WHY DOES MEDICAL CONFIDENTIALITY MATTER DURING THE COVID-19 PANDEMIC? A CASE STUDY FROM REGULATIONS IN INDONESIA

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ABSTRACT

Since the final months of 2019, the novel coronavirus has spread to more than 200 countries worldwide. As of this publication World meters report indicates more than 181,000,000 confirmed cases of coronavirus worldwide. This number keeps increasing daily, hitting different countries at different times, and the world has to adapt to the volatile situation. Data on patients is one of the key ingredients of policymaking. The governments and the World Health Organization need those data for analyzing public health services and policymaking. However, the question of patient privacy remains ambiguous. Therefore, the current pandemic has left the physicians, the patients, and the policymakers with a dilemma; protecting patient's privacy or sharing their information with the stakeholders. This paper intends to study the patients' privacy protection during the pandemic, taking Indonesia as its case study.

Keywords: Covid-19, Indonesia, Medical Confidentiality, Regulation
JEL Classification: I18, K15, K38, K42

INTRODUCTION

The novel coronavirus disease (COVID19) is very much a global health issue. Considering the virus's widespread starting from Wuhan, mainland China since December 2019, the World Health Organization (WHO) has officially declared the coronavirus, or COVID-19, a pandemic (Cucinotta & Vanelli, 2020). The case has spread to more than 200 countries, affecting more than 972,000 people and claiming more than 50,000 lives worldwide (WHO, 2021).

Pandemic is defined as the spread of infectious disease worldwide. In January of 2020, the WHO published a comprehensive guideline for confronting the novel coronavirus. It was by the end of January that the WHO Director-General declared the outbreak a global health emergency. On March 18, 2021, the first official campaign on data gathering regarding the pandemic commenced. By April 4, 2021, WHO reported more than one million cases worldwide. A figure which was ten times what it was one month ago (WHO, 2021). At the moment, every day, an average of 371,504 people joins the infected group. The number differs in different places.

The COVID-19 pandemic has put the entire world in a state of stalemate. Many countries had to declare national lockdowns, shutting down the entire economy. In many countries wearing a face mask has become part of everyday attire. In some states, even at the entrance of supermarkets and grocery stores, one could see a station for checking one's temperature. In other words, the national and the international world order have gone through considerable shifts. However, during this massive shift, the importance of doctor-patient confidentiality remains.

Tackling a global pandemic, besides a global will, requires a symmetrical information system. While the public deserves to know what the governments and the global organizations are doing to battle the pandemic, the policymakers also require complete information regarding the state of public health. Furthermore, the people have the right to know the extent of the pandemic in their cities and countries. People's right, however, contradicts with the principles of patient's privacy rights. Therefore, a study on the acceptable extent of breach in a patient's privacy rights, if any, is crucial. This paper is a step towards that endeavor.

The remainder of this paper would be as follows. First, we begin with the concept of confidentiality under the Indonesian Constitution, followed by informed consent in the Indonesian medical system. Thirdly, we continue with a basic comparison of social and individual rights followed by human rights in the healthcare system. Finally, the closing arguments and the concluding remarks will be presented.

PATIENT'S INFORMATION MANAGEMENT IN INDONESIA

Confidentiality in Medical Records

The right to privacy, especially regarding a personal health condition, is protected under the Indonesian Constitution. Various provisions related to patient confidentiality are embedded into several regulations. The concept of privacy regarding personal data and data protection can be observed through Articles 28F and 28G of the 1945 Constitution of the Republic of Indonesia. The former gives every person '... the right to communicate and obtain information for the purpose of his/her self and social environment;' while the latter gives every person '...the right to protect himself/herself, family, honor, dignity, and property.' (p.12)

These articles do not directly mention personal data privacy. However, they can be considered a legal basis for regulating the matter (Olinder et al., 2020; Olinder et al., 2021). Although the articles have not been directly applied to the regulation in Indonesia, there is no doubt that they concern human dignity as a human right (Mangku et al., 2021).

The example of patient confidentiality, as noted on the medical records according to Ministry of Health Regulations No. 269 of 2008, is a file containing notes and documents regarding the patient's identity, examinations, treatment, actions, and other services that have been provided to patients. Moreover, medical records are included in medical secrets and mentioned in some regulations, described in article 48 of Law No.29 of the Republic of Indonesia, 2004, concerning medical practices. Medical confidentialities include data on patient identity and patient health status, including a history of physical examination, supporting examinations, diagnosis, treatment, and medical actions. Article 48 states that 'every doctor or dentist must keep medical secrets in carrying out the medical practice.' Medical secrets can be disclosed only for the benefit of the patient's health, fulfilling the demands of law enforcement officials, and with the patient's consent. Moreover, articles 57 of Law No.36 of 2009 concerning the law on health and article 38 of Law No. 44 of 2009 concerning the hospital could be considered further examples of Indonesian regulations that concern patient confidentiality. Article 38 states that every hospital must keep a 'secret of medicine.'

In Articles 3 and 5 of the Ministry of Health's regulation No. 4 of 2018 concerning Hospital Obligations and Patient Obligations, it is stated that 'hospitals must provide correct information about services to patients.' Furthermore, article 2 of the Law on Public Information Disclosure states that 'every public information is open and can be accessed by every user of public information unless certain information is restricted and limited. In the case of information with consequences for the public, the greater benefits must be considered.

Health information is one type of public information formulated under several statutory provisions in the Indonesian legal structure. For instance, Article 168 of Law No. 36 of 2009 concerning health states that 'health information is needed to carry out effective and efficient health efforts.' As referred to in paragraph (1) of the article, health information shall be carried out through an 'information system and cross-sections. Further provisions regarding the information system as referred to in paragraph (2) of the article shall be regulated by a 'Government Regulation' (Indonesia, 2009).

Furthermore, Article 169 of the Health Law stipulates that 'The government provides facilities for the public to gain access to health information to improve the degree of public health.' The provisions described are based on the constitutional mandate formulated in Article 28E paragraph (2) and 28F, which guarantee information acquisition, possession, and dissemination. Furthermore, law No.8 of 1999 concerning consumer protection in the provisions of Article 4 paragraph (3) states that 'consumers [of health care] goods and services have the right to clear and honest information' while law No.44 in 2009 concerning Hospitals (Hospital Law) in the provisions of Article 29 paragraph (1) points at hospitals' obligations to provide correct information about hospital services to the public.

Based on the description above, the right to public information concerning health services is the right of every person/community to obtain information from the government as the agent responsible for ensuring the right to a healthy life for everyone. In order to realize this right, the government has developed a health information system (Rath & Kumar, 2021; Sunarti et al., 2021).

Health information consists of two forms; public information, which can be communicated to the public; and private information that cannot be disclosed to the public. Public health information consists of various forms and types. For example, a hospital includes the form and type of hospital services, service procedures, fees, health service facilities, and the financing system (Ozair et al., 2015). More specific examples are information systems related to disease eradication, among others: information on survey results for certain types of diseases (through reporting, data collection, mapping); disease prevention programs; disease prevention measures; data on the development of the types of infectious diseases and their area of infection.

Private health information includes health conditions; both written in medical records and those known, seen, and heard by health workers as regulated by the Ministry of health regulations No.269 of 2008 concerning Medical Records and Ministry of health regulations No.36 of 2012 on Secrets.

Based on the description above, it can be seen that public health information can be disclosed to the public, while private health information cannot. Furthermore, the Law about Public Information Disclosure explicitly stipulates that public information which can be provided or disclosed to the public is excluded from personal rights and information relating to occupational secrets (Lubis et al., 2018; Sunarti et al., 2020). However, information that should not be given to the public in the health sector is a person's health data and condition.

Concerning the right to health information with the right to health services, it is argued that 'The human right to health care is linked to the rights and non-political freedom. Health care is either life-preserving to alleviate or eliminate sickness or suffering, which are barriers to developing fully as a human being'. Meanwhile, AP Den Exter states that 'many instruments consider health and especially the access to health care; of national and international law' (den Exter, 2015). The right to access health care is interpreted in Article 12 of the International Covenant on Economic, Social and Cultural Rights, which reads: (1) The State Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest standard of physical and mental health. (2) The steps to be taken by the State Parties to the present Covenant to achieve the full realization of these rights shall include those necessary for the prevention, treatment and control of epidemic, endemic, occupational, and other diseases; The creation of conditions which would assure to all medical service and medical attention in the event of sickness (Strydom, 2019).

Regarding accessibility, the population should be informed about their rights, meaning that access to information is sufficiently guaranteed (Gachter et al., 2010; Schoukens, 2020). Accessibility includes the right to seek, receive and impart information and ideas concerning health issues. However, accessibility of information should not impair the right to have personal health data treated with confidentiality. Based on the opinion of these experts, it can be seen that the right to health services, in particular the right to access to health services, is a basic social right whose source is human rights (Gachter et al., 2010). Access to health services includes the right to get services and obtain information and policies related to health problems, but a person's health data is excluded because it is confidential.

While there has always been a balance between individual and collective rights, public health legislation exerts great power in the context of a public health emergency. Some ethicists and policymakers have proposed that individual rights, particularly the right to privacy of personal health information, should be defeated in the collective interest of society when it is seen to help prevent a more serious spread to the general public. For example, information about infectious diseases is public information. This information is open and accessible to the public, but if there is confidential information that could have negative consequences if disclosed, there must be certain considerations following statutory regulations (Oyeleye, 2021).

Ministry of health regulations No.36 of 2012 regulates Medical Secrets, which in certain matters can be disclosed but limited as needed. This regulation is formulated in Article 5. Whereas Article 6 states that disclosing medical secrets for the benefit of patient health must be carried out with the patient's consent, either in writing or by an electronic information system. However, Article 9 states that the disclosure of medical secrets can be carried out without the patient's consent in the interests of upholding ethics or discipline and the public interest. He explained again that the disclosure of medical secrets in the context of public interest was carried out without revealing the patient's identity. What is meant by the public interest in medical audit, the threat of extraordinary events or epidemics of infectious diseases, education, and threats to the safety of other individuals or the society as a whole? Such disclosure can only happen for institutions or parties authorize to carry out follow-ups.

Based on Ministry of health regulation No.36 of 2012 regarding the Indonesian medical association's argument about disclosing the patient's identity to the public, the government, through the Covid-19 handling task force, could more effectively carry out contact tracing to anyone suspected of contracting Covid-19. Therefore, it is emphasized that disclosing the patient's data, including the name and residence, was crucial and made it much easier to do contact tracing and consequently made overcoming the pandemic easier (Oyeleye, 2021).

The Coordinating Minister for Political and Security Affairs (Menko Polhukam) Mahfud MD acknowledged that Law No.36 of 2009 concerning Health states that 'every patient has the right to request that their health records not be disclosed to the public.' However, Mahfud reminded that in special conditions such as a pandemic, the rules on the confidentiality of patient health records can be neglected based on Law No.29 of 2004 concerning Medical Practice and Law No.4 of 1984 concerning Outbreaks of Infectious Diseases. This law is based on the argument of read a special law derogates generalist or a special rule of law that overrides the general rule of law. It is even emphasized that anyone who obstructs officers' work in saving public health amid this pandemic can be subject to criminal charges under Articles 212 and 216 of the Criminal Code.

Right to Medical Secrets

The discussion of medical secrecy cannot possibly be separated from informed consent and medical records. Informed consent is a patient's right to consent for medical treatment against himself, a patient's right that comes from human rights, namely the right of self-determination (Cocanour, 2017). Informed consent is carried out after the patient receives sufficient information about his health condition, medical actions to be performed, and even costs to be borne (Hanson & Pitt, 2017). The legal provisions regarding informed consent are stipulated in the Ministry of health regulations No.290 of 2008. In carrying out the informed consent procedure, information must be provided with good faith, honesty, and not worry.

Information is the patient's right, so it must be provided whether requested or not (Wheeler, 2017). The information provided must be complete and should include the advantages and disadvantages of the medical action to be performed. For example, diagnostic, therapeutic and preferably information or explanation. The facts should at least include information or an explanation of diagnosis, therapy, with the possibility of alternative therapies about the doctor's work and experience, the risk of taking the medical action or not, possibly ill feelings or other feelings, therapeutic benefits and prognosis (Leenen, 1994).

The background of doing the informed consent procedure in health services, which involves a relationship between a doctor (health worker) and the patient or commonly known as a therapeutic relationship, is based on the following reasons: the doctor-patient relationship is based on trust; the existence of the right to autonomy or the right to determine itself over himself; and a contractual relationship between doctor-patient (Beltran-Aroca et al., 2016). Meanwhile, the purpose of informed consent is to provide legal protection, both for patients and doctors who perform medical actions. Consequently, in principle, the informed consent procedure, which is the patient's right, begins with providing information from the doctor who provides medical services and ends with the patient's consent for medical action(s).

In this case, medical information is about a person's health condition, one of the 'patient rights.' Article 7 of the Health Law explains that 'Everyone has the right to receive balanced and responsible information and education on health.' Furthermore, Article 8 states that 'Every person has the right to obtain information about his/her own health data, including actions and treatments that have been or will be received from health workers.' In this provision, it can also be explained that health information in the context of this provision is private health information, so that only those who have the right, especially the patient concerned, may know.

Patient health data is recorded in a medical record file with confidentiality (Rath & Kumar, 2021). The provisions on medical records are formulated in Ministry of health regulations No.269 of 2008. According to these Ministry of health regulations, medical records are files containing notes and documents including patient's identity, results of examinations, the treatment that has been given, and other actions and services provided to patients. Notes are writings made by a doctor or dentist regarding actions taken on patients in the context of health services. Furthermore, the medical record can be in a manual form, written completely and clearly or in electronic form according to the provisions. Medical records consist of patient data records performed in health services. These records are very important for patient care because complete data can provide information that determines various decisions (Chen et al., 2019). Therefore, doctors or dentists are required to make medical records according to applicable regulations.

The Ministry of health regulations also states that the medical record contents belong to the patient, while the document belongs to the health service facility. The medical record summarizes the patient's contact with health service facilities, which contains: patient data, examinations, medication and actions given, correspondence for the continuity of service (usually in the form of cards). Medical records that contain patient data are the patient's right and the doctor has to make them (Paszkowska, 2018). Patient data recorded in medical records is information containing data that contains confidentiality so that the provider is obliged to manage the data as well as possible.

Medical secrets bind doctor-patient relationships based on various regulations. The Indonesian Doctor's Oath item 4 states that 'I will keep everything that I know a secret because of my profession.' The 2012 Indonesian Medical Code of Ethics (Kodeki) in Article 16 states, 'Every doctor is obliged to keep everything he knows secret about a patient, even after the patient has died.' Under Law No.29 of 2004 concerning Medical Practice, article 48 paragraph (1), 'In implementing the medical practice, every doctor or dentist is obliged to keep medical secrets.' Medical secrets can only be disclosed if there are strong ethical reasons and done with great care. Also added to the explanation of Article 16, paragraph (3) of the code of ethics, ' A doctor may not use his patient's secrets to harm the patient, his family or close relatives by disclosing them to third parties or unrelated.' The principle of autonomy applies because, generally, the safeguarding of secrets is what the patient wants, and beneficence is because it emphasizes doing good for the patient's benefit (Cohen, 2019).

Referring to the Decree of the Medical Ethics Honorary Council Number 015/PB/K.MKEK/03/2020 concerning Medical Ethics Fatwas, Health Policy and Research in the Context of the COVID-19 Pandemic, the identity of patients, with or without symptoms, and positive cases must still be protected. In certain circumstances, information can be disclosed at the initials name, gender, brief health status (death, clinically critically severe, or recovered), age and chronology relevant to transmission tracing. As for other in-depth clinical information, which is not of broad public health interest, such as detailed health status, comorbidities, and management, should not be disclosed.

It has been stated in the Decree of the Medical Ethics Honorary Council Number 015/PB/K.MKEK/03/2020 concerning Medical Ethics Fatwas, Health Policies, and Research in the Context of the COVID-19 Pandemic that medical secrets related to the interest of collecting information on the epidemic can be disclosed in this condition and certain limitations. The universal participation of the public in the collection of health surveillance information must be followed by feedback from the government in the form of implementing 'transparent' surveillance. Transparency, in this case, means that patients must also be aware of what information they provide, for what purpose, and the possibility of disclosing information to third parties (Yan et al., 2017). In addition, in line with Article 154 of Law No.36 of 2009 concerning Health, transparency also refers to the government's obligation to periodically announce the surveillance results, namely, announcing the type and spread of the disease, including areas with potential for transmission. This law is important for safeguarding the public's right to health as a whole in all regions. It is necessary to remember that an action is considered good/ethical if the purpose is good, is done in a good way, and is carried out at the appropriate time, place and situation.

The WHO suggested that despite the need for countries to control the outbreak, countries must also ensure adequate protection against these risks. Thus, disclosing medical secrets collected during an epidemic (including name, address, diagnosis, family history, and other information) without the patient's consent can risk the individual concerned (Cowan, 2014). The protection of the right to medical records is regulated in Article 79B of the Medical Practice Law in the formulation of criminal sanctions. The law states that: 'To be punished with imprisonment for a maximum of 1 (one) year or a maximum fine of Rp.50,000,000.00 (fifty million rupiahs) for any doctor or dentist who: deliberately does not make medical records as referred to in Article 46 paragraph (1)' (Note: the sanction of imprisonment is declared not legally binding through the Judicial Review of the Constitutional Court in July 2007).

The description above emphasizes the relationship between medical information, medical records, and medical secrecy. A doctor is obligated to keep secret everything conveyed by his patient, whether conveyed consciously or unconsciously to him and everything that the doctor knows when treating and caring for the patient (Leenen, 1994). This statement is the description of medical confidentiality. The framework of thinking about medical secrets arises from the professional obligation to keep confidential information obtained in carrying out the profession (Olinder et al., 2021). Information obtained by professionals in carrying out the profession is known as Occupational Secret, while the information obtained by a doctor in carrying out his profession is known as a Medical Secret (Wheeler, 2017).

The legal basis for regulating medical secrets is regulated in the Medical Practice Law and Law Number 36 of 2009 concerning Health (Health Law) (Indonesia, 2009). In the provisions of Article 48 of the Medical Practice Law, it is stated that 'In practicing medicine, every doctor or dentist is obligated to keep medical secrets. Medical secrets can only be disclosed for the benefit of patient health, fulfilling requests from law enforcement officials in the context of law enforcement, patient requests, or based on statutory provisions' (Cowan, 2014).

Ministry of Health Regulation No.269 of 2008 also regulates that health service facilities are responsible for medical records. The information recorded in medical records is a person's (personal) data, confidential, a personal right, and related to job secrets. In addition, health care facilities also make or record all incidents related to patients; manage as well as possible, and keep them confidential. Therefore, medical records containing patient personal data are confidential and are exempted from disclosing public information (Beltran-Aroca et al., 2016).

This guarantee of protection for medical confidentiality is also formulated in Article 79C of the Medical Practice Law: 'shall be punished with imprisonment at the most. For 1 (one) year or a maximum fine of Rp.50,000,000.00 (fifty million rupiahs), every doctor or dentist who: intentionally fails to fulfill the obligations as referred to in Article 51C' Furthermore, Provisions regarding medical information and medical secrets are also clearly regulated in the Hospital Law. Article 32B of the Hospital Law states that 'Every patient has the right to obtain information about the rights and obligations of the patient.' Meanwhile, Article 32I states that 'every patient has the right to privacy and confidentiality of the illness, including medical data.'

THE RIGHT TO HEALTH INFORMATION AS A BASIC SOCIAL RIGHT AND THE RIGHT TO MEDICAL CONFIDENTIALITY AS AN INDIVIDUAL BASIC RIGHT

In order to explain basic social rights and basic individual rights, it is necessary to provide examples of each. Social rights in this context are not the right of interest to the state alone, but as members of society along with other members (English & Eldesouky, 2020). Social rights, for example, the right to work, the right to education, and the right to health services. Meanwhile, individual rights are related to the rights of individuals to the state. The state must not avoid or interfere with individuals in realizing their rights, for example, the right to religion, the right to follow the conscience, the right to express an opinion (English & Eldesouky, 2020).

Social Rights and Health Services

In the concept of basic rights to health services, it is stated that these rights include basic social rights and basic individual rights (O'Hare et al., 2016). The basic social rights are the right to health services in the form of the right to medical services and access to health services (The, 2018). The individual's basic rights are in the form of the right of self-determination. The right to privacy is outlined in provisions concerning medical confidentiality. For example, the right to keep the disease and medical record confidential. The right to determine one's own decision. For example, informed consent (approving medical action), refused consent (refusing medical action). The rights to a second opinion choose the doctor or hospital, reflecting the right to self-determination.

The basic social right in health services, called the right to health care, is the basis for the fulfillment of the right to a healthy life and, in a more specific context, is the right not to contract diseases (The, 2018). As part of efforts to prevent the violation of these rights, everyone has the right to obtain public information in health services. The government is responsible for fulfilling it by making system development policy information on health services to facilitate access in health services and access to information on health services (Davies, 2020). However, the right to public information is limited by a person's rights and privacy related to confidential health data (medical secrets). So, it can be analyzed that the right to information is a basic social right in the public sphere. The right to health information in this context is derived from the right to access health services as a right that originates from human rights, so of course, this right must be respected (Davies, 2020).

Individual Rights and Health Services

Individual basic rights in health services related to the therapeutic relationship between doctors as health service providers and patients as receiver's state that patients in obtaining medical services have the right to health services. For example, care provided by health workers based on their abilities and abilities to apply health science and technology and the right to self-determination as a human being. Therefore, there are two basic human rights in health services, namely the right to health care, including the right to information, and the right to self-determination (Cocanour, 2017). Among other things, the right to self-determination is the right to information (private), an individual's basic right.

The provisions regarding the right to self-determination are contained in several laws and regulations in formulating patient rights. For example, article 52, concerning Medical Practice, states that patients receiving services in medical practice have the following rights to get a complete explanation of the medical action as referred to in Article 45 paragraph 3. Also, the patient has the right to ask the opinion of another doctor or dentist, get services according to medical needs, refuse medical treatment, and obtain the contents of medical records. In general, in health care practice, patients do not have the right to certain specific therapies, but the possible therapies must be in line with health science and technology developments (Cocanour, 2017).

Based on the right to their own body, in certain circumstances, a patient has rights over treatment and management, such as the right to refuse certain treatment methods and the right to choose health workers (doctors) and hospitals according to their wishes (Davies, 2020). In addition, patients in obtaining health services have the right to obtain information/explanations regarding diagnosis or therapy from health personnel responsible for their care. Patients also have the right to get information about the disease they are suffering from, the medical action they will take, and the possible complications resulting from that action, and other therapeutic alternatives and their prognosis (Paszkowska, 2018). So, in this case, the right to information is a very important individual right as far as personal health data is concerned.

As explained above, one of the basic individual rights possessed by patients is the right to privacy in the form of the right to medical secrets. As an individual's basic right in health care, this right comes from human rights (Paszkowska, 2018). Apart from balancing the individual rights of patients, obligations are also limited by law and the rights of others. Therefore, in the provisions of Ministry of health regulations No.290 of 2008, it is mandated that medical secrecy should not be opened unless: At the request of the patient concerned or by law order for the benefit of the wider community (for example, related to the eradication of infectious diseases)

The Minister of Health Regulation No.36 of 2012 stipulates more explicitly about Medical Secrets, which in principle can be disclosed in certain cases even with fairly strict restrictions. This law is formulated in Article 5 and related to health information specifically regulated in Articles 6 and 9. In the provisions of Article 5, it is stated that '(1) Medical secrets can only be disclosed for the benefit of patient health, fulfilling requests from law enforcement officials in the context of law enforcement, requests by patients themselves, or based on statutory provisions. (2) The disclosure of medical secrets as referred to in paragraph (1) shall be limited according to the need'.

Furthermore, in Article 6, it is formulated that 'The disclosure of medical secrets for the benefit of patient health as referred to in Article 5 includes: The interests of health care, treatment, healing and patient care; and Administrative purposes, insurance payments or health financing guarantees'. As referred to in paragraph (1), the opening of medical secrets shall be carried out with the patient's consent.

The disclosure of medical secrets as referred to in paragraph (1) letter B shall be carried out with the patient's consent, either in writing or by an electronic information system. The consent of the patient is referred to in paragraph (3). It is stated that it has been given when registering the patient in a health care facility. If the patient is incapable of giving consent, as referred to in paragraph (2), consent may be given by his immediate family or assistant.

Article 9 states that: 'the disclosure of medical secrets based on the provisions of the statutory regulations as referred to in Article 5 is carried out without the consent of the patient in the interests of upholding ethics or discipline as well as the public interest.' The disclosure of medical secrets in the interests of upholding ethics or discipline as referred to in paragraph (1) shall be provided at a written request from the Professional Ethics Honorary Council or the Indonesian Medical Discipline Honorary Council. Furthermore, the disclosure of medical secrets in the public interest referred to in paragraph (1) shall be conducted without disclosing the patient's identity.

HUMAN RIGHTS PROBLEMS IN HEALTH SERVICES

The concept of human rights in health services is the problem of rights versus rights. It is a continued problem in the medical field, including its application in health services (The, 2018). For example, the right to health information for the public regarding the transmission of a dangerous disease must be fulfilled so that the public can avoid disease transmission through this information. This right is one of the basic social rights derived from human rights (Paszkowska, 2018).

Meanwhile, the right to medical secrets of a person suspected of having an infectious disease is a basic individual right that must also be respected. In other cases, a person may choose not to immunize their child based on their individual rights. Nevertheless, on the other hand, in preventing infectious diseases, the government requires that every child born up to 9 months must complete Five Basic Immunizations (LIDL) (Valenzuela-Almada et al., 2020). So, this example illustrates that there are often conflicts between basic social rights and individual basic rights in health services, both of which are based on human rights.

Human rights problems in health services can also be seen in the following example:

We have little experience of cases in which rights compete with rights. The most familiar older cases deal with health issues. The refusal of parents to provide medical treatment to their children on religious grounds. Typically Jehovah's Witnesses are refusing blood transfusions, Christian scientists with a more general rejection of orthodox medical treatment, or parental and societal pressure for 'female circumcision' or 'female genital mutilation' (Nelson & Wilson, 2021). A judicial decision in Germany seeking to stop or limit the circumcision of boys is another suitable example (Tulchinsky & Varavikova, 2014). In general, we can expect the scientific outcome in which orthodox majoritarian medical treatment is imposed by court order. Practices such as male and female circumcision are prohibited, sharply limited or only allowed under medical supervision (Porat, 2021).

The example above shows that in health services, issues of conflict between rights often arise, especially the right to self-determination, such as refusing transfusions based on certain beliefs, circumcision for women (in Indonesia, this case is opposed by women activists and is considered a form of violation) (Ulya, 2019). It should be understood that the concept of human rights is not the same as other concepts of rights (ordinary rights). Human rights can be interpreted as inherent rights in humans solely because of their human nature.

By nature, every human being is born free and the same (Universal Declaration of Human Rights, 1948, Article 1). Therefore, the right to life, freedom, personal integrity is inherent to articulate life according to its nature in a dignified manner. Juridical, the concept of human rights must be interpreted as a sui generis legal relationship between rights holders or entitled parties (people) vis-à-vis the person in charge of rights or parties who are obligated to the right (state) (De Terwangne, 2021). Human rights are the claims of the people/citizens of their country to fulfill their human rights. Human rights are basic rights that are inherent in humans, universal and lasting. Therefore, human rights must be protected, respected, defended and should not be ignored, reduced, or taken away by anyone.

Human rights apply everywhere and for anyone and cannot be taken away by anyone (De Terwangne, 2021). Humans need this right in addition to protecting themselves, and their human dignity is also used as a moral foundation in associating or relating to fellow human beings.

In the legal concept, the right to adequate health services is a constitutional right for every citizen, as mandated 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 get a good and healthy environment and entitled to health services.' Furthermore, according to the provisions of Article 1 point 1 of Law No.39 of 1999 concerning Human Rights, it is stated that 'Human rights are a set of rights inherent in the nature of human existence as a creature of God Almighty and it is His gift that must be respected, upheld, and protected by the state, law, government, and everyone for the honor and protection of human dignity.'

Concerning health as a human right, Article 9 paragraph (3) states that 'everyone has the right to a good and healthy environment.' Moreover, the issue of the right to health is also regulated by the statement in Article 4 of the Health Law, namely, 'everyone has the right to health' and Article 6, which states that 'everyone has the right to a healthy environment for the attainment of a health degree.'

Among the provisions on human rights in health services are regulated in Article 5 paragraph (3) of the Health Law, which reads: 'Every person has the right to independently and responsibly determine the health services that are needed for him.' The mention of the word everyone in this law means anyone without exception. In other words, discrimination in matters of health is not permitted. This provision also reinforces the regulation of self-determination, a basic individual right rooted in human rights.

Two rights often clash in the scope of human rights, even though they are equally important and both must be guaranteed protection (Leiser, 2020). For example, the main (public) right to health information is the right to access health services. Meanwhile, the right to self-determination is derived from several rights, including the right to medical secrets, an individual right that must also be protected.

CLOSING ARGUMENT

Health care information can be viewed from two perspectives: public information (health information) and private information (medical information). The right to health information as part of public information is information about health services, a form of public information disclosure limited by law provisions. Health information is a form of public information subject to the provisions of the enactment of the Public Information Disclosure Law. The right to health information is one of the basic social rights derived from human rights, namely the rights to health care. This right is realized through government policies to develop a health information system. This system will make it easier for the public to access health service facilities and information about health policies,

The right to medical privacy is a right derived from individual basic rights, namely self-determination. In the context of this basic individual right, there is also the right to medical information, which is private information. Individual basic rights in health services are realized as a medical privacy trilogy concept in a medical service relationship (therapeutic relationship), namely informed consent, medical records, and medical privacy. This series of therapeutic relationships is preceded by granting the patient the right to medical information that the doctor must fulfill and ending with the patient's consent to undergo medical action in a procedure called informed consent. Furthermore, the doctor has a further obligation to make medical records of all the things he has done to the patient. Medical records must be managed and maintained properly because their contents are confidential (because doctors have a professional obligation to maintain the confidentiality of their patients), so medical confidentialities are related to the secrets of the doctor's office.

Human rights problems in health services often occur, especially to protect interests between basic social rights and individual basic rights. For example, the right to public information and the right to medical secrets are rights derived from human rights. In some cases, health service providers are often faced with a choice between providing health information and warning to avoid disease transmission or keep their patients' medical private.

Public health emergencies, such as the COVID-19 outbreak certainly need more attention from the community. This pandemic can cause social stigma against people, places, or anything else. Of course, some groups are vulnerable to stigma, such as suspect patients, medical personnel, even patients who have been declared cured. Social stigma can lead to social rejection, discrimination in education, health care, employment, and physical violence. Several things can be done to fight the stigma in this COVID-19 response, but the most important thing is maintaining the confidentiality of the patient's identity as the responsibility of medical facilities and the government.

Based on various statutory provisions, medical information is confidential and is one of the information exempted from disclosure under The Enactment of Public Information Disclosure Law. It can be concluded that patient health data is not one of the information conveyed to the public. Medical privacies are patient rights that must be respected. So, it can be interpreted that the right to health information is a right of everyone limited by the right to medical secrets. However, it is for the patient's benefit that medical secrets can be disclosed because the patient has the consent. Meanwhile, public interest under the order of law, for example, concerning infectious diseases that endanger the public interest, secrets can be disclosed without the patient's consent.

CONCLUSION

The condition of the COVID-19 outbreak requires health surveillance activities as a basic action in handling it. In the process, patient data information is heavily involved and can raise ethical issues. Patient identification information must remain protected, and disclosure of medical information is limited to those relevant to tracing transmission. It is feared that this could lead to stigmatization in the community and increase the government's difficulty controlling the outbreak. Transparency in sharing of information related to the outbreak is also an urgent matter under current conditions.

In this case, information about infectious disease outbreaks, the government conveying information about the COVID-19 case, is public information that must be conveyed to the public immediately because it is related to the public interest. However, the medical record information, namely the patient's identity, medical history, examination history and medical history, is confidential. For the opening of medical record data for the interests of health care, medication, healing, patient care, administrative purposes, and the payment of insurance or health financing guarantees must be through the patient's consent. The disclosure of confidential medical data/medical records in the context of public interest, including the threat of extraordinary events/outbreaks of infectious diseases, however, is carried out without the patient's consent and will be limited. Disclosure of medical secrets in the public interest framework is done without disclosing the patient's identity. Patient identities can be limited to institutions or authorized parties to carry out follow-up actions to control infectious diseases. So what the government has done by disguising the patient's identity data is correct following the legislation.

ACKNOWLEDGMENT

The second author would like to thank Asia University, Taiwan & California State University San Bernardino (CSUSB) for providing resources; and Dr. Sahand Faez for revising the original manuscript. This research received no external funding. The authors declare no conflict of interest (Corresponding Author -writetodrm@gmail.com).

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