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## TELEMEDICINE SERVICES OF THE INDIVIDUAL HEALTH RIGHTS IN NEW NORMAL ERA

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### **Abstract**

Regarding the right to protect and respect individual rights as stated in positive law in Indonesia, these rights are part of the human rights of every citizen. So that the State is obliged to guarantee the availability and fulfillment of these rights to avoid the threat of abuse and violations by various parties, including state officials themselves. During the Covid-19 pandemic, how can the right to individual health be obtained and the State can guarantee it? This research uses sociological normative juridical research by surveying 531 respondents in Jakarta in March 2020. The results of the study were analyzed qualitatively so that the State has the authority to guarantee telemedicine services as a form of state responsibility in the new normal era according to Regulation of the Minister of Health of the Republic of Indonesia Number 20 2019 concerning the Implementation of Telemedicine Services between Health Service Facilities.

**Keywords:** Telemedicine; Individual Rights; New Normal Era.

### **Abstrak**

*Hak atas perlindungan dan penghormatan atas hak-hak pribadi telah dicantumkan pada hukum positif Indonesia. Hak-hak tersebut merupakan bagian dari hak asasi setiap warga negara. Sehingga Negara berkewajiban menjamin tersedianya dan terpenuhinya hak-hak tersebut agar terhindar dari ancaman penyelewengan dan pelanggaran oleh berbagai pihak, termasuk penyelenggara negara itu sendiri. Di masa pandemi Covid-19, bagaimana hak atas kesehatan individu dapat diperoleh dan negara dapat menjaminnya? Penelitian ini menggunakan penelitian yuridis normatif sosiologis dengan mensurvei 531 responden di Jakarta pada Maret 2020. Hasil penelitian dianalisis secara kualitatif yang menunjukkan Negara memiliki kewenangan untuk menjamin layanan telemedicine sebagai bentuk tanggung jawab negara di*

*era new normal sesuai Peraturan Menteri Kesehatan Republik Indonesia Nomor 20 Tahun 2019 tentang Penyelenggaraan Pelayanan Telemedis Antar Fasilitas Pelayanan Kesehatan.*

***Kata Kunci : Telemedicine; Hak Pribadi; Masa Normal Baru***

## **INTRODUCTION**

Indonesia is a rule of law country. This means that every implementation of a state in the Republic of Indonesia (RI) must be based on applicable law, including the issue of Human Rights (HAM).<sup>1</sup> In Indonesia, human rights are implicitly stated in the basic constitution of the country, namely in the 1945 Constitution, Article 28 H paragraph (1),<sup>2</sup> That "Every person has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and good living environment. healthy and entitled to health services ". Then it is also regulated in Law Number 36 of 2009 concerning Health. Article 4 states, "all people have the right to health."

Health is a basic right of humans themselves which has been protected by certainty to get social services and security in the health sector. In other words, health care is one of the human rights that the State must fulfill for all Indonesian people. Concerning health services, the community also has human rights to obtain adequate health services, known as Patient Rights.

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<sup>1</sup> Yuli Asmara Triputra, "Implementasi Nilai-Nilai HAM Global Ke Dalam Sistem Hukum Indonesia Yang Berlandaskan Pancasila," *Jurnal Hukum IUS QUILA IUSTUM* 24, no. 2 (2017): 279–300, <https://doi.org/10.20885/iustum.vol24.iss2.art6>.

<sup>2</sup> Ellya Rosana, "Negara Demokrasi Dan Hak Asasi Manusia," *Jurnal Tapis* 12, no. 1 (2016): 37–53.

The government seeks to improve the quality of health services by implementing social security programs to guarantee the health rights of the poor or underprivileged. The survey results that assess the level of satisfaction with BPJS services are admittedly not giving hope; complaints often submitted include: no stock of drugs, low BPJS claims rates so that hospitals have difficulty managing operational costs, long check queues, lack of fast doctors, and paramedics services.<sup>3</sup> The low BPJS claims impacted hospital management from the hospital side, so it suggested the government immediately review the INA CBG rates.<sup>4</sup>

One of the patient's rights is the confidentiality of the patient's condition or health. As regulated in Law Number 36 Year 2009 concerning Health, Article 57 paragraph 1 states that everyone has the right to confidential personal health conditions disclosed to health service providers. However, further elucidation is explained in Article 57 paragraph 2 that the right of everyone to the confidentiality of their health conditions as referred to in paragraph (1) does not apply in certain cases, such as a) statutory orders; b) court order; c) the license concerned; d) public interest; or e) the interests of that person.<sup>5</sup>

The Covid-19 pandemic has brought deep sorrow to the whole world. Since the first case in Wuhan, there has been a significant

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<sup>3</sup> Siregar Adelina Rospita, "The Hospital Cooperation with the Board of Social Security Administrator (BPJS) from the Business Law Perspectives of Indonesia," in *Conference Proceedings* (Jaka: ICABE, 2018).

<sup>4</sup> Ervianingsih et al., *Kebijakan & Manajemen Pelayanan Kesehatan*, ed. Elan Jaelani (Bandung: Widina Bhakti Persada, 2019).

<sup>5</sup> Asni Ovier, "Hak Atas Rahasia Kondisi Kesehatan Pasien Bisa Diabaikan," *Beritasatu.com*, 2020, <https://www.beritasatu.com/kesehatan/703957/hak-atas-rahasia-kondisi-kesehatan-pasien-bisa-diabaikan>.

increase in the number of cases in China between the end of January 2020 and February 2020. In Indonesia, from the announcement of the first confirmed case of Covid-19 by President Joko Widodo in March 2020 to the end of 2020, the number of patients continues to increase.<sup>6</sup> However, at the beginning of 2021, it slowly experienced a decline or sloping, as data from the Last Updated Covid-19 Handling Task Force: 21-04-2021 globally from 113 countries confirmed 89,437,507, died 1,909,170. in Indonesia alone Positive 1,620,569, recovered 1,475,456, died 44.007.<sup>7</sup>

The struggle of medical personnel to save the Indonesian nation from the Covid-19 pandemic is still not over. It requires hard work and cooperation from all elements of society, not only medical personnel, one of which is about safety and quality health services, which is undoubtedly the main hope and goal from the government, the community/patients, health workers, and health service managers.<sup>8</sup>

Health services are carried out by prioritizing the safety of patients, health workers, and all employees and visitors to health service facilities. Health services during the adaptation period for new habits will be very different from the conditions before the Covid-19 pandemic. Health service providers need to prepare tighter security

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<sup>6</sup> Bachtiar Husein et al., "Tinjauan Etik Prioritas Alat Pelindung Diri (APD) Untuk Profesional Pemberi Asuhan (PPA) Kedokteran Dan Kesehatan," *Jurnal Etika Kedokteran Indonesia* 4, no. 2 (2020): 47, <https://doi.org/10.26880/jeki.v4i2.47>.

<sup>7</sup> Satuan Tugas Penanganan Covid-19, "Data Sebaran," [covid19.go.id](https://covid19.go.id/), 2021, <https://covid19.go.id/>.

<sup>8</sup> Jovita Irawati et al., "Tanggung Jawab Hukum Rumah Sakit Terhadap Hak Pasien Saat Pandemi Covid-19 Ditinjau Dari Peraturan Perundang-Undangan Di Bidang Kesehatan," repository UPH, 2021, <http://repository2.uph.edu/3407/1/Publikasi1.pdf>.

and safety procedures by implementing the Infection Prevention and Control (PPI) protocol in accordance with the Regulation of the Minister of Health of the Republic of Indonesia Number 20 of 2019 concerning the Implementation of Telemedicine Services Between Health Service Facilities.<sup>9</sup>

Health care providers need to plan and implement safe ways of caring for Covid-19 patients so that they can still provide services to general patients with the minimum risk of transmission. This step taken by a healthcare provider is known as a balancing act. Several procedures in health service providers have changed, including patient admission procedures, use of masks, screening procedures, scheduling of visits, restrictions on visitors / patient companions, and even separation of health services for Covid-19 and non-Covid-19 patients.<sup>10</sup>

Since positive cases of Covid-19 have increased dramatically, many health care providers have been overwhelmed by the surge in patients infected with the coronavirus. This situation has a negative impact on patient safety, especially if health care providers do not strictly enforce disaster management plans, namely implementing a mechanism and procedures to deal with pandemics in health care providers. The condition of the Covid-19 disaster has impacted the quality and safety of the services provided by the hospital to patients. Mistakes or delays in disease diagnosis contribute to death.

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<sup>9</sup> Irawati et al.

<sup>10</sup> Irawati et al.

As the research conducted by the author, using the sociological normative juridical method by distributing questionnaires to 531 respondents in March 2020, the results of respondents based on the knowledge level of 286 (53.6%) respondents knew about the shape and structure of the Covid-19 Virus, and from 332 (62.2%) respondents know how to spread the virus, then from 491 (92.1%) respondents know that all age groups are at risk of contracting Covid-19, then 514 (96.4%) respondents have followed the news that Social Distancing and Physical Distancing are ways suppressing the acceleration of the morbidity rate and 508 (95.3%) respondents know that the State is obliged to provide protection and safety for health workers in the midst of the Covid-19 pandemic, by ensuring the adequacy of PPE as a form of responsive law. Meanwhile, the name and position/job were not opened (11% of respondents). Suspected of respecting patient privacy. However, this number is still smaller than the number of respondents who want all data to be opened (22%). The number of respondents who believe that if all data is opened will have an impact on reducing the spread of the Covid-19 virus is quite large, namely 20%. However, only 7% agreed that all data was opened and believed that the impact of the spread of the Covid-19 virus would be reduced by having complete knowledge about the Covid-19 virus in this survey. Only 8% of respondents who disagreed with the disclosure of name and position/job data believed that the spread of the Covid-19 virus could be reduced.

Based on the explanation above, the authors determine the issues that need to be studied more deeply, namely regarding how the right

to individual health can be obtained, and the government can guarantee it. The purpose of this research is to guarantee telemedicine services as a form of state responsibility in the new normal era according to the Regulation of the Minister of Health of the Republic of Indonesia Number 20 of 2019 concerning the Implementation of Telemedicine Services Between Health Service Facilities.

## DISCUSSION

One type of government responsibility is to provide health facilities, namely the hospital, as a place for professional workers to work and a legal institution (foundation) to produce the activities of ethical professional developers. Then set about matters relating to the hospital as a means of health services in a legal relationship with patients as consumers of health services. As a health service unit, the hospital has two functions, namely curative and preventive.<sup>11</sup>

The curative function during the Covid-19 pandemic focuses more on healing patients while the preventive function brings consequences to the mission of health care by increasing the human body's resistance to disease threats, such as through the National Immunization Program (PIN). The construction of hospital responsibility as a health service provider for losses suffered by patients as consumers of health services is stipulated in Law Number

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<sup>11</sup> Soerjono Soekanto, *Aspek Hukum Kesehatan (Suatu Kumpulan Catatan)* (Ind-Hill-Company, 1989); Yusuf Shofie, *Perlindungan Konsumen Dan Instrumen-Instrumen Hukumnya* (Citra Aditya Bakti, 2000); Achmad Muchsin, "Perlindungan Hukum Terhadap Pasien Sebagai Konsumen Jasa Pelayanan Kesehatan Dalam Transaksi Terapeutik," *Jurnal Hukum Islam (JHI)* 7, no. 1 (2009): 31–45.

36 Year 2009 concerning Health which includes: regulation of guidance and supervision of the implementation of health efforts by the government. The government is tasked with organizing health efforts that are evenly distributed and affordable for the community. The government is assigned to mobilize public participation in the administration and financing of health by paying attention to social functions so that health services for less fortunate people can be guaranteed and that the Government is responsible for improving the health status of the community.<sup>12</sup>

However, in practice, what is the form of the legal responsibility of health service providers to fulfill the rights of patients during the Covid-19 pandemic, if viewed from the various laws and regulations in the health sector in effect in Indonesia, it is necessary to get a balanced understanding, both from the provider's point of view. health services as well as patients.

Basically, the rights of Covid-19 patients are generally regulated in Article 32 of Law Number 44 of 2009 concerning Hospitals which states that every patient has the right to:

- a. Obtain information about the rules and regulations that apply in the hospital;
- b. Obtain information about patient rights and obligations;
- c. Receive services that are humane, fair, honest, and without discrimination;

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<sup>12</sup> Muchsin, "Perlindungan Hukum Terhadap Pasien Sebagai Konsumen Jasa Pelayanan Kesehatan Dalam Transaksi Terapeutik."



- d. Obtain quality health services in accordance with professional standards and standard operating procedures;
- e. Obtain effective and efficient services so that patients avoid physical and material harm;
- f. Submit complaints about the quality of service obtained;
- g. Choose a doctor and treatment class in accordance with the wishes and regulations that apply in the hospital;
- h. Request consultation about the illness he is suffering from other doctors who have a Practice License (SIP) both inside and outside the hospital;
- i. Obtain privacy and confidentiality of the illness, including medical data;
- j. Obtain information including diagnosis and procedures for medical treatment, the purpose of medical treatment, alternative measures, risks and complications that may occur, and prognosis for the action taken and the estimated cost of treatment;
- k. Give approval or refuse for actions to be taken by health workers against the illness they are suffering from;
- l. Be accompanied by his family in critical condition;
- m. Perform worship according to their religion or belief as long as it does not disturb other patients;
- n. Obtain his own safety and security while in hospital;
- o. Submit suggestions, suggestions, improvements to the Hospital's treatment of himself;
- p. Reject spiritual guidance services that are not in accordance with their religion and belief;

- q. Suing and/or suing the hospital if the hospital is suspected of providing services that do not comply with standards, both civil and criminal; and
- r. Complain about hospital services that are not in accordance with service standards through print and electronic media in accordance with the provisions of laws and regulations.

Normatively, the legal responsibility of health care providers in fulfilling patients' rights cannot be separated from the obligations of health service providers to patients. Various laws and regulations in the health sector, such as:

- a. Medical Practice Act;
- b. Health Act; and
- c. Hospital Act.

Of the 3 (three) rules have been regulated adequately. Especially during the Covid-19 pandemic, which was declared a period of health emergencies, various statutory provisions also apply, such as:

- a. Infectious Disease Outbreak Law;
- b. Health Quarantine Law;
- c. Presidential Decree Number 11 of 2020 concerning the Determination of the Public Health Emergency for Corona Virus Disease 2019 (Covid-19);
- d. Minister of Health Regulation Number 4 of 2018 concerning Hospital Obligations and Patient Obligations; and
- e. Regulation of the Minister of Health Number 1501 / MENKES / PER / X / 2010 is related to infectious diseases that cause epidemics.

Article 1 point 1 and point 2 Permenkes states that:

“An infectious disease outbreak (epidemic) is an outbreak of an infectious disease in a community where the number of sufferers has increased significantly more than normal conditions at certain times and areas and can cause catastrophe and Extraordinary Events (KLB).

Furthermore, in the Decree of the Minister of Health of the Republic of Indonesia Number HK.01.07 / MENKES / 104/2020 concerning the Determination of Novel Coronavirus Infection (2019-nCoV Infection) As Diseases That Can Cause Outbreaks and Efforts to Overcome it stipulates that the novel coronavirus infection (2019-nCoV infection) is a disease. which can cause an epidemic and through Number 1 Presidential Decree of the Republic of Indonesia number 12 of 2020 concerning the Determination of Non-Natural Disaster for the Spread of Corona Virus Disease 2019 (Covid-19) as a National Disaster declares non-natural disasters caused by the spread of Corona Vints Disease 2019 (Covid-19) as a national disaster.

Article 1, Article 2, and Article 3 Regulation of the Minister of Health of the Republic of Indonesia Number 20 of 2019 concerning the Implementation of Telemedicine Services between Health Service Facilities states that Telemedicine is the provision of remote health services by health professionals using information and communication technology, including exchange of information on diagnosis, treatment, prevention of disease and injury, research and evaluation, and continuing education of health care providers for the benefit of improving the health of individuals and communities.

Article 32 letter i of the Hospital Law states that every patient has the right to privacy and confidentiality of illness, which is the same as stated in Article 57 paragraph (1) of the Health Law and Article 17 letter h number 2 of Law Number 14 of 2008 concerning Public Information Disclosure that everyone has the right to confidential personal health conditions that have been disclosed to health service providers. Every public body can open access for every applicant for public information to obtain public information, except one of which, regarding history, condition and treatment, medical treatment, physically and psychologically a person, because public information can reveal personal secrets if it is opened and given to an applicant.<sup>13</sup>

The disclosure of positive patient information for Covid-19 is still the pros and cons. This information was initially considered to interfere with patient privacy and could potentially lead to discrimination against patients. However, along with the increasing number of positive patients, this information is deemed necessary as an effort to break the chain of virus transmission. The disclosure of positive patient information for Covid-19 can be useful to increase awareness. However, disclosing positive patient information for Covid-19 has its own consequences, there are still people who are in cases of monitoring or positive Covid-19 who are poorly treated and discriminated against in their environment so that the dissemination of positive patient information for Covid-19 must be done correctly and

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<sup>13</sup> Irawati et al., "Tanggung Jawab Hukum Rumah Sakit Terhadap Hak Pasien Saat Pandemi Covid-19 Ditinjau Dari Peraturan Perundang-Undangan Di Bidang Kesehatan."

adequately. so as not to cause other social problems. The results of the author's study recommend that disclosure of positive patient information for Covid-19 needs to be done, but information that can be disclosed is limited to the 14-day travel history of positive patients.

Changes in people's habits to obtain health services and respond to community concerns to come to health service providers while they need health services. Hospitals provide services with telemedicine. Various innovations at the primary and referral health level through social innovation and the use of technology, such as the development of telemedicine and the virtual hospital Covid, will help determine the priority scale for handling patients.

### **Conclusion**

The legal responsibility of health service providers in fulfilling patient rights cannot be separated from the obligations of health service providers to patients. The obligations of health service providers have been adequately regulated in various laws and regulations in the health sector. The obligations of hospitals in protecting patient rights during this pandemic cannot be fully fulfilled, especially the right to patient privacy. On the basis of this provision, it is possible for health service providers to maintain the confidentiality of privacy in situations of health emergencies, such as during the Covid-19 pandemic for very urgent interests and for the benefit of many people, such as for tracking and tracing purposes that need to break the chain of spreading Covid-19. However, in accordance with applicable regulations, it is still impossible for health workers and health service

providers to disclose the history of the patient's disease, conditions of care and treatment, physical and psychological health. At the time of the Covid-19 pandemic, hospitals also experienced problems in providing quality and excellent service to patients. then health workers and hospitals need a legal umbrella to guarantee the rights of health workers and hospitals in providing services to patients, especially the protection of work norms, occupational health and safety (K3) norms, and labor social security norms.

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