

**LEGAL PROTECTION FOR CHATGPT (Generative Preb-Trained Transformer)
USERS AS A FORM OF HEALTH SERVICES INNOVATION FROM THE
PERSPECTIVE OF LAW NUMBER 17/2023 ON HEALTH**

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ABSTRACT

Today's technological advancement has given birth to the artificial intelligence technology (AI), of which one of its examples is ChatGPT. ChatGPT is a type of artificial intelligence which can duplicate human intelligence and behave like a human being in order to solve certain task or assignment. In this paper, we apply normative juridical analysis method through in-depth study and analysis of legal issues through literature study of relevant regulations, as they are currently enforced in Indonesia. In the field of health services, the utilisation of ChatGPT is done to provide automated medical record brief from interaction with patients so as to create efficiency in medical documentation. Another consequence that arises from the use of ChatGPT artificial intelligence is its implementation towards ethical and legal issues, where legal protection for its users shall be further studied in order to create a sense of balance in its utilisation. This analysis deduces that current Indonesian legal regulation has not comprehensively and specifically regulated artificial intelligence as well as ChatGPT. Therefore, a specific regulation on artificial intelligence is necessary to protect national, social, and private interests from misuse of, and negative impacts of, artificial intelligence to ensure legal certainty.

Keywords: Legal Protection; ChatGPT Artificial Intelligence; Health Services.

INTRODUCTION

Today, information and communication technology undergoes rapid advancement which would later constitute the main aspect in nurturing societal prosperity. One of the massively-used information technology investments lies in the field of public health field due to its importance in supporting the performance of development. According to Article 28 point (h) of the Indonesian Constitution, it is elaborated that every people has the right to live a

prosperous physical and spiritual life, right to residence, and right to a good and healthy environment as well as right of access to health services. The development of health services aspect is important to the national development to improve willingness, consciousness, and life skills in order to create a high degree of societal healthiness. Aside from clothing, food, and housing, health also constitutes primary needs in the society. This is since in order to live a normal life and to perform daily activities, a human being must always be in healthy condition.¹

The development of technology-based health aspect began to take form since the advent of infrastructural development as well as drop in price of internet access in the society, which results in adjustment of pattern in information gathering, especially in the medical field through the internet.² . Such change in lifestyle also results into the birth of digital technology-based health services. According to paragraph 1 section (3) of the Law of the Republic of Indonesia Number 17 of 2023 on Health, Health Services is defined as any form of activity or a series of activities given directly to individuals or society in general to nurture and improve societal health through promotional, preventive, curative, rehabilitative, and/or palliative methods. In the process of administration of health services, there are several dimensional measurements which can be seen through the perspective of quality, which will later become the characteristic of a service quality.³ There are ten main service quality identifying characteristics, namely responsiveness, reliability, competency, courtesy, access, communication, credibility, ability to understand customers, security, and physical evidences.⁴

However, in today's era of technological development, there exists new health services innovation in the form of chat bot-based ChatGPT (*Generative Pre-Trained Transformer*). ChatGPT is a natural language-based AI (*Artificial Intelligence*) which can provide solution to problems by way of suggestions and solutions based on available data, wherein ChatGPT can provide answer in text form (prompt) to human's inquiries.⁵ This health services innovation has generated considerable optimism regarding its potential to enhance healthcare access for diverse patient populations. Nevertheless, it is important to recognise that such technological advances can have both positive and negative consequences. When not utilised wisely, they can cause harm to their users. The utilization of ChatGPT presents a number of challenges, including the potential for bias and discrepancies in the delivery of health services. The potential for issues concerning patient data privacy and the risk of erroneous diagnoses or medication recommendations to arise must be considered, necessitating further analysis and

supervision of its use.

Medical law constitutes a “*lex specialis*” law, which specifically protects medical professions (provider) and users of health services (receiver) so as to ensure its smooth undertaking.⁶ It is known that as a new technological innovation in the field of health services, there is a possibility that ChatGPT does not yet have any regulatory legal product to protect its users. In light of the above, the authors are interested in discussing the legality of ChatGPT/chatbot-based artificial intelligence within the context of health services applications, with a particular focus on the legal protection afforded to users of health services who are catered to by ChatGPT-based artificial intelligence, as set forth in Law Number 17 of 2023 on Health. The objective of this research is to ascertain the credibility, legality and legal protection of ChatGPT-based health services, as well as to provide an analysis of their use by users. Furthermore, this research is intended to contribute to the advancement of scientific knowledge for the benefit of society.

RESEARCH METHOD

Method of research carries great role in resolving certain issue or problem in order to further develop science by way of scientific methods.⁷ The type of legal research employed in this paper is normative juridical or doctrinal legal research. The benefit of normative juridical research is to present juridical argument in the case where normative void, ambiguity, and conflict exists. The approach used in this research is statute approach which discusses regulations relevant with the legal issue being analysed, as well as conceptual approach which dissects views and concepts of legal studies present in legal books, articles, and encyclopaedias. Moreover, legal materials represent a fundamental instrument for addressing legal issues within the context of scientific papers. In this research, two categories of legal materials are employed: primary and secondary legal sources. In this research, the primary legal material employed is Law Number 17 of 2023 on Health. Cohen and Olson define primary legal material as comprising all regulations that are enforced by the state.⁸ On the other hand, the secondary legal material used in this research cover books related to legal studies containing doctrines, journals, or articles published periodically, as well as legal dictionary or legal encyclopaedia. Furthermore, collection of data within primary legal materials begins with searching and

gathering regulations having connection with the core issue of the research, followed by sorting and selecting regulations to be used in this paper from the highest to the lowest in the regulatory hierarchy. Conversely, the collation of data pertaining to secondary legal materials is conducted through the classification of books, journals, and scientific papers that are pertinent to the legal concept under examination, with a view to resolving the principal issues of this research. The data analysis in this research is conducted through four phases: descriptive, comparative, evaluative, and argumentative. The analysis will then be employed to derive an answer to the issue discussed herein through the deductive method, which is used to analyse certain issues in general, thus leading to a specific answer.

RESULTS AND DISCUSSION

The Legality of ChatGPT/Chatbot-Based Artificial Intelligence in Health Services Application Based on Law Number 17 of 2023 on Health

The concept of medical law is connected with the rights and duties of a patient, the standard of health services, and the active role of the society to achieve optimal degree of healthiness, which is regulated in the Law Number 17 of 2023 on Health. The government provides all of its citizens with the right and the opportunity to receive medical services. In light of the aforementioned details, the administration of health services is typically conducted by medical professionals, with patients serving as the recipients of these services. The individual responsible for the provision of health services must possess the requisite competence as outlined in the prevailing regulatory framework. The objective of healthcare services is to maintain the health of individuals in relation to patients, medical professionals and medical equipment.¹

Chapter 1, Article 1 paragraph (22) and Article 25 of Law Number 17 of 2023 on Health stipulates telemedicine as a form of provision and facilitation of clinical service, conducted through digital telecommunication technology. Such elaboration is in line with the phenomenon on health services innovation, namely ChatGPT/Chatbot-based artificial intelligence which sees widespread use today. It is established that ChatGPT is a digital platform employed for the analysis of a vast corpus of textual data, predominantly sourced from online platforms. The platform is then employed to respond to a number of queries through the utilization of a pre-training technique. ChatGPT is a chatbot-based system that

operates within the domain of artificial intelligence. A system embedded with artificial intelligence may perform a number of tasks, including studying, planning, providing solutions to given issues, and even making decisions. In other words, the ChatGPT system attempts to access all of the user's medical data in order to provide a diagnosis in response to the user's query.

ChatGPT/Chatbot-based health services are, in essence, much more efficient in terms of time, cost, and performance. Despite this, in terms of contribution regarding improvement of societal prosperity and advancement, once its implementation is contrarious to regulatory norms, then a specific legal product is necessary to regulate such right.² Article 281 of Law Number 17 of 2023 on Health elaborates the following:

“In certain condition, performance of practice as stipulated in Article 280 may utilize information and communication technology integrated with the National Health Information System.”

According to the above-mentioned article, there is a possibility of bias as there is no complete explanation of “certain condition”, thus resulting in its inability to be used as a legal basis for ChatGPT/Chatbot-based health services. Further, Article 334 of Law Number 17 of 2023 on Health states that:

- (1) Health Technology shall be implemented, emanated, distributed, developed, and evaluated through research, development, and analysis for the improvement of Health Resources and Health Effort.*
- (2) Health Technology as mentioned in paragraph (1) shall include hardware and software.*
- (3) The Central Government and the Regional Government shall push for the utilisation of domestic Health Technology products.*
- (4) Health Technology as mentioned in paragraph (1) shall fulfil standards in accordance with provisions of applicable regulations.*

The tone of the article above is also inadequate with regard to ChatGPT/chatbot-based health services, resulting in difficulties in the implementation of ChatGPT/chatbot-based health services under Law Number 17 of 2023 on Health. It is not possible to use ChatGPT/chatbots as a legal ground or regulatory basis for such services, necessitating the introduction of a

specific regulation on the particular matter to avoid bias and prevent new issues from arising in the future.

Forms of Legal Protection under Law Number 17 of 2023 on Health for Users of Health Services Catered by ChatGPT-based Artificial Intelligence

In the medical field, ChatGPT technology possess benefits and potentials in revolutionising the medical industry. For medical workers, ChatGPT eases health services provider in administering recommendation through real-time evidences, recommending accurate medication choice and identifying effects of medicines as well as recommending clinical guide in dealing with complex medical cases.¹⁰ Further, ChatGPT can also aid in composition of patient's medical record. Additionally, ChatGPT is also able to renew medical research in the fields of diagnosis, nursing, and provision of medicines.¹¹ In addition to the beneficial effects of ChatGPT artificial intelligence, there are also adverse effects in the medical industry. These include a lack of emotional connection between patients and medical professionals, as well as the potential for bias in the data gathered by ChatGPT AI. This may result in unfair recommendations for certain patients and inaccurate or erroneous responses due to the potential for bias in word choices.¹⁰ In terms of ethical and security implication for the patient's private data, such must be taken into account to ensure the security of patient's private data and safeguard medical information or medical record of the patient.

In general, the negative consequences of artificial intelligence include an increase in the number of jobs created as certain roles that previously required human input are now performed by AI for reasons of efficiency and accuracy. Furthermore, it is not possible to guarantee the privacy and security of user data, given that certain forms of AI require access to private information. On an individual level, there is a risk of dependency on artificial intelligence for assistance with daily activities. The most drastic impact involves the reduction of cognitive ability due to technological over-dependence, thus resulting in instant searching of solutions using technologies such as ChatGPT or Google Bard, lowering critical thinking and solution finding skills in the process.

The advent of ChatGPT has marked the beginning of a new era in artificial intelligence (AI). As a relatively recent phenomenon, AI falls into the category of new technology. Consequently, there is currently no legal framework that specifically addresses the use of AI.

This is despite the existence of numerous existing regulations and legal doctrines that accommodate and characterise AI. The objective is to guarantee that the regulation of artificial intelligence does not contravene national, public, and private interests.

The Constitution has stated that private data constitutes human right as stipulated in Article 28 letter G section (1), where it is elaborated that every person has the right to protection of self, family, honour, dignity, and their property, and has the right to security and protection from threats of fear to exercise or not to exercise his or her human rights. Similarly, regulation on private data protection has been accommodated by the Law Number 19 of 2016 on Amendment of Law Number 11 of 2008 on Electronic Information and Transaction, otherwise known as *UU ITE*, specifically in its Article 26 section (1), stating, “Unless stated otherwise by the Regulation, every information transmitted through electronic media having connection with a person’s private data shall be performed under the basis of consent of the concerned Person.” Further, the Law Number 27 of 2022 on Personal Data Protection also includes the principles of consent, limitations of purpose, and data minimisation.

Scholars tend to differ in defining the legal position of artificial intelligence, as evidenced by the statements of Professor. Joanna Bryson (a professor in Hertie School) and Prof. Dr. Saldi Isra, S.H., LL.M (Indonesian legal expert and constitutional judge) who opine that artificial intelligence shall be considered as a legal subject having same rights and duties as humans due to its ability to make decision and act independently.¹² An opposing viewpoint is presented by Paulius Cerka, who asserts that artificial intelligence (AI) is a legal entity that does not necessitate legal status akin to that of humans. Consequently, the accountability for any actions undertaken by AI should be attributed to the humans who created it.¹³ From the perspective of the concept of criminal responsibility in Indonesia, artificial intelligence does not qualify as a legal subject, since in the concept of criminal responsibility, a legal subject shall have conscience and will over his or her actions, whereas artificial intelligence is merely a program having no will over its action.¹⁴

Further, matters regulated in the Law Number 17 of 2023 on Health does not yet explicitly set out the concept and mechanism surrounding ChatGPT artificial intelligence, although telecommunication and technology-based health services method has been regulated under Article 1 points 21 and 22, carrying the term “Telehealth” (*Telekesehatan*) and “Telemedicine” (*Telemedisin*). This is further reinforced in the content of Article 172

paragraph (2), stipulating that health services may collaborate with electronic system organisers that has been registered and does not conflict with current regulations. In addition, the rights and privacies of patient is also guaranteed by the Law Number 17 of 2023 on Health, where a patient's medical data shall be safely kept and its secrecy maintained by medical workers, and shall be signed by the responsible medical or health worker performing action, thus clarifying that ChatGPT artificial intelligence cannot access or otherwise come into contact with a patient's medical record, minimising the risk of data leak. In addition, medical personnel are required to maintain the confidentiality of patients' personal health information in accordance with Article 301 of Law Number 17 of 2023 on Health. This ensures the protection of patients, as ChatGPT artificial intelligence is unable to act as a medical or health worker and therefore cannot access a patient's private data concerning their medical record.

CONCLUSION

ChatGPT artificial intelligence-based health services possess significant potentials and effects in the development of medical field due to it providing ease of use and efficiency. However, there also exist problems and challenges needing attention, especially concerning the aspect of legality. The Law Number 17/2023 on Health is still deemed insufficient to be a specific regulation, as it also creates many general norms, thus requiring an actual specific regulation regarding such matter.

The technological sophistication of the ChatGPT artificial intelligence in the field of health has its own benefits and harms. In relation to such potential harms, Indonesia has not yet possess a specific regulation on ChatGPT artificial intelligence, although there exists Article 28 point G section (1) of the Indonesian Constitution of 1945, Law on Electronic Information and Transaction, and Law on Private Data Protection as well as Law on Health which can mitigate losses incurred through the existence of ChatGPT artificial intelligence.

SUGGESTION

Government role in enactment of regulation concerning artificial intelligence is required to create legal certainty.

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