicine services. Article 172 only establishes the organization and authorized medical personnel in telemedicine services. It is expected that Government Regulations will further regulate this matter as implementing regulations of the law. In cases of diagnostic errors that harm patients, resolution is usually conducted outside of court through non-litigation alternatives. Patients can file complaints to the Indonesian Medical Ethics and Honor Council (MKDKI). Additionally, patients can also settle their losses according to the Consumer Protection Law, both through non-litigation and litigation methods.

### Declaration by Authors

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