

# The Protection of The Law Patients Privacy of Health Services

Johanes Deo Fau, Yustina Sila

Faculty of Law, Hang Tuah Universty Surabaya, Indonesia

E-mail : yohanesdeofau@yahoo.com, yustinsila@gmail.com

## ABSTRAK

This research read:“ The protection of the law patients privacy Of health services with 2 (two) case formulations, are: (1) How the regulation of the protection of the law privacy a patient in health services?; (2) How was the end of law a violation of privacy for patients of health workers?. The research is the kind of research law with uses the method law normative. In addition, the study also used the conceptual kinds of abilities. the statute and approach. This research result indicates that privacy is the right of patients that have to be fulfilled by health workers and the means of health services and shall constitutes the obligation of health workers to keep privacy patients who it serves in the act of health, the act of health workers, the act of practices medicine, the act of nursing, regulations related minister midwife practice that requires health workers behind the secrecy was related to the record good patients medical and privacy. A breach of privacy by health workers towards patients will cause due to law when patients and their families feel aggrieved. Due to administrative law civil and criminal can be used as material. accusation of health workers. Hence it is expected that the act of explicitly able to regulate precisely because given health workers keep privacy patients and clarify about privacy rights inherent in themselves patients who must be protected and be protected conducting socialization on the importance of maintaining privacy patients called on the government as well as a means of health services to facilitate a patient to complained about services received that may violate the right of privacy she would had to thrash out as soon as possible in the process of mediation in order to avoid a process litigation can force own. financial losses for.

**Keyword:** Protections. Law, Patients Privacy, Health Services.

## 1. INTRODUCTION

Privacy rights of a person is something that should have valued and respected because it is the inherent right in each individual. Freedom of expression, the sophisticated technology of the heavens and the unspecific became the reason for certain parties to violate privacy rights of a person of either deliberate and not accidental. The privacy rights ( *right privacy*) according to *Black's law Dictionary* is “*the right to personal autonom*”. Someone in the determination of the autonomy and protect those things which pertain to his privacy, next *autonomy privacy* dimaknai as *An individual's right to control his or her personal activities or intimate personal decisions without outside interference, observation, or intrusion*. Control over privacy someone controlled in full by the autonomy that are owned by each individual, which means that ca privacy rights to others because is something very personal.

In Indonesia rights over privacy in a norm and regulations were not explicitly, but in an implicit manner rights over privacy there are in article 28 g paragraph ( 1 ) of act law of the republic of Indonesia 1945 ( hereinafter called the 1945 constitution ) as follows: ” every persons have the right of personal protection family, honor, the dignity and their possessions that his people: under and is entitled to a sense of security and protection from the threat of fear in order to do or did not do anything that is rights”. Understanding this law guarantees the protection of rights protection for the citizens of a country upon privacy; the state in this case have a responsibility control offense privacy.

Against privacy is also affirmed in a verdict the constitutional court number 50 / puu-vi / 2008 concerning testing article 27 paragraph 3 of the act number 11 year 2008 about information and electronic transaction ” everyone with willfully and without right distribute and or transmits and or make able accessed electronic information electronic documents who has charge of contempt and or libel ” which in this case translate articles 12 universal declaration of human rights ( udhr). This privacy rights are also related to the health care services that are the basic needs of people who are protected and guaranteed by the state, health services is every an organized attempt own or together in an organization to maintain and improve health, prevent and cure diseases and restore the health of individuals, family, groups and or the public. Today alleging violations of privacy by health workers the more reported worldwide. Alleged cases in Indonesia is also the case reviewed and, national news allegations of sexual harassment by a doctor in the district general hospital dr. Soetomo Surabaya on October 2018, the case has been up until i at the investigation by the police and coordinate with ties doctor Indonesia ( IDI ), and what that means is Indonesian people starting to understand about her rights including the right to privacy and implement measures with applicable laws, though the process of the court who determine the wrong, but this case signifying knowledge between public awareness on their rights and duties when to access health services. A breach of privacy patients by health workers in Indonesia by case for another also occurred, involving social media for example in the year 2015 of a trained health professional upload photos patients in social media account that he had this is the case in the province of Bangka belitung, the difference is on the completion of the case and limited only to inform ethic. disciplinary and violations. The sanction that was given very different with a load sanctions outside country giving the protection of privacy has been very tight and the issuing of sanctions and have rather heavy workloads. The violation of the right patient privacy by health workers until now there is no parameter in the laws, says that whether this type of violations including in violation of the code of conduct or violation of law.

## 2. RESULTS AND DISCUSSION

### *Setting the protection of the law privacy a patient in health services*

#### **Privacy as a right**

The scope of privacy rights of divided into three general concept that is privacy as of a room, privacy as secrecy, only managing the privacy information and privacy as a right of human rights. Privacy rights is generally considered the right which is subjective and it is difficult to strict barriers to the rights of other. Privacy also has the limits of as follows:

- a. Privacy limits as a space ( *Privacy as Space* ) Right is a right to not agitated or accessible by others being without the right to privacy of individuals are associated with thrust fault ( a households number, private data , the date / month / year was born, information on disability physical and / or mental, identity number of biological mothers, identity number of father and some the contents of a log of events important, in accordance set in article 84 paragraph ( 1 ) and article 85 the act of to be a residence family activities with the contents of the inside his house valuable documents owned and wealth object which is have private individuals are.
- b. Privacy limits as a secrecy ( *Privacy as Secrecy* ) Is the extent of the public s access to the private lives of someone who is personal information. Public in it is the public at large could not allowing them to freely access private data someone in the form of personal information for the purpose not justified by who is entitled to private data.
- c. Privacy limits as Information Control ( *Privacy as Information Control* ) What this means is a person can controlling information on the rights of belonging to his private data his the claims against personal matters that could not be considered personal intervened by someone else without a permit.

#### **Patient privacy rights of health services**

Patients were the ones who had the right against himself including privacy; it can be said patients are the subject of independent law which assumed to be able make decisions for the benefit of himself. As the subject of patients independent law has the authority in determining voting patterns health services offered by health workers of the illness of which related to the state of the good advice of course except the state of specific pain that is set in a law that his decision to withdraw the unilateral can of paramedics who handle the condition, for example the condition of en-dangerous medical. Other than things diseased condition arranged in a law that allowed without the consent and of health workers was a must for us in making informed concern or approval the act of medical, as required by article 45 paragraph 1 the law number 29 / 2004 about practices medicine that ” any act of a medicine or dentistry towards patients an approval ”. And has been continued in verses 2: ” approval

as that are referred to on subsection ( 1 ) is briefed after the patient in a complete manner ”. It means the act of in their health care is obliged to the production of MOU of the agreement in the form of informed concern and the two sides subject to the agreement that already made.

Article 32 the letter q the law number 44 years old 2009 on the hospital required that ” sue and / or demanding the hospital when the hospital expected offer a service that not conforming to standard in the field of civil and criminal ” which means this rule is give space for every one of those patients as consumers to make an effort when it was felt that the law lose or is alleged to the hospitals were not do the duties to provide services to a standard.

An explanation of the right to bring any charge against god above is continued in article 32 of the letter r that ”Complained about the hospital services that does not conform to the standard of service through the print and electronic media in accordance with the provisions of the legislation.”. To a hospital health facilities of course not directly provides the health service, of health workers as professionals that deals directly to patients as a recipient of service.Nevertheless hospital on this context have an obligation responsibility for of a suit which is probably the work of a patient.

The rights and obligations of the other patients here that is set performed circular letter director general medical services number ym.02.04.3.5.250.1997 on guidelines for the rights and obligations of patients, physicians and hospitals.An explanation of the regulation concerning the right of privacy rights of patients above line with the 7th points seven in the law number 29 / 2004 about privacy practices medicine which states that patients is a right that must be protected either the health workers and hospital sources said.

### **An obligation of health workers in maintaining patient privacy**

Obligations that had to be met by health workers in running health care. practices

- a. Obligation doctor based on article 51 the act of practices medicine about keeping the votes there are in letter c: ” conceal it all things she knew about patients, even after the patient died ”.This same as that is delivered by Marthin Khun formerly that of us privacy ” secrecy ”.And what that means is of health workers not only have an obligation keep medical record that contains the documents that treat a patient but also secrecy such as privacy rights that is from a patient itself.

The duty of information of a physician in run practice also controlled in a code of ethics of medicine Indonesia ( kodeki ) as follows:

- 1) Each doctor is obliged to are sincere use all knowledge and his knack for making the for the benefit of patients.

- 2) Each doctor should give a chance to the patient will not cease to related families and his advisers in the worship of other and or issue.
- 3) Each doctor is obliged to conceal it all things she knew about a patient, and even after the patient died.
- 4) Each doctor are required to conduct emergency aid as an errand humanity, unless he was confident that there were others who willing and able to give it.

A doctor as part of health workers have an obligation which in this case patients good regarding behind the secrecy of documents and information about diseases patients who it serves and privacy rights of who inside the patient.

- b. Nurses also has an obligation as stipulated in article 37 the act of nursing. But an obligation the profession of a nurse in article they do not contain about privacy protection element of the patients and secrecy health patients ( clients ), but the act of practices at article 38 nursing letter e patients has the right ” have been separated secrecy and know that ” thus the profession of a nurse have an obligation that clearly in protect patient medical information about that is being treated..
- c. In running midwifery; practices a midwife have rights and duties are also stipulated in the regulation of health minister no. 28 2017 regulation on licenses for and the implementation of midwife practice ( hereinafter called ministry of finance permission and the implementation of midwife practice. Professional midwives are required to run health services by taking into account and respect and meet their obligations, related privacy and secrecy a clear understanding of the so called in article 28 letter e: ” store secrecy patients in line with the law ”. Ministry of finance permission and the midwife practice above as of one obligation for storing secrecy patients were related to his health..

The act of rules of these three of health workers in the sight of the picture which is clear the health workers have an obligation behind the secrecy and privacy for every one of them a patient in run practice. This is also worsened with article 73 paragraph ( 1 ) the act of health workers ” every health workers in carrying out health services must keep a secret health recipients ” health services and what that means is every health workers with a clump of the health profession set in article 11 paragraph ( 1 ) the act of health workers in a resolute manner it was prescribed in honor of, protect, and who have not secrecy including privacy patients.

Health secret referred to in article 73 paragraph ( 1 ) act of human resources of health did not related to record of medic ( medical record ) because in article 70 paragraph ( 4 ) the act of health workers explained that ” medical record recipients health services as referred to in paragraph 3 of election secrecy should be saved and guarded by health workers and to the heads of ”. health service facilities.

Second explanation of this article shows that secrecy medical record in secret patient medical are two different things, secrecy patient medical privacy is that should not be exposed by health workers without the consent of the patient and rules and regulations.

### ***A breach of privacy patients in social media***

According to article 81 the provisions of a statute number 12 / 2011 about legislation reads " furthermore legislation in a gazette official performed referred to in this provision, any person regarded ". has known about the matter. An explanation on this article explicitly states that there is no reason pardoning for every offenders had been considered out of rules applied and valid. Of health workers in this case normatively not only can be sanctioned by the tribunal of conduct reprimand and disciplinary profession but can also be questioned with a lawsuit using generally accepted norm (*lex generale*).

Every one of those patients who feel aggrieved be subjected to health and the privacy of social media by health workers sure can do a claim on the loss was as *klacht delict*, as required by article 26 the law number 11 year 2008 about information and electronic transaction stated that: paragraph ( 1 except specified by regulations framework the use of any information via electronic media related to private data someone has to be done with the approval the affected person, and paragraph ( 2 ) any person violated their rights as referred to in paragraph ( 1 ) may submit a claim for the losses inflicted based on this law.

The digital era closely related to the openness of public information Indonesia is currently adheres to open government of inclusion information across the levels of society and can be accessed by everyone to set regulations this is country of make legislation in particular. The act of no 14 / 2008 on the openness of public information ( hereinafter called freedom of information law is ) is *Lex specialist* that regulates a groove access the disclosure of information the public room. Nevertheless there is an exception in this law regarding the data is personal and the health of a person.

This regulation basically allow access to information for each citizen with the exception of one of them is of the condition of the care, physical and psychological health of a person, indirectly privacy rights of every one of those patients who is undergoing treatment and medication served his health and protected by the state. Ease to distribute information good data, a photograph, video, documents and others give rise to big potential for violation of privacy a person, it is simply that share clinical photo patients in social media by health workers with various reasons for not justified within the rule of legislation or deemed invalid and breaking if

they do not meet the conditions valid one who often ignored is the agreement or the consent of the patient and his family to willing to be distributed a photograph, their own health care with the sacred printing information public this data is electronic information load content things personal patients.

To share with you data patients who underwent the treatment or care at the health facilities is the act of breaking privacy. According to article 1 paragraph 1 of the law of information and electronic transaction that: information of this electronic system is a or a bunch of the data electronic, including but not limited to writings, sound, a picture, map, a photograph, design electronic data interchange edi ), ( for electronic mail as electronic mail ), a telegram; telex, telecopy or the like, letters, a mark, put a figure on the the access codes, symbol, which he had made ready or perforation having meaning or can be understood by people who have the capacity may understand.

The explanation given during this law clearly states that that the amount of information shall contain data electronic personal someone in this case was seen as something, according to the patients next in article 1 paragraph 4 the law of information and electronic transaction explaining it as follows: documents of this electronic system is any information that they made, electronic continued, send received, or deposited, in the form of analogous to, digital, electromagnetic, optically, or the like that you can see, are displayed: and / or heard through a computer or an electronic system including but not limited to writings, sound, a picture, a map the design, photographs or the like, letters, a mark, put a figure on the the access codes, symbol or perforation that which has significance or to the sense or can be understood by people who have the capacity may understand.

### ***The law breach of privacy for patients health workers***

#### **1. Due to administrative laws**

Due to administrative law breach of privacy patients by health workers can be given by the government the regional government provincial and regent local city. This rule is referring to article 82 paragraph 3 of the act of health workers replied in the government, the regional government of the province and the local governments district in accordance with their authority give sanction to a trained health professional and administrative health service facilities as referred to in paragraph 1 and paragraph ( 2 ), that means that administrative sanctions ( 2 ) to health workers and health facilities given by the government in accordance with the related authority. local areas

Next administrative sanctions that can be dropped to health workers arranged in article 4 health act of human resources in the form of warning written and the removal of the temporary permission and the removal of the a permanent.

Warning or formal written warning is sanctions that have been set by the authorized official punish with a breach that when we are concerned as required by article 30 1 the health ministry`s regulation no 10 the year 2018 ( monitoring on in the field of health ( hereinafter called the minister ( monitoring on in the field of health ) stated that: the imposition of the act of administrative written in form of warning can be given by the leader of the main unit, the head of the provincial health office in or head of district health offices in accordance with the regulations of legislation. The act of transgressing when your words come true by health workers done violation privacy patients health agency relevant writing to delivering a rebuke of a trained health professional who is suspected of committing a breach in good health services.

Other than related health agency supervisory function in the fields of health in accordance with the article 1 paragraph 4 ( monitoring on minister regulation in the field of health set about supervisory power health stated that: supervisory power health is of state civil apparatus that is raised and assigned to do in the fields of supervision health the authorized official in line with the regulation framework, Thus the extension of the health agency in carrying out their duties and functions in civil apparatus for supervision of the appointed as an overseer directly in each health facilities. The provisions of a person inducted as a health watchdog obliged to the provision as stated in article 10 ( monitoring on minister regulation in the field of health where article 10 criteria that the supervisory power an area where none is assigned by the government through conditions contained in the fields of supervision and training in if there an offense or nonconformity to the procedural operational and will soon be reported and be more details. The sanctions imposed the repeal of the permit for health workers who is suspected of committing the offense in accordance with article 30 2 ( monitoring on the health ministry`s regulation in the field of health that: the imposition of the act of administering in the form of the repeal of the temporary permission or a permanent can only be administered by the officer who issued permit based on the provisions of the legislation. Health agency as practices to permit issuer has the authority of a trained health professional for analysis in the removal of the raft of sanctions or even take off the temporary permission a permanent.

Prosedur pencabutan izin Through recommendations from the head of the unit or leadership of health facilities that is a superior from paramedics who practicing at the health facilities who is suspected of committing offense. In article 30 3 ministerial regulations (



monitoring on health in the health sector that, paramedics who reportedly in offense by the leader of health facilities will be processed through consideration by the supervisory board of health sectors.

Their adoption we sent to that the decision-making process in do not have to give sanction imposed sanctions in the form of a tiered, administrative article 33 paragraph 1 ( monitoring on the health ministry`s regulation in the field of health stated that the imposition of the act of administrative by minister, main the head of the unit the head of the provincial health office in or head of district health offices as referred to article 30 may be subject to not in stages according to the.If authorities who as well as impose sanctions on health workers who commits an offense can do the issuing of sanctions from the most light to most heavily or can be directly revoked the license of security in a fixed manner.

The decision-making procedure consideration raft of sanctions to form a team to in the elected official actually available for analysis about the violations committed of health workers, as required by article 33 paragraph 2 ( monitoring on the health ministry`s regulation in the field of health which reads an official who would have done the administrative can form ad hoc team to help in performing verification, clarification and violation of the regulations of the study on legislation the health sector based on reports on the results of supervision.Although administrative sanctions not through judicial domain general, the sanction that was given is a decision to run by paramedics who proven doing violations of health services done violation privacy patients.

## **2. As a result of civil**

Out of the corner of civil law in accordance with the article 1365 kuhperdata set about the legal liability of a person to committed an illegal action law.This not only to the act of criminal alone would have but if it contrary to the statute and even with the provisions of other not written.The law of committed an illegal action was conducted with the aim to protect and provides compensation to the inflicted loss party.In the science of law known three categories of committed an illegal action as follows:

- a. An unlawful act because a. intention.
- b. Committed an illegal action without error ( without some element of intention and heedlessness.
- c. An unlawful act due to negligence.

In article 1366 kuhperdata whenever a party or a person with deliberately or negligent so it can are required to replace the loss was which reads every unlawful act, that carries loss to

others requires a because his fault issue the loss came after a, replace the loss. Men of understanding out of a norm this imposed on health workers that has been shown to legally of having committed an offense privacy replace loss suffered by patients. Patient as recipients of these services health services when do not feel can be serviced by carry on a suit in accordance the regulation, article 58 of law replied in health

Paragraph ( 1 ); every persons have the right demanded compensation of against a person of health workers, and / or health administrators which have inflicted losses result of an error or omission of health services they have.

Paragraph ( 2 ); demands compensation as referred to in paragraph ( 1 ) do not apply to perform the act of rescue paramedics who lives or prevention of disability someone in an emergency.

Paragraph ( 3 ); provisions regarding the procedure of submission demands as referred to in paragraph ( 1 ) will be regulated in line with the law.

The explanation given during this law in a resolute manner provide rights to patients who feel aggrieved to doing any fault or negligence worker for civil charges in for the losses suffered by, privacy patients in terms of this is not something that to be suspended their fulfillment emergency health service in going on and of any new violation of privacy has to be accounted for by health workers for noncompliance. Compare a breach of privacy with the elements of malpractice, have an element of as follows: malpractice:

- a. Do the existence of a form of active and passive ) certain in practice medicine.
- b. Who did the doctor or under your order
- c. Conducted against his patient.
- d. On purpose and negligence.
- e. As opposed to standards of a profession, operational standard procedure the principles of professional medicine, or breaking a law or done without good authority because in the absence of concern, informed without registration certificate of, without practice, license is not in accordance with their needs medical patient. Yang menimbulkan akibat kerugian bagi kesehatan fisik ataupun mental ataupun nyawa pasien.
- f. Therefore, forming legal accountability for health workers.

A breach of privacy of an opinion above sure it will all be malpractice, although other opinion which states that malpractice tended to be resulting from neglect ( negligence ) that context are considered to be more than the act of lacking in caution ( careless conduct and later patients who pleads or demands must be able to prove the

- A. doctors ( of health workers not his approach to his duties towards patients ( a duty of care was cawed to him by the doctor )
- B. of words transgression is not follow up to liability ( that has been breached )
- C. offense causing damage to it ( the breached resulted in damage )
- D. damage or loss that occurs can be predicted easily that damage the foreseeable reasonably.

These opinions of course meet malpractice element by health workers when breaking privacy patients, that is basically the obligation for a health workers is respecting and protect privacy for the patient to so that does not cause a loss for patients who handled by it in accordance with legislative regulations. Unlawful act ( onrecht-matge daad ) with progress in was expanded into four the following criteria: contrary to a legal obligation, against legal rights subjective others, against rule of discretion and contrary to propriety; cautious and that is supposed to be owned by somebody in intercourse with fellow society or concerning the things that others. However a breach of privacy need further assessment by the agency of of conduct each of health workers.

The assessment of the losses suffered by patients according to eko pujiono loss suffered by patients are not always medically, loss loss must draw the interests of economical loss. Identification next element loss or damage ( damaged ) would bring them to loss and immaterial. materiel having the character of Calculation compensation due to loss suffered by patients aiming to develop the condition of balanced and neutral or cover the loss of some of that which. Materiel losses are defined as the disadvantage that results directly of a fault or negligence during in medical care while loss immaterial can be defined as the loss of income. In the case of breaking privacy due to law which had caused losses to matter and immaterial sure may be put forward as compensation for a loss. Extent of damages to be given away in the rule of legislation not regulated; a judge as those who weighed into account the feasibility of the size of the turn of the loss both in material or immaterial, the plaintiff must be able to prove the compensation for in their bids. The regulation is based on verifiable in BW.

According to section 1865 bw that everyone that postulates that he has a right or in order to establish her own right and a dispute with the rights of others, designating an event, required to prove the existence of a right or the incident next can be compared the equation on herzien indonesisc forbidden regalement ( article 163 mentioned that whoever said he has the right or designating an event to get materials to fortify their rights that or to refute one the rights of others, is obliged to prove the existence of the truth or occurrence that was mentioned by these. Understanding in the provisions in this regulation has a lawsuit will find it difficult to prove when

it should be only a medical malpractice alleged that causes disability or death; the position of patients more weak in this scientific proof because health and in medicine more controlled by health workers and has a variety of consideration in performing an action, but on the offense privacy in the service of health did not so difficult was, compare to the cases of that ever happened where health workers upload photos, to take a picture, without the consent of the patient sure it can be easily prove the violation with a sign authentic.

### **3. Due to criminal law**

The act of practices medicine did not mention a clear understanding of the criminal sanctions that can be given to medical doctors who violates privacy patients that is incumbent upon every doctor. Procedure consideration the tribunal honor of conduct of medicine ( mkek ) can be run internally profession but the process towards the demands of the criminal investigation could still be taken. Sanctions mkek more on a procedure to himself to be a management so that answer is administrative. While in the case of healthcare legislation have not been included in criminal sanctions that can be granted to health workers when breaking privacy patients, for this bill just set about first aid to the patient article 190 paragraph ( 1 ), criminal practices traditional health service without permission to article 191, the buying and selling of criminal organ of the human body at article 192, plastic surgery of change criminal identity article 193, article 194, criminal abortion the buying and selling of criminal blood article 195, criminal pharmacological, medical equipment article 196, 197 198, production and imports criminal cigarette article 199, withhold that criminal maintenance of the mother exclusive article 200, a special rule an unregulated specifically. Legal principle of *lex specialis derogat lex generalist* when a special act have been present then the act of a more general can be neglected ) next in article 63 paragraph ( 2 a book the act of criminal law ( kuhp ) stated that: if a deed included in a criminal rules the existing arranged also in terms of regulation crimes specifically, it is that are specially that is what applied. It is not legal concept can be implemented on the approach of the completion of a breaking privacy had been delayed because patients in a special act specifically regulate are content with the current.

History judicial decisions related criminal against health workers so far they have not been registered. Related jurisprudence judicial decisions in the case of breaking privacy patients should be able to be used as the guidelines of judgments in force the same case, according to national legal development agency ( bphn ) 1995 stated that case law can be used as reference the same case decision on fulfillment of elements::

1. Rule on an event law is uncertain arrangement legislation.

2. The ruling should be the judgment which has with a magnitude of fixed set of laws.
3. Has repeatedly been used as the basis to break that same.
4. The ruling has meet the sense of justice.
5. The ruling by the supreme court.

Judicial decisions about criminal offense privacy by health workers there is no case law his until now alleged criminal medical malpractice that is of a suit which is often go to the law court although in fact most in the resolution of cases this is over mediation.

Due to criminal violation of privacy in terms of the law of information and electronic transaction can be used as be considered criminal law for health workers. Article 27, paragraph 1 the act of electronic transaction reads as follows: everyone with willfully and without right distribute and / or transmits and / or make able in the access to electronic information and / or document electronic who has charge of who violates decency. The decency in this article when connected with full insight and understanding in a dictionary large Indonesian language ( kbbi ) ” regarding discretion; having to do with culture and manners ” and what that means is decency not only oriented to, vulgarity or sexuality but all things related to the courtesies and culture that is set in the society. Criminal next in this article is provided in article 45 paragraph ( 1 ) the law of information and electronic transaction that meet element that everyone who so much as in article 27 paragraph ( 1 ), paragraph ( 2 ), paragraph ( 3 ), or paragraph ( 4 ) to be imposed with an imprisonment of no longer than 6 old and / or a maximum fine of 1.000.000.000 ( one billion rupiah ), the provisions of article as criminal consideration when of health workers is suspected of committing a breach of privacy patients in social media without the consent.

Due to criminal law violation of privacy patients from alleged malpractice, kept on a constant review in legislation Indonesia do not clearly state about defenisi malpractice, according to veronika komalasari: Malpractice derived from a malpractice that those to whom we have is a mistake in running a profession arising as a consequence of the obligations that must be conducted doctor. Thus medical malpractice is a mistake in running medical profession that does not conform to standards of a profession medical exam in running profession. Malpractice can be defined as fault, neglect careful an district by health workers in the conduct of their obligations in servicing patients according to standard profession, the act of practices medicine, article 51 kodeki, the act of nursing, article 37 article 28 of the ministry of finance and the regulation on licenses for midwifery; practices the act of of health workers, article 73 the act of that mentioned are the responsibilities of a profession of health workers keeping secrets, information and privacy pertaining to patients who it serves. And that patients can be categorized as a breach of privacy in

violation of medical malpractice that can result in criminal. Demands. A patient in its position as the victim in the case of a criminal act in accordance with the article 1 the number 3 the act of number 31 year 2014 on changes to the act number 13 year 2006 on witness protection and the stated that: of the victims were people who experience the infliction of physical, mental and / or economic loss caused by a a criminal offense, and what that means is a patient in alleging violations of privacy by health workers in fact it is not the physical misery, but can give rise to mental suffering and economic a result of committed an illegal action law

### 3. CONCLUSION

The protection of the law privacy a patient in health services are not dealt with in explicit in the act of pertaining to health and practices health services, so far that rules explicit focus only on medical secrecy in the form of medical record, privacy patients during in fact is the right of that had to be met by health workers and the means of health services and shall constitutes the obligation of health workers to keep privacy patients who it serves, this requirement have been set in the act of health, the act of health workers, the act of practices medicine, the act of nursing, regulations related minister midwife practice that requires health workers behind the secrecy was related to the record good patients medical and privacy.

A breach of privacy by health workers who are treated patients against his will cause due to law when patients and their families feel aggrieved on suspicion of the violation. Due to administrative law civil and criminal can be used as material. accusation of health workers

#### *Advices*

Encourage explicit making process that regulates precisely because follow privacy of health workers keep a patient in service process health and clarify about privacy rights inherent in themselves patients who must be protected and be protected so that in the process of health services the rights and obligations of related patient privacy can be run professionally. Conducting socialization on the importance of maintaining privacy patients that is part of the obligations of paramedics who involving the ministry of health agency health ), professional organization the hospital, health and education facilities so that this obligation was assumed something which must be obeyed and implemented.

Called on the government a means of health services to facilitate a patient to complained about services received that may violate the right of privacy she would had to thrash out as soon as possible in the process of mediation in order to avoid a process litigation can force own. financial losses for.

## **REFERENCES**

### **Buku-Buku**

- Abdulkadir Muhammad, (2004). *Hukum dan Penelitian Hukum*, Citra Aditya Bakti, Bandung.
- Adami Chazawi,(2015) *Malpraktik Kedokteran*, Sinar Grafika, Jakarta.
- Agus Purwadianto,(2016). *Pedoman Organisasi dan Tata Laksana Kerja Majelis Kehormatan Kedokteran*, Cetakan Pertama, PBIDI.
- Agus Yudha Hernoko,(2010). *Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak Komersil*, Prenada Media Group, Jakarta.
- Anny Isfandyarie,(2006) *Tanggung Jawab Hukum dan Sanksi Bagi Dokter*, Buku Ke-I, Prestasi Pustaka, Jakarta.
- Bambang Heryanto,(2006). *Diklat Kuliah Perbuatan Melawan Hukum*, FH Unsoed, Purwokerto.
- Brodnik, M.,L Rinehart-Thomposon dan Reynold,(2012). *Fundamental of Law for Health Informatic and Information Management Professional*, Chapter I, AHIMA Press, Chichago.
- C.de Rover,(2000). *To Serve and Protect : Acuan Universal Penegakan HAM*, Raja Grafindo Persada, Jakarta.
- Carolina Kuntardjo,(2017). *Prinsip Transparansi Dalam Informed Concern Tindakan Bedah Untuk Mengurangi Resiko Sengketa Medik*, Tesis, Program Magister Ilmu Hukum Universitas Hangtuah, Surabaya.
- Chrisdiono,(2005). *Pernik-Pernik Hukum Kedokteran*, Melindungi Pasien dan Dokter, Widya Medika, Jakarta.
- Danny Wiradharma,(2010). *Penuntun Kuliah Umum Kedokteran*, Sagung Seto, Jakarta.
- Djojodirjo dan Moegni,(1979). *Perbuatan Melawan Hukum*, Pradnya Paramita, Jakarta.
- Eko Pujiyono,(2017). *Keadilan Dalam Perawatan Medis*, Cetakan Pertama, PT Citra Aditya Bakti, Bandung.
- Endang Kusuma Astuti,(2010). *Hubungan Hukum Antara Dokter Dengan Pasien Dalam Upaya Pelayanan Medis*, Universitas Muhammdiyah Malang, Malang.
- Firman Tumantara Endipradja,(2016). *Hukum Perlindungan Konsumen*, Setara Press, Malang.
- Frans Hendra Winata,(2013). *Hukum Penyelesaian Sengketa Arbitrase Nasional Indonesia dan Internasional*, Sinar Grafika, Jakarta.
- G.W Smith,(2002). *Liberalism; Right, Property and Market*, Routledge, New York.
- H.Muntaha,(2017). *Hukum Pidana Malapraktik*, Sinar Grafika, Jakarta.
- Hao Wang,(2011). *Protecting Privacy in China*, Springer, New York.

- Hermien Hadiati Koeswadji,(1984). *Hukum dan Masalah Medik*, Airlangga University Press, Surabaya.
- Hermien Hadiati Koeswadji,(1998). *Hukum Kedokteran*, Citra Aditya Bakti, Bandung.
- H.M Soedjatmiko,(2001). *Masalah Hukum Medikal Dalam Malpraktek Yuridis, Kumpulan Makalah Seminar Tentang Etika dan Hukum Kedokteran*, RSUD dr. Sayiful Anwar, Malang.
- Huw Brevely Smith et.al.,(2005). *Privacy, Property and Peronality Civil Law Perspectives on Commercial Appropriation*, Cambridge University Press.
- Ihdhal Kasim,(2007). *Konvensi Hak Sipil dan Politik, Sebuah Pengantar*, Seri Bahan Bacaan Kursus HAM untuk Pengacara X, ELSAM, Jakarta.
- I Ketut Oka Setiawan,(2015). *Hukum Perikatan*, Sinar Grafika, Jakarta.
- I Made Sukadana,(2012). *Mediasi Peradilan ; Mediasi Dalam Peradilan Perdata Indonesia Dalam Rangka Mewujudkan Proses Peradilan Yang Sederhana, Cepat dan Biaya Ringan*, Prestasi Pustaka, Jakarta.
- Ishaq,(2009) *Dasar-dasar Ilmu Hukum*. Jakarta. Sinar Grafika.
- J.Guwandi,(1992). *Trilogi Rahasia Kedokteran*, Penerbit FK UI, Jakarta.
- Komariah,(2001). *Edisi Revisi Hukum Perdata*, Universitas Muhammadiyah Malang, Malang.
- Kimberlly K. Kovach,(2000). *Mediation Principle and Practice*, Thomson West, United States of maerica.
- Lukman Santoso Az dan Yahyanto,(2016). *Pengantar Ilmu Hukum*, Setara Press, Malang.
- M. Yahya Harahap,(2015). *Hukum Acara Perdata*, Sinar Grafika, Jakarta.
- Majda El Muhtaj,(2013). *Dimensi-Dimensi HAM; Mengurai Hak Ekonomi, Sosial dan Budaya*, Raja Grafindo Persada, Depok.
- Maria Farida,(1998). *Ilmu Perundang-undangan*, Kanisius, Yogyakarta.
- Martin Khun,(2007). *Federal Data Veillance Implication for Constitutional Privacy Protections*, LFB Scholary Publishing LLC, New York.
- Munir Fuady,(2005), *Sumpah Hipocrates*, Citra Aditya Bakti, Bandung.
- Muliatjno,(2008). *Asas-Asas Hukum Pidana*, Edisi Revisi, Rineaks Cipta, Jakarta.
- Mc Way Dana,(2010). *Legal and Ethical Aspect of Health Information*, Third Edition, Cengage Learning, New York.
- Nihal Jayawickrama,(2002). *The Judicial Application of Human Right Law; National, Regional and International Jurisprudence*, Camdridge University Press England.
- P.A.F. Lamintang,(1984). *Dasar-Dasar Hukum Pidana Indonesia*, Sinar Baru, Bandung.
- Peter Mahmud Marzuki, (2008). *Pengantar Ilmu Hukum*, Kencana, Jakarta.



- Peter Mahmud Marzuki, (2008). *Penelitian Hukum*, Cetakan Ke-V, Prenada Media Grup, Jakarta.
- Pukovisa Prawiroharjo dan Nurfanida Libritany,(2017). *Tinjauan Etika Pengguna Media Sosial oleh dokter, Jurnal Etika Kedokteran*, No. (1) Vol (1).
- Puteri Nemie Kassim,(2003). *Medical Neglience Law in Malaysia*, International Law Book Service, Selangor.
- Philipus M. Hadjon,(1987). *Perlindungan Bagi Rakyat di Indonesia*, Bina Ilmu, Surabaya.
- Rachmadi Usman,(2013). *Pilhan Penyelesaian Sengketa di Luar Pengadilan*, Citra Aditya Bakti, Bandung.
- Rover, C.de, To Serve and to Protect (2000). *Acuan Universal Penegakan HAM*, Raja Grafindo Persada, Jakarta.
- Rury Narulita Sari,(2012). *Konsep Kebidanan*, Graha Ilmu, Yogyakarta.
- Satjipto Rahardjo,(2000). *Ilmu Hukum*, Cetakan Ke-V, Citra Aditya Bakti, Bandung.
- Setiono,(2004). *Rule of Law ( Supermasi Hukum)*, Program Magister Ilmu Hukum Pasca Sarjana Universitas Sebelas Maret, Surakarta.
- Sudikno Mertokusumo(2005)., *Mengenal Hukum Suatu Pengantar*, Liberty, Yogyakarta.
- Setiono(2004), *Rule of Law (Supremasi Hukum)*.Surakarta. Magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret.
- Soerjono Soekanto,(1990). *Segi-Segi Hukum Hak dan Kewajiban Pasien Dalam Kerangka Hukum Kesehatan*, Mandar Maju, Jakarta.
- Susatyo Herlambang, *Etika Profesi Kesehatan*, Gosyen Publishing, Yogyakarta, 2001.
- Subekti, *Hukum Perjanjian*, Cetakan X, Penerbit Intermassa, 1985.
- Syahrul Machmud (2008). *Penegakan Hukum dan Perlindungan Hukum Bagi Dokter yang Diduga Melakukan Medikal Malpraktik*, Mandar Maju, Bandung.
- Taryana Soenandar et.al., *Kompilasi Hukum Perikatan*, Citra Aditya Bakti, Bandung, 2016.
- Veronika Komalasari,(1989). *Hukum dan Etika Dalam Praktik Dokter*, Pustaka Sinar Harapan, Jakarta.
- Walter Kalin, Jorg Kunzil, *The Law of International Human Right*, Oxford, New York, 2009.
- Herlambang,(2018). *Kasus Dugaan Pelecehan Seksual Pasien Oleh Dokter*, Jawa Pos, Tanggal 30 Oktober 2018.

## **Website**

- Aditya Mardiasuti, Ramai Media Sosial, Tenaga Medis Unggah Foto Selfir Saat Bedah Pasien, dalam [http://:www.detik.com](http://www.detik.com). Diakses 25 Oktober 2018.

Agustinus Mario Damar, Pengguna Internet di Indonesia Tembus 143 Juta, dalam <http://www.liputan6.com>. Diakses 26 Oktober 2018.

Anna KimArical Mengapa tidak boleh selfie dengan pasien yang sakit? dalam [www.today.mims.com](http://www.today.mims.com). diakses 30 Desember 2018.

An Uyung Pramudiarja, 5 Foto Selfie Tenaga Medis Yang Memicu Kontroversi, dalam <http://www.detik.com> Diakses 25 Oktober 2018.

Depkes RI Profil Kesehatan Indonesia, dalam <http://depkes.go.id>. Diakses 30 September 2018.

Firdaus Anwar, Petugas Medis Yang Posting Foto “seram” diwanti-wanti Hargai Hak Pasien, dalam <http://www.detik.com>. Diakses 25 Oktober 2018.

Hario Mahar Mitendra, Fenomena Kekosongan Hukum, dalam <http://www.rechtsvinding.bphn.go.id>. Diakses 4 November 2018.

Ivan Fauziani Raharja, Penegakan Hukum Sanksi Administrasi Terhadap Pelanggaran Perizinan, dalam [http:// media.neliti.com](http://media.neliti.com). Diakses 26 Oktober 2018.

Kementerian Komunikasi dan Informatika Republik Indonesia, Pengguna Internet di Indonesia 63 juta orang dalam [www.kominfo.go.id](http://www.kominfo.go.id). Diakses 25 Oktober 2018.

Pusat Perencanaan Hukum Badan Pembinaan Hukum Nasional, Fiksi Hukum harus Didukung sosialisasi hukum, dalam [http : www.hukumonline.com](http://www.hukumonline.com) Diakses 31 Desember 2018.

Letezia Tobing, Tentang Tindak Pidana Merusak Kesopanan di Muka Umum, dalam <http://www.hukumonline.com>. Diakses 08 November 2018.

Liputan 6, Rahasia Pasien Jadi Bahan Gosip di FB, Dalam <http://www.liputan6.com> Diakses 1 Oktober 2018.

Tempo.co, Berfoto Selfie Saat Operasi Dokter Bedah Dipecat, Dalam <http://www.duniatempo.co>. Diakses 25 Oktober 2018.

Tempo.co, Selfie Dengan Pasien Sekarat Paramedis ini Dipecat, Dalam <http://www.dunia.tempo.co>. Diakses 25 Oktober 2018.

<http://id.wikipedia.org/wiki/Pasien>. Diakses 26 Oktober 2018.

## **Peraturan Perundang-undangan**

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

Undang-Undang Nomor 29 Tahun 2004 Tentang *Praktik Kedokteran*, Tambahan Lembaran Negara Nomor 4431.

Undang-Undang Nomor 14 Tahun 2008 Tentang *Keterbukaan Informasi Publik*, Tambahan Lembaran Negara Nomor 4846.

- Undang-Undang Nomor 19 Tahun 2016 Tentang *Informasi dan Transaksi Elektronik*,  
Tambahan Lembaran Negara Nomor 5952.
- Undang-Undang Nomor 13 Tahun 2006 Tentang *Perlindungan Saksi dan Korban*, Lembaran Negara  
Tahun 2006 Nomor 64.
- Undang-Undang Nomor 36 Tahun 2014 Tentang *Tenaga Kesehatan*, Lembaran Negara Tahun 2009  
Nomor 144.
- Undang-Undang Nomor 36 Tahun 2009 *Tentang Kesehatan*, Tambahan Lembaran Negara Nomor  
5063.
- Undang-Undang Nomor 44 Tahun 2009 Tentang *Rumah Sakit*, Tambahan Lembaran Negara  
Nomor 5072
- Undang-Undang Nomor 39 Tahun 1999 Tentang *Hak Asasi Manusia*, Lembaran Negara Tahun 1999  
Nomor 165.
- Undang-Undang Nomor 12 Tahun 2005 Kovenan Internasional Tentang *Hak-Hak Sipil dan  
Politik*, Tambahan Lembaran Negara Nomor 4558.
- Undang-Undang Nomor 23 Tahun 2006 Tentang *Administrasi Kependudukan*, Tambahan Lembaran  
Negara Nomor 4674.
- Undang-Undang Nomor 38 Tahun 2014 Tentang *Keperawatan*, Tambahan Lembaran Negara Nomor  
5612.
- Undang-Undang Nomor 12 Tahun 2011 Tentang *Peraturan Perundang-Undangan*, Tambahan  
Lembaran Negara Nomor 5234.
- Undang-Undang Nomor 5 Tahun 1986 Tentang *Peradilan Tata Usaha Negara*, Tambahan Lembaran  
Negara Nomor 3344.

### **Ketetapan Majelis Permusyawaratan Rakyat**

Tap MPR Nomor XVII/MPR/1988 Tentang *Hak Asasi Manusia*

### **Peraturan Mahkamah Agung**

PERMA No 1 Tahun 2016 Tentang *Prosedur Mediasi di Pengadilan*, Berita Negara Tahun 2016  
Nomor 175.

### **Peraturan Menteri**

Peraturan Menteri Kesehatan Republik Indonesia Nomor 269/MENKES/PER/III/2008 Tentang *Rekam  
Medis*

Peraturan Menteri Kesehatan Republik Indonesia Nomor 28 Tahun 2017 Tentang *Izin dan  
Penyelenggaraan Praktik Bidan*

Peraturan Menteri Kesehatan Republik Indonesia Nomor 10 Tahun 2018 Tentang *Pengawasan*  
*di Bidang Kesehatan*

**Putusan Mahkamah Konstitusi**

Putusan Mahkamah Konstitusi Nomor 50/PUU-VI/2008 Tentang Informasi dan Transaksi Elektronik.