Electronic Sick Leave Certificate on Telemedicine Service Implementation in Indonesia: A Legal Consideration

Rani Tiyas Budiyanti 1*, Wulan Kusumastuti1

1Health Policy and Administration, Faculty of Public Health, Universitas Diponegoro, Indonesia

Abstract. Telemedicine service has been developed in Indonesia and its use has increased during the Coronavirus Disease 2019 (Covid-19) pandemic. This service makes it easier for people to get health services without meeting face-to-face. One of them is getting electronic medical certificates i.e. sick leave. However, problems arose regarding the legitimacy of electronic sick leave certificate (e-sick leave) through telemedicine services. This study aims to analyse the legal aspects of electronic sick leave in Indonesia. This research was normative research with statute and conceptual approach. Regulations in Indonesia have not discussed in detail the provision of electronic sick leave through telemedicine services. During the Covid-19 pandemic, Indonesian Medical Council Regulation Number 74 of 2020 was issued which permitted the issuance of sick certificates in telemedicine services with due observance of the principles of caution and high accountability. However it does not regulate in detail the provision of electronic sick leave through telemedicine services. Further regulations comprising of specific requirements and procedures are needed in Indonesia regarding telemedicine services, specifically in order to have valid electronic sick leave certificate issuance that can guarantee patient safety and accountability. Technological support is also needed to support the examination of patients in telemedicine services. Issuance of electronic sick leave requires collaboration between health care facilities and companies.

Keywords: Telemedicine, e-sick leave, legal perspective

1 Introduction

The use of telemedicine services has risen especially during the Coronavirus Disease 2019 (Covid-19) pandemic. In the USA, the government relaxed many telemedicine's restrictions and provided additional telemedicine funding [1]. In Indonesia, the use of telemedicine increased from 2020 to 2021 was 78%, and from the 2021 to 2022 was 30% [2][3]. In Ontario Canada, telemedicine adoption increased in rural and remote areas during the COVID-19 pandemic, but its use in urban higher than in the rural population [4]. Others,
Centers for Diseases Control and Prevention also recommended prioritizing telehealth consultation for non-emergency medical care during Covid-19 pandemic [5].

Telemedicine is a technology-based health service that allows its users to consult with doctors without face to face or remotely in order to provide diagnostic consultation and management of patient care [6]. According to World Health Organization (WHO), there are four elements related to telemedicine, which aim to provide clinical support, are useful for overcoming geographical and distance barriers, aim to improve public health, and involve the use of various types of information technology devices [7].

This technology can make the patient get online medical consultation and prescription from the medical doctor. Although there are various ethical and legal issues related to the use of telemedicine services such as data security and confidentiality, miss diagnosis, doctoroid phenomena, and so on, this service is increasingly in demand by the public, especially users who are familiar with technology [8]. Ease of access and flexibility of time is one of the factors that influence it [9].

In the term of health services, the patient also can get the medical certificates from the doctor. One of medical certificate that usually given by the doctor was doctor's sick leave [10, 11]. The legitimacy of the letter is one of the things discussed, bearing in mind that several companies refuse electronic sick leave obtained by their employees through telemedicine services [12].

A sick leave is a sick certificate given by a doctor to a patient or someone who is declared sick by a doctor during an examination [13]. This letter contains the patient's name, place and date of birth, date of examination, address, occupation, length of time the patient has to rest, when the patient can return to work, and the signature of the examining doctor. This letter is used by workers as a basis for obtaining permission to work when sick. In principle, wages will not be paid if the employee does not do work or what is known as the 'no work no pay' principle. However, this is an exception if there is a sick leave certificate. So even if the worker is sick, the worker still has to be paid as long as his health is accompanied by a doctor's certificate. If not, then the no work no pay principle does not apply which can even be considered disciplinary action.

However, various issues have arisen regarding the ethical and legal aspects of a doctor's sick leave provided through telemedicine services [14]. Based on this background, this study aims to describe the ethical and legal issues of online sick leave and analyse the ethical and legal aspect of online sick leave in Indonesia.

2 Methods

This research was normative research with statue and conceptual approach. The material source were primary source that come from legislation related to labor and telemedicine in Indonesia, the secondary source come from journal article and book related telemedicine law. The tertiary source come from journal article and book related to the online sick leave implementation. Data were collected and were described in the narrative form.
3 Results and Discussion

3.1. Legal Issues Related to Online Sick Leave on Telemedicine Services

There are many legal issues that can be happened related to online sick leave on telemedicine services.

3.1.1. Potential Case 1

A 25-year-old man works at Company X. One day he was reluctant to go to the office because it was raining heavily. Seeing an advertisement on the internet regarding a sick note that could be obtained quickly online, he then used the service via chat and falsified several things related to his health condition in order to obtain a sick leave. After obtaining a sick leave, he gave it to his company and obtained permission from company X. One time, company X found out that the worker had gone to the shopping center that day, so he said that the sick leave issued by the doctor was incorrect and invalid. In addition to imposing sanctions on workers, company X is also suing the doctor who issued the letter.

3.1.2. Potential Case 2

A 25-year-old woman works for a company. He suffered from a chronic illness and one day had an acute attack. Because of this, the woman contacted a doctor who used to examine her through telemedicine services. The doctor then prescribed some medicines online and gave her sick leave so the woman could rest for a while. However, when the woman submitted it to her company, the company refused the permit because according to them they could not be sure of its validity and correctness.

3.1.3. Legal issues related to the potential cases

In terms of telemedicine services, the patient can get health services from a distance without face-to-face examination. Without the medical device standard, the risk of misdiagnosis can be happened in this services. Because of this limitations, medical doctor usually asks the patient to meet offline before in the case of serious illness to ensure the patient's condition. The next treatment then be done through telemedicine for monitoring and follow up. If there are no serious illness, the doctor will give the symptomatic drugs and do the elective treatment that can be done in the home.

It will be risk to get the medical certificate or sick leave without meeting offline before. In the fact, some telemedicine platforms even provide a service facility for issuing a doctor's sick leave as a marketing strategy so that patients use the service. This then gave rise to debate and controversy. This is because it seems as if the doctor's certificate can be traded and has the potential for abuse.

Legal issues also rise related to the validity of sick leave and the responsibility of the doctor. This certificate was crucial to get permit from the work and related to payment the worker so the doctor must get attention related that. So that, it will be risk for the medical doctor to responsible with that services. The responsibility related to this services also should be clear, if the patient’s condition doesn't appropriate with the doctor's examination results, who will be responsible? Is the doctor? the healthcare facilities? or the telemedicine service platform?

3.2. Laws related to online sick leave in Indonesia

It is important to know the regulation related to telemedicine and employment in Indonesia to know more about sick leave regulation in Indonesia.
3.2.1. Laws related to telemedicine

In Indonesia, there was no specific regulation related to telemedicine services. The last regulation related to telemedicine services was Regulation of the Minister of Health Number 20 of 2019 concerning the implementation of telemedicine services between health service facilities [15]. This regulation only discusses regulations related to telemedicine between central healthcare facilities and networks. In the covid-19 pandemic, the Indonesian Ministry of Health released circular letter number HK.02.01/Menkes/303/2020 about Implementation of Health Services through Utilization Information and Communication Technology in the Framework of Prevention Spread of Corona Virus Disease 2019 (Covid-19) [16]. But this policy has been replaced with Decree of Indonesian Minister of Health Number HK.01.07/Menkes/4829/2021 about Guidelines for Health Services through Telemedicine in the Corona Virus Disease 2019 (Covid-19) Pandemic and just temporary implemented in the Covid-19 pandemic [17].

This regulation does not further discuss the issuance of electronic sick leave, but it is stated that doctors can provide referral letters for further examination or action to laboratories and/or health care facilities according to the results patient management [17]. In this policy doctors are also given the authority to write electronic prescriptions for drugs and/or medical devices except for drugs narcotics and psychotropics. However, the legal protection for doctors is very weak because in this policy doctors have to responsible for the contents and effects that may arise from the drug written in electronic prescription [17].

Based on Article 8 paragraph (2) Indonesian Medical Council Regulation Number 74 of 2020 concerning Clinical Authority and Medical Practice Through Telemedicine during the Corona Virus Disease 2019 (COVID-19) Pandemic in Indonesia, doctors and dentists can provide prescription drugs and/or medical devices; and sick letter with the principles of prudence and high accountability [18]. Further, based on Article 7 of the Indonesian Medical Code of Ethics, a doctor must first examine to ascertain the condition of the patient concerned as stipulated in which reads "A doctor is obliged to only provide a statement and opinion that has been checked for its truth" [19].

3.1.2. Laws related to sick leave in employment

A sick leave is a sick certificate given by a doctor to a patient or someone who is declared sick by a doctor during an examination. Based on Article 93 paragraph (2) letter (a) of Law Number 13 of 2003 concerning Manpower, the worker still has to be paid when they sick as long as his health is accompanied by a doctor's sick leave [20]. This regulation is in line with Article 40 paragraphs (1), (2), and (3) Indonesia Regulations regarding the Labor Law, Government Regulation Number 36 of 2021 concerning Wages that stated Workers are still paid when they are sick [21].

Regulation related to electronic sick leave on telemedicine services in Indonesia stated in table (1).

<table>
<thead>
<tr>
<th>Policy/regulation</th>
<th>Part of regulation</th>
<th>Stated related to online sick leave</th>
</tr>
</thead>
<tbody>
<tr>
<td>Law Number 29 of 2004 concerning Medical Practice</td>
<td>Article 35 paragraph 1 (h)</td>
<td>Doctors or dentists who already have a registration certificate have the authority to practice</td>
</tr>
</tbody>
</table>
Based on the existing regulations in Indonesia above, there are no regulations that specific and detail that can be used as a basis for resolving potential cases that may occur in the use of e-sick leave. Especially regarding the legal protection of patients to get the right to remuneration when applying for permission to use e-sick leave, and the legal protection of doctors who provide e-sick leave through telemedicine.

### 3.3. Legal Concept Related to Online Sick Leave on Telemedicine Services

#### 3.3.1. Legitimacy of online sick leave

The legitimacy of sick certificates obtained through telemedicine services needs to be clarified. Can the letter be used as a condition for employees not to come to work and still be paid? Or are there other conditions that must be met? This needs to be clarified further. This is because there is no difference in perception between the patient/worker and his company. In Germany, the electronic of incapacity for work (eAU) will be used soon to reduce the bureaucracy in healthcare system and companies and will be replaced the yellow paper slip. In this concept, there are key participants i.e. medical practices, health insurance companies, and the employers. The basic process of digital sick leave involves of four steps. The first step, the sick employee will be examined by the medical doctor. Next, the healthcare facilities or doctor’s office will report the electronic sick leave to the employee’s health insurance company.

After that, workers notify the company by telephone, email, or instant message that they are sick. In this case, the reporting obligation remains with the employee. In the last step, the company will report the following five things for insurance purposes, namely the
name of the employee, the start and end of being unable to work, the doctor's appointment date, identification of initial notification or follow-up, as well as information on incapacity to work due to work accidents or others [22].

This strategy can be used in giving e-sick notes on telemedicine services so that their validity is maintained. It would be better if there was an integrated system between health workers, companies, and health insurance companies, in which doctors can send their e-sick note barcode numbers to companies and insurance companies so that their legitimacy can be accounted for.

3.3.2. Requirement and procedure for issuing online sick leave

Issuance of electronic sick certificates/notes via telemedicine needs to be done with the concept of caution. This is because, in telemedicine, doctors carry out examinations remotely. It would be better if a standard medical device was used that supports remote physical examinations. If there is no such tool, then anamnesis can be done directly via video call to find out the general condition of the patient.

Therefore, standardized procedures and related regulations need to be developed so that both doctors and patients receive legal protection. The good infrastructure and medical device standard need to be developed to keep privacy and appropriate diagnosis [23][24].

3.3.3. Sanctions for violation

Sanctions for violating the application of e-sick leave need to be developed for both medical doctors and workers. This is intended so that doctors are more careful in giving e-sick leave. In addition, workers who falsify their information or conditions need to be given clearly regulated sanctions.

Table 2. Legal concept in implementing e-sick notes on telemedicine services

<table>
<thead>
<tr>
<th>Aspect</th>
<th>Required Regulation and/or Sanction</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legitimacy of online sick leave</td>
<td>Regulation related to legitimacy of electronic sick leave</td>
</tr>
<tr>
<td>Requirement and procedure for issuing online sick leave</td>
<td>Regulation and standard for issuing electronic sick leave</td>
</tr>
<tr>
<td>Sanctions for violation</td>
<td>Sanctions of online sick leave misuse/miss-appropriate</td>
</tr>
</tbody>
</table>

In the provision of online health certificates, where the devices used are limited, especially in the asynchronous (indirect) telemedicine model such as via chat or email and are not supported by video, the determination of the statement that the patient is truly sick and requires a certificate and rest will be very risky. Based on regulations in Indonesia regarding the Labor Law, Government Regulation Number 36 of 2021 concerning Wages do not specifically stipulate the form and method of obtaining a doctor's certificate.

Although the guidelines for administering telemedicine in Indonesia have been further regulated in the Indonesian Medical Council Regulations, this does not yet have the force of law to protect doctors implementing telemedicine services. So that, Indonesia need specific regulation related to telemedicine services implementation.

Moreover, in a Circular Letter that was issued by the Ministry of Health, this was not explained further. Therefore, doctors need to be careful when giving a diagnosis, prescribing, or giving sick notes to patients via telemedicine. The standard medical devices support that were needed to remote physical examinations in Indonesia are not yet
available. So doctors must pay attention to the precautionary principle so as not to harm the patient (nonmaleficence).

Issuance of electronic sick leave requires collaboration between health care facilities and companies. The e-sick leave can be sent directly to the company so that the legitimacy and validity of the e-sick leave can be accounted. Further, the Indonesian government needs to regulate online medical certificates on telemedicine services with the aspect legitimacy of online sick leave, requirement and procedure for issuing online sick leave, and sanction for violation.

4 Conclusion

Indonesia has no regulation related to the provision of electronic sick leave through telemedicine services. Indonesian Medical Council has been released Indonesian Medical Council Regulation Number 74 of 2020 that which permitted the issuance of sick certificates in telemedicine services with due observance of the principles of caution and high accountability. But, it does not regulate in detail the provision of electronic sick leave through telemedicine services. Regulations related to legitimacy of online sick leave, requirement and procedure for issuing online sick leave, and the sanctions for violation were needed to guarantee patient safety and accountability. Technological support is also needed to support the examination of patients in telemedicine services. Issuance of electronic sick leave requires collaboration between health care facilities and companies.

Acknowledgement
This research is funded by the Faculty of Public Health, Universitas Diponegoro in 2023 with the number contract: 39/UN7.F9/HK/III/2023

References


[15] Regulation of the Minister of Health Number 20 of 2019 concerning the implementation of telemedicine services between health service facilities

[16] Indonesian Ministry of Health released circular letter number HK.02.01/Menkes/303/2020 about Implementation of Health Services through Utilization Information and Communication Technology in the Framework of Prevention Spread of Corona virus Disease 2019 (Covid-19)

[17] Decree of Indonesian Minister of Health Number HK.01.07/Menkes/4829/2021 about Guidelines for Health Services through Telemedicine in the Corona Virus Disease 2019 (Covid-19) Pandemic

[18] Indonesian Medical Council Regulation Number 74 of 2020 concerning Clinical Authority and Medical Practice Through Telemedicine during the Corona Virus Disease 2019 (COVID-19) Pandemic in Indonesia


[20] Law Number 13 of 2003 concerning Manpower

[21] Indonesia Regulations regarding the Labor Law, Government Regulation Number 36 of 2021 concerning Wages

