



LIMITATIONS OF CLINICAL AUTHORITY AND MEDICAL PRACTICE THROUGH APPLICATION-BASED TELEMEDICINE

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Submitted: March 17, 2023; Reviewed: March 21, 2023; Accepted: March 31, 2023
DOI: 10.2504/iplr.v4i1.2962

Abstract

Telemedicine is a technology-based health service that can be carried out remotely by health workers to improve public health. This study aims to determine the status of telemedicine service provider applications in medical practice therapeutic transactions, the status of doctors' practice licenses (SIP) in telemedicine practice, and the limits of clinical authority that doctors can exercise in providing medical services form of Telemedicine. This research method is normative juridical by analyzing library materials, secondary legal materials, and the results of interviews with informants. The study results found that the telemedicine service provider application is not an official health facility, the SIP used as a requirement in telemedicine-based applications does not comply with applicable regulations, and the limited clinical authority for telemedicine practice is consultation and initial therapy.

Keywords: Clinical Authority, Medical Practice, Telemedicine.

A. Introduction

The development of technology has become something that cannot be ignored today. The use of *smartphones* and the internet is increasingly widespread and continues to develop rapidly. This ever-moving technological development forces other sectors to follow the changes happening. Like the emergence of *online transportation*, *online shopping*, learning, and teaching activities can be done *online*, this situation also encourages changes in the world of health. Medical devices are increasingly sophisticated, and the interaction or way doctors communicate with patients is now much easier and cheaper.

Accessing health services is still a problem. Referring to the situation above, various countries have made inroads to improve health services by utilizing technology and information media through online medical applications or other social media communications, which we are usually familiar with as Telemedicine. With the presence of Telemedicine in the world of health, it is hoped that it will be able to answer the challenges posed by the situation, namely that patients can consult doctors remotely. This has many benefits, especially for archipelagic countries like our country Indonesia. *Telemedicine* also makes it easier for people to access health services wherever they are because nowadays, almost everyone has a *smartphone* and gets internet access.¹

In addition, with the Covid-19 Pandemic, this *Telemedicine* is also very beneficial for self-isolation patients with complaints during isolation. Patients can consult doctors or other health workers easily, without the risk of infecting others, while protecting doctors and other health workers from exposure to the coronavirus. Almost all Health Service Centers have opened

¹Carolina Kuntardjo, 'Dimension of Ethics and Telemedicine in Indonesia: Enough of Permenkes Number 20 Year 2019 As a Frame of Telemedicine Practices in Indonesia?', Soepra, 6.1 (2020)

access to Telemedicine for self-isolation services and other diseases. Mainly to control self-isolation patients, every Doctor at the first level uses this technology. Coupled with the convenience and low cost, Telemedicine is the right choice to answer the challenges posed by this pandemic.

The health technology mentioned above includes all medical procedures and devices used to prevent health problems from occurring, including treating health problems, and all tools must follow the general rules that apply in the regulations that govern them. With regard to regulations regarding telemedicine services, it is implicitly determined in Law no. 36/2009 Article 42 paragraph 1, technology and health technology products to be procured must be researched, circulated, developed and utilized for the sole benefit of public health.² The application of Article 42 is when a medical device will be made, especially concerning the presence of *online technology* that allows providing health services without being limited by distance and providing prescriptions to buying medicines easily and practically via the internet or *online media*.

Another statement regarding *Telemedicine* has contained in Permenkes No. 20/2019 states that *Telemedicine* must be carried out in the same way as the principles in Permenkes No. 1438/2010 in Article 10, which states that clinical practice guidelines must include something certain, as well as complete the actual or physical and mental assessment of the patient. Undergoing this stage, it is undeniable that *Telemedicine* meets a very important limitation. There must be limitations from the data sent by the patient because doctors do not make direct observations, and this will affect the resulting diagnosis related to the selection of drugs to be prescribed by the Doctor.

Permenkes No. 20/2019 is limited to regulating *telemedicine regulations* between Health Service Facilities (Fasyankes). This Regulation regulates *telemedicine activities* between one health facility and another. Among them, related to Practice License (SIP), accreditation, confidentiality of patient's electronic medical records, liability in the event of malpractice, clinical guidelines and insurance. It's not about Telemedicine that happens directly between doctors and patients, like what's happening nowadays so that the presence of Telemedicine cannot be denied and also has the potential to cause legal medical disputes.³

Regarding the *Corona Virus Disease 2019* (Covid-19) Pandemic, the Indonesian Medical Council issued Perkonsil No. 74/2020 Covid-19 Pandemic in Indonesia. Article 3 states that, Medical practice during the Covid-19 Pandemic may be carried out by Doctors or Dentists either face-to-face or by utilizing technology using applications/systems in the form of Telemedicine *with regular apply the concept of effective communication*.

Telemedicine regulations in Indonesia are still insufficient to cover all actions in *telemedicine transactions*, especially for legal protection for doctors who are legal subjects. Given that until now, every *telemedicine transaction* must be under a Health Service Facility or *Online Doctor Consultation Service provider*. So, the Doctor here, as a consulting service provider, is not the main person who makes this transaction possible.⁴

The importance of the position and existence of *Telemedicine*, especially in dealing with the Covid -19 Pandemic, the existing regulations and laws are inadequate and disproportionate. Given the risky position of doctors in implementing *telemedicine services*, with the above considerations. The importance of the position and existence of Telemedicine, especially in dealing with the Covid -19 Pandemic, regulations and laws that are inadequate and disproportionate. Given the risky position of doctors in providing telemedicine services.

²Carolina Kuntardjo, 'Dimension of Ethics and Telemedicine in Indonesia: Enough of Permenkes Number 20 Year 2019 As a Frame of Telemedicine Practices in Indonesia?', *Soepra*, 6.1 (2020)

³ Sherly Primavita, Nayla Alawiya, Ulil Afwa (2021). Tanggung Jawab Hukum Dokter dalam Pelayanan *Telemedicine*. Fakultas Hukum Universitas Jenderal Soedirman.

⁴ Sari, Grenny Gustina, Welly Wirman (2021). *Telemedicine* sebagai Media Konsultasi Kesehatan di Masa Pandemi Covid-19 di Indonesia. *Jurnal Komunikasi*, 15(1), 43-54.

This research method is normative juridical by analyzing library materials, secondary legal materials, and the results of interviews with informants. The study results found that telemedicine service provider applications are not official health facilities, SIPs used as requirements in telemedicine-based applications do not comply with applicable regulations, and limited clinical authority for telemedicine practice is consultation and initial therapy.

B. Discussion

1. *Telemedicine* Service Provider Applications In Therapeutic Transactions

Telemedicine applications that are permitted by Regulation are applications owned by the Ministry of Health (Kemenkes) or owned by private companies registered with the Ministry of Health. Meanwhile, *telemedicine* activities are regulated by Permenkes No. 20/2019, namely activities that occur under the supervision of Health Facilities. Kepmenkes No also reinforces this statement. HK. 01.07/MENKES/4829/2021 CHAPTER II states that Health services through *Telemedicine* carried out by health service facilities can use applications developed by the health facilities themselves or with private parties.

Thus, it can be interpreted that the practice of *Telemedicine* must be under the supervision of healthcare facilities. At the same time, the practice of *Telemedicine* that occurs a lot in the community is utilizing applications that are not health service facilities. This is stated in the terms and conditions of one of the *telemedicine application service providers* (Halodoc) in point m, which reads, “ We are a technology company, **not a health service provider**, and we **do not provide health services**. We **do not employ Service Providers**, and We are not responsible for the actions, carelessness, negligence, and negligence of Service Providers. The platform is an online information and communication service provided by Halodoc.”

The above statement creates a bias toward existing regulations related to *Telemedicine* in Indonesia. On the one hand, the Regulation emphasizes that *Telemedicine* must be under the health facility. Still, on the other hand, the Regulation also states that *telemedicine practice* can be carried out by utilizing government or private applications as long as it is registered with the Ministry of Health. Meanwhile, the platform, currently an application-based *telemedicine service provider*, has proclaimed that it is not a health service facility which should not have the right to provide telemedicine services.

This is intended that there will be difficulties if there is a conflict or medical dispute that occurs in application-based *Telemedicine*, where the position of the Doctor as the provider of *telemedicine services*, does not have any legal power and must bear all claims alone. If we review it again, doctors are not the only parties that make this *telemedicine therapeutic transaction possible*.

Following the grammatical definition of the theory of legal protection put forward by Salim and Erlis Septiana, namely a place of refuge, or things (actions) to protect. About *telemedicine practice* here, the position of a doctor is not to protect, while the Doctor here is a party who should also have the right to protection. But doctors seem to be acting alone without anyone protecting them because there are no health facilities to protect doctors. The service provider platform has declared that anything related to the service provider is not responsible for everything that happens even though his party is also the party that benefits the most from this *telemedicine therapeutic transaction*.

In practice, *Telemedicine* has been applied to two concepts, namely:

- a. *Telemedicine* in real-time, which is as simple as using a telephone, in this case, requires the presence of both parties at the same time so that there is a connecting medium between the two parties that can offer real-time interaction, one of the parties can carry out health care.⁵

⁵ Andrianto, Wahyu, and Atika Rizka Fajrina. "Tinjauan Perbandingan Penyelenggaraan *Telemedicine* Antara Indonesia dan Amerika Serikat." *Jurnal Hukum Kesehatan Indonesia* 1, no. 02 (2021): 70-85.

- b. Telemedicine in store and forward includes collecting medical data and sending this data to a doctor at the right time for offline evaluation; this type does not require the presence of both parties at the same time. Dermatology, radiology, and pathology are specialists who usually use store and forward medical records in a proper structure.⁶

The development of the health sector is aimed at increasing awareness, willingness and ability to live healthy for everyone to realize an optimal degree of health as one of the elements of well-being as mandated by the Preamble to the 1945 Constitution of the Republic of Indonesia. Doctors and dentists, as one ⁷of The main components of providing health services to the community, have a very important role because it is directly related to the provision of health services and the quality of services provided. The merging of technology with health services has led to innovations in the field of medicine in the form of Telemedicine. Telemedicine can be said to use information and communication technology to provide medical services remotely or without face-to-face contact. ⁸Communication facilities used can be in the form of telephone, video calls, internet sites, or other sophisticated communication tools.

Health facilities through Telemedicine as a systematic, consolidated, and sustainable health effort to maintain and advance public quality by monitoring the disease, promoting health, treatment, and healing as specified in Article 1 point 12 UUK. ⁹Meanwhile, Law Number 29/2004 concerning Medical Practice (after this referred to as UUPK) does not specifically regulate health services. Related to the Regulation regarding health services through Telemedicine which is implicitly stipulated in the UUK, it is determined that before being circulated for use for public health, technology, and technological products must be examined first; health technology means all medical methods and devices that can help prevent health problems or treat health problems. , and all tools must meet the general provisions in the relevant regulations. Further provisions regarding telemedicine arrangements are specified in Article 42 of the UUK.

The health technology referred to in the provisions of Article 42 UUK are means, methods, processes, or products resulting from applying and utilizing scientific disciplines in the health sector that generate value for fulfilling needs, continuity, and improving the quality of human life. ¹⁰One of the applications in Article 42 is with the technology products produced, namely by having online clinics that help the community by providing health analyses and remote examinations with patients and providing prescriptions, and buying medicines practically with online media. The legal basis for telemedicine health services is Article 42 without forgetting the Good Faith Principle as the basis for its implementation as stipulated in Article 1338 paragraph (3) of the Civil Code, which states good faith as the basis of an agreement. The utilization of Information Technology underlies health services using online media and increases effectiveness, and maximizes public service.¹¹

Legal developments regarding the Regulation of the practice of health services through Telemedicine are regulated in Regulation of the Minister of Health Number 20 of 2019

⁶ Ganiem, Leila Mona. "Efek Telemedicine Pada Masyarakat (Kajian Hukum Media McLuhan: Tetrad)." *Interaksi: Jurnal Ilmu Komunikasi* 9, no. 2 (2021): 87-97. <https://doi.org/10.14710/interaksi.9.2.87-97>

⁷ Basuki, Udiyo. "Merunut Konstitusionalisme Hak Atas Pelayanan Kesehatan Sebagai Hak Asasi Manusia." *Jurnal Hukum Caraka Justitia* 1, no. 1 (2020): 21-41. <http://dx.doi.org/10.30588/jhcj.v1i1.699>

⁸ Alfaruqy, Zefri, and Irwansyah Irwansyah. "Aplikasi Halodoc sebagai Bentuk dari Konstruksi Sosial dalam Media Baru di Masa Pandemi Covid 19." *Syntax Literate; Jurnal Ilmiah Indonesia* 7, no. 2 (2022): 2835-2848. <https://doi.org/10.36418/syntax-literate.v7i2.6379>

⁹ Simatupang, Juni Rahmadhani, and Sudi Fahmi. "EFEKTIVITAS PENGGUNAAN MEDIA TELEMEDICINE BERDASARKAN HUKUM INDONESIA DAN MALAYSIA." *Jurnal Hukum Samudra Keadilan* 18, no. 1 (2023): 15-32. <https://doi.org/10.33059/jhsk.v18i1.7183>

¹⁰ Mariso, James Hokkie. "Analisis Yuridis Tentang Upaya Kehamilan Diluar Cara Alamiah (Inseminasi Buatan) Menurut Undang-Undang Nomor 36 Tahun 2009 Tentang Kesehatan." *LEX ET SOCIETATIS* 6, no. 6 (2018).

¹¹ Dharmanu, I. Putu. "Modernisasi dan Inovasi dalam Pelayanan Publik Melalui E-Government di Kota Denpasar." *Adhum: Jurnal Penelitian dan Pengembangan Ilmu Administrasi dan Humaniora* 7, no. 2 (2017): 93-108.

concerning Telemedicine Services between Health Service Facilities.¹²Based on this Permenkes, it is stated that to bring specialist health services closer and improve the quality of health services in health service facilities, especially in remote areas, various efforts have been made, one of which is through the use of information technology in the health sector in the form of consultation services between health service facilities through Telemedicine.

Dr.Denny Priyanto, a practicing doctor who practices *Telemedicine*, said that he did not know that the *platform* was not included in the category of health facilities and that the *platform* was also not responsible for anything that might occur in therapeutic transactions. Because this was not explained at the start of partner recruitment, and it's possible that this doesn't just happen to dr. Denny, but also other doctors who practice *Telemedicine*.

Applications that provide *telemedicine services* do mention that they have collaborated with health facilities. Still, it is not clear which health facilities and which areas are referred to in the statement so that it cannot be used as a reference in determining the position of applications in currently ongoing therapeutic transactions.

2. SIP Doctors Who Practice With Application-Based *Telemedicine*

A practicing doctor must have a Registration Certificate (STR) and a Practice Permit (SIP). However, the SIP and STR requirements that were put forward were not explained in detail regarding the type. Both SIP¹³ and STR¹⁴ consist of several types that have different authorities. It's just that the SIP listed in the regulations above does not explain what SIP is allowed. Likewise, with the STR, which is used as a requirement, it is not clear what STR is intended. Thus, it can be biased and can allow for abuse of authority.

Telemedicine is the use of information and communication technology combined with medical expertise to provide health services, ranging from consultations to diagnoses, without being limited by space or carried out remotely so that doctors can provide health services through telecommunication, audio, visual and data media that can connect health service facilities although geographically separated. The differences in time, place, and distance are no longer obstacles to the therapeutic relationship between doctors and patients.¹⁵

The main foundation for doctors and dentists to be able to perform medical procedures on other people is their knowledge, technology, and competencies, which are acquired through education and training.¹⁶ Their knowledge must be continuously maintained and improved according to the progress of science and technology itself. Doctors and dentists with their scientific devices have unique characteristics. This uniqueness can be seen from the justification given by law, namely the permissibility of carrying out medical actions on the human body in an effort to maintain and improve health status.¹⁷

The practice of medicine from a legal perspective is a concrete legal act that must be accounted for by a legal subject, be it a doctor (*natuurlijk person*) and a hospital or clinic (*recht person*).¹⁸ This responsibility is the anticipation of malapractice and malaadministration.

¹² Kuntardjo, Carolina. "Dimensions of ethics and telemedicine in Indonesia: Enough of Permenkes Number 20 year 2019 as a frame of telemedicine practices in Indonesia?." *Soepra* 6, no. 1 (2020): 1-14. <https://doi.org/10.24167/shk.v6i1.2606>

¹³ Surat Izin Praktek (SIP) adalah Berkas yang menunjukkan bahwa seorang dokter dapat berpraktik di wilayah tertentu. Seorang dokter memiliki hak 3 wilayah untuk berpraktik, kecuali pada kondisi tertentu. SIP terdiri dari SIP Internsip, SIP Residensi dan SIP Definitif..

¹⁴ Surat Tanda Registrasi (STR) dokter adalah bukti tertulis yang diberikan oleh korsi Kedokteran Indonesia Kepada dokter dan dokter gigi yang telah di reg.istrasi. STR terdiri dari STR Internsip, STR Residensi dan STR Definitif.

¹⁵ Arman Anwar, *Legal Aspects of Telemedicine*, Ambon: Patimmura University, 2013, p. 2

¹⁶ Rasyidah, Aulia, and Dinda Delfina. "TINJAUAN HUKUM IZIN PRAKTIK DOKTER ATAS PENYELENGGARAAN PELAYANAN TELEMEDICINE." *Artificial Dalam Bidang Hukum Di Era Teknologi Informasi: Tantangan Dan Peluang*: 85. <https://doi.org/10.31004/jpdk.v5i1.11091>

¹⁷ Willem, Maikel D. "SANKSI HUKUM ATAS PELANGGARAN DISIPLIN DOKTER ATAU DOKTER GIGI MENURUT UNDANG-UNDANG NOMOR 29 TAHUN 2004 TENTANG PRAKTIK KEDOKTERAN." *Lex Et Societatis* 5, no. 10 (2017). <https://doi.org/10.35796/les.v5i10.18482>

¹⁸ Veronica Komalawati, S. H. "Kompetensi Dan Kewenangan Praktik Kedokteran: Perspektif Hukum Di Indonesia." *Jurnal Ilmiah Hukum DE'JURE: Kajian Ilmiah Hukum* 3, no. 1 (2018): 147-166. <https://doi.org/10.35706/dejure.v3i1.1891>

Evidence that serves as an indicator of whether an error has occurred is a medical record. Medical records are files that contain notes and documents regarding patient identity, examination, treatment, action and other services to patients in health care facilities (Permenkes Number 269 of 2008). regarding medical records). Medical records can be in manual or electronic form.

Doctors who are in charge of providing health services through Telemedicine must also use a registration certificate issued by a medical council, a registration certificate, hereinafter abbreviated as STR, is written evidence given by the Indonesian Medical Council to doctors and dentists who have been registered in Article 35 paragraph (1). 1) The Medical Practice Law, an authorized doctor is a doctor who has a Registration Certificate (STR). On the basis of STR, doctors have the authority to practice medicine in accordance with their education and competence, which consists of: interviewing patients; examine the patient's physical and mental; determine supporting examinations; establishing the diagnosis determines the management and treatment of the patient; perform medical or dental procedures; writing prescriptions for medicines and medical devices; issue a doctor's or dentist's certificate; store the drug in the amount and type that is permitted; and dispensing and dispensing drugs to patients, for those who practice in remote areas where there are no pharmacies. Further arrangements regarding STR are regulated in Article 29 of Law Number 29 of 2004 concerning Medical Practice.¹⁹

Paragraph (1), Every Doctor and dentist who practices medicine in Indonesia is required to have a doctor's registration certificate and a dentist's registration certificate. Paragraph (2), Doctor's registration certificate and dentist's registration certificate as referred to in paragraph (1) are issued by the Indonesian Medical Council.

To obtain a doctor's registration certificate and a dentist's registration certificate, you must meet the following requirements:²⁰

1. Have a doctor, specialist, dentist, or specialist dentist degree;
2. Have a statement letter that has taken the oath/appointment of a doctor or dentist
3. have a certificate of physical and mental health;
4. have competency certification;

Make a statement that you will comply with and carry out the provisions of professional ethics. STR designation is not used as a basis for practicing but only as an administrative requirement, only a requirement to obtain a license to practice and must be owned by every Doctor who wants to practice because STR is a requirement that must exist if a doctor wants to have a SIP.

In addition, it also requires a practice license for doctors who have registered on the platform.²¹ A license to practice is written evidence given by the government to doctors who will practice medicine after fulfilling the requirements. The following is a quote from Law 29/2004 concerning medical practice, articles 36, 37 and 38. Article 36 Every Doctor and dentist who practices medicine in Indonesia is required to have a license to practice. Article 37 (1) The license to practice as referred to in Article 36 is issued by the authorized health official in the district/city where the practice of medicine or dentistry is carried out. (2) The license to practice a doctor or dentist as referred to in paragraph (1) is only issued for a maximum of 3

¹⁹ Kainde, Baby Ivonne Susan, and Ika Dewi Sartika Saimima. "Rekonstruksi Pasal 66 Ayat (3) Undang-Undang No. 29 Tahun 2004 Tentang Undang-Undang Praktik Kedokteran Terkait Tata Cara Pengaduan Tindakan Malapraktik Dokter di Indonesia." *Jurnal Hukum Sasana* 7, no. 2 (2021): 309-320. <https://doi.org/10.31599/sasana.v7i2.807>

²⁰ DM, Mohd Yusuf, Muhammad Agung Swasno, Andhi Syamsul, Ari Wirasto, Afriadi Hamid, and Geofani Milthree Saragih. "Tindak Pidana Dokteroid Dalam Perspektif Hukum Kesehatan (Analisis Putusan Putusan Nomor 598/Pid. Sus/2022/PN PdG)." *Jurnal Pendidikan dan Konseling (JPDK)* 4, no. 6 (2022): 6935-6944. <https://doi.org/10.31004/jpdk.v4i6.9431>

²¹ Mursalat, Mohammad Hilman, Efa Laela Fakhriah, and Tri Handayani. "PROBLEMATIKA YURIDIS DAN PRINSIP PERLINDUNGAN HUKUM DALAM PELAYANAN KESEHATAN JARAK JAUH MENGGUNAKAN TEKNOLOGI INFORMASI DAN KOMUNIKASI." *Jurnal Poros Hukum Padjadjaran* 4, no. 1 (2022): 94-111. <https://doi.org/10.23920/jphp.v4i1.986>

(three) places. (3) One license to practice is only valid for 1 (one) place of practice. Article 38 (1) To obtain a license to practice as referred to in Article 36, a doctor or dentist must: (a). have a doctor's registration certificate or dentist's registration certificate that is still valid. (b). have a place of practice; and (c). have a recommendation from a professional organization. Further provisions regarding licenses to practice are regulated by a Ministerial Regulation. Meanwhile, in Permenkes No. 2052/MENKES/PER/X/2011 regarding licenses to practice, it is stated that the Head of the District/City Health Office will issue the SIP to doctors or dentists who already have an STR based on the request in question. And in the issuance of the SIP it is also stated that the Head of the Health Service must consider the balance between the number of doctors and the need for health services. Doctor's practice license as regulated in article 37 of law number 29 of 2004 concerning Medical Practice states that a doctor's license to practice (SIP) is only given for a maximum of three places and only applies to one place of practice, while in article 38 point two it is stated for to get SIP as intended by a doctor must have a place of practice. If a doctor already has three SIPs and he continues to practice Telemedicine, it can be said that the Doctor is practicing without a permit.

In article 4 of the Minister of Health Number 2052 of 2011 concerning Practice Permits and Implementation of Medical Practices, it is stated that three SIPs are given for health service facilities belonging to the government, private sector, or individual practice.²²In Government Regulation article 4 Number 47 of 2016 it is stated the types of health services and in the second paragraph it is stated "in certain cases to fulfill health services and the development of health science and technology, the minister can determine the type of health service facility other than the type mentioned in paragraph 1 ". Telemedicine can be considered as a type of health service facility organized in the framework of science and technology development, but unfortunately until now there is no clear regulation regarding the independent practice of individual doctors in the case of Telemedicine

Deputy Chairperson of MKEK Lampung Province, dr. Ade Kurniawan, MH.Kes, Sp.KLLP stated that there is a significant difference between STR and SIP. Where the STR only states the status of a doctor who has graduated and is registered/registered as a graduate of a medical faculty. However, this does not become a reference for justification if the Doctor provides health services. This means that a Practice License must still be owned by a doctor providing health services. STR is only one of the requirements in obtaining SIP. So, in providing health services, it is not enough just to have an STR that is owned by a doctor. Considering that SIP is intended for a particular health facility, while application-based *Telemedicine* is not a health facility, SIP arrangements cannot be carried out if a doctor wants to practice *Telemedicine* using an application.

The above statement again creates a bias towards the existing *telemedicine regulations in Indonesia*, firstly it states that every Doctor or health worker is required to have a SIP at Health Facilities before conducting Telemedicine. The health service provider platform is not a health facility, so SIP arrangements cannot be made in it. As the main requirement for a doctor to practice medicine is to have a SIP, but in the case of *Telemedicine* it is application-based because the application is not a health facility so doctors do not have SIP in the application which should make doctors unable to provide any medical services in the application. So that the legal protection for doctors becomes very vulnerable and puts doctors in a position on the edge if a medical dispute occurs.

Second, SIP, which is highly tied to a particular region, is also irrelevant to the concept of *Telemedicine*, which provides services that are not limited by time and space, so they cannot be categorized or compartmentalized by region. Meanwhile, SIP is still issued by the Health Service of a region, which means it is very tied to a particular area. This also complicates SIP

²² Sulaiman, Eman, Trini Handayani, and Aji Mulyana. "Juridical Study of Telemedicine Consulting Services in Indonesia." *SOEPRA* 7, no. 2 (2021): 275-291. <https://doi.org/10.24167/shk.v7i2.4035>

management, because in *telemedicine practice* patients and doctors do not have to be in the same place and time, so it is not possible for a doctor practicing Telemedicine to have a SIP, when referring to SIP management regulations as currently applicable in Indonesia. .

There are many kinds of application-based *telemedicine* practices and the requirements to become a doctor who practice providing health services also vary. Some applications only require a doctor to have an STR, but other applications require the Doctor to have an STR and SIP at the health facility. This certainly makes the services provided also different, because it is related to STR which is indeed owned by an individual who graduated from medical school, but related to SIP it is very related to experience in dealing with patients directly, which will certainly make a difference in a person's ability. Doctors provide medical services.

That the SIP owned by doctors practicing *Telemedicine* is *SIP at other health facilities which do not have any relationship with telemedicine* service provider applications . Thus, it can be categorized as doubtful that this SIP can be applied and used as the basis for providing medical services in the application and it can be said that the SIP is used not in accordance with the regulations for medical practice in force in Indonesia.

3. Limits Of Clinical Authority Of Doctors Who Practice *Telemedicine*

Prohibited limitations related to the clinical authority to practice medicine by *Telemedicine* are listed in Perkonsil No. 74/2020 Article 9, which includes:

- a. teleconsultation between health workers and patients directly without going through health facilities;
- b. does not provide honest, ethical and adequate explanations;
- c. diagnosing and managing beyond competence;
- d. requesting irrelevant supporting examinations;
- e. act disgracefully, intimidate/violence to patients;
- f. act invasively through *Telemedicine*;
- g. asking for a fee that does not match the rate;
- h. provide a health certificate.

Limitations of clinical authority are important to emphasize in *telemedicine practice* given the lack of protection for doctors as health service providers. In point a it is clearly stated that *Telemedicine* can only be carried out under health facilities. So that in relation to application-based *Telemedicine* which is not a health facility, there is a legal vacuum over the regulations that govern it. The limits of clinical authority mentioned above are quite clear, but these regulations only apply during the CovidPandemic. For the continuation of *telemedicine practice*, there are still no clear clinical authority limits.

Related to this, the Chairperson of IDI Lampung Province, dr. Josi Harnos, M.Kes stated that the clinical authority possessed by doctors in the practice of using *Telemedicine* is around consultation, initial management that can be done at home and education. It is still possible to administer drugs, but it is limited to drugs that do not include narcotics, psychotropics or other strong groups.

A statement that agreed was also put forward by dr. Ade Kurniawan, MH.Kes, Sp.KLLP., that a clear distinction must be made between consultation and counselling. In the case of application-based *Telemedicine*, what may be done is limited to consultations, which as a result is a differential diagnosis, not a working diagnosis. This is different from counseling, which at the end of counseling must give rise to a definite working diagnosis of a patient's complaint.

So it can be said that the limits of a doctor's clinical authority in practicing *Telemedicine* are consultations, initial management that can be done at home, education and provision of initial therapy with drugs that are not classified as narcotics, psychotropics or other strong groups. Based on Max Weber's opinion, the theory of authority related to law is known as

rational or legal authority, namely authority that is guided by the legal system as a rule that is recognized and obeyed by society and strengthened by the state.

So it is appropriate for the state to strengthen the existence of this limitation of authority by establishing a statutory regulation related to the limitation of clinical authority in practicing Telemedicine, *especially* those based on applications without the atmosphere of the COVID-19 Pandemic. Because it is almost certain that this *telemedicine practice* will continue even though the pandemic period has been declared over.

C. Conclusion

The telemedicine service provider application is not an official health service facility. However, it is only a platform to meet doctors with patients. The application also does not have legal responsibility for any therapeutic transactions that occur in it. So, the application should not have the authority to organize therapeutic transactions between doctors and patients.

The Practice License (SIP) used as a requirement in carrying out application-based telemedicine practices is a SIP registered at other Health Facilities and *not related to the telemedicine* service provider application. Thus, the validity of the SIP is still doubtful to be used as a basis for providing health services to the community.

The limits of clinical authority for doctors who practice medicine with application-based *Telemedicine* are limited to consultations, providing initial treatment that can be done at home, education, and providing drug therapy outside of narcotic, psychotropic, and other hard-class drugs.

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