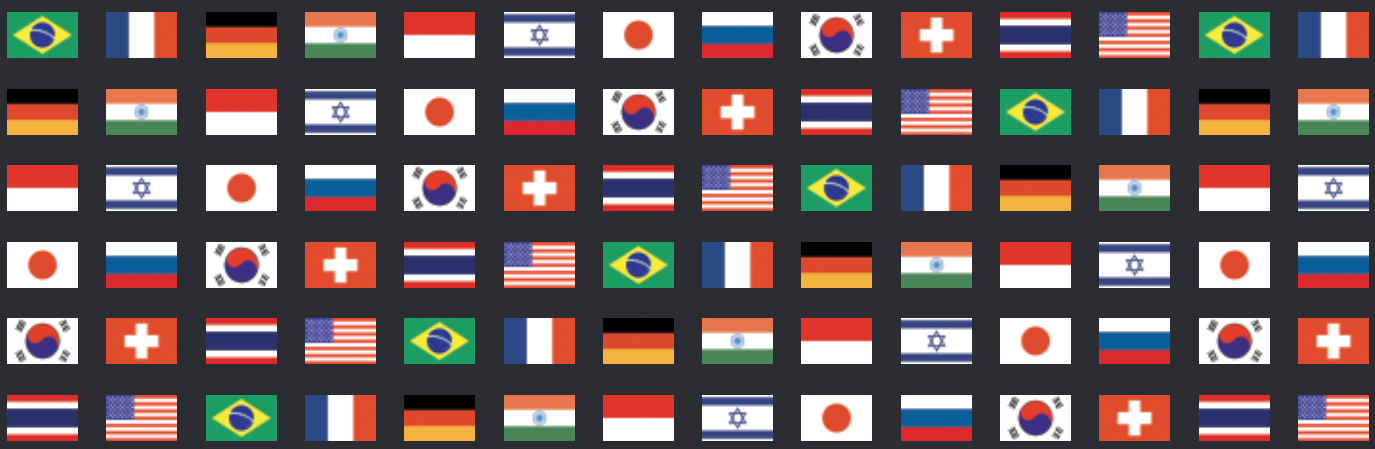
Digital Health
2021



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Indonesia

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ABNR

MARKET OVERVIEW AND TRANSACTIONAL ISSUES

Key market players and innovations

1 | Who are the key players active in your local digital health market and what are the most prominent areas of innovation?

The key players active in the digital health market in Indonesia are:

- healthcare providers: healthcare services have been transformed by digital technology, which has changed them from conventional to digital. Healthcare providers are nowadays engaged in facilitating healthcare-related services to their consumers;
- pharma industry: currently, trading in pharmaceutical products can be carried out through electronic trading, including websites, software and mobile applications, and digital platforms;
- investors: the development of digital health (including the invention and creation of applications and software) needs financing, which depends partly on investor funding; and
- government: legislation enacted by the government is anticipating the development of digital health as well as information technology, although improvements are still needed to give certainty to investors and to build harmony with related and perhaps overlapping regulations.

The invention of applications, websites and platforms was a game-changer in digital health in Indonesia, and has provided a range of services from the provision of telemedicine, sales of medicine through electronic media, health information and health checks, as well as facilitating appointments with healthcare providers and healthcare practitioners.

Investment climate

2 | How would you describe the investment climate for digital health technologies in your jurisdiction, including any noteworthy challenges?

The investment climate for digital health technology in Indonesia is favourable, with good potential following rapid growth in internet penetration and usage (the fastest growing in South East Asia). Indonesia is the fourth-largest country in the world by population, with a very young demographic, poised to become the largest market for technology-driven products, including digital apps. Being an island archipelago, access to medicine is poor in remote regions, which opens an opportunity for digital health, including telemedicine. To date, Indonesia has home-grown digital health apps, such as AloDokter, HaloDoc, and GO-MED, to name a few. The current pandemic has also spurred the growth of telemedicine apps, with HaloDoc having a 101 per cent increase in usage in March 2020 versus the average for the whole of 2019.

Improvement is needed on the regulatory side as the government has yet to prepare an extensive regulatory framework specifically on digital health business, as well as clarity on how the existing regulations would apply, creating uncertainties for investors as to what is allowed and restricted in carrying out the business.

To date, the prevailing regulations in Indonesia on digital health are currently limited to:

- telemedicine, which is used at health service facilities (eg, hospitals and clinics), under Ministry of Health Regulation No. 20 of 2019 on Telemedicine Services as part of Health Services Facilities (Regulation 20/2019); and
- online distribution of medicine, under National Agency of Drug and Food Control Regulation No. 8 of 2020 on the Supervision of Online Distribution of Medicine and Food (Regulation 8/2020).

There is also a need for regulations on digital health apps that would allow health practitioners to communicate directly with patients; at present, the regulations neither govern nor restrict utilisation of these apps, so they operate within a somewhat grey area.

Nonetheless, during the coronavirus pandemic, the government issued several regulations to highlight the authority of health practitioners in providing services through telemedicine to slow down the spread of covid-19. The new regulations provide more clarity on the dos and don'ts of the digital health business. However, investors must anticipate the re-emergence of uncertainty in the telemedicine business post-pandemic.

Recent deals

3 | What are the most notable recent deals in the digital health sector in your jurisdiction?

The most notable recent deal was the financing of the HaloDoc application in the amount of US$65 million in March 2019, led by UOB Venture Management.

HaloDoc is a mobile application healthcare platform that unites patients, doctors, insurance companies and pharmacies into one healthcare application. They work together with doctors registered by the Indonesian doctors' association and the Indonesian Medical Council that have a medical practice licence (SIP or STR). Also, they provide telepharmacy services by partnering with trusted pharmacies to deliver medicine to customers.

Due diligence

4 | What due diligence issues should investors address before acquiring a stake in digital health ventures?

Digital health ventures in Indonesia are not comprehensively regulated. Hence, there is currently no definitive guidance for investors engaging in the business. Existing digital health ventures might also be affected by a ruling on the operation of the business when it is eventually issued.

Today, digital health ventures (such as digital health apps companies) are classified as web platform providers (falling under the information technology sector, not the health sector). Thus, their operations generally do not extend to the provision of health services, as this is done in cooperation with health practitioners.

Foreign investment in a digital platform company is limited to 49 per cent (or up to 100 per cent if the investment is at least 100 billion rupiahs). Foreign investors are generally required to invest more than 10 billion rupiahs (excluding land and building value) for doing business in Indonesia.

Typical Indonesian M&A diligence points would still be applicable, including the checking of capitalisation and share ownership in a digital health company, licensing, and coverage of business scope of digital health.

Financing and government support

5 What financing structures are commonly used by digital health ventures in your jurisdiction? Are there any notable government financing or other support initiatives to promote development of the digital health space?

The most common financing structures used by digital health ventures are equity funding and credit or loan arrangement by financial institutions.

For start-up companies, venture capital is also a notable funding option as it allows a digital health venture to expand its business in cooperation with a venture capital firm. This type of funding is often seen as suitable for a start-up business, as its operation will be under valuable guidance and supervision from professionals of the venture capital firm.

The government has not provided specific financing for digital health ventures. However, the legislation allows the central and regional government to provide financing of telemedicine services, sourced from state or regional budgets and other non-binding sources, as per the prevailing regulations. However, the financing of telemedicine funded by the government is limited to telemedicine by health services facilities (and not between a healthcare facility and patients).

Support to promote the development of digital health by the government is achieved through collaboration with digital health provider companies for health education through the apps.

LEGAL AND REGULATORY FRAMEWORK

Legislation

6 What principal legislation governs the digital health sector in your jurisdiction?

The principal legislation governing the digital health sector is:

Legislation	Governing body	Highlights
Ministry of Health (MOH) Regulation No. 21 of 2020 on the MOH Strategic Plan for 2020–2024	MOH	As part of its strategic plan, the government is preparing a new regulation on the utilisation of technology through telemedicine for direct health services between doctors and patients, and the regulation is expected to be issued in 2021.
MOH Regulation No. 90 of 2015 on the Implementation of Health Services in Health Services Facilities in Remote Areas and Very Remote Areas	MOH	Under the regulation, telemedicine is used as part of the development of health services facilities located within remote and very remote areas. The regulation defines 'telemedicine' as the use of technology in combination with medical expertise to provide health services, from consultations, diagnoses and medical procedures performed remotely.
Regulation 20/2019	MOH	Regulation 20/2019 specifically stipulates the use of telemedicine by health services facilities and covers telemedicine with patients. The term 'telemedicine' is defined as the provision of remote health services by health professionals using technology (eg, exchange of information on diagnosis, treatment, prevention of disease and injury, research and evaluation). Under Regulation 20/2019, only health services facilities in a hospital may provide telemedicine services to other facilities (eg, hospitals, clinics, public health centres), which includes tele-radiology, tele-electrocardiography, tele-ultrasonography, clinical teleconsultation and other services. In these examples, both facilities must be registered with the MOH.
Regulation 8/2020	National Agency of Drug and Food Control	Regulation 8/2020 allows the pharma industry, wholesalers and pharmacies to distribute medicine through an electronic system. Only a pharmacy may engage a third party to provide the system, while the pharma industry and wholesalers may only use their own electronic system. In delivering medicine to patients, Regulation 8/2020 allows pharmacies to deliver independently or engage a third-party legal entity to do it. Regulation 8/2020 covers the distribution of over-the-counter and prescribed medicines. The regulation also stipulates certain requirements and limitations on pharmacies or platform providers when distributing the drugs online.

In addition to the above, the government issued the following regulations on the use of telemedicine during the coronavirus pandemic:

Legislation	Governing body	Highlights
MOH Decree No. HK.01.07/MENKES/413/2020 on Guidelines for Prevention and Control of Coronavirus Disease	MOH	As a preventive measure to limit the spread of coronavirus, MOH acknowledges the need for the provision of health services through telemedicine.
Regulation of the Indonesian Medical Council No. 74 of 2020 on Clinical and Practical Medical Authority through Telemedicine during the Coronavirus Pandemic in Indonesia (Regulation 74/2020)	Indonesian Medical Council	Regulation 74/2020 is aimed at providing additional authority for doctors to engage in medical practice during the pandemic in Indonesia. It is stipulated that during the pandemic, medical practice for patients can also be done using a telemedicine app or an electronic system, which can be online writing, voice or video. Doctors providing services through telemedicine must have a Registration Certificate and Medical Practice Certificate in the relevant health services facility. Further, they are required to refer the patient to a health services facility if the patient is in a critical condition or requires diagnostic action or therapy. This provision seems to restrict doctors from carrying out a diagnosis on patients using telemedicine. There are also specific limitations on the authority of doctors in carrying out medical practice through telemedicine under the regulation. For instance, doctors are prohibited from performing tele-consultations directly with patients without a health services facility, and from diagnosis beyond their competence. When using a telemedicine service, patients must provide general and informed consent following the prevailing laws. A medical practice using telemedicine must maintain medical records that may be manual or electronic, in accordance with the prevailing laws.

Regulatory and enforcement bodies

7 Which notable regulatory and enforcement bodies have jurisdiction over the digital health sector?

The implementation of the digital health sector in Indonesia is primarily under the jurisdiction of the following ministries and institutions:

- the MOH, for telemedicine and health services in general;
- the National Agency of Drug and Food Control for the distribution of medicines (online and offline);
- the Ministry of Communications and Information Technology, for electronic systems used for telemedicine; and
- the Ministry of Industry, for the business licensing of an electronic systems provider.

Licensing and authorisation

8 What licensing and authorisation requirements and procedures apply to the provision of digital health products and services in your jurisdiction?

There is still no specific licensing requirement for a telemedicine platform in Indonesia. However, if the platform provides an online distribution of medicine, the platform provider must obtain the Pharma Electronic System Operator Registration from the MOH as required under MOH Regulation No. 26 of 2018 on Electronic Integrated Business Licensing Services in the Health Sector.

As a general concept, aside from a specific licence or registration that may need to be obtained concerning healthcare services, the platform provider is required to obtain certain general permits to carry out its business activity within Indonesian territory, including an Industrial Business Licence from the Ministry of Industry and Electronic System Provider Registration from the Ministry of Communication and Information Technology.

The implementation of digital health services is also subject to licensing and authorisation that apply to the business via conventional methods. A party involved in an online business (eg, doctors, pharmacies, the pharma industry and wholesalers) must obtain relevant permits to carry out their normal businesses. Likewise, any medicine distributed online must also be registered and obtain a necessary permit as if distributed offline, including marketing authorisation.

Soft law and guidance

9 Is there any notable 'soft' law or guidance governing digital health?

There is no notable 'soft' law or guidance governing digital health in Indonesia. However, in its effort to limit the spread of coronavirus, the MOH has then issued a circular letter No. HK.02.01/MENKES/303/2020 (on Health Services through the Utilisation of Information and Communication Technology for Limitation of the Spread of Coronavirus Disease) to some stakeholders. In its circular letter, MOH allowed doctors to use telemedicine in providing health services during the coronavirus pandemic, including to diagnose, treat, prevent and evaluate a patient's health under their competence and authority. Telemedicine can be carried out between a doctor and a patient or between doctors during the coronavirus pandemic.

The authority of doctors to provide telemedicine services includes anamnesis, diagnosis, provision of advice and prescribing of medicine and medical devices.

Although the circular letter seems to allow doctors to carry out diagnosis through telemedicine during the pandemic, in performing their services, doctors are also subject to the regulations under the Indonesian Medical Council, as an autonomous and independent body responsible to the Indonesian president for providing certain arrangements and guidance to medical practices. This includes limitations on doctors to provide diagnosis via telemedicine under Regulation 74/2020.

Liability regimes

10 What are the key liability regimes applicable to digital health products and services in your jurisdiction? How do these apply to the cross-border provision of digital health products and services?

The key liability regimes that apply specifically to digital health products and services in Indonesia are as follows:

Sector	Key liability	Legal basis
Online distribution of medicine	Pharma industry, wholesaler and pharmacy must guarantee the medicine being distributed online.	Regulation 8/2020
Telemedicine services	Doctors that provide telemedicine services to patients are responsible for the health services they provide, including ensuring the security of patient data accessing telemedicine services.	MOH Circular Letter No. HK.02.01/ MENKES/303/2020
Medical records	Doctors are responsible for the results of telemedicine services that are recorded in digital or manual records and used as medical records.	MOH Circular Letter No. HK.02.01/ MENKES/303/2020
Electronic prescriptions	Doctors that write electronic prescriptions for drugs or medical devices must take responsibility for the content and impact that may arise from the medicine stated in electronic prescriptions.	MOH Circular Letter No. HK.02.01/ MENKES/303/2020

Also, as regulated in conventional doctors' practice, the Health Law also stipulates the right of a party to claim against healthcare personnel or a health services facility in the event of loss owing to the fault or negligence in the health services rendered.

Other than the above civil liabilities, the management of the company as individuals may also be exposed to liabilities that involve criminal sanctions. The Health Law also stipulates that criminal sanctions are also applicable for some violations that involve:

- trading of pharmaceutical products without proper marketing authorisation;
- medical practice without expertise and authorisation; and
- the procurement, storage, processing, promotion and distribution of pharmaceutical preparations and medical equipment that do not fulfil the quality standard for pharmaceutical services.

Under the Consumer Protection Law, entrepreneurs (for example, health services providers) are responsible for paying compensation for damages, contamination or losses suffered by a consumer as a result of consuming or using the goods or services produced or traded. The compensation referred to above can be a cash refund or replacement of goods or services that are of a similar type or of comparable value, or medical treatment or provision of sympathetic care following the prevailing regulation. The provision of compensation will not preclude criminal sanctions based on further verification of a fault.

As to the application of the liability regime in cross-border provision, the prevailing regulations governing digital health business in Indonesia only cover the provision of digital health products and services within Indonesian territory; hence, the liability should not extend to cross-border provision.

DATA PROTECTION AND MANAGEMENT

Definition of `health data'

11 What constitutes 'health data'? Is there a definition of 'anonymised' health data?

Health data within the context of health information system legislation in Indonesia is a type of patient health metadata used for health development. Health data in this context is collected by the health services facilities and government institutions, to be further processed by the Ministry of Health into health information. The aim in collecting health data is to enhance knowledge to support health development.

In addition, the legislation also stipulates that 'health information' means healthcare data processed to be of value and meaning for enhancing knowledge to support healthcare development.

Indonesian legislation does not stipulate the definition of 'anonymised data' as well as 'anonymised health data'. Nevertheless, the common understanding is that anonymised data means data stripped of person-identifiable information and therefore cannot be used for identifying certain individuals.

Data protection law

12 What legal protection is afforded to health data in your jurisdiction? Is the level of protection greater than that afforded to other personal data?

In the health sector, the Health Law (Law No. 36 of 2009 on Health) and its implementing regulation protect information on patients contained in medical records. Except in certain circumstances, the information in the medical records must be kept confidential by doctors, dentists, certain health workers, management officers and heads of health service facilities (the head of the place where the medical practice is performed) and may not be shared with other parties without the approval of patients. The medical records can be accessed only in the following limited circumstances:

- in the interests of a patient's health;
- upon a government request for law enforcement;
- at a patient's request;
- if stipulated under the prevailing laws;
- for research, education and medical audit so long it does not reveal the identity of the patient.

Any disclosure of medical records must be submitted in writing to the head of health service facilities.

Other than the above, legal protection of personal data should follow the general provisions on personal data protection within the framework of electronic systems under the Electronic Information and Transactions Law (Law No. 11 of 2008 on Electronic Information and Transactions (EIT Law), as amended by Law No. 19 of 2016) and its implementing regulations. In brief, the sharing of personal data is subject to the consent of the person whose data is being shared.

An organisation that functions as an electronic services provider (eg, a digital platform company that establishes apps or websites, and others) in Indonesia must:

- provide a standard protection procedure that guarantees security or confidentiality of patient data (in the form of electronic information or documents);
- apply risk management in the event of any damage or loss arising out of the operation of an electronic system;
- provide and carry out procedures and facilities to protect an electronic system from interference and material or non-material loss; and
- provide a security standard covering procedures and systems to prevent and overcome any threat or attempted interference.

Further, electronic service providers should maintain confidentiality, completeness, authenticity, accessibility, availability and traceability of electronic information or electronic documents according to the prevailing laws and regulations. A party may submit a claim against the operator of an electronic system or information technology that results in a loss to that party.

Anonymised health data

13 Is anonymised health data subject to specific regulations or guidelines?

Indonesian legislation does not stipulate the definition of anonymised data or anonymised health data. Nevertheless, in general, the common understanding is that anonymised data means data stripped of person-identifiable information and therefore such data cannot be used to identify an individual.

Enforcement

14 How are the data protection laws in your jurisdiction enforced in relation to health data? Have there been any notable regulatory or private enforcement actions in relation to digital healthcare technologies?

Currently, Indonesia does not have rules or regulations for digital health care systems. Regulations on patient confidentiality and safety have not yet been issued. Apart from medical records, data protection in the health sector should be enforced as per the general data protection laws for electronic systems. There is no specific regulation on data protection for digital healthcare technologies.

Within the context of electronic service providers, no express regulation covers the liability of a provider for a leak of patient data owing to a failure of its electronic system. However, in general, an electronic services provider may be held accountable or sued by anyone affected in the event of a loss arising from an electronic system. However, an electronic services provider may limit its liability for claims filed if it can prove its compliance under the prevailing law.

Cybersecurity

15 What cybersecurity laws and best practices are relevant for digital health offerings?

The Indonesia cybersecurity regulatory framework is currently undeveloped. We may see this change in the future with the National Cyber Encryption Agency being tasked with the responsibility to establish regulations and policy and to develop better protection while coordinating Indonesia's existing cybersecurity capabilities. Although there is no standalone cybersecurity law in Indonesia, some Indonesian laws touch on cybersecurity issues, including the EIT Law.

The EIT Law includes restrictions on the following:

- distribution, transmission or making accessible electronic information or electronic documents that violate decency, have content on gambling, insults or defamation, extortion or threats;
- access to computer or electronic systems by any means to obtain electronic information or electronic documents;
- access to a computer or electronic system by any means, by violating, breaching, trespassing or penetrating a security system;
- interception of transmission of private electronic information or electronic documents, on a computer or electronic system owned by another party;
- any act that causes interference to an electronic system or causes electronic system malfunction; and
- production, sale, procurement for use purposes, importing, distributing, providing or possessing the following items for facilitating certain prohibited actions under the EIT Law:
- computer hardware or software that is designed or specifically developed to facilitate an act as mentioned under the Information Technology Law; or
- computer password, access code or similar.

Best practices and practical tips

16 What best practices and practical tips would you recommend to effectively manage the ownership, use and sharing of users' raw and anonymised data, as well as the output of digital health solutions?

As there is no specific regulation governing anonymised data in Indonesia, its use and management in the digital health sector should comply with the regulations on medical records and electronic systems. Apart from medical records (which should be treated differently), it is advisable for any use and sharing of data (whether or not anonymised) through electronic media to be made with the consent of the individual concerned to comply with the EIT Law.

INTELLECTUAL PROPERTY

Patentability and inventorship

17 What are the most noteworthy rules and considerations relating to the patentability and inventorship of digital health-related inventions?

The most noteworthy rules and considerations cover software and algorithms used for operating digital health platforms.

An 'invention', as defined in Law No. 13 of 2016 on Patents (Patent Law), is an inventor's idea utilised in a specific problem-solving activity in the field of technology in the form of a product or process, or improvement and development of a product or process.

A patented invention must fulfil the criteria below:

- it is considered new (on the filing date, the invention is not the same as previously disclosed technology);
- it contains an inventive step; and
- it applies to industry.
- Concerning the above, inventions that cannot be patented include:
- processes or products of which the announcement, use or implementation is contrary to statutory regulations, religion, public order or morals;
- methods of examination, treatment, medication or surgery applied to humans or animals;
- theories and methods in science and mathematics;
- living entities, except microorganisms; or
- a biological process essential for producing a plant or animal, except a non-biological or microbiological process.

For the above, it is necessary first to identify the form of the digital invention and decide whether it is patentable or copyrightable, or whether it cannot be protected by an intellectual property (IP) regime in Indonesia.

For example, software in Indonesia can be protected either under patent or under copyright, depending on its nature. Software is not patentable if it only contains a program, without having characters (instructions), technical effect and problem-solving (tangible and intangible) features. Instead of protection under patent, it should be protected by copyright. Algorithms are also patentable.

Non-patentable examples that can be classified as other intellectual property include:

- AI-generated content (which can be copyrightable, depending on whether human input has been involved in its development). AI-generated content is copyrightable if it involves human-related effort and creation to produce the work so it can be protected. Otherwise, AI-generated content is not copyrightable, and only the software can be protected under copyright;
- Databases (however, a database is copyrightable);
- healthcare apps are not patentable because they are categorised as computer programs, which are copyrightable;
- healthcare wearable software can be protected by copyright and by industrial design for the form or shape of the item;
- software as a medical device is considered a computer program; thus, it is protected by copyright (see the information above on patentable and copyrightable software); and
- electronic health records considered a database are not patentable but protected by copyright.

Other aspects of digital health are treated as follows:

- telemedicine as a method of examination and treatment applied to humans is not patentable nor protected by copyright;
- big data and data analytics cannot be protected if purely produced by AI and machine learning; and
- electronic health records considered as a database are not patentable but protected by copyright.

Further, as for the ownership of an invention, as regulated by the Patent Law, a patent holder of an invention created by an inventor within a working relationship is the party that provides the job, unless agreed otherwise. Within a copyright regime, the creator or copyright holder of works made within a working relationship or based on an order is the party that produced the work, unless agreed otherwise.

Patent prosecution

18 | What is the patent application and registration procedure for digital health technologies in your jurisdiction?

There is no specific procedure within Indonesian jurisdiction. The procedure for digital health technologies will be treated the same as for other patent application and registration procedures, with due regard to the following.

Terms and procedures

A patent application is submitted by the applicant or his proxy electronically or non-electronically to the Directorate General of Intellectual Property (DGIP) of the Ministry of Law and Human Rights in writing, in Indonesian language, accompanied by the fee. The application must contain at least the data of the applicant and his attorney, and the application must be accompanied by data such as title, description, claim and a summary of the invention.

Administration examination

The DGIP will stipulate a receipt date that indicates the receipt of complete data for a patent application and records the application. If the requirements and completeness of the application are not yet complete, the DGIP will notify the applicant in writing of the need to complete the requirements and the application within a period of three months from the date of notification.

Announcement

Once an application is complete and there is no pending request from the DGIP, it will announce the patent application (electronically or non-electronically) for a period of six months, during which anyone may file a written objection or comment with the DGIP. Further, the written objection or consideration will be forwarded by the DGIP to the patent applicant. Upon receipt of the written objection or consideration, the patent applicant will have a chance to respond to it within a certain period, and the DGIP will take all of this input into consideration during the substantive examination.

Substantive examination

A substantive examination is carried out by the DGIP upon a written request and payment of the patent applicant, which must be submitted within 36 months of the date of receipt. After the substantive examination process, the DGIP will agree either to grant or reject the patent application.

If an application does not fulfil patent requirements, the DGIP will notify the applicant in writing and provide an opportunity for the applicant to make adjustments as necessary for a review of the application.

Patent granted

The DGIP will issue a patent certificate to a patent applicant upon the grant of a patent.

The protection of a patent is granted from the receipt date for 20 years, non-extendable.

Other IP rights

19 | Are any other IP rights relevant in the context of digital health offerings? How are these rights secured?

A number of other IP rights are relevant in the context of digital health offerings.

Copyright

Copyright is the exclusive right of an author that arises automatically, based on the declarative principle after a creation is manifested in tangible form without restrictions, following the provisions of laws and regulations.

A creation is creative work in the field of science, art or literature produced by inspiration, ability, thought, imagination, dexterity, skill or expertise, and is expressed in a tangible form.

The exclusive right of creation (copyright) arises automatically based on the declarative principle after creation is manifested in tangible form. However, for proof of copyright ownership in the territory of Indonesia, it is important to hold notification of copyright recordation, which can only be obtained upon the submission of a copyright recordation application.

Trademark/mark

A mark is a sign that can be displayed graphically as an image, logo, name, word, letter, number, colour arrangement, in two or three dimensions, sound, a hologram or a combination of two or more of these elements to distinguish goods or services produced by persons or legal entities when trading goods or services.

To secure the right, the trademark must be registered with the DGIP under the name of the applicant. Upon registration, the trademark registrant will have a right to use it or allow another person to use it.

Industrial design (ID)

ID is a creation involving the shape, configuration or composition of lines or colours, or a combination thereof in three- or two-dimensional form that gives an aesthetic impression and can be realised in three- or two-dimensional patterns and can be used to produce a product, goods, industrial commodity or handicraft.

In order to obtain an exclusive right to an ID, the ID holder must first apply for registration to the DGIP under the name of the applicant. Upon obtaining the exclusive right, the ID registrant will have a right to use it or allow another person to use it.

In addition to the above, we understand that domain names are recognised worldwide, to identify the unique name of a website. Domain names are not protected under the intellectual property law of Indonesia. Therefore, currently there is no official protection of domain names in Indonesian law.

However, the EIT Law stipulates that the protection of domain names is based on the first-to-file principle. The use and ownership of a domain name are based on good faith, without breaching fair competition and other party rights. A domain name is managed by the government or the public. Foreign-registered domain names outside Indonesian territory are acknowledged in Indonesia, to the extent that they do not breach the laws and regulations.

Licensing

20 What practical considerations are relevant when licensing IP rights in digital health technologies?

A licence agreement must be recorded with the DGIP. Otherwise, it will not be valid for third parties. Therefore, a licence agreement must be made in writing.

Enforcement

21 What procedures govern the enforcement of IP rights in digital health technologies? Have there been any notable enforcement actions involving digital health technologies in your jurisdiction?

The enforcement of IP rights is based on registration, while enforcement related to IP infringement is covered by civil and penal procedures. A criminal act concerning IP is a complaint-based offence. We are not aware, to date, of any notable enforcement action involving digital health technologies in our jurisdiction. In practice, we have seen that the general terms and conditions of digital health service providers include protection of their IP or the IP of parties related to the digital health platform.

ADVERTISING, MARKETING AND E-COMMERCE

Advertising and marketing

22 What rules and restrictions govern the advertising and marketing of digital health products and services in your jurisdiction?

There is no specific regulation on the advertising and marketing of digital health products and services in Indonesian territory. However, concerning general health services advertising or publication, MOH Regulation No. 1787/MENKES/PER/XII/2010 on Health Services Advertising and Publication emphasises that advertising or publication by health facilities via the internet cannot be used as a remote medical consultation facility (telemedicine). Therefore, an advertisement or publication must not provide medical consultancy services. Other than the foregoing, there is no specific regulation on the advertising and marketing of digital health products and services in Indonesia.

However, the government issued a regulation on the publication and advertisement of health facilities, containing some rules and restrictions, including those published and advertised through electronic media, which we believe are also applicable to digital health products and services offered in Indonesia.

Some of the rules and restrictions state:

- the advertisement or publication should be accurate, evidence-based, informative, educational, accountable and responsible; and
- the advertisement or publication should not, among other things:
  - include incorrect, false, deceptive or misleading information or statements;
  - include superlative statements or information on the excellence of the health facility;
  - advertise health facilities or health workers not located in Indonesia or that are unlicensed;
  - advertise medicine, supplements or medical devices that:
    - have no marketing authorisation or do not comply with safety and quality standards,
    - are available only on prescription; are psychotropic substances; or
    - are narcotic substances, except in a medical science magazine or forum;
    - provide testimony as an advertisement or publication in mass media; or
  - promote sales (including discounts), commission on the use of a health facility, or multi-level marketing schemes.

e-Commerce

23 What rules governing e-commerce are relevant for digital health offerings in your jurisdictions?

No specific regulation governs e-commerce for digital health offerings in Indonesia.

However, the following rules that govern e-commerce in general might be relevant:

Aspect	Notes	Material licences
Operation of electronic system	Covers all electronic transactions	Registration as an electronic system provider with the Ministry of Communication and Information Technology Certification of Security of Electronic System (either by ISO or National Cyber Encryption Agency, as relevant)
Operation of payment gateway	Held by various payment gateways entities in Indonesia, such as Midtrans, DOKU, iPaymu and others	Licence of Operator of Payment Service Provider issued by Bank Indonesia
Operation of electronic wallet	Held by various e-wallet companies, such as GoPay, Ovo, DANA, LinkAja and others	Electronic Wallet Licence issued by Bank Indonesia

PAYMENT AND REIMBURSEMENT

Coverage

24 Are digital health products and services covered or reimbursed by the national healthcare system and private insurers?

We have not seen digital health products and services covered or reimbursed by the national healthcare system. Under the prevailing regulations on health security, the use of national healthcare must be done through health facilities. As digital health products and services are technically done by the platform provider without going through the health facilities, there is no basis for the digital health products and services to be covered in the national healthcare system. Private insurers, upon collaborating with digital health service providers (such as in applications), can provide additional services of digital health products and other services to an existing insured client.

UPDATES AND TRENDS

Recent developments

25 What have been the most significant recent developments affecting the digital health sector in your jurisdiction, including any notable regulatory actions or legislative changes?

Since 2019, the Ministry of Health has been developing a website known as Telemedicine Indonesia that provides tele-radiology, tele-electrocardiography, tele-ultrasonography services and online health consultation services, and the government is still working on expanding the type of health-related services that can be provided by the website. This initiative has shown the seriousness of the government to develop the digital health sector in Indonesia.

In addition to the above and during the covid-19 public health emergency, the government has paid more attention to the digital health sector as a way of preventing the spread of the virus via the provision of health services between doctors and patients. The utilisation of telemedicine in Indonesia was formerly limited to services among health service facilities. However, certain regulations are now being issued to provide a basis and guidelines for doctors when using telemedicine directly with patients during the pandemic, including the issuance of Regulation 74/2020 by the Indonesian Medical Council.

Coronavirus

26 What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programs, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The government has issued several regulations to prevent the spread of coronavirus, including regulations that authorise doctors to use telemedicine in the provision of health services to patients. The regulations seem to provide a clearer view on telemedicine business in Indonesia during the pandemic. However, it remains unclear as to whether the same approach will be implemented by the government post-pandemic. Given the uncertainty, it is advisable for investors intending to engage in the digital health technology business to build a strong relationship with the government or a medical association and to keep informed of developments in the business, particularly on the direction of government policy on telemedicine after the pandemic.

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