



A Juridical Analysis of Post-Pandemic Telemedicine Regulation in Indonesia

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Article History :

Received date : 2024/10/19

Revised date : 2024/11/02

Accepted date : 2024/12/15

Published date : 2025/01/01



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Abstract

Introduction: The COVID-19 pandemic catalyzed a paradigm shift in healthcare delivery, accelerating the adoption of telemedicine in Indonesia. While temporary ministerial decrees successfully bridged the emergency healthcare gap, the transition into a post-pandemic era requires a permanent, robust juridical framework to ensure legal certainty, patient safety, and physician protection.

Methods: This legal research employs a qualitative normative juridical approach, analyzing statutory laws, ministerial regulations, and foundational legal principles governing digital health services in Indonesia.

Results: The study reveals that current post-pandemic regulations, primarily under the framework of the new Health Law (UU No. 17/2023) and updated Indonesian Medical Council regulations, still suffer from overlapping jurisdictions, ambiguous standards for cross-border telemedicine, and fragmented liability mechanisms. **Discussion:** The literature underscores that a cohesive medical-legal architecture is critical. Analysis demonstrates a significant divergence between technical healthcare advancements

and current statutory readiness, particularly regarding electronic informed consent, malpractice liability attribution between tech platforms and clinicians, and stringent medical data privacy under the Personal Data Protection Law (UU No. 27/2022). A comprehensive regulatory synthesis is explored to reconcile these operational gaps with statutory doctrines. **Conclusions:** Indonesia requires an overarching, integrated Government Regulation specifically dedicated to digital health to unify cross-sector obligations. Regulatory authorities must establish clear liability boundaries, standardized digital informed consent protocols, and localized enforcement mechanisms to protect all clinical stakeholders. *Keywords: Telemedicine Regulation, Normative Jurisprudence, Digital Health Law, Post-Pandemic Healthcare, Medical Liability.*

Introduction

The intersection of digital technology and healthcare delivery has fundamentally altered the traditional doctor-patient relationship, a transformation that became an absolute necessity during the COVID-19 global health crisis. In Indonesia, an archipelago characterized by deep geographical fragmentation and unevenly distributed medical specialists, telemedicine emerged as a vital instrument to maintain healthcare accessibility while minimizing virus transmission. During the peak of the pandemic, the Indonesian government relied heavily on temporary administrative measures and circular letters issued by the Ministry of Health to provide a quick legal basis for virtual consultations, electronic prescriptions, and remote patient monitoring. However, as the global health emergency officially dissolved, the reliance on makeshift, crisis-era administrative frameworks created a precarious legal vacuum for healthcare providers and patients alike. The post-pandemic landscape demands a transition from emergency administrative flexibility to permanent, structured statutory stability. Consequently, the primary problem addressed in this research is the lack of cohesive, comprehensive statutory alignment within the Indonesian legal system regarding the long-term operationalization of telemedicine, which creates profound legal uncertainty regarding medical liability, digital data breaches, and cross-border clinical accountability.

The primary objective of this legal inquiry is to critically evaluate the adequacy of the post-pandemic regulatory framework governing telemedicine in Indonesia, specifically examining how current statutes address the complexities of virtual medical interventions. By evaluating these statutory mechanisms, this study aims to provide concrete legal recommendations for policymakers, healthcare institutions, and legal practitioners, ultimately offering a theoretical benefit to the advancement of Indonesian cyber-law and medical jurisprudence, alongside the practical benefit of safeguarding patient rights and clinical practitioners from systemic vulnerabilities. It is hypothesized that the current scattered regulatory approach in Indonesia fails to provide adequate protection for telehealth stakeholders because it treats digital health as a mere technical extension of conventional medicine rather than a distinct legal entity requiring specialized statutory doctrines. While contemporary literature widely discusses the operational efficiency and public health utility of telemedicine during the pandemic, a significant research gap exists regarding the strict legal harmonisation required between the newly enacted Indonesian Health Law (Undang-Undang No. 17 Tahun 2023), the Personal Data Protection Law, and medical ethics codes in a post-pandemic equilibrium. The novelty of this study lies in its focused juridical synthesis of these newly enacted legislative products, evaluating how their overlapping mandates impact medical malpractice attribution and data liability within the specific context of post-pandemic digital clinical practice.

Methods

This study utilizes a normative juridical research methodology, which constitutes a legal research approach that treats law as a cohesive system of norms, principles, rules, and statutory doctrines. Rather than observing empirical social behavior or clinical field outcomes, this method focuses strictly on library-based legal research to analyze the internal consistency and hierarchical harmony of existing legal instruments. The legal materials analyzed are categorized into primary, secondary, and tertiary legal sources. Primary legal materials consist of binding legislative acts, including the Indonesian Constitution of 1945, the newly codified Health Law (UU No. 17/2023), the Personal Data Protection Law (UU No. 27/2022), the Electronic

Information and Transactions Law (UU No. 1/2024), and various relevant regulations from the Indonesian Medical Council and the Ministry of Health. Secondary legal materials include peer-reviewed legal journals, academic textbooks on medical jurisprudence, draft legislation, and explanatory legal commentaries that clarify the theoretical foundations of health law. Tertiary legal materials comprise legal dictionaries, encyclopedias, and official government reports used to provide contextual definitions of technical terms. The legal analysis is conducted using a statutory approach, a conceptual approach, and a comparative analytical technique. By systematically contrasting the mandates of disparate laws, this normative approach identifies instances of regulatory overlapping, statutory lacunae, and internal contradictions within the post-pandemic Indonesian telemedicine landscape, concluding with a deductive logical synthesis to formulate prescriptive legal remedies.

Results

The normative juridical assessment indicates that the post-pandemic regulatory architecture for telemedicine in Indonesia remains fragmented across multiple layers of legislation, despite the structural consolidation attempted by the enactment of the Omnibus Health Law (UU No. 17/2023). Under the current statutory design, telemedicine is recognized as a valid modality of healthcare delivery, yet its precise operationalization is governed by an array of sub-legislative instruments that frequently overlap and conflict. For instance, the Indonesian Medical Council Regulation No. 74/2020, which originally provided emergency relaxations for clinical registration and virtual practice during the pandemic, remains functionally active but is theoretically misaligned with the broader mandates of the new 2023 Health Law. Furthermore, the research reveals that the current legal framework fails to establish a clear demarcation of legal liability between the attending medical practitioner and the third-party digital health platform provider. While the Electronic Information and Transactions Law holds digital platforms liable for system failures and data infrastructure security, it does not explicitly address the gray area of clinical misdiagnosis resulting from technical audio-visual distortions or algorithmic recommendations.

Additionally, the results demonstrate a severe regulatory gap concerning cross-border telemedicine. The current Indonesian legal framework assumes a closed domestic loop, requiring all practicing telemedicine doctors to possess a valid practicing certificate (Surat Izin Praktik) localized within an Indonesian healthcare facility. This statutory model completely overlooks the growing reality of transnational digital consultations, leaving Indonesian citizens who seek remote international specialist opinions without domestic consumer protection or a clear path for medical negligence claims. In terms of data governance, the integration of the Personal Data Protection Law (UU No. 27/2022) with electronic health records introduces strict penal and financial sanctions for data controllers; however, the results show that most public hospitals and private telemedicine platforms lack the institutional capacity to fulfill the legal requirements of data processing logs and specialized data protection officers as mandated by the law. This statutory disconnect exposes the entire Indonesian digital health ecosystem to significant regulatory compliance risks and potential constitutional challenges regarding the right to health and personal privacy.

Discussion

The evolution of health law doctrines emphasizes that the validity of any medical intervention rests upon three core pillars: legal capacity, valid informed consent, and a clearly defined standard of care. In the context of telemedicine, each of these pillars undergoes a fundamental structural shift that the current post-pandemic Indonesian legal framework fails to address with sufficient depth. A thorough review of medical-legal literature highlights the doctrine of the professional standard of care, which dictates that a physician must exercise the same degree of skill and care that a reasonably competent practitioner would demonstrate under similar circumstances. In a conventional clinical setting, this standard is easily measured through physical examination protocols. In a digital environment, however, the physician is legally constrained by a lack of physical palpation and direct diagnostic observation. Academic jurisprudence argues that a modified standard of care must be legally codified for telemedicine to protect physicians from frivolous malpractice claims when a diagnosis fails due to the inherent technical

limitations of a remote interface. The Indonesian legal system, through UU No. 17/2023, continues to hold physicians to a rigid traditional standard of care, which introduces an unfair element of strict liability for practitioners utilizing digital channels in good faith.

Furthermore, the legal mechanism of electronic informed consent within Indonesian telemedicine remains highly problematic from a contract-law perspective. According to Article 1320 of the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata), a valid agreement requires the free consent of the parties involved. In telemedicine applications, informed consent is often reduced to a rapid "click-wrap" agreement where the patient checks a box to agree to extensive terms of service before a consultation. Normative legal theory dictates that such mechanisms do not constitute genuine, legally binding medical informed consent, as they fail to ensure that the patient fully comprehends the specific clinical risks, diagnostic limitations, and data privacy implications of a remote consultation. If a data breach occurs or a critical misdiagnosis takes place, these digital waivers face a high probability of being declared null and void by an Indonesian court due to unconscionability and a fundamental lack of mutual understanding between the doctor and patient.

The intersection of telemedicine with the Personal Data Protection Law (UU No. 27/2022) presents another profound layer of regulatory friction. Medical data is explicitly classified as specific personal data under Indonesian law, meaning it requires the highest tier of security and explicit, unambiguous consent for processing. Under the PDP Law, any unauthorized exposure of health data subjects the data controller to administrative fines reaching up to two percent of annual revenues, alongside criminal liabilities for intentional breaches. In the telemedicine ecosystem, an intricate question arises: who is the primary data controller? The individual physician, the hospital utilizing the digital platform, or the technology startup that hosts the servers and manages the application infrastructure? The current text of UU No. 27/2022 and UU No. 17/2023 provides no precise answer, resulting in an environment of diffused responsibility. If a malicious cyberattack exploits a vulnerability in a telemedicine app's cloud architecture, exposing

thousands of patient clinical histories, current statutory provisions could theoretically hold the treating physician civilly liable for a breach of professional medical confidentiality, even though the physician had zero technical control over the application's cybersecurity frameworks.

Finally, the lack of a specialized medical dispute resolution mechanism for telemedicine complicates the realization of post-pandemic legal certainty. In traditional Indonesian medical law, disputes are mediated through the Indonesian Medical Discipline Honorary Council (MKDKI). However, the MKDKI's jurisdictional mandate is strictly confined to investigating the professional ethical conduct of individual natural persons holding medical licenses. It lacks the statutory authority to investigate, subpoena, or penalize corporate tech entities or digital platform developers whose operational algorithms, internet latency, or interface designs may have directly contributed to a diagnostic error. This systemic boundary leaves a massive regulatory blind spot where corporate platforms enjoy economic gains from digital healthcare facilitation while systematically shifting the entire burden of clinical, civil, and criminal liability onto the individual healthcare practitioner.

Conclusion

The post-pandemic transition of telemedicine in Indonesia from a crisis-driven health tool to a permanent fixture of national healthcare has exposed profound systemic gaps within the domestic normative juridical structure. While the overarching Omnibus Health Law (UU No. 17/2023) recognizes digital medicine, the statutory framework remains highly fragmented, creating severe legal uncertainty regarding the exact boundaries of medical malpractice, the validity of electronic informed consent, and corporate data liability under the Personal Data Protection Law. The current legal architecture improperly forces a modern, digital paradigm into traditional legal doctrines designed for face-to-face clinical encounters, resulting in an inequitable distribution of liability that overly burdens individual medical practitioners while offering ambiguous consumer protections to the patient.

To rectify these statutory inconsistencies, it is highly recommended that the government of Indonesia urgently enact an explicit, unified Government Regulation (Peraturan Pemerintah) dedicated entirely to Digital Health and Telemedicine. This new regulatory instrument must clearly define the distinct legal identity of telemedicine, establish an altered standard of care that accounts for the technical limitations of remote diagnosis, and legally codify a standardized model for electronic medical informed consent. Furthermore, the regulatory framework must introduce a joint-liability paradigm that legally binds third-party digital platforms to share civil accountability with clinicians when technical system failures or algorithmic errors lead to adverse medical outcomes. Finally, the jurisdiction of digital medical dispute resolution bodies must be expanded to handle multi-party claims involving both medical professionals and digital technology corporations, thereby securing comprehensive legal certainty, safeguarding patient welfare, and fostering a resilient digital healthcare ecosystem in the post-pandemic era.

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