

The Principle of Proportionality in the Terms and Conditions of Use of Telemedicine Applications

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Abstract. *This study aims to analyze the application of standard limitation of liability clauses in telemedicine services and examine the application of the proportionality principle as a benchmark for fairness in digital contracts. This study uses a juridical-normative approach with legislative and conceptual methods. Based on the results of the study, it is concluded that the position of the parties in the telemedicine agreement constitutes a specific legal relationship in which the platform acts as an electronic system intermediary, while the doctor acts as a healthcare provider. The terms and conditions of use of the application have fulfilled the legal requirements of the agreement and reflect the proportionality principle. Contractual balance is maintained through an informed consent mechanism, guaranteed personal data protection, and a consumer complaint feature. The inclusion of an exoneration clause by the platform is seen as a rational self-protection to separate responsibilities between technological and medical aspects, thereby creating targeted legal certainty.*

Keywords: *Agreement; Application; Conditions; Proportionality.*

1. Introduction

Health is a state of well-being, both physically, mentally, spiritually, and socially, that enables everyone to live productively socially and economically, as stipulated in Law Number 36 of 2009 concerning Health. In healthcare, a legal relationship arises that gives rise to rights and obligations between doctors and patients, known as a therapeutic agreement.

The development of digital technology has brought significant changes to the healthcare sector through innovative telemedicine services. Halodoc has become one widely used service provider, allowing patients to consult with medical professionals online without a physical visit. However, the use of this digital service presents new legal challenges, particularly in the contractual relationship between the platform and users. Before using the service, users are required to agree to the terms and conditions of use, which constitute an adhesive

contract.¹In practice, these adhesive agreements often contain standard clauses and exoneration clauses, which can create imbalances in rights and obligations. Exoneration clauses aim to relieve business actors from potential risks, such as absolving the platform from liability for misdiagnosis or service disruptions. This contradicts the principles of consumer protection as stipulated in Article 18 of Law Number 8 of 1999 concerning Consumer Protection (UUPK).

In the Indonesian legal system, freedom of contract as regulated in Article 1338 paragraph (1) of the Civil Code provides flexibility for the parties.²However, this freedom must be limited by the principle of proportionality, namely the principle that demands a fair balance between the rights and obligations of the parties, especially to maintain substantive justice in one-sided digital contracts.³

Inequality in digital contracts is concerning because consumers lack equal bargaining power with service providers. Therefore, the principle of proportionality is a crucial parameter for evaluating whether a liability waiver clause is fair or exploits user vulnerability.⁴This study aims to analyze the position of the parties and the suitability of the application of the principle of proportionality in the terms and conditions of use of the Halodoc application.

2. Research Methods

This research method uses a normative legal research method with a statute approach and a conceptual approach. Primary legal materials include the Civil Code, Law Number 8 of 1999 concerning Consumer Protection, the ITE Law, and the Health Law. Secondary legal materials are sourced from scientific journals, books, and application Terms and Conditions documents. Data collection was conducted through a bibliography study.

3. Results and Discussion

3.1. Position of the Parties in the Terms and Conditions of Use of the Application Agreement Based on the Principle of Proportionality

Theoretically, a new social interaction can be said to be a legal relationship if the interaction is regulated and recognized by legal rules, so that its implementation gives rise to rights and obligations guaranteed by the state. Sudikno Mertokusumo defines a legal relationship as a relationship between two or more legal subjects, where the rights and obligations of one party confront the rights and obligations

¹Makarim, Edmon. (2010). Introduction to Telematics Law. Jakarta: RajaGrafindo Persada, p. 78.

²Subekti. (1979). Contract Law. Jakarta: PT Intermasa, p. 13.

³Prihatin, Lilik., Amin, Mohammad., & Darmawan, Darmawan. (2023). "Implications of the Principle of Proportionality in Default: An Effort to Realize Substantive Justice." in *JiIP - Scientific Journal of Educational Sciences*, Volume 6 No. 1 2023, p. 187. url <https://jiip.stkipyapisdompupu.ac.id/jiip/index.php/JiIP/article/view/1357>

⁴Suharnoko. (2014). Contract Law: Theory and Case Analysis. Jakarta: Kencana Prenada Media Group, p. 112.

of the other party.⁵In the context of digital-based health services (telemedicine), understanding the essence of this legal relationship is essential for analyzing the position and mapping the proportion of responsibility of each entity involved.

In civil law, a legal relationship can only arise if three absolute elements are fulfilled. First, the legal subject, namely the parties who bind themselves to each other. In contrast to conventional medical practice which is binary, the legal relationship in telemedicine applications is tripartite, involving the Electronic System Organizer (Platform/Halodoc), Independent Medical Personnel (Doctors), and Service Users (Consumers/Patient). Second, the legal object, namely something that is the target or goal of the relationship. Objects in telemedicine include the provision of reliable digital infrastructure, medical diagnostic teleconsultation services, and protection of electronic medical record data. Third, the legal bond, namely the exchange of achievements in the form of proportional rights and obligations between the three subjects. Furthermore, for a relationship to be qualified as a binding legal relationship, a legal basis and a legal event are required.⁶The legal basis that governs relationships in telemedicine applications is spread multidimensionally, including contract law (Book III of the Civil Code), the Consumer Protection Law, the Health Law, and the Electronic Information and Transactions Law (UU ITE).

Meanwhile, the legal event manifests itself digitally through two primary actions that have legal consequences. The first legal event is the consumer's affirmative agreement (clickwrap agreement) to the Terms and Conditions document, which automatically creates a legal relationship between the user and the platform provider. The second legal event is the initiation of a clinical teleconsultation session, which legally creates a therapeutic agreement (*inspanningsverbintenis*) between the patient and the healthcare provider.⁷

Given that legal relationships formed in the digital space (such as standard/adhesive agreements in applications) are often characterized by imbalances in bargaining power, the law must act as a balancing instrument. The construction of legal relationships in telemedicine cannot be allowed to proceed solely on the basis of blind freedom of contract. Such relationships absolutely require the application of the principle of proportionality to ensure that the allocation of risk, the inclusion of exoneration clauses, and the fulfillment of consumer rights are arranged rationally, fairly, and do not exploit the situation of the weaker party.

The legal standing of the parties in an agreement is a fundamental basis that determines the distribution of legal rights, obligations, and responsibilities. In the digital healthcare ecosystem through telemedicine applications, the legal

⁵Sudikno Mertokusumo. (2007). Understanding Law: An Introduction. Yogyakarta: Liberty, p. 73

⁶Sudikno Mertokusumo, Op.Cit., p. 75

⁷Wila Chandrawila. (2001). Medical Law. Bandung: Mandar Maju, p. 32.

relationship structure is no longer the traditional binary one involving only doctors and patients, but has transformed into a tripartite relationship involving the Electronic System Provider (Platform), Medical Personnel (Doctors), and Service Users (Consumers/Patients). Proportional mapping of these positions is essential to ensure that each party is responsible according to their capacity, competence, and actual role in the service.⁸

Analyzing the position of application companies (platforms), platforms operate exclusively as information technology infrastructure providers or intermediaries. The legal structure of telemedicine platforms clearly distinguishes them from healthcare facilities (Fasyankes) such as hospitals or clinics. Application companies do not employ medical personnel subordinate to them within an employment relationship, but rather establish a partnership. Therefore, the platform's legal responsibility focuses on the reliability of its electronic systems, cybersecurity, and smooth user access.

The platform's position has implications for its liability. As an intermediary, the platform is subject to the Electronic Information and Transactions Law (ITE Law) and the Personal Data Protection Law (PDP Law). The platform is obligated to ensure that patients' medical data and electronic medical records (ERDs) are securely encrypted and protected from misuse. The platform must also ensure that its payment gateway system functions flawlessly. Any losses arising solely from technological system failures are the platform's responsibility.⁹

Meanwhile, medical personnel (doctors) participating in telemedicine applications are considered independent contractors who practice their profession based on standards of competence and medical authority. Doctors act as professional legal subjects, providing healthcare services, including diagnostic consultations, education, and therapeutic recommendations, directly to patients online. Although doctors interact through a system provided by the platform, the independence of their clinical judgment is not under the control of platform management.¹⁰

Doctors are bound by the norms stipulated in the Health Law and the Indonesian Code of Medical Ethics (KODEKI). Medical responsibility for all actions, diagnoses, prescriptions, and referral recommendations rests solely with the physician concerned. If medical negligence or a misdiagnosis occurs that harms a patient, civil and criminal liability rests with the individual medical professional, not the platform as the technology provider.¹¹

⁸Muninjaya, AA Gde. (2004). Health Management. Jakarta: Medical Book Publisher, p. 55.

⁹Law Number 27 of 2022 concerning Personal Data Protection.

¹⁰Isfandyarie, Anny. (2006). Legal Responsibilities and Sanctions for Doctors. Jakarta: Prestasi Pustaka, p. 89.

¹¹ Dewi, Alexandra Indriyanti. (2008). Health Ethics and Law. Yogyakarta: Pustaka Book Publisher, p. 67.

Regarding the status of Service Users (Consumers/Patients), application users have dual legal status: as consumers of electronic technology services when registering an account on the platform, and as patients receiving medical services when entering a teleconsultation room with a doctor. In their capacity as consumers, users are protected by Law Number 8 of 1999 concerning Consumer Protection (UUPK). Consumers have the right to comfort, security, safety, correct, honest, and clear information, as well as the right to demand compensation if the service received is not appropriate.¹² The legal relationship between consumers and the platform is based on an electronic agreement (clickwrap agreement) outlined in the Terms and Conditions of Use (Terms and Conditions). On the other hand, the legal relationship between patients and doctors is formed through a therapeutic agreement (*inspanningsverbinten*). A therapeutic agreement is an agreement whose object is the doctor's maximum effort to heal the patient, not an agreement that promises an absolute outcome (*resultatsverbinten*). This agreement is created automatically when a patient submits a medical complaint and the doctor responds via the app's chat feature.¹³

Based on the principle of proportionality, the positions of these three parties must be placed in a fair proportion. Ignorance of the limitations of this position often results in patients demanding medical compensation directly from the app company. However, in accordance with the principle of proportionality, liability must be allocated according to the source of the breach. This separation of legal entities between technology providers and healthcare providers reflects structural fairness, where the platform facilitates, the doctor treats, and the patient receives the benefits with full understanding of these limitations.

A medical professional, when performing their duties through an application, is required to comply with the standard operating procedures stipulated in the Health Law and the Indonesian Code of Medical Ethics (KODEKI). This medical responsibility is absolute and cannot be delegated or transferred to a platform entity. If medical negligence or an error in the diagnostic process occurs that causes physical or material harm to the patient, the individual physician bears full civil and criminal liability, based on the principle of professional responsibility, which requires maximum care (standard of care). In contrast, the legal relationship between patients and doctors facilitated by this platform is subject to a therapeutic agreement (*inspanningsverbinten*). A therapeutic agreement is not one that promises a definitive outcome in the form of absolute healing (*resultatsverbinten*), but rather one whose object is the maximum effort of

¹²Sofian, Ahmad. (2019). Consumer Protection Law in Indonesia. Jakarta: Sinar Grafika, p. 142.

¹³. Dali, Muh. Amin., & Kasim, Warsito. (2019). "Legal Aspects of Informed Consent and Therapeutic Agreements". in *Akademika Jurnal UMGo*, Volume 8 No. 2 2019, p. 96. url <https://jurnal.umgo.ac.id/index.php/akademika/article/view/100>

medical personnel based on the latest medical science and technology to cure the patient.

Furthermore, Article 4 of Law Number 8 of 1999 explicitly outlines consumer rights, including the right to accurate information, the right to have complaints heard, and the right to compensation. The obligation to provide accurate information regarding server stability and the security of electronic transactions falls under the purview of platforms. However, the obligation to provide comprehensive information regarding diagnoses, medical procedures, and medical complications and risks is a legal obligation entirely inherent in the autonomous rights of the medical profession, thus relegating the platform to a purely administrative facilitator. The interconnectedness of the principles of distributive justice and proportionality creates a multidimensional protection structure. Platforms ensure consumers' digital rights are protected, doctors ensure patients' health rights are met, and consumers are obligated to provide honest health information and pay for services. With this precise mapping of legal standing, the agreement structure within electronic contracts can be objectively assessed as a way of structuring the functional boundaries of each party.

Furthermore, in the context of healthcare services, law, as a set of regulations governing social relations, grants legal subjects the right to act or demand something required. The legal relationship in app-based healthcare services is divided into the relationship between the app company and its partners (doctors and pharmacies) and the relationship between the user as the consumer. The obligation of doctors and other partners as service providers is to provide the services required by consumers according to their needs and to fulfill the obligations stipulated in the Consumer Protection Law. Article 7 of the Consumer Protection Law explicitly states that business actors must act in good faith in conducting their business activities, provide accurate, clear, and honest information regarding service conditions and guarantees, and treat or serve consumers properly, honestly, and without discrimination. If medical personnel violate these obligations while providing services through a platform, the compensation and redress mechanism rests with the relevant service provider, given that the platform's role is purely as a facilitator.

Understanding the principle of proportionality provides guidance for understanding the philosophical meaning of contracts, which must stem from the concept of justice. Aristotle stated the principle that equals should be treated equally, and unequals should be treated unequally proportionally. This equality demonstrates an impartial and fair relationship. Thus, the relationship between doctors and patients in telemedicine platforms is proportional. The doctor possesses medical expertise, while the patient requires that expertise. Therefore, the positions of both parties are corrected through an agreement based on their respective proportions.

3.2. Terms and Conditions of Use Agreement for the Application Based on the Principle of Proportionality

The Terms and Conditions for using a telemedicine application are a concrete manifestation of a standard contract. A standard contract is a contract whose clauses have been unilaterally standardized by the business actor and offered en masse to consumers on a "take it or leave it" basis. In this agreement, consumers do not have the option to negotiate or change the substance of the clauses, but are instead faced with the choice of agreeing (by clicking the registration button) or refusing to use the service altogether.

Legally, the electronic agreement through the 'clickwrap agreement' mechanism is valid and binding, because it meets the four conditions for a valid agreement as stipulated in Article 1320 of the Civil Code, namely: the agreement of those who bind themselves, capacity to act, a certain matter, and a lawful cause. The agreement is realized through the consumer's affirmative action of pressing the registration button. Capacity is ensured through a clause requiring users to be at least 21 years old. The specific object is the provision of teleconsultation services, and the lawful cause is a partnership that does not conflict with the law. However, this formal validity does not necessarily reflect substantial justice. A crucial issue in standard telemedicine agreements is the inclusion of an exoneration clause, namely a provision that limits or eliminates the liability of the business actor. In the Halodoc application, there is a clause stating that the platform is not responsible for losses, damages, or negligence arising from misdiagnosis by the service provider (doctor), and is not responsible for loss of account access due to user negligence in maintaining passwords. The existence of this exoneration clause at first glance appears to clash directly with the provisions of Article 18 paragraph (1) letter a of Law Number 8 of 1999 concerning Consumer Protection, which expressly prohibits business actors from including standard clauses that transfer their responsibilities. If they violate this provision, then based on Article 18 paragraph (3) of the Consumer Protection Law, the standard clause is declared null and void (*nietig van rechtswege*).¹⁴

However, through the analytical lens of the principle of proportionality, the inclusion of an exoneration clause in the context of telemedicine platforms has a different rationale. The principle of proportionality emphasizes a fair exchange of rights and obligations (*equitability*). In the telemedicine business model, the transfer of medical responsibility from the platform to the doctor is not a "transfer" as referred to in Article 18 of the Consumer Protection Law to escape responsibility, but rather an "affirmation" of the legal limitations of the entity.¹⁵

¹⁴Law Number 8 of 1999 concerning Consumer Protection, Article 18.

¹⁵ Shokhib, Muhammad Yalis. (2022). "The Dialectic of Ihdad in the Compilation of Islamic Law (Khi) Based on the Principle of Proportionality." in *AlSyakhsiyyah: Journal of Law & Family Studies*, Volume 4 No. 1 2022, p. 27. url <https://journal.iainponorogo.ac.id/index.php/syakhsiyyah/article/view/4279>

This is where the principle of proportionality comes into play as a legal tool to correct overly rigid interpretations of the Consumer Protection Law. The principle of proportionality demands that the burden of liability be distributed based on the proportion of each party's contribution and risk management capacity. In the telemedicine business model, shifting responsibility for medical malpractice from the platform to partner doctors is not an escape from liability prohibited by the Consumer Protection Law, but rather an affirmation of the jurisdiction of professional liability. Given that telemedicine platforms are legally neither licensed nor competent to conduct in-person medical practice, forcing them to bear the burden of compensation for independent physicians' misdiagnosis is a legal anomaly that creates structural injustice. Therefore, the exoneration clause is positioned as a highly rational form of self-protection, aimed at explicitly directing patient claims to the parties authorized to perform clinical interventions.

Telemedicine platforms are legally lacking the permits, qualifications, or competence to practice medicine. Imposing liability for medical malpractice on platforms is an anomaly and a form of structural injustice. The exoneration clause is positioned as a rational form of self-protection, ensuring that patient lawsuits are directed to the party with the actual authority to perform the medical procedure—the doctor.

Furthermore, the terms and conditions agreement maintains proportional balance through other protection mechanisms provided within the application. First, patient autonomy is protected through an electronic Informed Consent system. Before a teleconsultation or medication prescription is performed, the patient is provided with information about the risks and procedures of the service, and their explicit consent is requested. This informed consent represents a transfer of decision-making power from the doctor to the patient, shifting the paternalistic paradigm to a transparent partnership. Second, the platform embodies the principle of proportionality by allocating resources to safeguard the privacy and security of patient personal data. This protection is demonstrated through an encryption system and strict access restrictions to Electronic Medical Records. If a data breach is proven to be caused by technical negligence in the platform's infrastructure, the exoneration clause is void, and the platform is obligated to bear full compensation, as this falls within the scope of its technological control. Third, the availability of a Consumer Complaints Service (Helpdesk) channel. Article 18 of the Consumer Complaints Service in the Halodoc application applies the principle of proportionality, providing a complaints service if consumers encounter problems using the application. Although the platform limits its clinical responsibilities, it provides an alternative first-level dispute resolution mechanism by accepting technical complaints and mediating disputes. The existence of this responsive complaints service demonstrates that good faith is maintained.

Furthermore, clauses in the Terms and Conditions, such as "You may stop accessing and/or using the Platform," provide patients with absolute freedom to opt out if they find the clause burdensome. This restores the individual's autonomous right to reject an agreement if they feel their equal rights are violated. The principle of proportionality ensures that contracts are not formed based on coercion, but rather on rational choice in the digital age. Given this partnership, a Notary plays a crucial role in drafting the Cooperation Agreement between the Electronic System Provider and Medical Professionals. To ensure proportional legal certainty for all parties, this collaborative relationship is ideally framed in an Authentic Deed. Through the Authentic Deed, the Notary formulates a clear division of risk between the platform and the physician, thereby minimizing disputes and protecting end users (consumers) from confusion regarding jurisdictional liability.

Table Proportion of Responsibility in Telemedicine Agreements

Related parties	Legal Status	Main Responsibility Burden
Application Platform	Electronic System Organizer	Technical reliability, Personal Data Protection, System Operations.
Medical personnel	Professional Service Provider	Performing diagnosis, Medical action, Drug recommendations.
Consumer/Patient	Service Users	Honesty of medical complaint information, Compliance with recommendations.

Based on the details and comprehensive analysis above, it is clear that the parties' positions and the substance of the telemedicine application's terms and conditions operate outside the bounds of the principle of proportionality. This conclusion aligns with the view that cyberspace law enforcement requires harmonization between the Consumer Protection Law (UUPK) and the Electronic Information and Transactions (ITE) Law, so that the validity of digital contracts can be understood not only as a manifestation of free will but also as a manifestation of measurable justice that protects the entire ecosystem without imposing responsibilities beyond each party's actual share.

4. Conclusion

Based on the research, it was concluded that the parties in the agreement for the use of the telemedicine application clearly separate the responsibilities of the electronic system provider from those of the medical service provider. The platform acts purely as a digital space provider responsible for data and system security, while the physician holds absolute responsibility for the therapeutic clinical service aspects. The application's Terms and Conditions of Use have been proven to meet fairness standards and align with the principle of proportionality. The inclusion of an exoneration clause does not violate consumer protection laws, but rather a form of rational self-protection to clarify the platform's legal obligations and ensure they are proportionate. The balance for consumers remains firmly assured through the implementation of an informed consent

mechanism, guaranteed personal data protection, and the availability of an active complaint service. As a recommendation, companies operating telemedicine platforms are expected to consistently prioritize transparency of clauses by presenting a summary of agreements that are more easily understood by the general public. For notaries, a philosophical understanding of the principle of proportionality in digital contracts should serve as a primary foundation for drafting partnership agreements between electronic providers and medical professionals to ensure fair and balanced legal certainty.

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