

Juridical Review of Legal Protection of Patients' Personal Data in Health Services

Mahroni¹, Aris Prio Agus Santoso², Peter Guntara³

Universitas Duta Bangsa Surakarta

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Abstract

Indonesia is one of the countries that until now does not have a law that specifically regulates the protection of personal data. Lately, there are many cases in the community regarding the misuse of personal data. Especially with the ease with which people access the internet, so that the misuse of personal data through electronic media will spread rapidly. In the field of health services, personal data of patients cannot be separated from the possibility of misuse. It will be even more dangerous if the personal data is a track data of the patient's medical record which is very confidential. The research method used is normative juridical, the approach method is more emphasized on the law, the source of legal material is the law, and the type of collection of legal materials is literature study. The results of this study are the use of Information and Communication Technology (ICT) in health services aimed at improving access, efficiency, effectiveness, and quality of medical processes involving medical service organizations in hospitals, clinics, health centers, medical practitioners both doctors and therapists, laboratories, pharmacies, insurance also involves patients as consumers. However, in the service process using the E-health program will collect a number of consumer personal data which is sensitive personal data and raises new legal problems, namely the extent to which health service providers can protect patients' personal data, which can be accessed, disseminated more easily through ICT advances. Until now, the existing regulations (existing law) have not provided maximum protection for patient's personal data because the regulation is still sectoral and scattered in several laws and regulations.

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Corresponding Author:

Mahroni

Universitas Duta Bangsa Surakarta

Email: al.safatran9@gmail.com

1. BACKGROUND

In Indonesia, the world of health is experiencing very significant developments and has quite good prospects. Conditions like this make competition even more competitive. Therefore, every company operating in the health services industry must be able to use various methods to attract customers through the quality of its services. The higher level of public education causes people to become more aware of the importance of quality. People tend to demand better and faster health services. This gives rise to increasingly fierce competition not only between hospitals but also with the increasing number of community health centers and health clinics in cities and regions. Many health service providers are aware of this, so like it or not they have to realize customer satisfaction in various strategies in order to retain customers.

Service quality and customer satisfaction were chosen as variables in this research because research on customer satisfaction is very important to research because customer

satisfaction is the issue most frequently discussed by all hospital patients. Service satisfaction in hospitals is very dependent on customers. If customers no longer trust the hospital because of bad results, then the hospital will lose customer trust because of the bad responses that are formed. For this reason, researchers chose the dimensions of service quality used by Behrouz et al. al (2016), namely access, reception process, waiting time, physical environment, doctor consultation and information for patients. Because these dimensions have been used by previous researchers to measure the quality of service for inpatients. Hospitals are one of the health facilities to provide health services to the community and have a very important role in accelerating the improvement of the public's health status. This requires health service providers, namely hospitals, to improve the quality of services better, not only services that are curative for disease but also include services that are preventative. Therefore, hospitals are required to provide quality services in accordance with established standards and can reach all levels of society.

The quality of hospital services has two components, namely compliance with established quality standards and fulfillment of customer satisfaction. Hospitals must provide services that focus on customer satisfaction. Improving the quality of health services can start by evaluating each element that plays a role in shaping patient satisfaction. The health care system can be improved through clinical pathways, services, including patient perspectives such as how good the health services they need are. Quality health services are the hope of all hospital customers, both internal customers such as employees and especially external customers (patients). With the government program, namely BPJS (Social Security Administering Agency), hospitals must provide the best service in meeting patient needs and expectations, health services to JKN participants must pay attention to service quality, be oriented towards patient safety, effectiveness of actions, suitability to needs. patients, as well as cost efficiency.

As the population grows, the need for health services increases. The existence of a hospital is very important to provide health services to the community. Based on data from the Ministry of Health, the number of hospitals throughout Indonesia was 2,813 units as of the end of 2018. This number consists of 2,269 general hospitals and 544 special hospitals. For information, the number of hospitals in 2010 only reached 1,632 units. Level III Hospital Prof. Dr. J.A. Latumenten is one of the Implementing Bodies of Kesdam XVI/Pattimura which has the main task of providing health services to TNI-AD personnel and TNI-AD civil servants and their families in the ranks of Kodam XVI/Pattimura. Level III Hospital Prof. Dr. J. A. Latumeten is the highest referral hospital in the ranks of the XVI/Pattimura Military Command for the Kesad Unit which is at a lower level. In accordance with the mandate of Republic of Indonesia Law No. 44 of 2009 concerning Hospitals that Hospitals are obliged to provide health services to all levels of society, the Level III Hospital, Prof. Dr. J. A. Latumeten, apart from having the main task of providing services to TNI personnel and their families, also provides health services to the general public by utilizing the excess capacity of the Hospital. At this hospital there are still many patient complaints being submitted, namely patients complaining about the punctuality of routine examinations, nurses often ignoring the patients who come, also the complaints submitted are about the facility factor. Hospitals need to provide services in accordance with patient expectations, with appropriate services the patient's expectations regarding a service can be met or even exceed their expectations, thereby giving rise to patient satisfaction. Hospitals need to know how to serve patients effectively and quickly. Services are patient-oriented because the measure of perceived quality is not in the view of the health service provider but lies in the patient. If the service received by the patient is as expected then the service can be said to be good.

In achieving service goals that are oriented towards patient satisfaction, it is necessary to pay attention to things that play an important role in determining patient quality perceptions, including facilities, the role of doctors, medical personnel and nurses. National development is a series of sustainable development efforts that cover all aspects of community, nation and state life, to carry out the task of realizing national goals as formulated in the Preamble to the 1945 Constitution of the Republic of Indonesia. This series of development efforts includes development activities that take place without stopping, by increasing the level of social welfare from generation to generation. The implementation of these efforts is carried out in the context of meeting the needs of the present without reducing the ability of future generations to meet their needs. Health development as an integral part of national development is essentially the implementation of health efforts to achieve the ability to live healthily for every resident to achieve optimal health status and is a major contribution to the development and development of Human Resources as National Development Capital.

One of the goals of National Development is towards a healthy Indonesia in 2010, namely by improving the quality of community resources that are healthy, intelligent and productive, and able to maintain and improve the level of public health accompanied by a high commitment to humanity, ethics and carried out with a spirit of empowerment, health development is carried out with priority on efforts to improve (promotive), prevent (preventive), cure (curative), and restore (rehabilitation). Efforts to improve (promotive), prevent (preventive), cure (curative) and recover (rehabilitation) are currently equipped with technological means to make health services more effective, efficient and easier for patients.

In accordance with the program planned by the government based on the basis of Health Development, and to realize the Healthy Indonesia Vision 2025, the Health Development mission has been established, namely increasing and utilizing health resources which include health human resources, health financing, as well as pharmaceutical supplies and health equipment. Health resources also include mastery of health/medical science and technology, as well as data and information whose role is increasingly important. One of the uses of information technology in the health sector that is in line with the flow of globalization is health services based on Health Information Technology, especially the ERA of the industrial revolution 4.0 which presents real challenges that are not easy in this health sector. Apart from the abundant demographic bonus, other challenges also exist in the realm of health service technology innovation. Indonesia is a country where 171.2 million people use the internet (results of an Indonesian Polling study in collaboration with the Indonesian Internet Service Providers Association / APJII) (Franedy: 2019) but does not have a single law that specifically regulates personal data protection. Since 2016, the Personal Data Protection Bill (RUU) has been included in the National Legislation Program (Prolegnas), however the discussion of the bill proposed by the government, in this case the Ministry of Communication and Information (Kominfo) has not been ratified to date.

Recently, there have been many cases in society regarding misuse of personal data. Moreover, with people increasingly easily accessing the internet, misuse of personal data via electronic media will spread quickly. As of November 2018, the Jakarta Legal Aid Institute (LBH) received 1,330 complaints regarding alleged violations of law and human rights by online loan provider companies. Upon closer inspection, there were at least 14 alleged violations, including leaking personal data to pressure borrowers to immediately return the money. (Abdulsalam: 2019) Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that Indonesia is a legal state. This means that Indonesia is a country based on law. Naturally, legal protection becomes an essential element and a consequence in a rule of law state. The state is obliged to guarantee the legal rights of its citizens. Legal protection is a recognition of the dignity of its citizens as human beings. The

protection of personal data itself is a mandate from Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that: "every person has the right to protection of himself, his family, honor, dignity and property under his control, as well as has the right to a sense of security and protection from the threat of fear of doing or not doing something which is a human right."

The issue of protecting personal data arises because of concerns about privacy violations that could be experienced by individuals and/or legal entities. This violation of privacy can cause losses that are not only material but also moral, namely in the form of destroying the good name of a person or institution. Personal data in the health sector is not free from the possibility of misuse. It will be even more dangerous if the personal data is trace data of the patient's medical record which is very confidential, so there are several special regulations such as Law Number 29 of 2004 concerning Medical Practice which regulates that every Doctor and Dentist in carrying out medical practice must make medical records and these medical records must be kept confidential by the Doctor or Dentist and the head of the health service facility. Then, Minister of Health Regulation Number 269 of 2008 concerning Medical Records states that although information about the patient's identity, diagnosis, disease history, examination history and treatment history must be kept confidential by the clinician, management officers and heads of health facilities, however, this information can be disclosed, among other things, to fulfill requests from law enforcement officials based on court orders and to fulfill requests from institutions/institutions in accordance with statutory provisions. The request must be submitted in writing to the Hospital leadership.

Apart from that, this Minister of Health Regulation also regulates ownership, benefits and responsibilities in managing medical records. The medical record file belongs to the health service facility and its contents in the form of a summary of the medical record belong to the patient. The summary can be given, recorded or copied by the patient or person authorized to do so or with the written consent of the patient or their family who have the right to do so. Based on the background above, the problem can be formulated as: How to Legally Protect Patient Personal Data in Health Services Based on Law No. 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 about Information and Electronic Transactions (ITE)?

2. RESEARCH METHOD

The research method used in this research is the Normative legal research method, legal research is a process of finding legal rules, legal principles, and legal doctrines in order to answer the legal issues faced. This is in accordance with the prescriptive character of legal science. In contrast to research carried out in descriptive science which tests whether or not a fact exists which is caused by a certain factor, legal research is carried out to produce arguments, theories or new concepts as prescriptions for solving the problems faced. If in descriptive science the answer is expected is *true* or *false*, *the answer* that is expected in legal research is *right*, *appropriate*, *inappropriate*, or *wrong*. Thus, it can be said that the results obtained in legal research already contain value.

These legal materials are called primary legal materials and include not only all statutory law but also court jurisprudence and any other products acknowledged as positive law or as parts of positive law.

Secondary data used in this research includes:

1. Secondary legal materials,

Secondary legal materials are legal materials that have binding force on the public, such as the Civil Code, UUJN, Ministry of Information and Electronic Transactions.

2. Tertiary legal materials

Tertiary legal materials are materials that provide instructions and explanations for secondary legal materials, for example in the form of dictionaries and encyclopedias.

Based on its nature, this research is descriptive research, namely research that is intended to provide data that is as thorough as possible about conditions or symptoms so that it can confirm hypotheses in order to strengthen existing theories. The data is presented in sentence form, not in the form of statistical data so this research is qualitative in nature. This research can provide an illustration in the form of a clear answer that there is a legal vacuum for creditors as financiers in the regulation of guarantees for aircraft purchased on credit or lease with option rights or without option rights.

A. Theoretical Framework

1. Understanding Legal Protection

With the presence of law in social life, it is useful for integrating and coordinating interests that usually conflict with each other. Therefore, the law must be able to integrate it so that conflicts of interest can be reduced to a minimum. The definition of legal terminology in Indonesian according to the KBBI is regulations or customs that are officially considered binding, which are confirmed by the authorities or government, laws, regulations, and so on to regulate social life in society, standards or rules regarding certain natural events, decisions or considerations. determined by the judge in court, or verdict. Opinion regarding the meaning of understanding the meaning of the law stated by Dr. O. Notohamidjojo, SH Law is the totality of written and unwritten regulations which are usually coercive for human behavior in state society and between states which are oriented towards two principles, namely justice and efficiency, for the sake of order and peace in society.

According to Prof. Mahadi, SH legal definition is a set of norms that regulate human behavior in society. According to Soedjono Dirdjosisworo, the meaning of law can be seen from eight meanings, namely law in the sense of rulers, law in the sense of officers, law in the sense of attitude of action, law in the sense of a system of rules, law in the sense of a network of values, law in the sense of legal order, law in meaning of legal science, law in the sense of legal discipline. Various definitions have been put forward and written by legal experts, which basically provide almost the same definition, namely that the law contains regulations for human behavior.

In the large Indonesian dictionary, protection comes from the word *lindung* which means to protect, prevent, defend and fortify. Meanwhile, protection means conservation, maintenance, guarding, shelters and bunkers. In general, protection means protecting something from dangerous things, something that could be interests or objects or items. Apart from that, protection also means protection given by someone to someone who is weaker. Thus, legal protection can be interpreted as protection by law or protection using legal institutions and means. However, in law, the definition of legal protection is all efforts made consciously by every person or government and private institution aimed at securing, controlling and fulfilling the welfare of life in accordance with existing human rights as regulated in Law Number 39 of 1999 on Human Rights.

In other words, legal protection is an illustration of the function of law, namely the concept where law can provide justice, order, certainty, benefit and peace. The opinions quoted from several experts regarding legal protection are as follows:

- a) According to Satjito Rahardjo, legal protection is an effort to protect a person's interests by allocating a Human Rights authority to him to act in the context of his interests.

- b) According to Setiono, legal protection is an action or effort to protect society from arbitrary actions by authorities that are not in accordance with the rules of law, to create order and tranquility so as to enable humans to enjoy their dignity as human beings.
- c) According to Muchsin, legal protection is an activity to protect individuals by harmonizing the relationship between values or rules which are manifested in attitudes and actions in creating order in social interactions between fellow humans.
- d) According to Philipus M. Hadjon, it is always related to power. There are two powers: government and economic power. In relation to government power, the issue of legal protection for the people (who are governed) and the government (who governs). In relation to economic power, the issue of legal protection is protection for the weak (economic) against the strong (economic), for example protection for workers against entrepreneurs

Basically, legal protection does not differentiate between men and women. Indonesia as a legal state based on Pancasila must provide legal protection to its citizens because this legal protection will give rise to recognition and protection of human rights in their form as individual and social creatures within a unitary state that upholds the spirit of kinship in order to achieve common prosperity.

2. Forms & Means of Legal Protection

According to R. La Porta in *Journal of Financial Economics*, the form of legal protection provided by a country has two characteristics, namely preventive (*prohibited*) and punitive (*sanction*). The most obvious form of legal protection is the existence of law enforcement institutions such as courts, prosecutors, police and other out-of-court (non-litigation) dispute resolution institutions. Protection is meant to be preventative in nature (*prohibited*) namely making regulations, while the protection referred to is punitive (sanction) namely enforcing regulations. The objectives and methods of implementation include the following:

- 1. Make rules, which aim to:
 - a) Provide rights and obligations
 - b) Guarantee the rights of pre-legal subjects
- 2. Enforce rules through:
 - a) State administrative law which functions to prevent violations of rights by licensing and monitoring.
 - b) Criminal law functions to overcome any violations of statutory regulations, by imposing legal sanctions in the form of criminal sanctions and penalties.
 - c) Civil law which functions to restore rights by paying compensation or damages.

Legal protection requires a container or place for its implementation which is often referred to as a means of legal protection. Legal protection means are divided into two types, namely as follows:

- 1. Means of Preventive Legal Protection. In this preventive legal protection, legal subjects are given the opportunity to submit objections or opinions before a government decision takes definitive form. The goal is to prevent disputes from occurring. Preventive legal protection means a lot for government actions based on freedom of action because with preventive legal protection the government is encouraged to be careful in making decisions based on discretion. In Indonesia there are no special regulations regarding preventive legal protection.

2. **Repressive Legal Protection Means:** Repressive legal protection aims to resolve disputes. The handling of legal protection by the General Courts and Administrative Courts in Indonesia falls into this category of legal protection. The principle of legal protection for government actions relies on and originates from the concept of recognition and protection of human rights because according to western history, the emergence of concepts regarding recognition and protection of human rights was directed towards limitations and the laying down of community obligations. and the government. The second principle underlying legal protection for government actions is the principle of the rule of law. Associated with the recognition and protection of human rights, the recognition and protection of human rights has a primary place and can be linked to the objectives of the rule of law

3. ANALYSIS AND DISCUSSION

1. Protection Law on Patient Personal Data in Health Services Based on Law No.11 of 2008 concerning Harmonization and Electronic Transactions as amended by Law No.19 of 2016 concerning Amendments to Law No.11 of 2008 concerning Information and Transactions Electronic (ITE)

Protection of personal data, especially health data, in Indonesia is still vulnerable to leaks and is not fully accommodated. Considering that Indonesia does not yet have regulations that specifically and specifically regulate the protection of personal data and there are still a number of cases of misuse of people's personal data on various platforms. Personal Data Protection was created because of the increasing number of violations of personal data of individuals and legal entities. Misuse of personal data can result in not only material losses, but also moral losses related to this, namely the good name and honor of a person or institution being harassed. If we look recently, there have been many cases involving people having their personal data hacked by irresponsible parties. Moreover, increasingly sophisticated technology makes it easier for people to carry out daily activities online with an internet connection. Thus, misuse of personal data has increasing potential and is spreading rapidly.

Regulations regarding Personal Data Protection in Indonesia are still general in nature and do not accommodate various problematic issues that often occur in society and are located separately in various laws and regulations. With the availability of specific and comprehensive regulations, it is felt that Indonesia can be better prepared to face challenges regarding personal data issues and can also provide security guarantees for each individual's data and can catch perpetrators of misuse of personal data with strict sanctions. In this case, it has become an obligation and is actually a state of law as stated in Article 1 paragraph (3) of the 1945 Constitution that Indonesia is a state of law. This means that Indonesia is a country based on law and also, democratic which must provide legal protection to its citizens in the context of personal data protection issues. Data is a raw material contained in information that can provide meaning or personal information for humans.

Data is any information containing a person's identity that can be processed with a tool for the purpose of storage or for a specific purpose. Personal data in the health sector also often experiences leaks, it will be even more fatal if the data that is leaked is highly confidential medical records. The term personal data in the health sector is a medical record which is written and recorded information about laboratory identity, service diagnoses, actions and treatment given to patients both inpatient and outpatient and who are receiving treatment in emergency situations. In Minister of Health Regulation

Number 269 of 2008 concerning Medical Records ("Permenkes 269/2008") it is stated that information regarding the patient's identity and medical history must be kept confidential by the organizers of electronic systems, in this case hospitals, including officers, managers and leaders.

However, for the benefit of the patient, upon request from law enforcement officials in the context of law enforcement and based on statutory provisions, this information can be disclosed. This request must be submitted by means of a written request submitted to the Hospital. Regulations governing the protection of personal data, especially in the health sector, are regulated in Law Number 29 of 2004 concerning Medical Practice (UUPK) in Article 47 paragraph (2) which states "Medical records must be kept and kept confidential by doctors or dentists and management. health service facilities". Then, every patient also has the right to the confidentiality of their personal health condition as regulated in Law Number 36 of 2009 concerning Health (UUK), Article 57 paragraph (1) which reads "Every person has the right to the confidentiality of their personal health condition which has been disclosed to health service providers." .

The rules relating to personal data protection in Indonesia are still weak and general in nature because the rules are contained in several separate laws and regulations and only describe the concept of personal data protection in general and the rules are only outlined in the form of a Regulation of the Minister of Communication and Information of the Republic of Indonesia. Several separate laws and regulations include, among others, the Information and Electronic Transactions (ITE) Law no. 11 of 2008, Law Number 43 of 2009, concerning Archives, Law Number 8 of 1997 concerning Company Documents, Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking, Law Number 36 2009 concerning Health, Law Number 36 of 1999 concerning Telecommunications (Telecommunications Law), and Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration (UU Adminduk). Apart from the several rules mentioned above implicitly, the Indonesian Constitution (UUD NKRI 1945) contains norms regarding the protection of personal data. Article 28 G paragraph (1) states "Every person has the right to protect himself, his family, honor, dignity and property under his control.

Regulations regarding the protection of personal data are regulated in several articles in the ITE Law. This law does not yet contain strict and comprehensive personal data protection rules. However, this law indirectly creates a new understanding regarding the protection of the existence of electronic data or information, both public and private. Explanation of personal electronic data is further mandated by the ITE Law in the PP on the Implementation of Electronic Systems and Transactions (PSTE). Protection of personal data in an electronic system in the ITE Law includes protection from unauthorized use, protection by electronic system operators, and protection from illegal access and interference.

Regarding the protection of personal data from unauthorized use, Article 26 of the ITE Law states that the use of any personal data in electronic media must obtain the consent of the owner of the data concerned. Any person who violates this provision may be sued for losses incurred. In his explanation, Article 26 of the ITE Law also states that personal data is part of a person's personal rights. The ITE Law (11/2008 jo. 19/2016) as a generic law contains personal data protection norms in Article 26, which in essence, the use of any data and information in electronic media related to a person's personal data must be carried out with the consent of the person concerned or based on positive law (legislation). Basically, this provision contains two bases for the legitimacy of personal

data processing, namely (a) consent; and (b) positive legal norms. These two principles are the basis of legal data processing.

4. CONCLUSION

The large number of cases in society regarding misuse of personal data cannot be separated from the easier it is for people to access the internet so that misuse of personal data via electronic media will spread quickly. The issue of protecting personal data arises because of concerns about privacy violations that could be experienced by individuals and/or legal entities. This violation of privacy can cause losses that are not only material but also moral, namely in the form of destroying the good name of a person or institution.

5. SUGGESTION

Even though it is guaranteed in the 1945 Constitution of the Republic of Indonesia, and is also regulated in Law Number 11 of 2008 concerning Information and Electronic Transactions (ITE) and its [1]amendments, it turns out that it is not enough to guarantee legal protection for a person's or patient's personal data. in a health service based on Health Information Technology. Indonesia also feels that it is very necessary to immediately implement special regulations regarding the protection of personal data which are passed in the form of a law. It is hoped that the existence of strict and adequate regulations can provide security for information technology users and in particular can improve technology-based health services.

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