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LAW RENEWAL CONCERNING DISCLOSURE OF MEDICAL SECRETS THROUGH A PROGRESSIVE LEGAL APPROACH

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ABSTRACT

Indonesia, as a country based on law (rechtstaat), is not solely based on mere power (machtstaat), consequently that in the life of society, nation and state it is obligatory to comply with the will that has been regulated based on the applicable laws and regulations. One of the concepts in the theory of the welfare state is that the state has the responsibility to provide maximum health services to its citizens. Based on the provisions of Law Number 36 of 2009 concerning Health, in Article 5 paragraph (1) that; Everyone has the same right in obtaining access to resources in the health sector. One of the health sectors is the hospital which is an important part in the health sector and plays a role in supporting the survival of the community to live a healthy and prosperous life. Hospital medical records are an important component in the implementation of hospital management activities. According to the provisions of the legislation, namely Law Number 29 of 2004 concerning Medical Practice Article 46 paragraphs (1) to (3) and Minister of Health Regulation No. 269 of 2008 concerning Medical Records and Medical Records, made by doctors who are included in the management of their responsibilities which are intended for the condition of the patient. For this reason, medical secrets are the obligation of every doctor to maintain them as required by legislation. The obligation to keep medical secrets concerns things that are obtained through disease examination procedures or by chance, which are carried out by doctors, including those related to the patient's health. The problems that can be raised from this research are; 1. How is the construction of laws and regulations in regulating medical secrets? and, 2. Why does the legality of the disclosure of medical secrets require legal reform through a progressive legal approach? Solving the problem is done through a juridical normative research approach. The results of his research, that medical records are facilities that contain information about patients' illnesses and treatments aimed at maintaining and improving a health service regulated by Law No. 29 of 2004 concerning Medical Practice and Minister of Health Regulation No. 269 of 2008 concerning Medical Records. Legal reform regarding the disclosure of medical secrets through a progressive legal approach, constructively hospitals are obliged to comply with these laws and if

violated are threatened with administrative sanctions ranging from verbal warnings, written warnings to license revocation and criminal sanctions.

Keywords: Legal reform, medical secret, legal approach

INTRODUCTION

The Reformation Era, which started in Indonesia in mid-1998, had implications for creating a more democratic pattern of state life, as well as resulting in changes to the existing legal system, in law enforcement behavior in social life by prioritizing justice which is used to uphold human dignity (Barber & Talbott, 2020).

Indonesia, as a country based on the law (rechtstaat), is not solely based on mere power (machtstaat), consequently that in the life of society, nation and state it is obligatory to comply with the will that has been regulated based on the applicable laws and regulations (Akmal, 2021). It means that humans as members of society and part of the State in the framework of fulfilling all their life needs must comply with the legal provisions that have governed them. Philosophically, along with the development of civilization, the law aims to achieve justice, so the law serves human interests to uphold human values (Hesse et al., 2015). The law is part of the intuition of the basic values of humanism, namely as a means of realizing a civilized conception of justice.

Law and the operation of law are seen in the context of the law itself, the law does not exist for itself and its own needs, but for humans, especially for the protection and welfare of humans (Lauterpacht, 2011).

As a result, to get justice, justice seekers must go through unfair procedures. So that the law becomes a frightening specter for society. The law is no longer to make people happy but instead makes people miserable (Pasquale, 2015). The law fails to provide justice in society. The rule of law that has been advertised so far is only a sign without meaning. Legal texts only legitimize the language of the game which tends to disappoint (Bugarič, 2019).

Pancasila in that position is often referred to as the philosophical basis or the philosophical basis of the state (philosophische groundslas) of the state, state ideology (staatsidee), and is a basic value and norm to regulate state government/state administration (Siswoyo, 2013).

One of the concepts in the theory of the welfare state is that the state has the responsibility to provide maximum health services to its citizens. It means that an optimal and maximum health service system is an obligation for every country to its people (Barr, 2020). The 1945 Constitution Article 28 H Paragraph (1) states that; Everyone has the right to live in physical and spiritual prosperity, to have a place to live, to have a good and healthy living environment, and have the right to obtain health services. Furthermore, in Article 34 Paragraph (3) it is emphasized that; The state is responsible for providing adequate healthcare facilities and public service facilities.

Based on the provisions of Law Number 36 of 2009 concerning Health, Article 5 paragraph (1) states that; Everyone has the same right in obtaining access

to resources in the health sector (Gilbert, 2002). One of the health sectors in question is the hospital.

Hospitals have the function and purpose of health service facilities that carry out service activities in the form of outpatient services, inpatient services, emergency services, referral services, and medical support and are used for education, training, and research for health workers (San Saw et al., 2015).

The hospital has several rooms for treatment, services, information, and the medical record section. In the relationship between the hospital and the patient, there will be a lot of personal data of the patient that is known by doctors and other health workers (Ishijima et al., 2016) .

Health facilities are responsible for protecting health information contained in medical records against possible loss, damage, forgery, and other unauthorized things (Seh et al., 2020). Filling in must be complete, detailed, accurate, and relevant and the doctor who treats the patient is responsible for the completeness and accuracy of the medical record it will be very useful for patient care and treatment, legal evidence for hospitals as well as medical and administrative research purposes. The problems raised in this paper are; How is the construction of legislation in regulating medical secrets?

RESEARCH METHOD

The research is included in the type of normative juridical research. Normative juridical research is a type of research that seeks to synchronize the legal provisions that apply in law enforcement to other legal norms or regulations. A conceptual approach is also used based on the opinions of legal experts. Based on the type of normative juridical research, the research approach in this study uses a statutory approach and a conceptual approach.

The statutory approach uses laws and regulations related to the rule of advocated immunity rights in defending, while the conceptual approach uses the theories and concepts used in this study that have relevance to the legal issues analyzed regarding the liability of advocates in defending clients.

Normative juridical research uses secondary data sources. Secondary data in this type of normative juridical research is data sourced from legal materials, consisting of primary legal materials, secondary legal materials, and tertiary legal materials.

Legal materials as secondary data used to analyze legal issues in this study are as follows.

The source of data in the study is the subject from which the data can be obtained. There are two sources of data used by the author, namely:

1. **Primary Data Source**

   Primary data sources are data sources obtained from parties who are able to provide data directly from the field to researchers. Those parties are limited to the head of the Advocate's office, Indra Syahfri, S.H, and colleagues. Thus, primary data collection is an integral part of the legal research process used for decision-making.

2. Secondary Data Source

Sources of secondary data in this study are sources of data obtained from books/documents related to this research substantively. The documents include books, the Peradi Secretariat Team, the Book of Indonesian Advocates, Rahmat Rosyadi & Sri Hartini, Advocates in Islamic Perspectives & Positive Law, and other books that support research on the Effectiveness of Advocate Immunity Rights in Client Defense according to Law no 18 2003 concerning advocates (Case Study at the Office of Advocates/Legal Advisers Indra Syahfri, SH and Partners).

RESULT AND DISCUSSION

Every legal relationship contains aspects of rights and obligations in parallel and cross. For this reason, academically, human rights are balanced with human obligations (Borràs, 2016). However, in historical developments, the issue of human rights itself is closely related to the issue of injustice that arises about the issue of power. Therefore, the history of mankind bequeathed the idea of protecting and respecting human rights, which was adopted into the idea of limiting power which became known as the flow of constitutionalism. It includes the community's rights when they need health services from the hospital institution and its components.

Concrete law enforcement is the application of positive law in practice as it should be obeyed. Therefore, giving justice in a case means deciding the law in concreto in maintaining and guaranteeing the observance of material law by using the procedural method established by formal law (Cahyaningtyas, 2020).

Hospital medical records are a crucial component in the application of hospital management activities. For this reason, a medical record must be able to present information about medical and health services in hospitals (Mashoka et al., 2019).

The enactment of the Medical Practice Law Number 29 of 2004 is intended to protect patients and doctors so that they can be protected legally and with the enactment of this law it is obligatory for doctors as health service providers to make medical records, as well as for actions taken must obtain approval from the patient (Kachalia et al., 2014).

Furthermore, the provisions of the Minister of Health Number 269 of 2008 state that every health service facility is obliged to maintain medical records. Medical Record (RM) is a file containing records and documents about patient identity, examination, treatment, actions, and other services to patients at healthcare facilities. Medical records have the aim of protecting patients and doctors related to the law and supporting the achievement of an administrative order in the context of efforts to improve health services in hospitals.

Based on the provisions in Permenkes No. 269 of 2008 concerning Medical Records, it is stated that violations of the provisions in the implementation of medical records can be subject to administrative sanctions ranging from verbal warnings, and written warnings to revocation of permits.

The juridical definition of medical records according to the explanation of

Article 46 paragraph (1) of Law No.29 of 2004 concerning Medical Practices states that; Medical Record is a file containing records and documents about patient identity, examination, treatment, actions, and other services that have been provided to patients.

So, the core of the medical record is a facility that contains information about the disease and treatment of patients aimed at maintaining and improving a health service.

Based on the provisions of Permenkes No. 269 of 2008 concerning Medical Records, Article 13 states that the use of medical records is as follows:

1. Health maintenance and patient treatment;
2. Evidence in law enforcement processes, medical and dental disciplines, and medical and dental ethics enforcement
3. Research and education needs;
4. Basic payment of health care costs.
5. Health statistics data.
6. Based on the administration of medical records, several medicolegal aspects include:

When a health worker is sued for revealing medical secrets (contents of medical records) to third parties without the patient's permission or even refusing to disclose the contents of medical records (which belong to the patient) when the patient asks for it.

A health worker can intentionally disclose a patient's secret (contents of a medical record) by conveying it directly to other people. However, he can also open it accidentally, namely when he discusses the patient's condition with other health workers in public or if he puts the Medical Record carelessly so that unauthorized people can see it.

For this act of revealing secrets, health workers may be subject to sanctions.

1. The sanctions include, among others;
2. Sanctions that can be imposed on Health Officers who take action to reveal patient secrets Criminal Sanctions

Opening a medical secret is punishable by a criminal offense of violating Article 322 of the Criminal Code with a maximum penalty of 9 years in prison. Civil Sanctions

Patients who feel aggrieved can ask for compensation based on Article 1365 jo 1367 of the Civil Code Administrative Sanctions.

Sanctions can be imposed if they violate the provisions regarding the provision of medical records as regulated in Law Number 29 of 2004 concerning Medical Practice in Article 79 letter b, namely every doctor or dentist who intentionally does not make medical records as referred to in Article 46 paragraph (1). shall be sentenced to a maximum imprisonment of 1 (one) year or a maximum fine of Rp. 50,000,000, - (Fifty million rupiahs).

Sanctions can be imposed if they violate the provisions regarding the provision of medical records as regulated in Law Number 29 of 2004 concerning Medical Practices in Article 79 letter b, namely; any doctor or dentist who

intentionally does not make a medical record as referred to in Article 46 paragraph (1), shall be sentenced to a maximum imprisonment of 1 (one) year or a maximum fine of Rp. 50,000,000, - (Fifty million rupiah).

In a legal dispute that is resolved through a civil court process, there is a term known as juridical proof. The letter referred to in Article 187 letter (c) of the Criminal Procedure Code is an "expert certificate" containing an opinion based on his expertise regarding a matter or condition that can be assessed as evidence of a letter. In the Criminal Procedure Code, medical records can be used as evidence in court based on Article 187 paragraph (4) letter b of the Criminal Procedure Code that responsibility which is intended to prove something or a situation.

The medical record is an official letter made according to the provisions of the legislation, namely Law Number 29 of 2004 concerning Medical Practice Article 46 paragraphs (1) to (3) and Minister of Health Regulation No. 269 of 2008 concerning Medical Records. This criterion meets article 18 paragraph (4) letter b of the Criminal Procedure Code so that medical records can be used as evidence in court.

Based on the provisions of Article 48 paragraph (1) of Law Number 29 of 2004 concerning Medical Practice, that:

Every doctor or dentist in carrying out medical practice is obliged to keep medical secrets.

Medical secrets may be disclosed only for the benefit of the patient's health, fulfilling the request of law enforcement officials in the context of law enforcement, the patient's own request, or based on statutory provisions.

Further provisions regarding medical secrets shall be regulated by a Ministerial Regulation.

As for what is meant by Medical Secrets based on the provisions of Article 1 point 1, Regulation of the Minister of Health Number 36 of 2012 concerning Medical Secrets, it is stated that; Medical secrets are data and information about a person's health that are obtained by health workers when carrying out their work or profession.

Based on the provisions of the Regulation of the Minister of Health Number 36 of 2012 concerning Medical Secrets, Article 4 states;

Paragraph (1). All parties involved in medical services and/or using data and information about patients must keep medical secrets. (2), the parties as referred to in paragraph (1) include: doctors and dentists as well as other health workers who have access to patient health data and information; head of health service facilities; personnel related to the financing of health services; other personnel who have access to patient health data and information in health care facilities; legal entities/corporations and/or health service facilities; and student/student who oversees examination, treatment, care, and/or information management in health care facilities. (3). The obligation to keep medical secrets applies forever, even if the patient has died.

Based on these provisions, it is the duty of every doctor to protect medical secrets starting from the time the doctor takes the oath as a doctor as required by legislation. So that if there is a violation of medical secrets without any basis as a

reference as required by legislation, the doctor can be prosecuted civilly or criminally by the patient concerned because of his actions.

CONCLUSION

The obligation to keep medical secrets does not only cover the secrets entrusted to the patient but also concerns things that are obtained through disease examination procedures or by chance, whether carried out by doctors or third parties, including those that were not originally related to the patient's health problems.

The starting point for the obligation to keep secrets is directed attention to everyone, except the patient himself. Healthcare providers who for strong reasons think they can hide something from patients, cannot do so under the pretext of professional secrets. If it concerns child patients, patients with mental disorders, according to him, consciousness, fainting, and so on so that they cannot be invited to exchange ideas, then the obligation to keep secrets does not apply to their representatives according to the law in this case parents, guardians, and guardians.

Although confidentiality is the most important factor in the management of medical records, it is not the only thing that forms the basis for policies in providing information. There need to be reasonable provisions always maintained so that they do not allow information requesters to file demands for further information requests to the hospital.

Article 48 paragraph (2) of Law no. 29 of 2004 concerning Medical Practice states that: Medical secrets can be opened only for the benefit of the patient's health, fulfilling the request of law enforcement officials in the context of law enforcement, the patient's request, or based on the provisions of the law.

Based on the provisions of the regulations governing medical secrets, there is an ambivalent analogy in which if violated, regarding the confidentiality of medical records being disclosed by the doctor or hospital, the party is potentially threatened with violating the law. In such conditions, there is a legal deadlock that can be overcome through a legal reform approach, according to its legal function.

Regarding the dual concept of legalizing the disclosure of medical secrets, namely that one is prohibited, and the other can be opened with conditions, this requires legal certainty to provide legal protection for patients as well as doctors and hospitals.

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