

Legal Protection of Rights to Personal Data in Digital-Based Health Services for Indonesians (E-Health during the Covid-19 Pandemic)

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Abstract. The implementation of e-health in Indonesia is one form of e-government implementation, which is effective for realizing good governance. The use of information technology in the implementation of e-health raises legal issues regarding the protection of patient's personal data. This research examines how the legal protection of the right to personal data of patients in the implementation of e-health. This research used a doctrinal approach, and the collected data was analysed qualitatively. The results of this research indicate that the patient's personal data has been protected by law through the ITE Law, Health Law, Hospital Law, and the medical code of ethics as well as the ICCPR. Patients as protected parties have the right to demand accountability from health service providers in the event that a violation of the right to personal data. Confidentiality of patient health information has a close affiliation with patient rights and medical ethics. The existence of the principle of non-maleficence in health practice provides an opportunity for health workers to provide limited information about the medical condition of COVID-19 patients to outside parties who have an interest.

Keywords: E-Health, Good Governance, Personal Data

1 Introduction

The SARS-CoV2 virus, known as coronavirus, is a virus that first spread in Wuhan, China at the end of 2019. The existence of this virus caused the emergence of Corona Virus Disease 2019 (Covid-19), which is an infectious disease with similar symptoms with pneumonia. In early 2020, this virus began to spread around the world and caused a global pandemic. An increase in cases that are getting out of control has caused the termination of direct face to face activities, and all activities have begun to be completed online.

The existence of a drastic transformation, from offline to online activities, in human daily activities causes the emergence of a challenge for the government in running its functions for providing public services. The existence of the Covid-19 pandemic requires an expansion in the implementation of e-government, which will later be effective in rising the effectiveness of the implementation of public services and maintaining the existence of government [1].

The government has launched the Indonesian Broadband Plan (RPI) as outlined in Presidential Regulation no. 96 of 2014. This plan is a planning document for the development of internet access to support the efficiency of public services. The use of broadband is beneficial for the government and society, due to the fact that the government has the ability to govern its function successfully in supporting the socio-economic life of the Indonesian people, in the

interim the public have the ability to conveniently access information resources and numerous services [2]. As an endeavour to realize good governance, the government is obliged to develop the application of information and communication technology in accomplishing government activities and interacting with the community [3]. This will certainly improve the performance of the government, both in establishing relationships with other government institutions (Government to Government); government to society (Government to Citizen); and government with the business community (Government to Business) [4].

There are several priority sectors for the development of Indonesian Broadband, one of them is the implementation of e-health. That is the latest innovation in government to accelerate health services for the community [5] and to improve access, effectiveness, efficiency, and process of medical services by involving patients and health care providers [6]. Nevertheless, the use of information technology is closely related to personal data. This happens due to the reason of the countless cases of misuse of personal data due to the lack of security controls in the information technology use [7].

The right to personal data is protected by Article 12 of the Universal Declaration of Human Rights (UDHR) and Article 17 of the International Covenant on Civil and Political Rights (ICCPR). Constitutionally, this right is as well protected as regulated in Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) that: "Everyone has the right to personal self, ...". The legal protection of personal data is as well-regulated in Article 26 paragraph (1) of Law no. 19 of 2016 concerning Amendments to Law No. 11 of 2008 concerning Information and Electronic Transactions (UU ITE) which states that: "Unless stipulated otherwise by laws and regulations, the use of any information through electronic media concerning a person's personal data must be achieved with the consent of the concerned person". This study will examine how the legal protection for the right to personal data is in the implementation of e-health during the covid-19 pandemic.

2 Methodology

This study uses a doctrinal approach, particularly by conducting research on legal documents. The data is derived from secondary data which comes from the literature study. The data collected was analysed qualitatively.

3 Result and Discussion

3.1 Legal Basis of E-Health Services in Indonesia

The idea of providing e-health services began with the World Summit on the Information Society (WSIS) Action Plan in 2003 [8]. In Indonesia, the implementation of e-health is in accordance with the constitutional mandate stated in Article 28H paragraph (1) of the 1945 Constitution that "Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy environment and have the right to health services".

Moreover being mandated in the 1945 Constitution of the Republic of Indonesia, the development of e-health was as well launched by President Megawati Soekarnoputri through Presidential Instruction No. 3 of 2003 concerning the National Policy and Strategy for the Development of e-Government. Across the Presidential Instruction, the government is expected

to have the ability to use information technology to improve the processing, management, and distribution of information and public services. A few real examples of e-health programs are:

- a. *Electronic personal health record*, that is electronic individual health records that are integrated with health workers [9]
- b. *Health care service delivery*, that is an electronic health service distribution management [10]
- c. *Health care management and administration*, particularly management of control over the provision of complete health services, starting from providing health information to patients, methods of treatment accomplished, in order to supervision and action [6].

3.2 Legal Protection of the Right to Personal Data in the Implementation of E-Health in Indonesia

Legal protection can be interpreted as protection provided by legislation. Philipus M Hadjon said that legal protection is the protection of the dignity and worth, as well as the recognition of human rights possessed by legal subjects based on provisions or a collection of rules or regulation that will have the ability to protect something [11].

Human rights are natural rights inherent in humans. Human rights reflect a view of dignified human life. Protection and fulfilment of human rights are closely related to the realization of the perfection of human existence which will result in good social interaction [12].

The issue of electronic medical record leakage has become a common thing nowadays. As a matter of fact, in December 2021, there was a leak of millions of patient data from the Ministry of Health's centralized server which was then sold on dark market. The data leaked by hackers includes medical records, BPJS Health referral letters, laboratory test results, and a COVID-19 self-isolation approval letter as well [13].

The leak of the patient's personal data shows that there is a vulnerability in the application of e-health. Whereas the patient's personal data and medical records are protected by confidentiality in Article 47 paragraph (2) of Law no. 29 of 2004 concerning Medical Practice. In the article it is explained that "Medical records ... must be preserve and controlled the confidentiality by doctors or dentists and leaders of health service facilities". The confidentiality of medical records must be maintained until after the patient has died, as regulated in Article 51 letter (c) that "Doctors or dentists in completing medical practice have the obligation to keep everything they know about the patient secret, despite after the patient dies". Thus, basically personal data and patient medical records are confidential, hence leakage of patient data is a violation of the law.

Moreover, with regard to legal protection of the right to personal data, it has been regulated as well in Article 26 paragraph (1) of the ITE Law that the use of information through electronic media concerning an individual personal data must be executed with the consent of the concerned person, except the laws and regulations provide otherwise. Protection of personal data is one of the human rights that must be supported highly respected as well, as stated in Article 28G of the 1945 Constitution of the Republic of Indonesia that "Everyone has the right to the protection of his personal, family, honour, dignity, and property under his control, and has the right to a sense of security and protection from the threat of fear to do or not do something which is a human right".

These articles show that legal protection of the right to personal data is something that must be respected. Regarding health services, a patient has this right as a human right. Nevertheless, the fulfilment of these human rights cannot be accomplished absolutely, due to the reason of the existence of medical ethics regarding confidentiality and nonmaleficence [14].

The principle of confidentiality is the main medical ethic to keep any information about a patient despite until the patient has died. Under certain conditions, the principle of confidentiality basically cannot be implemented absolutely. This happens when there is a public interest that requires the provision of patient information to certain parties [14]. For example, during the COVID-19 pandemic.

The COVID-19 pandemic has led to certain situations where information regarding confirmed COVID-19 patients must be provided to the local government. The existence of a negative public issues or stigma against people with COVID-19 has caused many patients to ask health workers and health service providers to keep their health condition secretly. Moreover, economic factors have impacts as well, the lower classes communities are generally reluctant to self-isolate for fear of losing their income. As a matter of fact, COVID-19 patients basically have to undergo self-isolation without exception. This condition triggers the activation of the nonmaleficence principles, specifically that a doctor may not do anything that can harm others [15]. As a matter of fact, doctors have the flexibility to maintain information to interested outside parties regarding the condition of Covid-19 patients due to the reason of the interest of the wider community (*bonum commune*) that must be protected [14].

Ethically, despite the fact that there is an exception for disclosing the confidentiality of patient health information through certain considerations, this cannot be realized absolutely. Medical Ethics Honorary Council Decree No. 016/PB/K.MKEK/O4/220 concerning Revision of the Fatwa of Medical Ethics, Health Policy, and Research in the Context of the Covid-19 Pandemic regulates several things that can be disclosed, that information on Covid-19 patients is limited to name, gender, status health (died/short clinical condition/recovered), age, and domicile of the patient. The existence of these clear constraints provides guidance to health workers and health care providers regarding the information that can be provided to local government authorities. This is effective for controlling the spread of the COVID-19 disease.

The security of patient's personal data must be implemented in accordance with the risk assessment that can be accomplished, including:

- a. Stipulating information to patients about how far their personal data can be protected and the possibility of re-identification;
- b. Seek information about parties who illegally use the health information;
- c. Knowing that the protected information has been attained or viewed by other parties, and;
- d. Knowing the extent to which the protection risk can be mitigated [6]

There are several steps that must be overcome by e-health service providers in the event of a leak of patient personal data, such as:

- a. Completing official notifications to patients regarding the leakage of their personal data;
- b. Reporting to the mass media, specifically in the case of a large amount of data leakage;
- c. Notifying the authorities, such as the Ministry of Health and agencies responsible for monitoring privacy practices, and;
- d. Notifying business associations to improve health care provider data security systems [16].

Basically, a violation of the protection of a person's personal data can be legally prosecuted. In Article 26 paragraph (2) of the ITE Law it is stated that "Everyone whose rights are violated can file a lawsuit for the losses incurred under this law". The formulation of this article maintains strong legal protection for parties whose privacy rights are impaired.

In addition to the ITE Law, patient's personal data is legally protected under Article 57 paragraph (1) of Law no. 36 of 2009 concerning Health that "Everyone has the right to the secret of his personal health condition that has been disclosed to the health service provider". Thus, the Health Law as well maintains justification for the confidentiality of a person's personal data,

particularly regarding his medical information. In the event that there is a violation of the confidentiality of the personal data, a claim for compensation can be proposed as regulated in Article 58 paragraph (1) of the Health Law states that "Everyone has the right to claim compensation for a person, health worker, and/or health care provider who causes losses due to errors. or negligence in the health services they receive".

A hospital patient has several rights that must be fulfilled by the hospital as a health provider. In detail, Article 32 of Law no. 44 of 2009 concerning Hospitals that "Every patient has the right to attain information regarding the rules and regulations that implement in the Hospital; to attain information about the rights and obligations of patients; to attain humane, fair, honest and non-discriminatory information; to attain quality health services in accordance with professional standards and standard operating procedures; to attain effective and efficient services thus that patients avoid physical and material losses; file a complaint on the quality of service attained; to choose a doctor and treatment class in accordance with his wishes and the pertinent regulations in the Hospital; ask for a consultation about the illness he is suffering from another doctor who has a Practice Permit (SIP) both inside and outside the Hospital; attain privacy and confidentiality of the illness, including medical data; attain information which includes the diagnosis and procedures for medical action, the purpose of medical action, alternative actions, risks and complications that may occur, and the prognosis of the actions taken as well as the estimated cost of treatment; giving approval or refusing the action to be taken by the health worker against the disease he is suffering from; accompanied by his family in critical condition; perform worship according to his religion or belief as long as it does not disturb other patients; attain security and safety for himself while in hospital treatment; submit proposals, suggestions, improvements to the Hospital's treatment of him; refuse spiritual guidance services that are not in accordance with their religion and beliefs; sue or litigate the Hospital if the Hospital is suspected of providing services that are not in accordance with standards, both civil and criminal; and complain about hospital services that are not in accordance with service standards through print and electronic media in accordance with the provisions of the legislation".

Based on this description, there are several patient rights related to personal data and health information, they are: attaining information regarding hospital regulations and the rights and obligations of a patient; attain humane, professional, procedural, effective, efficient and non-discriminatory health services; choosing a doctor and treatment class; consult about his condition with other doctors; attain privacy regarding medical record data and health conditions; attain information about the diagnosis and the actions he experienced; giving approval or refusing the action to be taken, as well as attaining security during the treatment period in the hospital. This shows that basically the protection of patient's personal data is something that must be upheld in confidentiality.

4 Conclusion

The implementation of e-health is a patient's right that must be upheld and legally protected. In the event that violated, the patient has the ability to demand accountability from the health service provider. Confidentiality of patient health information has a close relationship with patient rights and medical ethics. The existence of the principle of non-maleficence in health practice maintains an opportunity for health workers to bestow limited information about the medical condition of COVID-19 patients to outside parties who have an interest.

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