

Legal Protection of Patients' Rights on the Recording Action Camerating or Photographing in the Hospital

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Keywords

Abstract

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The regulation of health services in Indonesia has been subject to heightened oversight in accordance with Law No. 17 of 2023 concerning Health. This legislative act encompasses provisions for the delivery of health services, in addition to the establishment of legal safeguards for patient rights. Among the rights protected by this legislation are the rights to privacy, confidentiality, and access to information. This study analyzes the legal dimensions that focus on cases in hospitals. The present study examines the legal protection of patient rights with regard to the act of recording or photographing without permission in the hospital. The aim of the study is to provide recommendations to strengthen patient privacy protection and more effective law enforcement. The study employs an empirical legal method, which involves the examination of normative legal provisions and the collection of primary data directly from the field through surveys, interviews, and field reports. The results of the study indicate that certain legal norms are not being implemented effectively. For instance, the rules in each area prohibit photography without authorization, and the hospital has established accountability measures for individuals who take pictures or record activities without permission. These individuals may be subject to sanctions.

INTRODUCTION

The right to a healthy and sustainable environment, as well as the right to health services, is enshrined in Article 28 H of the 1945 Constitution. This article is one of the national goals of the Indonesian nation in health development.

The provision of health services has been subject to regulation in Law No. 17 of 2023 concerning Health. This legislation stipulates the implementation of health services and encompasses the provision of legal protection for the rights to privacy, confidentiality, and information. The health services referenced herein pertain to those services that are furnished by hospitals. Hospitals are bound by law to respect and protect patient rights, as outlined in Article 189 paragraph 1 letter m of Law No. 17 of 2023 concerning Health.

Despite the existence of regulations concerning the privacy and confidentiality of patient health data in Article 4, letter i, of Law No. 17 of 2023 regarding Health, it is important to note that individuals retain the right to obtain the confidentiality of their personal health data and information. However, recent issues have emerged concerning privacy violations involving

documentation, such as the unauthorized capture of images or videos and subsequent dissemination on social media platforms. Warren and Brandeis put forward privacy in a scientific journal entitled "the right to privacy" that privacy is the right not to be disturbed. In the article, it is said that everyone in carrying out activities has the right to have their privacy protected.¹ Privacy has a more abstract and broader meaning and scope, including the right not to be disturbed or to have control over personal information. ²In this contemporary era, characterized by rapid advancements in technology and the dissemination of information, the ubiquity of mobile cameras and the internet has profoundly transformed the manner in which visual content is created, disseminated, and consumed. However, it should be noted that not all establishments permit the use of photographic or recording devices without explicit authorization. For instance, hospitals have established regulations that govern the use of such equipment, particularly within the confines of service and treatment rooms. These regulations pertain to the use of digital devices, such as mobile phones and cameras, in the context of medical services and procedures.

It is evident that each medical facility has a conspicuously displayed notice on its premises, clearly outlining the restrictions on photography and videography within the hospital. The legal basis for prohibiting photography and video recording in the hospital area is outlined in several announcements: Law No. 29 of 2004 concerning Medical Practice establishes the framework for medical conduct; Article 40 of Law No. 36 of 1999 concerning Telecommunications prohibits wiretapping activities on information distributed through telecommunications networks in any form; and Article 27 of Law No. 11 of 2008 pertains to the realm of information and electronic transactions.

These fundamental principles serve as the cornerstones for safeguarding patients' privacy rights within the healthcare sector. A privacy violation occurred at a Muhammadiyah Siti Aminah Bumiayu general hospital. According to health workers at the hospital, there was once a case in which a guest took a photograph of a patient in the inpatient room lying on a bed. The photograph was subsequently disseminated on social media via WhatsApp without the patient's or their family's knowledge or permission. The patient subsequently discovered the photograph and expressed their discontent regarding the violation of their privacy rights. They reported the incident to the medical personnel. In the event that the capture of photographic images requires the explicit consent of the relevant party, this requirement is clearly delineated in Article 26, paragraph (1), of Law No. 11 of 2008 concerning Information and Electronic Transactions. This legislative act stipulates that all forms of information pertaining to or data privacy are contingent upon the consent or permission of the proprietor of the pertinent data privacy. Hospitals, as institutions that are responsible for patient safety and privacy, are obligated to implement strict policies and provide education to visitors regarding the legal consequences of recording without permission.³

¹ Latumahina RE, *Aspek Hukum Perlindungan Data Pribadi Di Dunia Maya*, (Jakarta: Gema Aktualita Vol.3 No. 2, 2014), Hlm. 14-25.

² Endison Ravlindo & Ariawan Gunadi, *Perlindungan hukum terhadap data kesehatan melalui pengesehan rancangan Undang-undang perlindungan data pribadi*, Jurnal hukum adigma, Vol 4 No. 2, 2021, Hlm 4760.

³ Syarif Saddam Rivanie Parawansa, *Hukum Pidana Terorisme (Hakikat Sanksi dan Pengaturan Terorisme di Indonesia)*, Penerbit KBM, Jogjakarta, 2022, hlm 52.

The regulation acknowledges the right to privacy and the hospital's obligations. Consequently, patients are entitled to protection for their privacy and confidentiality of data and information related to their personal affairs from unauthorized recording or photographing. Despite the continued occurrence of instances of unauthorized photography, research has examined the legal protection of the right to privacy in such contexts. Furthermore, the law enforcement response to ensure the fulfillment of this right, as well as the responsibility of the hospital and the sanctions against the perpetrators, have been investigated.

METHOD

This research uses an empirical legal approach, which is commonly known as the socio-legal method.⁴ This type of research is descriptive to describe events or occurrences.⁵ This research technique uses qualitative techniques to examine the legal protection of patient rights for unauthorized photography or recording in hospitals (RSUM Siti Aminah). This research is categorized as field research and supported by using literature studies to obtain primary and secondary data. Primary data was collected through structured interviews with selected informants, including the director, public relations, medical personnel, health workers, service users and employees at Siti Aminah Bumiayu General Hospital located in Brebes Regency, Central Java. Secondary data was obtained from legal documents, scientific literature relevant to the research, and other written sources. Secondary data is grouped into three types, namely: Primary legal materials such as the 1945 Constitution, Law No. 17 of 2023 on Health, Law No. 11 of 2008 on Electronic Information and Transactions and Permenkes. Secondary legal materials were obtained from books, journals, reports and online sources. Data collection was conducted through observation and interviews. While data analysis was carried out qualitatively with descriptive methods to build interpretations in a narrative manner.

RESULT AND DISCUSSION

A. Legal Protection of Patients' Right Against Unauthorized Recording of Photographing in The Hospital

According to the Health Law, hospitals are obligated to provide patients with clear, accurate, and honest information regarding their rights and obligations. Furthermore, hospitals are obligated to adhere to, safeguard, and codify patient rights, in addition to establishing and implementing internal hospital regulations. It is imperative that all health service facilities maintain the confidentiality of their patients' health information, ensuring that such information remains strictly private and is not disseminated to the public.

The practice of documenting the hospital environment through photography or audio-visual recording is strictly prohibited, as it would infringe upon the privacy of patients, their families, and hospital personnel. The performance of this procedure is contingent upon the authorization of the patient, their family, or the hospital staff. In certain instances, there persists a transgression of privacy rights, as evidenced by the incident at RSUM Siti Aminah Bumiayu. According to health professionals at the facility, there was an occurrence in which an individual captured an image of a patient in the inpatient setting, positioned on a bed, and subsequently disseminated the photograph via the social media

⁴ Bambang Waluyo, *Penelitian Hukum Dalam Praktek*, Jakarta: Sinar Grafika, 2002, hlm. 15-16

⁵ Nurul Zuria, *Metodologi Penelitian Sosial dan Pendidikan*, Jakarta: PT Bumi Aksara, 2010, hlm 47

platform WhatsApp, without the awareness or consent of the patient or their family. The patient became aware of this transgression and expressed their discontent, reporting the incident to the medical personnel.

The above case that every patient has the right to privacy and confidentiality of medical data and their health condition. This is regulated in several regulations, including: Article(pasal) 17 paragraph 2 letter I of the Minister of Health Regulation No. 4 of 2018 concerning hospital obligations and patient obligations, which states that patients have the right to security and confidentiality of information about the disease they are suffering from. In Law No. 17 of 2023 concerning health, patient confidentiality must be maintained or protected by hospitals, health workers and medical personnel and may only be opened for the benefit of patients or by law enforcement officers. Hospitals have an obligation to respect and protect patient rights, especially the right to privacy and medical confidentiality. Protection is an action to protect. According to Philipus M. Hadjon, legal protection is an action to protect or provide assistance to legal subjects, using legal rules.⁶ Legal protection is defined as the provision of legal safeguards to individuals or entities that are recognized as legal subjects under established legal frameworks. This protection can be in the form of preventive measures or law enforcement measures (repressive), both written and unwritten. In essence, legal protection can be defined as the mechanism through which the legal system ensures the equitable distribution of benefits and the maintenance of peace within society.⁷ Hospitals employ a variety of methods to discourage photography and recording on their premises. These include the display of posters, pamphlets, and boards that explicitly prohibit such activities. The materials may include images or symbols such as "prohibited camera images," "prohibited cellphone images," or "prohibited recording devices." This preventive protection is a strategy employed by hospitals to maintain control over the use of photography and recording devices within their facilities. Subsequently, the Medical Practice Law No. 29 of 2004, articles (Pasal) 48 and 51, which pertain to the right to privacy, stipulate the prohibition of certain actions. As stated in Article (Pasal) 276 of Law No. 17 of 2023 concerning Health, patients' rights are subject to additional rights in accordance with the prevailing regulations. This principle is further delineated in Article (Pasal) 17, paragraph 2, letter g of the Minister of Health Regulation No. 4 of 2018 concerning hospital obligations and patient obligations. These rights encompass the ability to obtain information regarding the hospital's rules and regulations, as well as the rights and obligations of patients. Conversely, patients possess the right to receive services that are humane, honest, fair, and without discrimination.

The aforementioned announcement also encompasses Article (pasal) 40 of Law No. 36 of 1999 concerning telecommunications, which prohibits the practice of wiretapping on information transmitted through telecommunications networks in any form. Concurrently, the definition of tapping as delineated in the Explanation of Article (Pasal) 31 Paragraph (1) of Law No. 11 of 2008 is as follows: Tapping or interception is defined as the act of listening to, recording, diverting, altering, or inhibiting the transmission of electronic information and

⁶ Philipus M.Hadjon, *Pengantarhukum Administrasi Indonesia*, Gajah Mada Universitas Pres, 2011, hlm 10

⁷ Tim Hukum Online, 2022, *Teori-teori Perlindungan Hukum Menurut Para Ahli*. Hukum online.com. <https://www.hukumonline.com/berita/a/teori-perlindungan-hukum-menurut-paraahli-lt63366cd94dcbc/?page=1> , diakses pada 8 September 2024.

documents of a public nature. This can be achieved through the use of a communication cable network or a wireless network, such as an electromagnetic or radio network.

According to the regulations established by the hospital, the act of photographing individuals without their consent constitutes a violation of the established policies. This is further delineated in Articles 48 and 51 of the Law on Medical Practices, which stipulates the maintenance of confidentiality for the benefit of patients or for the purpose of law enforcement. According to Article 4, paragraph 4 of Law No. 17 of 2023 concerning Health, the confidentiality of health data and information is not applicable to requests from law enforcement officers in the context of law enforcement, KLB, epidemics, or disasters, limited education and research interests, efforts to protect against the danger of threats to the safety of others, for the benefit of patient care, patient requests, administrative interests, or other interests regulated in laws and regulations. The photograph was thus obtained without the patient's consent, as stipulated by the aforementioned regulations. The actions taken by the perpetrator constitute a violation of the confidentiality and security of the patient's personal data. The disclosure of this information has the potential to compromise the privacy of the patient, as well as Indah's research. It is imperative to exercise discretion and refrain from disseminating information that pertains to the patient's history, condition, care, and treatment of their physical and psychological health.⁸ The dissemination of such information through social media platforms constitutes a transgression against the patient's fundamental right to privacy. Due to the patient's lack of consent, the perpetrator's photographic session included images of the patient's condition, which, by protocol, should have been maintained in strict confidentiality. The patient's health condition is the patient's right as the sole owner of the identity.⁹ The patient reserves the right to report this violation to medical personnel and the hospital to obtain legal protection. Furthermore, the hospital is obligated to take action against the perpetrator in accordance with applicable regulations. This is done to maintain the patient's privacy and security and prevent similar incidents from occurring in the future. In instances where the patient perceives a disadvantage, legal provisions are in place to ensure their protection. These regulations mandate the provision of compensation in instances where the actions of the perpetrator result in harm to the patient, both in a formal and a material sense, within the context of the hospital. Despite the implementation of preventive measures, the Sisti Aminah Bumiayu General Hospital issued an announcement prohibiting the taking of photographs or videos within the hospital premises. This action was undertaken as an initial measure to safeguard and uphold the right to privacy.¹⁰

Notwithstanding the continued occurrence of infractions pertaining to these regulations. A significant proportion of the perpetrators who have committed violations remain unaware of these regulations. Therefore, it is imperative to implement an approach

⁸ Indah maria Maddalena s, *Perlindungan Hukum Atas Hak Privasi Dan Kerahasiaan Identitas Penyakit Bagi Pasien Covid-19*, Sibatik Journal, vol 1 N0 7. 2022. Hlm 1092

⁹ Yudi yasmin wijaya. *Penggunaan informasi medis pasien dalam pelaksanaan perlindungan hukum atas privasi*. Jurnal unpar. 2020. Vol 6 No. 2. Hlm 401

¹⁰ Agung tri prasetyo, *Tinjauan yurids terhadap penyebaran data pasien dalam mendapatkan privasi yang terdampak covid-19(studi kasus di rumah sakit sultan imanudin peangkalan bun)*, skripsi fakultas hukum universitas islam sultan agung semarang, 2021. Hlm 35

that provides comprehensive understanding or education to all visitors, patients, and hospital staff, thereby fostering a greater respect for the right to privacy.

B. Law Enforcement Against Individuals Who Take Photos or Record Without Permission in The Hospital

Law enforcement can be defined as the system of ensuring that the law is implemented effectively in society. Satjipto Rahardjo posits that law enforcement is interpreted as the process of achieving legitimate desires. Specifically, he asserts that lawmakers are determined and regulated in legal decisions, which will result in the occurrence of reality. Law enforcement is the process of implementing legal norms that are considered to be valid and applicable within a given society. These norms serve as guidelines for the behavior of individuals, communities, nations, and states, thereby facilitating the realization of legal principles.¹¹

Satjipto Rahardjo's aforementioned opinion posits an understanding of the legal process in its totality, encompassing the context of safeguarding patient privacy rights within the hospital milieu. With regard to infractions of conduct, such as the infringement of privacy rights, these are not permissible according to the law. The law enforcement of these regulations is particularly pertinent in the context of the distribution of patient photographs or data without explicit consent. This enforcement is facilitated by a series of legal mechanisms that are designed to safeguard the privacy and confidentiality of patient data. These mechanisms ensure that the rights of patients are protected and respected, in accordance with the sanctions stipulated by the relevant laws and regulations. The implementation of this process is twofold: first, to ensure the successful execution of the law; and second, to facilitate the involvement of law enforcement officers and the community. This collaborative effort is essential to ensure that legal norms function as effective behavioral guidelines in everyday life.¹²

For example, consider the scenario of a patient who is asleep in a hospital bed or ward. If a visitor to the hospital were to take a photograph of the patient, this would constitute a violation of ethical standards and statutory regulations. The occurrence of this incident was an unfortunate occurrence. The practice of photographing patients in designated areas is subject to specific regulations and ethical principles. These guidelines are designed to ensure that the photography does not disrupt hospital services or violate patients' privacy rights. Article 2 of Law No. 17 of 2023 concerning Health stipulates that hospitals are to be organized according to the following principles: humanity, ethics and professionalism, protection and safety, respect for rights and obligations, and legal awareness. In accordance with Article (Pasal) 27, paragraph 1 of the 1945 Constitution, "Every citizen has a shared responsibility to uphold the law and the government." This is a civic responsibility that necessitates community participation in the protection and enforcement of the law. Consequently, hospitals also play a role in ensuring that legal norms function.

¹¹ Satjipto Rahardjo, *Penegakan Hukum Sebagai Tinjauan Sosiologis*, (Yogyakarta: Genta Publishing), 2009, hlm. 25

¹² Satjipto Rahardjo, *Membedah Hukum Progresif*, (Jakarta: Kompas, 2008) hlm. 175-183

In this context, the hospital is obligated to take action against the perpetrator in accordance with its internal regulations. The institution may impose administrative sanctions on the perpetrator, including, but not limited to, issuing a verbal warning, providing a written warning, and imposing an administrative fine. In the event that the perpetrator is a health care professional, the institution may also revoke the perpetrator's practice license upon proof of a violation of patient confidentiality. As stipulated in Article 306 of Law No. 17 of 2023, infractions of discipline by medical or health personnel may result in disciplinary measures, including the issuance of written warnings, the requirement to attend educational or training programs, temporary deactivation of the STR, or recommendations for the revocation of the SIP. According to Article 301, paragraph (2) of Law Number 17 of 2023 concerning Health. Health professionals are meticulous in their maintenance of confidentiality, not merely to preserve their professional standing, but more importantly, to avert potential harm to patients that might result from the revelation of such information. In the event that the perpetrator is a visiting guest, The patient or their family members are entitled to report the violation to medical personnel and hospital management. Article 26 of Permenkes No. 4 of 2018 concerning hospital obligations and patient obligations stipulates that patients and their families possess the right to receive medical assistance in hospitals. Concurrently, they are obligated to respect the rights of other patients, hospital staff, and visitors. According to the internal regulations of medical facilities, hospitals are obligated to take action against perpetrators.

According to Article (Pasal) 1 of Law No. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Electronic Information and Transactions, electronic information is defined as one or a collection of electronic data, including, but not limited to, writing, sound, images, maps, designs, photos, electronic data interchange (EDI), electronic mail (electronic mail, telegram, telex, telecopy or the like, letters, signs, numbers, access codes, symbols, or perforations that have been processed and that have meaning or can be understood by people who are able to understand them. The utilization of any information pertaining to an individual's personal data through electronic media or systems is contingent upon the explicit consent of the individual concerned. Violations of this provision may result in legal sanctions, as delineated in Article 45, paragraphs 1 through 4.

The case has been carried out by taking pictures and then distributing the patient's self-image. This practice is not specifically stated in the health law regulations or its derivative regulations. The sanctions imposed on the perpetrators of the distribution of images can be found in Law No. 19 of 2016, an amendment to Law No. 11 of 2008 concerning ITE. The government is obligated to impede the dissemination and utilization of electronic information or documents that contain material proscribed by prevailing legislation. In the event that a party should violate this regulation, they will be subject to sanctions in the form of criminal penalties. The criminal article is contained in Article 45, paragraphs (1), (2), (3), and (4) of the ITE Law. In the event that the patient, family, or hospital perceives disturbance or harm as a consequence of the erroneous publication, the option of reporting to the relevant authorities (i.e., filing a complaint) is available.

The objective of imposing disciplinary sanctions on those who have committed infractions is to promote improvement and cultivate a greater respect for the rights of others. Therefore, if this punishment is applied, it is essential to instill a sense of responsibility,

encouraging individuals to fulfill their obligations and adhere to the provisions of the applicable law.¹³ Research conducted by Sevia Diah Pratiwi and Muhammad Irwan P.N. posits that human privacy concerns the enforcement of human rights, the violation of which can have fatal consequences. It is imperative that the law be unwavering in its application to serve as an effective deterrent for those who perpetrate criminal acts.¹⁴

CONCLUSION

The legal protection of patient privacy rights in hospitals is guaranteed through the hospital's obligation to respect, protect, and maintain the confidentiality of patient data and health conditions in accordance with the Health Law and related regulations. The unauthorized capture of images or audio recordings constitutes a violation of privacy, proscribed by law. This practice is permissible exclusively with the express consent of the patient, their family, or authorized medical personnel. Hospitals are obligated to establish internal regulations and implement preventive measures, such as prohibiting photography, and to take action against perpetrators of violations in accordance with legal provisions and professional ethics. In the event of a violation, patients are entitled to report the incident and receive legal protection, including the possibility of compensation for losses incurred. Education for visitors and hospital personnel is also paramount to raise awareness of the importance of respecting patient privacy rights in order to maintain the dignity and security of health information.

Law enforcement against perpetrators who take photos without permission in hospitals aims to protect patients' privacy rights in accordance with laws and regulations, including the Health Law and the Information and Electronic Transactions (ITE) Law. Hospitals are obligated to take action against perpetrators, including health workers and guests, through administrative sanctions or reporting to the authorities in cases of unauthorized distribution. This collaborative law enforcement process involves law enforcement officers, hospital management, and the community. The purpose of this cooperative endeavor is to ensure that legal norms are respected and implemented effectively. The objective is to provide a deterrent effect and optimally maintain the dignity and rights of patients.

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¹⁴ Sevia Diah Pratiwi Dan Muhammad Irwan P.N, *Penegakan Hukum Terhadap Keamanan Data Privasi Pada Media Sosial Di Indonesia*, Sammajiva : Jurnal Penelitian Bisnis Dan Manajemen Vol.1, No.3 2023, Hlm 40

Legal Protection of Patients' Rights on the Recording Action Camerating or Photographing in the Hospital

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