



# A Legal Concept of Post COVID-19 Telemedicine Practices in Foundation and Corporate Hospital

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**Abstract.** Hospitals have changed their services through technology and communication called telemedicine. This change was happened due to COVID-19 Pandemic and disruption of 4.0 industry revolution. Telemedicine practices happen in two types, which is the real time (synchronous telemedicine) using the phone or platform and the store-and-forward (asynchronous), where the patient and doctor compile the medical records and send it to the medical specialist for further diagnostic and medical recommendation. The regulation published by the Health Ministry on 2021 became ruling for telemedicine implementation and also the doctor's council regulation on 2020 had given the authority for doctors to practice telemedicine in the hospital where they work during the COVID-19 pandemic. However, telemedicine hasn't cover by a higher legislation, especially for post-pandemic situation in Indonesia. This problem is important, as the consequence of its legal relationship which each party in telemedicine has its legal certainty and furthermore, their legal protection. This research will be focusing on the philosophy of legal protection for hospital, doctor and patient through the concept of telemedicine by laws. It is a normative research, using the statute and conceptual approach. The research conclusion is an adjustment of a legislation will be needed, especially regarding the post-COVID 19 implementation of telemedicine and its legal protection held by the hospital

**Keywords:** hospital, legal protection, post COVID-19, telemedicine.

## 1. Introduction

Long before the COVID-19 stated as global pandemic, telemedicine has been practiced to give healthcare services. For Indonesia itself, reached its peak in the midst of 2020 to 2021. On that time, telemedicine healthcare service was used to kept as minimum as possible for patient to gain direct healthcare service. Also, this is become the strategy from the government to breakdown the transmission of corona virus cycle. Therefore, hospital needs to provide healthcare service to people, the best practice to apply during that situation is advancing the technology. Creating a healthcare service which allowing patient and doctor communicate through virtual media to do the consultations.

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This healthcare services have their legal foundation through the Guideline for Medical Services via Telemedicine during the Corona Virus Disease 2019 (COVID-19) Pandemic from the Health Minister Ruling of Indonesia Number HK.01.07/MENKES/4829/2021. This ruling become the basis for hospitals to organize their telemedicine services. In addition to this regulation, doctors have their own regulation regarding this through Indonesia Medical Council Number 74/20220 regarding Clinical Authority and Medical Practices via Telemedicine during the Corona Virus Disease (COVID-19) which use as the clinical guideline for doctors to practice telemedicine. However, those regulations were considered as a temporary regulation, which exclusively governs telemedicine during COVID-19 pandemic situation. Whereas, this COVID-19 pandemic status has been revoked on 21<sup>st</sup> July 2023, thus telemedicine services after COVID-19 pandemic is not yet regulated in any specific regulation.

As the House of Representative's Plenary pass the Health Bill into law on 11<sup>st</sup> July 2023 therefore this became the latest Health Law Number 17/2023 which in several articles has governed about telehealth and telemedicine. Due to this new law, the regulations regarding the implementation of telehealth and telemedicine shall technically specify for their organization models, every parties position in this service, and also the scope of hospital telemedicine service. Either the telemedicine service is held by the hospital which incorporated as foundation or limited liability company (LLC). Foundation and LLC are the legal entities for hospital, which has a different characteristic. Legal entity or legal person is defined by Black's Law Dictionary[1]: as a body, other than a natural person, that can function legally, sue or be sued, and make decisions through agents.

Foundation has the characteristic of non-profit, whereas LLC is a profit organization. According to Lennox Raphael Eyvindr, foundation is an organization that does not issue stock shares or distribute its surplus funds to owners or shareholders, but instead uses the funds to help achieve its goals [2]. While LLC, (in Dutch: *Naamloze Vennootschap*) is a legal entity to run a business for financial gains as opposed to a foundation which is a non-profit organization which characterizes a non-profit or social organization and business organization as [3]:

*One of the distinguishing economic characteristics of a social institution is that its equity capital has been donated. That is to say, the sources of equity capital retain no proprietary interest in it. In contrast, the equity capital of a business has been invested, i.e. the providers of capital retain a proprietary interest through the holding of shares or other means. In such cases, the investors expect to realize an economic return, either in the form of dividends or through an appreciation in the value of the interest they hold.*

The fact that the ratio of Indonesia's medical staff number, especially doctors were still not yet an ideal to the number which WHO stated. As the data on 2014, health department recorded 95,976 doctors were registered and worked in the health

sector. Nevertheless, the Indonesia's population is 243,6 million. According to this number as stated, the ratio become 1:2.538 population [4].

*Table 1. Doctors Ratio for every 10.000 residents in Southeast Asia (2020)*

No	Country	Ratio
1	Singapore	24,6
2	Malaysia	22,86
3	Brunei	16,09
4	Thailand	9,5
5	Vietnam	8,28
6	Filipina	7,73
7	Myanmar	7,37
8	Indonesia	6,23
9	Laos	3,54
10	Kamboja	1,93

As WHO states the ideal number ratio is 1:2.500 population. In accordance to the data above, our doctor to population is not in an ideal condition. Especially, when most of the doctors only centralized in Java island, and particularly in the big cities only outside Java island. This empirical situation also similar to the hospitals which mostly located in Java island and big cities. On the other hand, this situation is challenging since Indonesia is an archipelago country. The deployment for doctors and hospitals healthcare service is the main problem here, in that case the use of technology in healthcare service, such as: telehealth and telemedicine, will be a solution to address this obstacle. We may consider telemedicine as divergence of hospital service as the effect of technology.

For a comparison, in the USA, they regulate telemedicine in several acts including Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economy and Clinical Health Act (HITECH Act). Another comparison we might take a look at Netherlands, this country use the Medicine Act and Medical Device Act, and the information and technology communication regulation in European Union.

Hence, a legal framework on telemedicine is require to construct a legal framework for future juridical and empirical basis. Also, specific regulation regarding telemedicine on post COVID-19 situation—right now—is needed to give legal certainty and safety value. This legal construction framework will be use as a legal finding method when there is no regulation that specifically governs this situation. Therefore, this legal construction can be done using the logic thinking. According to Logemann, they include analogy construction, legal refinement construction (*rechtverfijning*), and *argumentum a contrario* (argument from the contrary construction) [5]. These constructions are necessary to find a legal substance, culture, structure and implementation formulation regarding telemedicine, in order to ensure

its application is appropriate without overlooking the legal objective (justice, utility and legal certainty).

Based on the explanation above, this article aims to layout the telemedicine legal framework concept by observing from its implementation on hospitals, either it's incorporated as foundation or LLC from the current regulation (*ius consitutum*). Also, the *ius constituendum* that would be needed as the implementing regulation of Health Law 17/2023.

## 2. Problems

Based on our discussion above, our research problems are:

- a. What are the legal concepts of telemedicine held by hospital according to Indonesia's regulation of telemedicine?
- b. How is the future regulation (*ius constituendum*) shall be regulated in post COVID-19 Pandemic situation after the Health Law passing?

## 3. Method

This research is a normative study, which focuses on legal documents study [6]. In order to answer the research problems above, the statute approach is use as the primary source for analysis which are including the Health Law 17/2023 and conceptual approach is use as the secondary source from books and other literature related to post COVID-19 telemedicine discussions.

## 4. Discussion

### 4.1. Legal Concept and Existing Regulation of Telemedicine

As we stated before, telemedicine has been known long before COVID-19 pandemic. Hospitals in Indonesia actually has developed a pilot project to use technology in their healthcare services since 2014 [7]. Some of the services that were developed are: teleradiology, telecardiology, teleconference, video conference and tele-radiotherapy. Moreover, 4.0 industrial revolution also become the reason that makes the conventional healthcare service shifts to the online-based service using the technology [8].

On 2017, government released the regulation regarding National E-Health Strategy through Health Minister Regulation Number 46/2017. This strategy aims to approach the planning, development, implementation and evaluation of the use of technology on healthcare service. In the annex of this regulation, E-Health itself is defined as: "the use of information and communication technology for healthcare

services and information to improve the quality of healthcare services and optimize work processes”.

During the COVID-19 pandemic, E-Health grows much faster, since government states to restrict the public mobility and significantly doctor and patients meeting were limited [9]. However, the healthcare services are needed either for the people itself or families [10]. In accordance of this situation, E-Health has been intensively developed until today, especially the telemedicine service. Telemedicine is the transfer of medical information and expertise via telecommunications and computer technologies, to facilitate diagnosis, treatment, and management of patients [11]. The telemedicine service may be differentiate by two concepts: 1) Synchronous telemedicine, also known as the real-time telemedicine that may take in a simple form, such as using the telephone, and 2) Asynchronous telemedicine, that is known as store-and-forward telemedicine where patient and doctor collecting medical history, photos, and pathology reports, and subsequently send them to a specialist doctor for their diagnostic expertise [12].

On Article 1 point 1 of the Health Minister Regulation Number 20/2019 regarding the Implementation of Telemedicine Cross Health Facilities, states that telemedicine is a remote health care provision by health professionals by means of information and communication technology that includes exchanging diagnosis information, medical treatment, disease and injury prevention, provision of healthcare service to improve the health of the individuals and the community. Meanwhile in the following year, Indonesia's Medical Council Number 74/2020 was released a regulation regarding Clinical Authority and Medical Practices via Telemedicine During the COVID-19 which only restricts the use of telemedicine among doctor and dentist. These two regulations have become the basic regulation for telemedicine during the early COVID-19 pandemic situation. However, the Health Minister later on released another regulation regarding Guideline for Medical Services via Telemedicine through Health Minister Regulation Number HK.01.07/MENKES/4829/2021, which become the new legal basis for hospitals to organize telemedicine services for their patients and doctors whom work directly for hospitals. Unlike the previous Health Minister Regulation, which only provides the cross-healthcare facilities telemedicine. Through those regulations, we may conclude that regulation on telemedicine were still limited on cross-healthcare facilities service, while now, telemedicine is mostly used directly between doctor and patient. Therefore, it indicates a legal vacuum in the aspect of doctor-patient regulation.

In early July 2023, the new Health Bill has passed into law through omnibus-law method [13]. Legislators has observed and put telemedicine in several norms through the Health Law 17/2023 as one of the transformations on health system in Indonesia. As in Health Law 17/2023 Article 1 point 23 states: telemedicine as the provision of healthcare service facilities, clinical in nature, which includes medical/clinical cares and/or health consultation services through telecommunication and digital communication technology. Based on this statement, we may see that

legislator has emphasized telemedicine service on the consultation between doctor and patient. Unlike the previous regulations which limited only on cross-healthcare facilities.

Based on Health Law Article 21 paragraph (2), states that telemedicine is used in the provision of clinical health services. In providing a healthcare service, doctors make some attempts to cure their patients. To do this, they are supported with the healthcare service facilities [14]. Healthcare service is also part of the disruptive technology advancement [15]. Further, from Article 169 paragraph (1) of the Health Law, these healthcare service facilities can be delivered through a telehealth and telemedicine service. For telemedicine service, in particular, it is to be managed by medical staff or health professionals with medical licenses, as regulated in Article 169 paragraph (4) of the Health Law. In Article 169 paragraph (5) of the Health Law, regulation about organizing a telemedicine service will be further regulated in government regulation.

Since the COVID-19 pandemic status has been revoked, right now, there were no legal foundation to replace the previous for hospitals to organize their telemedicine services. Therefore, there were a legal vacuum in the implementation of telemedicine healthcare service. On its execution, telemedicine practices are prone to errors and miscalculations [16]. This is also in line with the statement from Bernhard H. Sianipar: the implementation of Indonesia's healthcare service is not yet optimum due to the absence of the guideline standard [17]. In accordance to this problem, a regulation regarding protection for hospital, doctor and patients is highly required [18].

#### **4.2. *Ius Constituendum Telemedicine Hospital Post COVID 19 and Health Law 17/2023***

The emergency status of COVID-19 pandemic which WHO declared on 2020 were no longer a global pandemic, as Indonesia has revoked this status effectively on 5<sup>th</sup> May 2023 through the President's Ruling Number 17/2023 regarding The Decision to End the COVID-19 Pandemic Status in Indonesia. Therefore, all the regulations regarding telemedicine during COVID-19 pandemic are no longer valid [19]. The remaining regulation were only the general regulations serving as the legal basis for hospital services, doctor practices, and health professional practices are those regulations that predominantly could become the implementation guidance, in addition to patient-hospital contract and doctor-patient contract bound by the therapeutic agreement, which acts as the basis for the legal relations that arises, as illustrated below:

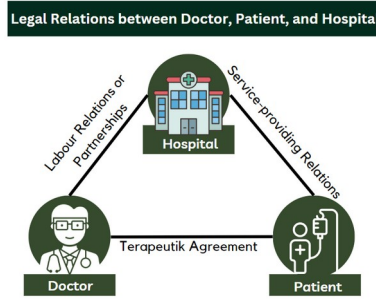


Fig 1. Legal Relations between Doctor, Patient, and Hospital

The enactment of Health Law Number 17/2023, the new health regulations and norms, an *ius contitutum* stemming from the inapplicability of the existing regulations to regulate about telemedicine will provide the legal basis for the implementation of telecommunication technology-based healthcare services, i.e. telemedicine. The Health Law 17/2023, a legal product that applies the Omnibus Law drafting method, has revoked the following 11 laws:

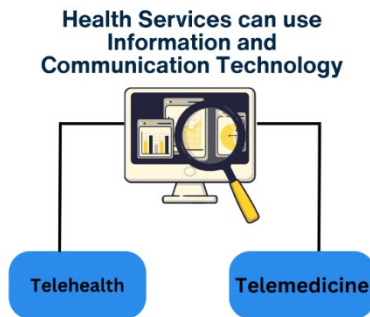
- a. Law No. 419 year 1949 on the Ordinance of Prescription-Only Drugs (Staatblad 1949 Number 419);
- b. Law No. 4 year 1984 on Contagious Disease Outbreaks
- c. Law No. 29 year 2004 on Medical Practices
- d. Law No. 36 year 2009 on Health
- e. Law No. 44 year 2009 on Hospitals.
- f. Law No. 18 year 2014 on Mental Health
- g. Law No. 36 year 2014 on Health Professionals
- h. Law No. 38 year 2014 on Nursing
- i. Law No. 6 year 2018 on Health Quarantine
- j. Law No. 20 year 2013 on Medical Education
- k. Law No. 4 year 2019 on Midwifery

Other than some brand-new contents, the Health Law 17/2023 revokes regulations with similar types and hierarchies and combines them in the Health Law 17/2023 as described above, and also amend/change content materials with connection to and/or legal needs regulated in other various laws and regulations.

In principle, health care is organized through promotive, preventive, curative, rehabilitative, and/or palliative efforts, which may have either communal impacts or only individual impacts. [20] Health care management manages the health care efforts and resources that may consist of healthcare service facilities, health care human resources, health care training, health care financing, health technology, and health

information system. First health care effort is a service organized through a primary service, i.e. a healthcare service that delivers individual health care effort, public/community health care effort, and community-resourced health care effort, as the closest, first-contact, community-facing effort, which consist of promotive, preventive, curative, rehabilitative, and/or palliative services for each and every single life phase. Secondly, a follow-up healthcare service, which is a specific and/or sub-specialty service that advances curative, rehabilitative, and palliative service, without overlooking the promotive and preventive aspects.

In essence, both the primary healthcare service and the follow-up healthcare service, may utilize information and communication technology in the forms of telehealth and telemedicine.



**Fig 2.** Type of Health Service

The Health Law Number 17/2023 consist of 20 chapters is the legal basis to transform policies, which is prepared and drafting to be implemented with various derived regulations. A derived regulation may be a government regulation (*regeling*) or a health ministry regulation (*beschikking*) or formed by drafting an implementing regulation as comprehensive and extensive as omnibus law. The Chapter X of the Health Law 17/2023 specifically regulates the Health Technology. Article 169 paragraph (1) of the Health Law 17/2023 specifies that healthcare services and healthcare service facilities may be provided through the telehealth and the telemedicine services. Next, article 169 paragraph (5) of the Health Law 17/2023 states that the organization of a telemedicine service will be further regulated in government regulation.

The transformation of health technology, which is divided into information technology and biotechnology, is the subject matter that should be regulated in the implementing regulations. Some norms to be regulated in the telemedicine-related implementing regulations are those in regard to health information system which include:



- a. Building health information system that can be accessed by central government, regional government, fasyankes, and the people, either individuals or groups.
- b. Data and information can be sourced from fasyankes, central and regional agencies, bodies or institutions organizing the national social security program, other bodies or institutions organizing activities in health sector, community activities outside fasyankes, and independent reporting.
- c. Data and information management and provision refers here to leveraging the data and information management activity to conduct individual health, community health, health development, and policymaking. People could access only those data which are public and could also access their own health data through the Health Information System.
- d. Data and information protection; the organizer of the Health Information System shall warrant the protection of every individual's health data and information. Individual health data is subject to the data owner's approval, and to him/her information shall be given when the protection to their data and information fails. In addition, it should also be reported to the law enforcement agencies when and if serious failure and/or disruption takes place.

The entire health information system above needs to be constructed in integration with the national health information system.

Hospital, based on the Health Law Number 17/2023, can be managed by the central government and regional government using public service agency/BLU financial management, or individuals owning an incorporated healthcare all service and foundation (non-profit agency). Hospitals incorporated as a limited liability company, management is run under the principles of Good Corporate Governance, or the Good Non-Profit Governance for those incorporated as foundation, they include accountability, responsibility, transparency, fairness, and independency. As a business entity, hospitals shall put weight on the efficiency and effectiveness principles basing them on social and humanity values as hospital service characteristics. Hence, this makes standard operational procedures holds strategically important position to adopt the above principles and values to be used as the basis in its drafting as the implementing regulation at hospital level. From the analogy in legal construction, a standard operational procedure as an implementing regulation of the Hospital's Bylaws equals to government regulation (*regeling*) or health ministry regulation (*beschikking*), which are the implementing regulations of the Health Law 17/2023. The scope, procedures, governance, rights, and responsibilities in implementing telemedicine require accurate and appropriate regulation to be used as guidance for all parties bound together in telemedicine implementation. This technical regulation would be best regulated in the standard operational procedures of the hospital, where it certainly cannot in any way go against the higher regulations, yet perfectly reflects the telemedicine services used in such hospital. [21] Norms to be strongly upheld within the hospital's standard operational procedures are the protection of every

individual's data and information and data and information management and provision. A standard operational procedure is a delegation as regulated in Article 291 (4) of the Health Law 17/2023 and is to be determined by the management of the Healthcare Service Facility. The regulation decided by the management of the fasyankes is the Regulation of the Director of the Hospital on Standard Operational Procedures of Hospital Telemedicine Service.

## 5. Conclusion

Hospital telemedicine as a legal concept regulated in the Health Law 17/2023, which should be regulated in an implementing regulation, either a government regulation (*regeling*) or a health ministry regulation (*beschikking*), and also in the hospital standard operational procedures. Relevant to the legal objective of creating a more well-structured and balance public order. By achieving a well-ordered society, it is expected that on its way to achieve their goals human interests are protected. The implementing regulation of the Health Law 17/2023 should be explicitly and definitively made and enacted to be able to regulate in a clear fashion, leaving no room for doubt (multiple interpretation), as well as logical; and put them into a single norm system to prevent conflict among norms that regulate about telemedicine services.

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