



## Protection of Medical Record Data as a Form of Legal Protection of Health Data through the Personal Data Protection Act

Ni Putu Yuliana Kemalasari<sup>1</sup>, I Putu Harry Suandana Putra<sup>2</sup>

<sup>1,2</sup> Program Studi Hukum, Fakultas Bisnis, Sosial, Teknologi dan Humaniora, Universitas Bali Internasional, Denpasar, Indonesia

Email: [yulianakemalasari@iikmpbali.ac.id](mailto:yulianakemalasari@iikmpbali.ac.id), [harrysuandana@iikmpbali.ac.id](mailto:harrysuandana@iikmpbali.ac.id)

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### Abstract

This study aimed at analyzing the government's efforts to provide protection for medical record data of patients as a form of legal protection for patients' medical data. In the midst of the flurry of cases of personal data leakage by hackers, it has raised concerns from various parties about the possibility of medical records leaking of someone's medical history. Medical history or medical record contains confidential information about a person's condition related to health and the history of health care that has been carried out. It becomes particularly serious when it records certain diseases of the patient that should not be spread out to the public. In Indonesia, several regulations regarding the protection of personal data which is a person's privacy rights have been formed. However, this is not enough to deal with the development of digital technology to provide legal certainty for the protection of personal data including medical records as one of the objectives of the law, namely to provide legal certainty and protection.

Therefore, this study examines how the legal protection of medical record data based on legal protection according to positive law and the Personal Data Protection Act.

**Keywords:** *medical records, personal data protection, personal data protection act.*

### INTRODUCTION

Humans as living and growing creatures will go through phases where they are in good and poor condition. Instinctively, humans who are ill will make efforts to heal themselves by seeking health services to get medical care. Health services encompass actions related to the medical field, where patients are provided with medical treatment based on the patient's complaints and health conditions. The development of health services has followed the advancement of technology and information. Development in health services is not limited to treatment methods, medicines, and medical equipment used in the treatment process, but also in the process of collecting patient data through digital medical records which allows the patient's medical history will be accessible digitally. Based on *Permenkes No. 209/MENKES/PER/III/2008*, a medical record is a file that contains notes and documents regarding the patient's medical history and treatment including identity,

examinations performed, medical procedures, type of treatment, and other service facilities that the patient underwent, namely outpatient and inpatient care in both private and government hospitals, including other health service centers such as the *Puskesmas*.<sup>1</sup>

Along with the rapid development of technology, it has become a tool for storing large amounts of information digitally in various electronic media that are vulnerable to data breaches caused by irresponsible parties. This is medically known as electronic health (e-Health). Electronic health is defined as an innovation that is used in the exchange of medical information where matters related to health services and information are enhanced through media and internet technology. Electronic health services can include medical care, consultation, online pharmacy services, and various health information that can be accessed online because the purpose of creating electronic health services is to provide patients with fast and efficient access to health, making it more comfortable for patients. them to receive the care they need. As is known, with these technological advances, there are loopholes that can be exploited, especially regarding the security of personal data. To overcome these weaknesses, Indonesia as a legal state based on the 1945 Constitution has a constitutional obligation to provide legal protection to all its citizens as a government institution.<sup>2</sup> Legal protection for citizens for personal data has been regulated in Article 28G paragraph (1) of the 1945 Constitution which states that everyone has the right to self-protection, the right to feel safe, and protection from all forms of threats and scared.<sup>3</sup>

Protection of personal data is part of fundamental human rights and if there are issues related to misuse of personal data, the owner of personal data has the right to legal defense and protection.<sup>4</sup> In medical or health context, protecting personal data pertains to medical record data. The medical record itself is defined as a statement made in written form or digital record containing identity, history taking, physical determination, laboratory/radiological examination, diagnosis, all forms of services and medical procedures provided to patients, including emergency services.<sup>5</sup> Medical records are used to:<sup>6</sup>

- 1) Take notes regarding health maintenance;

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<sup>1</sup> Politeknik Kesdam and V I Banjarmasin, "JURNAL PROMOTIF PREVENTIF Perkembangan Rekam Medis Elektronik Di Indonesia: Literature Review Research On Electronic Medical Records in Indonesia: Literature Review Hastin Atas Asih, Indrayadi" 6, no. 1 (2023): 182–98, <http://journal.unpacti.ac.id/index.php/JPP>.

<sup>2</sup> Republik Indonesia, "Undang-Undang Dasar Negara Republik Indonesia Tahun 1945" (1945), <https://www.dpr.go.id/jdih/uu1945>.

<sup>3</sup> Ni Putu, Suci Meinarni, and Emmy Febriani Thalib, "Privacy Related to Cyber Space Activities," in *Proceedings of the International Conference on Innovation in Research (ICIIR 2018) – Section: Economics and Management Science*, vol. 88 (Atlantis Press, 2019), 176–79, <https://doi.org/https://doi.org/10.2991/iciir-18.2019.32>.

<sup>4</sup> Wenderlin Koswara, "IMPLEMENTASI ATURAN PERLINDUNGAN DATA PRIBADI OLEHPENYELENGGARA SISTEM ELEKTRONIK DIKAITKAN DENGANTEORI KEADILAN DAN KEPASTIAN HUKUM," *Jurnal Paradigma Hukum* 7, no. 2 (2022): 1–23, <https://ejournal.atmajaya.ac.id/index.php/paradigma/article/view/3681/1691>.

<sup>5</sup> Suryadi Arif Agung, Yunita Wisda Tumarta, and Nur Syahbani, "Rancang Bangun Sistem Informasi Rekam Medis Klinik Rawat Jalan Berbasis Web," *Infokes: Jurnal Ilmiah Rekam Medis Dan Informatika Kesehatan* 12, no. 1 (2022): 37–43, <http://ojs.uib.ac.id/index.php/infokes/article/view/1498>.

<sup>6</sup> Wijiatmo Supanto, "Kebijakan Hukum Pidana Dalam Memberikan Perlindungan Hukum Terhadap Guru Dalam Hal Kedisiplinan," *Jurnal Hukum Dan Pembangunan Ekonomi* 7, no. 1 (2019): 85, <https://doi.org/10.20961/hpe.v7i1.29200>.

- 2) Keep records of medical history;
- 3) Provide evidence in the event of an incident related to medical action, such as allegations of malpractice;
- 4) Provide a guide for education and research purposes;
- 5) Become the basis for payment of health service costs;
- 6) Provide health statistical data.

Cases of hacking of patient medical record data are still common where on the RaidForum website as many as 6 million patient medical record data belonging to the Ministry of Health have been leaked and freely sold on the site. The patient's personal data that were successfully hacked included patient identity data and medical record data which contained anamnesis, international diagnosis, clinical examination, referral ID for supporting examinations, and the patient's treatment plan.<sup>7</sup> The occurrence of this case is a reflection of the importance of legal protection for patient medical record data. In Law Number 27 of 2022 concerning Protection of Personal Data it is stated in Article 1 number 2 that it has been regulated that personal data protection is the entire effort to protect personal data in the personal data processing chain in order to guarantee the constitutional rights of personal data subjects. Therefore, in this study the author was interested in examining more deeply and more specifically regarding the protection of personal data, specifically on patient medical record data. As such the title of this study is **"Protection of Medical Record Data as a Form of Legal Protection of Health Data through the Personal Data Protection Act"**.

## RESEARCH METHOD

The writing method in a scientific research is a step taken by researchers to collect data or information that is deemed necessary to then be processed and analyzed scientifically.<sup>8</sup> The writing method used in this research is normative juridical research, using library research.<sup>9</sup> The source of legal material used in this study focuses on literature related to the main research topic, namely the legal protection of medical record data through personal data protection laws.

## RESULT AND DISCUSSION

Cases of leakage of patient health data have raised concerns among the public and it leads the opinion that the government is unable to safely accommodate private data belonging to the public and guarantee legal certainty. Misuse of personal data places demands on the government to form a legal regulation that specifically regulates the protection of personal data. The rise of demands for personal data protection arises from the increasing cases of leakage of personal data on digital platforms, both managed by the private sector and the government. This is also balanced with the awareness that the impact of personal data leakage is the misuse of personal data which can cause material and non-material harm to the owner of personal data.

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<sup>7</sup> Republika, "Kebocoran Data Rekam Medis, Bukti RUU PDP Penting Segera Disahkan," 2022.

<sup>8</sup> Ani Purwati, *Metode Penelitian Hukum Teori & Praktek* (Surabaya: Jakad Media Publishing, 2020).

<sup>9</sup> H Snyder, "Literature Review as a Research Methodology: An Overview and Guidelines," *Journal of Business Research*, 2019, 333–39, <https://doi.org/https://doi.org/10.1016/j.jbusres.2019.07.039>.

As a result, a legal framework was established to safeguard personal data and provide legal protection for it and this protection is regulated in Law Number 27 of 2022 concerning Personal Data Protection which has been promulgated in State Gazette No. 6820 of 2022 which was stipulated on October 17, 2022. In this law, personal data is defined as data about individuals who are identified or can be identified separately or combined with other information, either directly or indirectly through electronic or non-electronic systems. Leakage of personal data has involved several aspects, such as leakage of personal data from service provider users, data from the Population and Civil Registry Service, to leakage of patient medical records on the Health Service server. Prior to the enactment of the Personal Data Protection Act, the Minister of Health had issued Minister of Health Regulation Number 269/MENKES/PER/III/2008 of 2008 concerning Medical Records which stated that information regarding the patient's identity and medical history must be kept confidential by the electronic system administrator which in this case relates to the hospital regarding hospital management.<sup>10</sup> Even so, certain reasons given by law, such as requests from law enforcement officials in the interest of investigations based on court orders. This has been regulated in Article 57 of the Health Law which regulates the right to secrecy of personal health conditions as referred to in paragraph (1) does not apply in the following cases:

- 1) Law Orders;
- 2) Trial order;
- 3) With the permission of the patient concerned;
- 4) For the benefit of the wider community (usually regarding research); or
- 5) For the benefit of the person.

Ownership of medical records as stipulated in Law Number 29 of 2004 concerning Medical Practice which in article 47 paragraph (2) mentions "Medical records must be stored and kept confidential by doctors or dentists and leaders of health care facilities" and *Permenkes* Number 269 of 2008 concerning Medical Records which explicitly stipulates that medical record documents or files are the property of Health Service Facilities while the contents of medical record files are the absolute property of the patient. Therefore, patients have the right to obtain their own medical information recorded in the medical record file, including requesting a copy of this information.<sup>11</sup> Article 57 paragraph (1) of Law Number 36 of 2009 concerning Health emphasizes that everyone has the right to secret personal health conditions that have been submitted to health service providers. This is in line with the words of Article 32 Letter I of Law Number 44 of 2009 concerning Hospitals which mentions "every patient has the right to obtain privacy and confidentiality of the illness experienced along with the patient's medical data".

Returning to the influence of scientific and technological developments that affect almost all sectors, technology has begun to be developed in the medical field, including creating a system that can provide convenience in storing and recording a person's health medical records in a computerized manner with the aim that this data can be accessed on integrated health services so that health services (hospitals) can access patient

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<sup>10</sup> Ministry of Health of Republic of Indonesia, "Peraturan Menteri Kesehatan Nomor 269 Tahun 2008 Tentang Rekam Medis" (2008).

<sup>11</sup> Anggara Yudha Ramadianto, "HAK MILIK PASIEN ATAS ISI REKAM MEDIS (SUATU PENDEKATAN FILOSOFIS DAN HUKUM PERDATA)," *Simbur Cahaya* 26, no. 2 (2019): 166–86, <http://journal.fh.unsri.ac.id/index.php/simburcahaya/article/view/538>.

medical records even though they have never had treatment or medical examination at that hospital/health service. The Ministry of Health launched a health application called E-health. E-health is an application created to provide health services as a form of new knowledge that innovates in the exchange of medical information, public health, and matters related to internet and technology-based health information services.<sup>12</sup> E-health can not only be used by health service providers but can also be used by health service users as consumers and researchers.

E-health has a system called Electronic Health Record (EMR), in which EMR is used to improve the quality of performance in patient care and services by health workers/medical personnel. Medical personnel include doctors, midwives, nurses, and administrative staff in health services. The importance of EMR as initial information for health workers in obtaining complete and accurate information about the patient's health condition and medical history. It allows them to sharpen the diagnosis that influences decision-making regarding the action to be given to the patient. E-health as a system based on internet technology is vulnerable to exploitation and system security.

Personal data and privacy are two different things but are related to one another. In theory, privacy protection and personal data protection have different scopes. Electronic protection of personal data can be found in Law Number 11 of 2008 concerning Information and Electronic Transactions as amended into Law Number 19 of 2016. Legal protection is an effort made in terms of fulfilling rights and providing assistance to give security for witnesses and/or victims, such as through the provision of restitution, compensation, medical services, and legal assistance.<sup>13</sup> Legal protection can be both preventive and countermeasures. In other words, legal protection provides an overview of the concept of the law itself, namely providing justice which aims to create order so that it will lead to legal certainty and provide benefits for achieving legal ideals, namely peace in society.

Based on the previous description, the right to privacy of personal data in obtaining legal protection is a perfect right that is within the patient's power but within the limits of statutory provisions. Referring back to the Personal Data Protection Act, personal data protection is a series of efforts made to protect the rights of personal data owners and provide constitutional guarantees of the rights of personal data subjects. Strictly speaking in Chapter XIII of the Personal Data Protection Act, Article 65 has prohibited everyone who unlawfully obtains or collects personal data that does not belong to him with the intention of benefiting himself or others which can result in harm to the subject of personal data. By having given sanctions for violations as referred to in Article 65 in article 67 of the same law as emphasized in paragraph (1) "Every person who intentionally and unlawfully obtains or collects personal data that does not belong to him with the intention of benefiting himself or others which can cause harm to the subject's personal data as referred to in Article 65

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<sup>12</sup> muhlizardy - Muhlizardy Winda Azmi Meisari, Asti Nurhayati - Nurhayati, "Pengenalan E-Health Kepada Masyarakat Untuk Pengurangan Mobilitas Ke Fasilitas Kesehatan Di Kelurahan Pucangsawit Jebres," *Empowerment Journal 2*, no. 1 (2022): 26–32, <https://jurnal.aiska-university.ac.id/index.php/Empowerment/article/view/810>.

<sup>13</sup> Rahmad Rizki, "TINJAUAN YURIDIS TINDAK PIDANA MENYIARKAN BERITA BOHONG TERHADAP DATA REKAM MEDIS PRIBADI DALAM PERSPEKTIF UU NO 1 TAHUN 1946 DAN UU ITE (Studi Kasus Habib Riziq Shihab)," *FAKULTAS SYARI'AH DAN HUKUM UNIVERSITAS ISLAM NEGERI AR-RANIRY BANDA ACEH* (2022), [https://repository.ar-raniry.ac.id/id/eprint/23498/1/Rahmad Rizki, 180106079, FSH, IH, 085358278699.pdf](https://repository.ar-raniry.ac.id/id/eprint/23498/1/Rahmad%20Rizki,%20180106079,%20FSH,%20IH,%20085358278699.pdf).

paragraph (1) shall be subject to imprisonment for a maximum of 5 (five) years and/or a maximum fine of Rp. 5,000,000,000.00 (five billion rupiah).

## **CONCLUSION**

Personal data by law becomes part of the right to privacy protection which has received legal protection by law. Likewise, with medical records such as patient personal data which contains information that is private, it is very important to get certainty of legal protection. There are several laws and regulations that have provided regulation regarding the protection of patient personal data including medical records. In addition to the regulations of the Minister of Health and the Hospital Act, the protection of personal data can refer to the Information and Electronic Transactions Act or by using the provisions stipulated in the Personal Data Protection Act, Law Number 27 of 2022.

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