

## Emerging Artificial Intelligence In Therapeutic Agreements With A Medicolegal Approach

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### Abstract

**Introduction:** Medical services use artificial intelligence for operating to help and even transform the healthcare system. AI innovators have developed tools to improve clinical care processes, advance medical research, and increase efficiency in medical services.

**Purposes of the Research:** The purpose of this article is to analyse the legal validity of therapeutic agreements using AI in medical field.

**Methods of the Research:** The research method used is a normative juridical research type with an analytical approach.

**Results of the Research:** The results show that medical services are complex and closely related systems, and always contain risks, so they must be carried out with great care. Legal provisions governing the use of AI in therapeutic agreements with a medicolegal approach must be able to evaluate and ensure the safety and accuracy of medical decisions made by AI "thinking algorithms".

**Keywords:** Artificial Intelligence; Therapeutic; Medicolegal.

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## INTRODUCTION

Health development is part of national development which aims to increase awareness, willingness, and ability to live healthy for everyone in order to realize the highest degree of public health. Health development is an effort of all the potential of the Indonesian people, both the community, the private sector, and the government. To ensure the achievement of health development goals, support from the National Health System (SKN) is needed. SKN plays a major role as a reference in the preparation of the Law on Health, as well as in the formulation of various policies, guidelines, and directions for the implementation of health development. Within the SKN there is a subsystem of health efforts consisting of Community Health Efforts (UKM) and Individual Health Efforts (UKP). The implementation of health services in hospitals is included in the second and third Strata of UKP, namely those that utilize specialist and sub-specialist medical science and technology.

In this digital era, technological advances are commonplace. Currently, many countries are competing to register their patents. This is because the more patents that are developed and filed by a country, it can encourage the economic growth of that country. As stated by an Indef Economist as well as Program Director and Economist of the University of Indonesia, Berly Martawardaya, in a discussion on the Role of Information and Communication Technology Sector Investment and Patents on Indonesia's Economic

Growth, 8 May 2018, said that "Every one percent increase in patent increases can contribute to the increase in gross domestic growth (GDP) 0.169 percent<sup>1</sup>. This makes Indonesia the highest patent holder in Southeast Asia. However, this number is very small when compared to developed countries such as China which in 2017 produced 1,245,709 patents, and Korea which produced 159,084 patents<sup>2</sup>. Of course, this needs improvement so that the Indonesian state can have more discoveries in the field of technology registered in the following years in order to boost economic growth, including the use of artificial intelligence.

Currently, technology in the form of artificial intelligence, or what is often referred to as artificial intelligence has developed quite rapidly in helping human activities. From the military field to daily needs, including in the medical field such as medical devices equipped with artificial intelligence technology, the formation of algorithms in e-commerce, even the Google search engine has used artificial intelligence, making it easier for us to find information. . In the context of intellectual property in the medical field, the use of artificial intelligence to produce a work in terms of treatment technology has begun to be utilized, such as the existence of machines equipped with artificial intelligence so that it can take anamnesis of disease in patients. Even in the United States a computer company called IBM has used and patented artificial intelligence that they made for medical technology<sup>3</sup>. With the development of technology, it is increasingly undeniable that the intelligence possessed by artificial intelligence is almost close to human intelligence. It is not impossible if in the future artificial intelligence can be used as a legal subject even though it is limited. In Law Number 13 of 2016 concerning Patents, it does not regulate the rights to patents made by artificial intelligence. The inventor of an invention in article 1 paragraph (3) of Law Number 13 of 2016 is only defined as "*a person or several people who jointly implement ideas that are poured into activities that produce inventions*"<sup>4</sup>.

Currently, artificial intelligence has not yet received full recognition as a legal subject. However, there is an artificial intelligence called Device for the Autonomous Bootstrapping of Unified Sentience (DABUS) in a court ruling in South Africa and Australia has been recognized as the inventor in a patent registered in his name. Although there are rejections in several countries such as the United States and Britain, it cannot be denied that DABUS is the beginning of where artificial intelligence can be recognized as a legal subject even though it is limited. This is in line with what the founder and CEO of IPWatchdog said: "*Not every patent system provides equal patent rights and is subject to the same rigorous scrutiny. And in this case, there are nuances involving the Patent Cooperation Agreement. So it's no surprise that South Africa awarded this patent to DABUS, and everyone should be prepared for the prospect that there will be more to come. This does not change the fact that difficult legal questions will eventually need to be addressed. I personally continue to believe that the solution is to recognize some sui generis protections for AI-created innovations rather than incorporating these constructs into existing patent*

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<sup>1</sup> Kautsar Widya Prabowo, 2018, *Patent Rights Help Boost the Economy*, <https://www.medcom.id/ekonomi/mikro/gNQnnlYb-hak-paten-turut-mendongkrak-pertumbuhan-ekonomi> (10 Oktober 2021)

<sup>2</sup> Badan Riset Dan Inovasi Nasional Republik Indonesia, 2019, *Indonesia Must Increase Patent Productivity If It Wants To Be A Developed Country*, <https://risbang.ristekbrin.go.id/publikasi/berita-kegiatan/indonesia-harus-meningkatkan-produktivitas-paten-jika-ingin-menjadi-negara-maju/> (10 Oktober 2021).

<sup>3</sup> Wahyunanda Kusuma Pertiwi, 2018, *IBM Patents Traffic Controlling AI Technology*, <https://tekno.kompas.com/read/2018/05/19/10120097/ibm-patenkan-teknologi-ai-pengatur-lalu-lintas> (4 September 2021)

<sup>4</sup> Article 1 paragraph (3) of Law Number 13 of 2016 concerning Patents.

laws”<sup>5</sup>. Artificial intelligence (later called AI) innovators have developed tools to improve clinical care processes, advance medical research, and increase efficiency in medical services. The artificial intelligence-based medical device relies on algorithms, which are programs created from health care data that can make predictions or recommendations. The use of AI in the health sciences raises issues in medicolegal aspects such as regulations governing artificial intelligence, fraud or errors in medical cases, intellectual property rights of health practitioners, privacy, and patient personal data.

Regulations regarding Artificial Intelligence can be found in the ITE Law which states that the implementation of AI or artificial intelligence in Indonesia can be carried out by people, state administrators, business entities, and the public. It means that the legal responsibility will be borne by the electronic system operator that provides the AI services. The ITE Law and Government Regulation Number 71 of 2019 have also set limits on the obligations and responsibilities of Artificial Intelligence providers, which state that: "provides features that allow users to make changes to information that is still in the transaction process". The responsibility of Artificial Intelligence in carrying out its activities according to Zahrashafa & Angga has been comprehensively regulated, including the obligation to keep data confidential, control users' personal data, ensure user privacy, convey information related to the system it uses so that it does not harm users. However, the operating gaps certainly cannot be equated and do not exist yet<sup>6</sup>.

The world of medical health is very closely related to medical law, another name is medicolegal. The definition of medicolegal itself is "*relating to the law concerning medical questions*"<sup>7</sup>. So the scope includes ethics, professional discipline, and law (administrative, civil, criminal). Medical services are complex and tightly coupled systems, that always contain risks, so they must be carried out with great care. Legal provisions governing AI should be able to evaluate and ensure the safety and accuracy of medical decisions made by AI "*thinking algorithms*". There are several questions that arise in this regard: a) can AI be called a legal subject? b) Does AI qualify as a legal subject? c) How to ensure the effectiveness and safety of AI thinking algorithms?, and d) Is the security and accuracy of AI legally verifiable?

Artificial intelligence algorithms in the medical field are often known as "*black-box medicine*" or predictive analysis<sup>8</sup>. This is because the medical decisions of this machine learning thinking algorithm cannot be explained in detail, and can even change over time (related to the increasing amount of data available). Various AI in the medical field already exist today, starting from pattern recognition to prognosis or prediction of emerging diseases and other medical conditions, no one has yet been able to explain how and why he can come up with these conclusions. Or if it can be explained, the pattern is not useful to understand medically. Thus, the medical algorithms produced by AI until now cannot be legally guaranteed of their safety and effectiveness.

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<sup>5</sup> IP Watchdog, 2021, DABUS Gets Its First Patent in South Africa Under Formalities Examination (online), <https://www.ipwatchdog.com/2021/07/29/dabus-gets-first-patent-south-africa-formalities-examination/id=136116/> (4 September 2021)

<sup>6</sup> Zahrashafa P. Mahardika & Angga Priancha, *Indonesia's Current Artificial Intelligence Legal Arrangements*, online articles on <https://law.ui.ac.id/v3/pengaturan-hukum-artifical-intelligence-indonesia-saat-ini-oleh-zahrashafa-pm-angga-priancha/>, accessed on 13 October 2021.

<sup>7</sup> Black's Law Dictionary

<sup>8</sup> Price, W. Nicholson, II., *op.cit.*, p. 10 in the article dr. Alexandra Francesca Chandra, <https://www.alomedika.com/aspek-medikolegal-artificial-intelligence>, accessed October 14, 2021.

## METHODS OF THE RESEARCH

This article methods used legal research. The method is used to analyze the legislation and legal views. This study examines and analyzes various laws and regulations in analyzing the legal efficacy of therapeutic agreements that use AI. The research was conducted with a statutory approach, namely legal studies through applicable positive legal regulations, in the form of laws and regulations and decisions of competent institutions<sup>9</sup> in the field of medicolegal, laws and regulations in the field of other law perspectives. The second approach is an analytical approach to analyze the understanding of legal principles, legal meanings, etc.<sup>10</sup> The legal materials in the form of primary and secondary legal materials were analyzed using teleological interpretation techniques, an appropriate method for interpreting a rule based on the objectives to be achieved, and the rationale and rational explanation. In addition, systematic interpretation relates one rule to another based on the underlying principle.

## RESULTS AND DISCUSSION

### A. Artificial Intelligence in Therapeutic Agreements in Medicolegal Aspects

In medicolegal law, the definition of a therapeutic agreement is a legal relationship between doctors and patients in professional medical services based on competencies that are in accordance with certain expertise and skills in the health sector. Therapeutic is a translation of therapeutic which means in the field of medicine which is not the same as therapy which means treatment<sup>11</sup>. An agreement that occurs between a doctor and a patient is not only in the field of treatment but more broadly, covers the fields of diagnostic, preventive, rehabilitative, and promotive, so this agreement is called an agreement.

The legal relationship of the therapeutic contract is interpreted differently by laws and regulations, although in principle the legal relationship of the therapeutic agreement is the same, namely the relationship between the patient and the doctor and/or other medical personnel. Law Number 36 of 2009 concerning Health that the parties in a therapeutic contract are patients with health workers, while Law Number 29 of 2004 concerning Medical Practice states that the parties to a therapeutic contract are patients and doctors/dentists. Although the definition of a therapeutic agreement is interpreted differently by the law, Salim H.S argues that the meaning of a Therapeutic Agreement is as follows: *A contract made between a patient and a health worker and/or doctor or dentist, in which the health worker and/or doctor or dentist tries to make maximum efforts to cure the patient in accordance with the agreement made between the two and the patient is obliged to pay the cost of the healing*<sup>12</sup>.

A therapeutic agreement is a special binding agreement between doctors and/or other medical personnel with patients. The therapeutic agreement can be said to be specifically regulated in Article 1601 of the Civil Code which reads: *"In addition to the agreement to provide several services which are governed by special provisions for that and by the terms agreed upon, and in the absence of these conditions, the agreement which is regulated according to custom, there are two kinds of agreements, with which the first party binds itself. to do a job for another party by receiving wages, namely: work agreements and work chartering agreements"*. Article 1601 of the

<sup>9</sup> Soerjono Soekanto & Sri Mamudji, *Normative Legal Research: A Brief Overview*, (Jakarta: Raja Grafindo Persada, Jakarta, 2003), p. 73.

<sup>10</sup> Johnny Ibrahim, *Normative Legal Research Theory and Methodology*, (Malang: Bayumedia Publishing, 2006), p. 310-311.

<sup>11</sup> Hermien Hadiati Koeswadi, 1998, *Medical Law (Study of Legal Relations in which As a Party)*, (Bandung: Citra Aditya Bakti), p. 99.

<sup>12</sup> Salim HS, *Development of Contract Law Outside the Civil Code*, (Jakarta: Rajawali Press), 2006, p. 45.

Civil Code regulates agreements with certain services. The agreement with certain services means that a party wants the other party to do work to achieve a goal, for which he is willing to pay wages, while what will be done to achieve that goal is completely up to the opposing party. Accordingly, the nature of this therapeutic agreement is as follows<sup>13</sup>: 1) People who ask for help generally lay people; 2) The person who is asked for help is an expert; 3) The existence of certain services.

In the implementation of this therapeutic agreement, it must be preceded by the approval of the action of the health worker/doctor/dentist against the patient, which is commonly referred to as informed consent. The term therapeutic agreement is not known in the Civil Code, but the elements contained in a therapeutic agreement can be categorized as an agreement in general as explained in Article 1319 of the Civil Code, that “for all agreements, both those that have a special name or those that are not known by a certain name, are subject to general rules regarding engagements in general”.

In addition, the general provisions regarding engagements based on the principle of freedom of contract are regulated in Article 1338 jo. Article 1320 of the Civil Code is the basic principle and validity of the agreement. The object of the therapeutic agreement is the effort or therapy carried out by doctors and other medical personnel for the healing of patients. The basis for medical liability in therapeutic agreements is Article 1234 of the Civil Code regarding default and Article 1365 of the Civil Code regarding *onrechtmatige daad* / unlawful acts. There is a difference between the notion of default and unlawful acts (*onrechtmatige daad*). Default (broken promise) is a condition in which the debtor, in this case the hospital and/or medical personnel, does not perform their obligations, not because of an overmacht.

AI in the medical sphere can play a role in medical devices, for example radiology devices with output images/photos of patients, besides AI in taking patient diagnoses, and surgery or surgery, this will certainly change the patient-doctor relationship, especially in Indonesia. Then, what is the legal status of using AI to interact and assist in patient care while remaining within the corridor of clinical consent/informed consent in medicolegal? This issue has not received enough attention and has caused debate. Approval of medical measures in integrating AI into clinical practice is one of the most pressing challenges<sup>14</sup>.

## **B. Legal Status of Therapeutic Agreements in the Form of E-Contract**

As an innovation that uses ICT systems in the industrial era 4.0, E-Health is motivated by the scarcity of resources and health care, advances in technology that are in line with the challenges of providing affordable quality health services, as well as the increasing demand for health services caused by the high human population. This system relies on e-contracts in running its business with other partners, especially consumers.

During the COVID-19 pandemic, with the aim of maintaining distance and minimizing contact with each other and at the same time maintaining health, technology companies such as *Halodoc* and *Alodokter* created an innovation that is engaged in e-health to meet

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<sup>13</sup> According to the Indonesian Code of Medical Ethics attached to the Decree of the Minister of Health of the Republic of Indonesia Number 434/Men.Kes/X/1983 concerning the Enforcement of the Indonesian Medical Code of Ethics for Doctors in Indonesia, it states about therapeutic transactions as follows: with patients and sufferers carried out in an atmosphere of mutual trust (confidential), and always overwhelmed by all the emotions, hopes and worries of human beings.

<sup>14</sup> Cohen IG, Amarasingham R, Shah A, Xie B, Lo B. Sara Gerke, dkk, *Ethical and legal challenges of artificial intelligence-driven healthcare*, Elsevier Inc., 2020, DOI: <https://doi.org/10.1016/B978-0-12-818438-7.00012-5>, p. 295

stakeholder demands, such as users as e-health consumers. Users here include but are not limited to patients from e-health itself and/or doctors who use e-health applications that are made specifically for doctors which at this time requires an increase in practical health services and also does not forget the security of personal data<sup>15</sup>. Meanwhile, not many people know that there are one or more clauses in the two e-health that are detrimental to consumers and are not in accordance with the laws and regulations.

Article 46 paragraph (2) letter d PP PSTE junto Article 52 letters e and f PP PMSE wherein the article states that in addition to fulfilling the legal subject requirements, the agreement will be valid if it has a certain object and is lawful<sup>16</sup>. The object in question is an object that can be traded. In addition to medicines that are sold, these two e-health focuses on services that can be traded, namely health services and other social services, where this is regulated outside the BW, namely Article 4 paragraph (2) letter h of Law Number 7 Year 2014 concerning Trade, which in essence explains that health services and other social services are included in services that can be traded as long as the laws and regulations say otherwise and are subject to existing market values<sup>17</sup>.

Then, in the second indicator, the clauses in this two e-health are in accordance with Article 1320 BW where in an agreement the subject of the agreement must be competent and agreed. In an e-contract on e-health, the offer and acceptance do not occur face to face between the e-health provider and the user. In accordance with Article 20 of the ITE Law junto Article 43 PP PMSE, bids made can occur via mail, e-mail, website, electronic media, and so on, when sent by the organizer and approved by the user. In this case, the offer is made by the e-health provider in the form of a standard contract, which means the clauses already exist and have not gone through a negotiation process, so the user only needs to accept it by clicking the I agree, I accept or similar button (by button) signing up, I Accept Terms of Services and Privacy Policy on the telemedicine application<sup>18</sup> and "By logging in, you agree to the Terms & Conditions and Privacy" on the application), then an agreement occurs.

In this case, it is also in accordance with Article 42 of PP PMSE where the acceptance process occurs if it is known by the user as a result of pressing such a button. Thus, based on the description of the agreement theory above, the occurrence of an agreement in an e-contract on e-health is that the user agrees with the offer that has been given by the organizer, even though it is not verbally stated or not met in person, but through other actions such as: fill in the signup form, login, "chat with a doctor" or other forms on the e-health application and click another button which essentially agrees to all the conditions provided by the organizer. This is also in accordance with Article 46 paragraph (2) letter a PP PSTE<sup>19</sup> junto Articles 52 letter c of PP PPMSE which essentially explains the validity of an electronic contract or e-contract is that if there is a conformity of electronic information submitted by the bidder (the Organizer) and approved by the recipient (User), then there is an agreement between the parties.

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<sup>15</sup> Andhi Bahtiar, dkk, Stakeholder Analysis on Telemedicine Utilization Policies in Facing Covid-19 in Indonesia, *Prepotif Jurnal Kesehatan Masyarakat*, Volume 5, No. 1, Sekolah Kajian Strategik dan Global Universitas Indonesia, Depok, 2021, p. 74-75.

<sup>16</sup> "Electronic Contracts are considered valid if: d. the object of the transaction must not conflict with the laws and regulations, decency, and public order".

<sup>17</sup> Muhammad Hutomo, dkk, Legal Protection for Patients Using Online Health Services, *Education and Development Journal*, Volume 8, No.3, Fakultas Hukum Universitas Mataram, Mataram, 2020, p. 970.

<sup>18</sup> In the Halodoc application, pressing the Verify/Verify . button

<sup>19</sup> "Electronic Contracts are considered valid if: a. there is an agreement between the parties".

Then the above policies will be analyzed again with the principles in the agreement. The principle of freedom of contract is not absolutely free, but there are certain limitations. The limitations of this principle are in Article 1320 paragraph (1) juncto Article 46 paragraph (2) letter a PP PSTE juncto Article 52 letter c of PP PMSE is based on the principle of consensual, namely an agreement is invalid if it is made without agreement from the parties. In the second provision of e-health above, if the provider has provided certain clauses but there is no action stating that the user agrees to these clauses, then the parties are not free to make a contract because the agreement has no agreement<sup>20</sup>.

The next limitation is in Article 1320 paragraph (2) BW juncto Article 46 paragraph (2) letter b PP PSTE<sup>21</sup> juncto Article 52 letter d PP PMSE where the freedom to make a contract is limited by the age and/or mental condition of the subject of the agreement. In terms of proficiency in the terms and conditions of the two e-health above, the user is required to be 21 years old or married. If the user does not meet one or both of these conditions, the user is not free to act in the contract<sup>22</sup>, this is reflected in the second e-health provision which explains that the telemedicine system will automatically assume that users who do not meet the age requirements have obtained permission from the parent.

Then Article 1332 BW and Article 1320 paragraph (4) juncto Article 1337 BW in conjunction with Article 46 paragraph (2) letter d PP PSTE juncto Article 52 letter d of PP PMSE provides limitations that the object of the agreement must not conflict with laws and regulations, decency, and/or public order<sup>23</sup>. Where in the two e-health above, if the object of the agreement is something that is prohibited by laws and regulations, or according to the judge after the agreement has been tested there is a purpose or purpose that is contrary to public order and morality, then the parties are not absolutely free to determine the object of a contract<sup>24</sup>. The implementation of the contract must be based on the principle of good faith. Article 1338 paragraph (3) juncto Article 17 paragraph (2) <sup>25</sup> UU ITE juncto Article 45 paragraph (2) letter a PP PSTE<sup>26</sup> jo Article 3 letter a of PP PMSE<sup>27</sup> stipulates that if the contract made is based on bad faith, for example on the basis of fraud, then the agreement is invalid because it relates to the terms of the agreement, namely a lawful cause. Halodoc itself has a clause in its provisions stating that users are prohibited from using the platform to carry out activities that are against the law, including money laundering, theft, embezzlement, or fraud, as well as Alodokter.

Then every contract made applies as law for the parties who make it, or the principle of *pacta sunt servanda* essentially intends to be fulfilled and if necessary can be forced, so that it is legally binding. This principle is also stated in Article 18 paragraph (1) of the ITE Law<sup>28</sup>

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<sup>20</sup> Niru Anita Sinaga, *The Role of Covenant Law Principles in Realizing the Purpose of the Agreement*, *Binamulia Hukum*, Volume 7, Fakultas Hukum Universitas Dirgantara Marsekal Suryadarma, Jakarta, 2018, p. 116.

<sup>21</sup> "Electronic Contracts are considered valid if: b. carried out by legal subjects who are capable or authorized to represent in accordance with the provisions of the legislation".

<sup>22</sup> Romario V. Saisab, dkk, *Legal Studies on the Application of the Principle of Freedom of Contract in Standard Contracts*, *Lex Privatum*, Volume IX, Fakultas Hukum Unsrat, Manado, 2021, p. 208.

<sup>23</sup> *Ibid.*

<sup>24</sup> Muhammad Teguh Pangestu, *Op. Cit.*, p. 109-110.

<sup>25</sup> "The parties conducting Electronic Transactions as referred to in paragraph (1) must have good faith in interacting and/or exchanging Electronic Information and/or Electronic Documents during the transaction".

<sup>26</sup> "The implementation of Electronic Transactions carried out by the parties must pay attention to: a. good faith".

<sup>27</sup> "In conducting PMSE, the parties must pay attention to the following principles: a. good faith".

<sup>28</sup> "Electronic Transactions that are poured into Electronic Contracts are binding on the parties".

junto Article 44 paragraph (1) PMSE<sup>29</sup>. This means that the parties must comply with what has been mutually agreed upon<sup>30</sup>. Including if both parties from the two e-health above violate the agreed clauses, then one of them can sue before the court. Thus, the position of e-contract in e-health is the same as conventional agreement, because it adheres to the principles and is based on the same legal terms as conventional agreements. If these two things are not fulfilled then the contract is invalid.

### C. Legal Relationship In terms of AI as a party to a Therapeutic Agreement in the form of an E-Health Application

According to Soeroso, a legal relationship is a relationship between two or more legal subjects, which means that the subject performs a legal act. Every legal relationship has two aspects: in terms of *bevoegdheid* (power/authority or rights) and aspects of *plicht* (obligations). In this case, the law gives one party to another the rights and obligations of each, where the rights and obligations are opposite each other. Then from this definition can be formulated elements of legal relations, namely: the existence of legal subjects who have their respective rights and obligations, the existence of legal objects, and the relationship of legal subjects as owners of rights and bearers of obligations. Then Soeroso added the conditions for legal relations, namely: the existence of a legal basis governing the legal relationship and the emergence of legal events that occurred between the legal subjects at the same time and place<sup>31</sup>. Legal subjects in e-health involve many parties, including E-health providers, doctors or other health workers, and users. Trade in services is the object of the three legal subjects especially AI. The legal relationship that will be clarified in detail is the legal relationship between the E-Health Provider and the User, but before that, the legal relationship will be explained: between the Provider as AI or a doctor and other health workers as AI, the legal relationship between a doctor and an application User or consumer, and the core, the namely legal relationship between the Operator and the User (in general).

First, it will explain the legal relationship between the Operator of the E-health application in the form of AI and doctors or other health workers. In this study, researchers examined two e-health applications, namely Alodokter and Halodoc, each of which has a separate application or website specifically for doctors. Alodokter itself has Alomedika, as a special application for doctors, while Alodokter has a special application for the general public who use health services provided by doctors who have joined the Alomedika. According to Alomedika's Terms and Conditions, doctors or other health workers are referred to as "Service Providers", while Alomedika itself refers to PT Sumo Teknologi Solusi. Alomedika explains in its Terms and Conditions, which reads: *Healthcare Providers are independent medical professionals. Any agency, partnership, joint venture, or employment relationship will not or will not be formed or occur as a result of the Services and/or these Terms and Conditions. We do not employ Healthcare Providers. Accordingly, Healthcare Providers are not our employees. We are not responsible for any acts, omissions and/or carelessness of the Service Providers.* From the clause it is clear that the legal relationship between a doctor and Alomedika is a partnership, which will have an impact on legal liability if the doctor makes a medical mistake on the patient or user of the Alodokter application.

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<sup>29</sup> "The agreement is deemed to have occurred legally and binding if the Electronic Acceptance has complied with the technical mechanism and substance of the terms and conditions in the Electronic Offer".

<sup>30</sup> Niru Anita Sinaga, *op.cit*, p. 117.

<sup>31</sup> Mutawakkil Amin, Legal Relationship between the Owner of the Online Transportation Service Application and the Driver in the Implementation of Transportation Services, Jember, Fakultas Hukum Universitas Jember, 2019, p. 9-10.

Then the second legal relationship is the legal relationship between doctors and patients or users of e-health applications. Although the Terms and Conditions of telemedicine do not explain at all the legal relationship between doctors and patients or users in the clauses, the legal relationship between the two in e-health services carried out via the internet is similar to the relationship between doctors and patients in conventional medical services<sup>32</sup>. A doctor is a person who has the proper authority and permission to provide health services, especially examining and treating diseases, and is carried out according to the law on services in the health sector<sup>33</sup>. While the patient is any person who consults his health problems to obtain the necessary health services, either directly or indirectly to a doctor or dentist<sup>34</sup>. The legal relationship between the two is also referred to as a therapeutic transaction which is an agreement between a doctor and a patient that gives birth to the rights and obligations of both parties<sup>35</sup>. This of course must fulfill the agreement between the patient and the doctor in an effort to maintain health, prevent disease, improve health, treat disease and restore health<sup>36</sup>. Where the agreement must be in accordance with service standards, professional standards, professional procedure standards, and the patient's medical needs<sup>37</sup>.

Then the last one is the legal relationship between e-health Operators, especially telemedicine applications with patients or users of the application from the above clause that the e-health is also under the auspices of a Limited Liability Company<sup>38</sup>. The Limited Liability Company that oversees e-health is a corporate company with the status of a legal entity. Then the two e-health activities carry out their economic activities within the jurisdiction of the Republic of Indonesia, namely trade in services in the technology sector. This is in accordance with Article 1 point 3 UUPK<sup>39</sup>, which classifies corporations as business actors<sup>40</sup>.

Meanwhile, a User is any person who uses the goods and/or services provided by the two e-health either through the web or application, either for the benefit of himself, his family, other people, or other living things and not for trading, this is in accordance with Article 1 number 2 UUPK<sup>41</sup>. Thus, the relationship between the legal subjects of the two e-health with the User is the relationship between the Business Actor and the Consumer, this is also in accordance with the requirements of the legal relationship that has been stated by Soeroso in the previous paragraph.

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<sup>32</sup> Eman Sulaiman, dkk, Juridical Study of Telemedicine Consulting Services in Indonesia, *SOEPRA Jurnal Hukum Kesehatan*, Volume 7, No. 2, Fakultas Hukum Universitas Suryakencana, Cianjur, 2021, p. 280.

<sup>33</sup> Yussi A. Mannas, Legal Relations of Doctors and Patients and Responsibilities of Doctors in Providing Health Services, *Jurnal Cita Hukum*, Volume 6, No. 1, Fakultas Hukum UIN Syarif Hidayatullah, Jakarta, 2018, p. 167.

<sup>34</sup> Article 1 paragraph 10 of Law Number 29 of 2004 concerning Medical Practice.

<sup>35</sup> Yussi A. Mannas, *Op. Cit.*, p. 168.

<sup>36</sup> Article 1 paragraph 10 of Law Number 29 of 2004 concerning Medical Practice.

<sup>37</sup> Eman Sulaiman, dkk, *loc.cit.*

<sup>38</sup> Ukilah Supriyatini, dkk, Limited Liability Company (PT) Civil Liability as a Legal Entity, *Jurnal Ilmiah Galuh Justisi*, Vol. 8, No. 1, Fakultas Hukum Universitas Galuh, Ciamis, 2020, p. 134.

<sup>39</sup> Business actor is any individual or business entity, whether in the form of a legal entity or not a legal entity that is established and domiciled or carries out activities within the jurisdiction of the Republic of Indonesia, either alone or jointly through agreements for the implementation of business activities in various economic fields..

<sup>40</sup> Elucidation of Article 1 paragraph (3) UUPK: Business actors included in this definition are corporate companies, BUMN, cooperatives, importers, traders, distributors and others.

<sup>41</sup> Consumers are every person who uses goods and/or services available in the community, both for the benefit of themselves, their families, other people, and other living creatures and not for trading.

Obligations as a User have been stated in Article 1513 BW<sup>42</sup>, Article 5 letter b UUPK<sup>43</sup>, and Article 27 Perkoinfo Number 20/2016<sup>44</sup>. The good faith referred to in Article 5 letter b of the UUPK can be interpreted as not violating the rights of the E-Health Provider, in accordance with the agreements made and other laws and regulations, and carrying out their obligations according to the agreement because the agreement applies properly to the law for both parties. The first indicator, namely the User's obligations for payments. Users of both e-health are required to pay for any service transactions or services they choose. The payment is no longer using cash but through third parties who have collaborated with the two e-health, such as interbank transfers, e-money, and so on. This can be equated with the obligations of the buyer as stated in Article 1513 BW and Article 5 letter c UUPK.

Good faith as a User's obligation can also be interpreted that the User is responsible for the personal data contained in his control, both individuals and organizations in the event of an act of abuse. In the second indicator, namely the obligation for User's Personal Data, the User is required to provide accurate and correct information. If not, the User will be held responsible for personal information that turns out to be owned by another person or another organization, as stated in Article 27 letter d of Perkoinfo Number 20 of 2016. However, this is different from Halodoc which has explained the acquisition of User's personal information specifically. , Alodokter is inconsistent in determining whether the information to be obtained is limited or not. This can be seen in the sub-chapter Position of Privacy Policy as a Clause in the E-Contract in the E-Health Application above, on the Alodokter Privacy Policy page it states that the information obtained from the User is the identity in the KTP, telephone number, e-mail address, and health-related information. Meanwhile, on the Terms and Conditions page, User information that will be obtained from Alodokter includes but is not limited to name, address, telephone number, date of birth, and e-mail address. However, the User must know for himself the extent to which he will provide his personal information to the two e-health or any Electronic System Operator, as stated in Article 27 Perkoinfo Number 20 of 2016.

Then in the three indicators, namely the obligation to use services, both Alodokter and Halodoc require users to use the services provided only for legitimate purposes and do not conflict with the provisions contained in the e-health and the provisions of the legislation. , this can be interpreted that the User has good intentions in using the e-health service and does not conflict with Article 5 letter b of the UUPK. Then the obligation for the parties to enter into an agreement is to comply with the contents of the agreement as statutory regulations, as stated in Article 1338 paragraph (1) BW<sup>45</sup>, the two e-health also require users to comply with the existing provisions: as in Halodoc, it requires its users to check the detailed information on the Halofit service before using supplements and/or vitamins at the Halofit service, then it is also mandatory to submit a drug prescription to buy the drug at the Health Shop service. This is also in accordance with Article 5 letter a UUPK<sup>46</sup>.

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<sup>42</sup> "The main obligation of the buyer is to pay the purchase price, at the time and place as determined by the agreement."

<sup>43</sup> "The consumer's obligation is to have good faith in making transactions to purchase goods and/or services."

<sup>44</sup> Users are required to: a. maintain the confidentiality of the Personal Data obtained, collected, processed, and analyzed; b. use Personal Data in accordance with User needs only; c. protect Personal Data along with documents containing said Personal Data from acts of abuse; and D. responsible for the Personal Data contained in their control, both organizational control under their authority and individuals, in the event of an act of abuse.

<sup>45</sup> "all agreements made legally apply as law to those who make them."

<sup>46</sup> "Consumer obligations are: a. read or follow information instructions and procedures for the use or utilization of goods and/or services, for security and safety."

If the User does not fulfill his obligations, in other words, is in default, as agreed, or does not carry out his obligations under the laws and regulations, then in this case the e-health Operator has the right to sue the user. Then good faith can also be interpreted that the User also protects the e-health Operator from negligence made by the User. This is stated by e-health sistem, if there is a User who is negligent in using e-health's services, then the User is obliged to protect and free the e-health from any demands.

There are not many user rights regulated in the Terms and Conditions as well as the Privacy Policy of the e-health, the user, in this case, must be careful and proactive to find out what his rights are while using the services of this electronic system operator or other electronic system operators that operate in a different field. The first indicator is the user's right to enter or make an agreement. For every person who has fulfilled the requirements as stated in Article 1320 BW, then that person has the right to make an agreement with anyone and is free to determine the contents of the agreement itself as long as it does not conflict with the laws and regulations, including electronic agreements, in this case, AI as the parties with Users.

Then the second indicator is the right to the protection of personal information. Everyone has the right to comfort, security, and safety in consuming goods and/or services, as stated in Article 4 letter of the UUPK. User comfort, security, and safety can be interpreted as the User having the right to the confidentiality of his personal data, as has been stated in Article 26 letter a of Permenkominfo Number 20 of 2016<sup>47</sup>. Which then is an obligation for AI Electronic System Operators to ensure comfort, security, and safety in organizing electronic systems as stated in the paragraph above. In the table above, e-health system provides a description of the User's rights to his personal information that the User has the right to provide or not provide his personal information to the AI provider, considering that it is the User's obligation to maintain the personal information. E-health system then further described that the User has the right to access, change, and delete his personal information, as in accordance with Article 26 letters c, d, and e of Perkominfo Number 20 of 2016 juncto Article 59 paragraph (3) PP PMSE. Then if the User's rights are violated by the Operator, then the Operator has the right and can sue the Operator in accordance with Article 4 letter e of the UUPK juncto Article 38 juncto Article 39 of UU ITE juncto Article 26 paragraph (2) Amendment to UU ITE Number 19 of 2016 juncto 32 Perkominfo Number 20 of 2016.

## CONCLUSION

The legal consequences of using AI as a party in e-health applications for the Users who use therapeutic agreements, which are the same as conventional agreements which are binding on the parties like statutory regulations, based on the terms of the agreement stated. in Article 1320 BW, namely: agreed, competent, a certain subject matter, and a lawful cause. Where the agreement in the Terms and Conditions of the telemedicine system occurs by agreeing to the offered clause which is also in accordance with Article 46 paragraph (2) PP PSTE juncto Article 42 letter c PP PMSE. Then AI skills as a subject regulated in the Terms and Conditions on e-health are for AI owners to comply with the provisions that everyone who is at least 21 years old or married and is not under guardianship or guardianship, this is also in accordance with Article 330 juncto Article 433 BW. Furthermore, the Terms and Conditions of the e-health state that the objective conditions are in the form of other than

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<sup>47</sup> "Owner of Personal Data has the right to: a. for the confidentiality of his Personal Data."

trade in freely sold medicines, also trade in health services and/or other social services. This is also in accordance with Article 1336 BW junto Article 46 paragraph (2) letter d PP PSTE jo. Article 52 letter e PP PMSE. However, if discussed in more depth, the Privacy Policy which is a therapeutic agreement in the form of an e-contract specifically, there are several clauses that contain the rights and obligations of the parties which are not in accordance with the laws and regulations, such as the obligation to guarantee quality services, the obligation to delete the User's account, the obligation not to include an exoneration clause, the obligation to guarantee the confidentiality of the User's personal data, and the obligation to notify the failure of the protection of the User's personal data. The clauses in the conflicting agreement can risk being null and void in which case one of the parties can request an annulment to the court, so medical services are complex and tightly coupled systems, and always contain risks, so they must be carried out with great caution. The legal provisions governing AI with a medicolegal approach should be able to evaluate and ensure the safety and accuracy of medical decisions made by an AI "thinking algorithm".

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