

# Confidentiality of Medical Record as Legal Protection of Patient's Privacy Rights

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**Abstract.** One of the implementations of health development is the principle of protection, namely providing protection and legal certainty to health service providers and recipients. One form of protection is the confidentiality of medical records as a patient's right to privacy that must be maintained and protected. A medical record is a file containing notes and documents about the patient's identity, examination, treatment, actions, and other services that have been provided to patients. A medical record is one of the Trilogy of Medical Secrets in addition to informed consent and medical secrecy. The provisions governing medical records are contained in Law No. 29 of 2004 concerning Medical Practice, Law No. 36 of 2009 concerning Health, Law no. 44 of 2009 concerning Hospitals, and Minister of Health Regulation No. 269 / Menkes / Per / III / 2008 concerning Medical Records. This study aims to examine juridically the confidentiality of medical records as legal protection of patient privacy rights. This research is normative legal research. The approach used in this research is a statutory approach and a conceptual approach.

**Keywords:** medical records; legal protection; privacy rights; patients

## 1 Preliminary

Health is a human right that must be realized in the form of providing various health services to all communities through the implementation of health development. Health development is carried out based on humanity, balance, benefits, protection, respect for rights and obligations, justice, gender and non-discrimination, and religious norms. The principle of protection means that health development must be able to provide protection and legal certainty to providers and recipients of health services. [1] Protection and legal certainty related to health law known as the Secret Medicine Trilogy concept, namely medical records, informed consent; and medical secrets (medical secrecy).

A medical record is a file containing notes and documents about the patient's identity, examination, treatment, actions, and other services that have been provided to patients.[2] Notes are writings made by a doctor or dentist regarding all actions taken to patients in the context of providing health services. [3] Medical record data is a legal object in health law which is part of the concept of the Trilogy of Secret Medicine. Therefore, every doctor or dentist in carrying out medical practice is obliged to keep medical secrets. [4]

The legal basis that underlies the administration of medical records in Indonesia is Law Number 29 of 2004 concerning Medical Practice or hereinafter referred to as Law No. 29 of 2004, which states that *"Every doctor or dentist in carrying out medical practice is obliged to make medical records"*. [5] This provision emphasizes that in carrying out medical practice, doctors and dentists are obliged to make medical records. Besides, the obligation of health service providers to conduct medical records is regulated in Law Number 44 of 2009 concerning Hospitals or hereinafter referred to as Law No. 44 of 2009, which states that *"Every hospital must organize medical records"*. [6]

This provision is further emphasized in Article 70 and Article 71 of Law Number 36 of 2014 concerning Health Workers or hereinafter referred to as Law No. 36 of 2014, which states that *"Every Health Worker who carries out individual health services is required to make medical records for Health Service Recipients. Medical records of Health Service Recipients must be completed immediately after Health Service Recipients have finished receiving health services"*. [7] Furthermore, every medical record of a Health Service Recipient must be affixed with the name, time, and signature or initials of the Health Worker providing the service or action. Medical records of Health Service Recipients must be kept and kept confidential by Health Workers and Head of Health Service Facilities. The recipient's medical records belong to the Health Service Facility.

For information, large companies/industries usually have separate health service facilities (non-hospital) which are intended to provide health services to their employees. These health service facilities are such as company clinics with adequate equipment and meet the requirements of health service standards. It even has its laboratory. The clinic provides daily health services for employees who are unwell or sick and annual routine check-ups for employees to find out about their health. Health services in the factory clinics are served by health workers who work or collaborate with these agencies.

However, it is unfortunate in the fact that what happens, especially companies that apply very strict work standards, use medical records to evaluate employee health, resulting in leakage of medical record data which should be kept and protected in secrecy, and endanger the health of other employees. In this case, the company management took unilateral action by not hiring the employee anymore. Meanwhile, minor illnesses, are given relief to temporarily rest at home until they are healed and can work again.

Leaking of the employee's medical data information is, of course, an offense that can be subject to sanctions. It should be noted that the company clinic is hierarchically under management as a health service unit, making it difficult for doctors as health workers to be in a dilemma. On the other hand, the company applies a hygiene policy (hygiene) to its production even though it uses high technology, still in the production process, it requires every employee to be in a healthy condition, for example, such as the food industry. This is intended to maintain the quality of the production. On the other hand, doctors must maintain and protect the confidentiality of medical records as regulated by applicable laws and regulations. Because the doctor's position is under company management, you have to provide medical record information to the company. Unfortunately, in the process of using this information, in the middle of the road, it often leaks and results in loss of the privacy rights of employees as patients who should be protected and protected. Of course, this causes employees who are suspected of having a contagious disease to become embarrassed and psychologically disturbed. The problem of leakage of medical record data does not only occur in non-hospital health facilities but can also occur in health service facilities, such as hospitals. This of course requires more effective supervision, so that there is no more leakage of medical record data.

Based on the description above, the confidentiality of medical records is very interesting to be examined more focused and deeply from the perspective of legal science in the form of confidentiality of medical records as legal protection of patient privacy rights. To examine the extent to which the confidentiality of medical records is legal protection for the privacy rights of patients from the point of view of the laws and regulations relevant to this research.

## **2 Research Problem**

Based on the background above, this research problem can be formulated as follows: How is the juridical review of the confidentiality of medical records as legal protection for patient privacy rights?

## **3 Literature Review**

### **3.1 Medical Record**

Medical records can be interpreted in a narrow and broad sense. Medical records in the narrow sense of a medical record are only a recording of documents or a recording of the patient's identity data and all examination of the patient's history during treatment at a health service place. Medical records in a broad sense are an administration system that involves patient information. These records are used as the basis for determining further action to serve other medical actions. Medical records are one of the supports to achieve an orderly administration to improve health services.

In the explanation of Law no. 29 of 2004 concerning Medical Practice, what is meant by medical record is a file containing notes and documents regarding patient identity, examination, medication, actions, and other services that have been provided to patients. [8] According to Emanuel Hayt and Hayt, a medical record is a collection of facts related to the records/life history of the patient, illness, nurse/medication. In a broader sense (broader) a medical record is a collection of scientific data from many sources, coordinated on one document and provided for various uses, personnel, and impersonal, to serve patients treated, treated, medical science, and society as a whole.[9]

Documents referred to in the scope of medical records are records of certain doctors, dentists, and/or health workers, reports on the results of supporting examinations, records of daily observations and treatment, and all records, whether in the form of radiological photos, imaging images, and electrical records. diagnostic. [10]

The contents of a medical record for a patient include, among other things, the patient's identity, date and time of action, results of anamnesis, complaints and disease history, results of physical examination and medical support, diagnosis, management plans, medication, and/or actions, other services that have been provided to patients, as well as other supporting documents. Unless the contents of medical records for specialist doctor services or specialist dentists can be developed as needed [11] The contents of medical records vary according to their type, namely Outpatient Medical Records, Inpatient Medical Records, Emergency Patient Medical Records, Disaster Patient Medical Records.

### **3.2 Legal Protection**

Legal protection was created as a method or instrument for regulating the rights and obligations of legal subjects. Besides, the law also functions as an instrument of protection for legal subjects. One of the most important functions of law is to achieve order in human life in society.[12]

In principle, legal protection for society rests on and is rooted in the concept of recognition and protection of dignity as a human being. According to CST Kansil, legal protection is that all legal measures must be provided by law enforcement officials to provide a sense of security, both physically and mentally from harassment and various threats from any party. [13]

Legal protection is the protection of dignity, as well as recognition of human rights owned by legal subjects based on legal provisions from arbitrariness or as a collection of rules or rules that will protect one thing from other things.[14] Soerjono Soekanto stated that legal protection is all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and/or victims, which can be realized in forms, such as through restitution, compensation, medical services, and legal assistance.[15] Meanwhile, Satjipto Raharjo said that legal protection is to protect human rights (HAM) that are harmed by others and that protection is given to the community so that they can enjoy all the rights provided by law.[16] Muchsin distinguishes legal protection into two parts, namely: [17]

- a. Preventive Legal Protection Protection is provided by the government to prevent violations before they occur. This is contained in statutory regulations to prevent a violation, as well as providing signs or limitations in carrying out an obligation.
- b. Repressive Legal Protection. Repressive legal protection is the final protection in the form of sanctions such as fines, imprisonment, and additional penalties that are given when a dispute has occurred or an offense has been committed.

### 3.3 Privacy Right

Privacy is a concept that is difficult to define because it deals with something subjective in nature. Everyone has a desire to keep some part of his life, thoughts, emotions, and activities private only to know for himself or to choose his family members and closest friends. In general, what is meant by the area of privacy will differ from person to person, from group to group, from society to society, and also differ according to different ages, traditions, and cultures. But although the areas of privacy may vary, the desire to protect privacy is universal.

According to the Big Indonesian Dictionary (KBBI), the right to privacy is freedom or privacy..[18] The right to privacy is the claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others without having to be known by the public. Westin (1967) simply defines the right to privacy as "*the claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others*". The broad scope of privacy usually makes the number of privacy arrangements in a country, both in type and level.[19]

Warren and Brandeis define privacy as the Right to be left alone, while according to Slyke and Belanger that a person can organize information about himself [20] Privacy protections were developed to regulate the behavior of others which can interfere in various ways in a person's life. Privacy in this context can be understood in general to limit the ability of others to obtain, share, or use information about themselves.

#### 4 Research Method

The research method used in this research is normative legal research. Normative legal research is legal research conducted by examining library materials or secondary data. [21] Normative legal research is also called doctrinal legal research. According to Peter Mahmud Marzuki, normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer legal issues at hand.[22] The approaching method used in this research is the statute approach and the conceptual approach.[23]

#### 5 Discussion

Before discussing the confidentiality of medical records as legal protection of patient privacy rights. First, it is explained about the conception of rights. According to Sudikno Mertokusumo, rights are defined as protected interests, while interests are defined as individuals or groups that are expected to be fulfilled. In essence, the interest contains the power guaranteed and protected by law in exercising it.[24] This definition implies that rights are things that are intrinsically inherent in humans and their implementation is applied to the sphere of freedom and equality when carrying out interactions with other individuals and institutions.

The explanation above is related to legal protection, so the confidentiality of medical records is a patient's right to privacy that must be guaranteed and protected. The right to privacy, although not an absolute right, is still a fundamental right in the realm of human rights that must be guaranteed and protected.

It must be guaranteed and protected because medical records consist of data and personal health conditions of patients, both formulated in medical record data and known by health service providers, both hospitals, clinics, and doctors. The data contained in the medical record file is confidential patient's personal data (confidential) which must be kept and protected by its confidentiality. Referring to Law No. 24 of 2013 concerning Population Administration, that "*personal data is certain individual data that is stored, maintained, and maintained for the truth and its confidentiality is protected*".[25]

Medical records are confidential because the content of medical records describes the unique relationship between patient and doctor, so they must be protected from leakage under the medical code of ethics and applicable laws and regulations.[26] The element of confidentiality in medical record data consists of reports which are the results of patient examinations that are not allowed to be disseminated to unauthorized parties, because they involve the patient's personality. In principle, patients have the right to privacy and confidentiality of their illness, including their medical data.[27]

The patient's medical record data qualifies for sensitive personal data. This is related to the potential legal risks that may be feared, such as compilation, access, and dissemination of medical record data to other parties who do not have competence without the knowledge and consent of the patient himself. For example, it can be used economically by other service provider industries, such as the pharmaceutical industry, the insurance industry, so that what is called direct selling will occur. [28]

The confidentiality of medical records as a form of legal protection for the privacy rights of patients is related to the dignity of a person as a citizen guaranteed by the constitution. Article 28G paragraph (1) of the 1945 Constitution reads, "*Every person has the right to protection of himself, family, honor, dignity, and property under his control, as well as the*

*right to a sense of security and protection from the threat of fear to do or not do something which constitutes rights". Furthermore, Article 28 H paragraph (4) states that "Every person has the right to have private property rights and these property rights cannot be taken over arbitrarily by anyone".*

The provisions in this constitutional article constitute a legal umbrella and the basis for laws and implementing regulations under it to provide authority to protect the right to privacy, including the protection of medical records as personal health data of patients.

It can be said that medical secrets contained in medical records are patient rights that must be respected. The right to medical secrets relating to the condition of a patient's medical record is a limit that must not be violated in gaining access rights to health information. The right to privacy in the patient's medical record data is part of the basic rights of individuals (the rights to self-determination) in health services.

The right to privacy as an individual basic right is universally stated in the Universal Declaration of Human Rights (DUHAM) or the Universal Declaration of Human Rights 1948, Article 12 which reads: *"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks"*. The UDHR stipulates that all individuals have the right to privacy, the right to family, the right to residence, the right to relate to other people, and the right to their good name. Therefore, all of these elements must get legal protection.

It is necessary to protect the patient's right to privacy over medical records, based on the doctor's relationship with the patient which is personal and special, so everything that a patient entrusts to his doctor must be protected against further disclosure. The role of doctors in filling out medical records is more in the process of recording medical activities, where doctors are responsible for filling in medical records. Completion of medical records by applicable regulations, as well as available medical record forms. The most important point of a medical record is that it can be a confidential and legal document.[29]

Medical records can be regarded as documents because based on Law no. 13 of 1985 concerning Stamp Duty, which states that the document is a paper (file) in which it contains writings containing the reality of circumstances or actions. [30]

The principal medical record data consists of two aspects, namely confidential information, and non-confidential information [31] Confidential information consists of reports or examination results of the patient's health condition so that the contents of this document are not allowed to be opened or disseminated to unauthorized parties. Notification regarding the patient's illness to the patient/family is the responsibility of the patient-doctor, the other party has no right at all. Meanwhile, information that does not contain confidentiality includes identity and non-medical information.

The substance that is summarized in the patient's medical record must contain three things, including: a. Who (Who) concerns the patient's identity information and who (Who) the doctor who treats/provides medical action. b. What (What) the patient's complaint, when (When) it began to be felt, why (Why) or the cause, and how (How) medical action received by the patient. c. The outcome or impact (Outcome) of medical action and treatment that the patient has received. Data containing the three elements above must not be wrong, accurate, and must not be left behind, because the data has a fatal impact on the safety of the patient's soul if an error occurs. [32]

If recording medical records use electronic information technology, the obligation to sign a signature can be changed by using a *personal identification number* (PIN). In the event of an error when recording medical records, the notes and files may not be deleted or deleted in any

way. Changes to records for errors in medical records can only be done by deleting and then initialing the officer concerned.

Permenkes No. 269 / Menkes / Per / 2008, stated that the contents of the medical record belonged to the patient, while the document belonged to the health service facility. The medical record summarizes the patient's contact with health service facilities, which contains: patient data, examinations, medication and actions given, correspondence for the continuity of service (usually in the form of cards). All data about the patient must be kept confidential by all parties involved in the use of the medical record.

Confidential medical records are for the sake of protecting the legal interests of patients and the families of hospital patients as well as doctors and other health professionals who do not have the authority to provide medical records to other people. This is following the provisions for maintaining the confidentiality of medical records contained in Permenkes No.269 / Menkes / Per / 2008 which states that *"information about the identity, diagnosis, medical history, examination history and treatment history of patients must be kept confidential by doctors, dentists, certain health workers, management officers and leaders of health service facilities "*.<sup>[33]</sup>

The interest of patient confidentiality must be the main objective of the provision of medical services provided by medical personnel, both in the form of medical services and in terms of other health services. If anyone violates this provision, they will be subject to legal sanctions under the prevailing laws and regulations. This is because medical record data contextually contains confidential individual rights so that the openness of access to medical record data is legally limited.

Legal restrictions are the existence of legal instruments that regulate the guarantee of protection of the privacy rights of patient medical records in Law No. 29 of 2004 concerning Medical Practice, Article 79 letter b, which states that *"shall be punished with imprisonment of a maximum of 1 (one) year or a maximum fine of Rp.50,000,000.00 (fifty million rupiahs), every doctor or dentist who: intentionally not making medical records as referred to in Article 46 paragraph (1) "*.

However, when in 2007, the IDI Executive Board submitted a judicial review to the Constitutional Court regarding Law No. 29 of 2004 concerning Medical Practice. The Constitutional Court revoked the criminal provisions imposed on doctors who commit violations through the Decision of the Indonesian Constitutional Court No. 4 / PUU-V / 2007, which states that Article 75 Paragraph (1) and Article 76 insofar as it concerns the phrase word imprisonment for a maximum of 3 (three) years or/and Article 79 as long as it concerns the words phrase in prison for a maximum of 1 (one ) year or Article 79 letter c as long as the wording phrase or letter e in the Medical Practice Law is declared contrary to the 1945 Constitution of the Republic of Indonesia and is declared to have no binding legal force.<sup>[34]</sup>

To anticipate the legal vacuum in the application of sanctions/penalties for violating information data, the legal basis applied is Law No. 14 of 2008 concerning Openness of Public Information, Article 54, which states that "Every person who deliberately and without the right to access and/or obtain, provides information that is exempted, shall be subject to imprisonment of up to 2 years and a maximum fine of Rp10 million". With the provision of this sanction, any violation of personal information, such as medical records which is a patient's right to privacy, can be subject to legal sanctions based on this provision.

In addition to violations of medical secrets by doctors and or other health workers at health care facilities, criminal sanctions can be applied in the Criminal Code (KUHP) Article 322, paragraphs (1) and (2), which reads, "whoever with Intentionally disclosing a secret which is obliged to be kept by him because of his position and occupation, both current and former

ones are punishable by nine months imprisonment and a fine of six hundred rupiahs. (2) If this crime is committed against a certain person, he is only prosecuted against that person. " This provision relates to medical secrets or medical records which are also occupational secrets, which are regulated in the Criminal Code.

However, the confidentiality of medical records is not absolute, in this case, the stipulations regarding the right to the confidentiality of the patient's health conditions do not apply in terms of: a. statutory order; b. court order; c. the license concerned; d. public interest; or e. interests of the person.[35] The same thing is stated in Law No. 29 of 2004 concerning Medical Practice, which states that medical secrets can be disclosed only for the benefit of patient health, fulfilling requests from law enforcement officials in the context of law enforcement, patient requests themselves, or based on statutory provisions.[36]

Apart from that Permenkes No. 269 / Menkes / Per / III / 2008, stated that medical records can be opened to fulfill the request of law enforcement officials in the context of law enforcement on court orders.[37] Another part of this Permenkes states that medical records can be used as evidence in the process of law enforcement, medical and dentistry disciplines, and dentistry ethics enforcement.[38]

## **6 Conclusion and Suggestion**

### **6.1 Conclusion**

Legal protection of medical records aims to protect the privacy rights of patients and also the secrets of the doctor's position/profession. Medical records may not be reproduced without permission, if the medical record has been used it must be destroyed, the medical record is protected by law; medical records are protected by professional organizations. Therefore, the confidentiality of medical records must be maintained and protected. The most important benefit of medical records is the legal aspect of medical records. If violated, the confidentiality of medical records which is the patient's right to privacy will be subject to criminal sanctions. However, the confidentiality of medical record data as documents is not absolute. Medical record data can be opened for the benefit of the patient himself or a certain higher level as regulated by statutory regulations.

### **6.2 Suggestion**

The need to maintain the confidentiality of medical records as legal protection for the privacy rights of patients. Medical records are important documents that not only protect the privacy rights of patients but can also be used as a tool that can provide legal protection for doctors or health workers themselves. For this reason, care is needed in maintaining and protecting this medical record, because if a violation occurs, it will be subject to criminal sanctions.

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