

Legal Protection of Covid-19 Patient Identity in Indonesia

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ABSTRACT: The Covid-19 pandemic creates legal problems between the private domain (patients) and the public domain (community). The case of uncovering the identity of Covid-19 patients and discrimination in Indonesia shows that the government's responsibility for protecting the personal data of Covid-19 patients is not yet comprehensive. This research uses a normative juridical approach and is descriptive and analytical. The results show that the identity of Covid-19 patients is a right of privacy that must be protected. Central Information Commission Circular Letter Number 2 of 2020, concerning Public Information Data Services during the pandemic, stated that the information release included the number of cases, the epicenter area, the spread of the Covid-19 disease without mentioning patients' identity. The patient's identity is disclosed only to follow up on the outbreak (tracing) by officers while adhering to ethics so that secrets are not leaked to unauthorized people. Repressive sanctions for violations of the identity of Covid-19 patients are already developed. The sanction is the form of administrative penalties stated in PP 10 of 1966, Article 1365 of the Civil Code, Article 310 and Article 322 of the Criminal Code, Article 54 of the KIP Law, Article 51 of the PK 45 of the ITE Law.

KEYWORDS: *Identity of Covid-19 patients, legal protection, government responsibility.*

I. INTRODUCTION

The Covid-19 outbreak has now hit the entire world, including in Indonesia. The Covid-19 outbreak is a disease whose cause is the Coronavirus which attacks the respiratory tract causing mild to severe illness. Transmission of this disease started from animals to humans (zoonosis), and now transmission occurs from human to human. Director-General of the World Health Organization (WHO) Tedros Adhanom Ghebreyesus stated that this disease was first detected in Wuhan, China. After the disease was first detected in two weeks, the number of Covid-19 cases in China and outside China has increased 13 times. The number of countries affected has tripled, so the infection is categorized as a pandemic, meaning the scale of the spread of the disease is occurring globally around the world.

The covid-19 is a big problem in Indonesia because once infected, and it can quickly spread to other people and endanger people's lives, especially the elderly and those with a history of comorbidities. This figure is the highest death rate in Southeast Asia. In May 2021 in Indonesia, the number of positive patients was 1,744,045 people, with 48,305 people died.

The provision of Covid-19 patient information data transparently and comprehensively by the government through the Covid-19 task force team in handling the pandemic is an obligation stipulated by law. It

must be carried out while still paying attention to the principles of urgency and proportionality. It is regulated as stipulated in Article 57, paragraph 2 of Law No.36 of 2009. The right to the confidentiality of personal conditions is deemed invalid if it is for the order of the law and the community's interests. This condition creates a clash of legal issues that causes a dilemma between protecting the patient's medical privacy rights (personal human rights) and fulfilling the public interest to prevent the spread of the Covid-19 pandemic outbreak.

Some news that includes the patient's identity has occurred both in electronic media and social media. Medical privacy refers to the interaction between patients and health care providers. Patient medical record data is a part of human rights inherent in the individual, and it is confidential. The disclosure of the identity of the personal data of Covid-19 positive patients is a violation of the law and can lead to discrimination and exclusivity (exclusion) against the parties concerned.

The Violation of the right to privacy is related to human rights as stated in Article 12 of the Universal Declaration of Human Rights (UDHR) of the United Nations 1948. "No one should be disturbed by his personal, family, household, or correspondence, arbitrarily, also not allowed to violate his honor and good name. Everyone has the right to legal protection against disturbances or violations like this".

The right to privacy of a person has been regulated implicitly in Article 28 G paragraph (1) of the 1945 Constitution. "Every person has the right to protection of himself, family, honor, dignity, and property under his control, as well as the right to a sense of security and protection from the threat of fear to do or not do something that is a human right." It is also in line with Law Number 39 of 1999 concerning Human Rights (Human Rights Law), which in several articles guarantees citizens' right to privacy as stipulated in Article 29 paragraph (1). It states the recognition of everyone's right to personal protection, family, honor, dignity, and property rights. This protection is not only in the context of a direct relationship but also for personal information or data. Article 14 paragraph (2) (Human Rights Law) states that one of the rights to self-development is the right to seek, obtain, store, process, and convey information using all available facilities. Article 31 (Human Rights Law) also stipulates that personal freedom in communication through electronic means is guaranteed, except by order of a judge or other legitimate power according to statutory provisions. Personal rights as regulated in Law No. 14 of 2008 concerning Freedom of Information. Following Article 17 letters h and i, personal information can be disclosed to the public, except if it is related to the history, condition of family members, and treatment of a person's physical and psychological health.

In handling Covid-19 in Indonesia, the government has refused to reveal the identity of patient personal data. On the other hand, the community can also be threatened with safety because they do not know whether the residents of their environment are positive patients. The government is making efforts to solve this problem by preventing the disease transmission process with the 3M (Wearing a Mask, Maintaining a Safe Distance, Handwashing) and 3T (Tracing, Testing, Treatment) health protocol campaigns. Based on the above, the authors are interested in examining and discussing the Legal Protection of the Identity of Covid-19 Patients in Indonesia. This article analyzes the government's responsibility in protecting the identity of Covid-19 patients in Indonesia.

II. RESEARCH METHODS

The approach method in this research is normative juridical. Legal research is carried out by examining library materials or secondary data as the primary material for research by searching for the regulations and literature related to the research question[1]

The data collection technique in this study was carried out employing documents research. The library material includes primary legal material such as statutory provisions, secondary legal material in textbooks, other literature, and writings of experts in general. In addition, a theoretical basis is investigated in the form of expert opinions or information from the authorities. The legal materials collected were analyzed using normative qualitative analysis techniques through interpretation, correlation, and comparison.

III. DISCUSSION

Implementation of Health Services for Covid-19 Patients

Law number 4 of 1984 on Communicable Disease Outbreaks stated the role of government during an outbreak are epidemiological investigations, examinations, treatment, care, and isolation of sufferers, including quarantine, prevention and immunization measures, and other countermeasures. Government Regulation Number 40 concerning Communicable Disease Outbreaks is also the basis for more detailed epidemiological investigations. Epidemic control efforts aimed at Knowing the causes of the plague, Determining the factors causing the outbreak, knowing which an outbreak threatens community groups, and determining how to overcome them. Epidemiological investigations are carried out by collecting data on population morbidity and mortality, examination (clinical, physical, laboratory in diagnosis), and population observation. These are what the Covid-19 Task Force Team did to deal with the Covid-19 Pandemic in Indonesia.

The decree of the Minister of Health of the Republic of Indonesia Number 413 of 2020 concerning Guidelines for the Prevention & Control of Covid-19 describes the procedures for recording and reporting Covid-19 cases, which are part of the medical record. The system for recording and reporting Covid-19 must be implemented quickly, accurately, completely, and valid. All were taking into account the surveillance performance indicators. Recording and reporting Covid-19 is divided into case notification reports, specimen delivery and examination reports, epidemiological investigation reports, contact tracing, monitoring, and aggregate daily reports. The recording and reporting of Covid-19 cases are computerized online through the Covid-19 recording and reporting system (All Record TC-19).

Whenever the case of a Covid-19 patient having close contact, it must be followed by a close contact monitoring reporting system. Whether the case is suspect, probable, or confirmatory, contact tracing needs to be followed by reporting epidemiological investigations (tracing) for area mapping and early disease diagnosis. The City Health Office must control all health data, including data in the region to facilitate subsequent epidemiological surveillance activities, in the form of investigations to find and localize the risk of transmission.

The health quarantine law explains that the participation of government officials and the community in emergencies and health is in the public interest. The public interest is above personal or group interests. This reason becomes a foundation in a public health perspective that all patients who are confirmed positive and those suspected of being contaminated with a person who confirmed positive must cooperate in handling and tracking the epidemiology of the outbreak.

Contradictions of Rights and Obligations to the treatment of Covid-19 Patients

Covid-19 is a big problem nationwide because infected people can easily pass it on to other people and can endanger the lives of others, especially the elderly population and those with a history of comorbidities. One of the new health protocols that have just been implemented is to maintain distance. In its application, there are many mistakes and discrimination.

A positive diagnosis of Covid-19 is confidential health information. In the process of epidemiological investigations, health information on positive Covid-19 patients is opened only to people who carry out their duties to close contact tracing of Covid-19 positive patients. It becomes a dilemma because, in this process, there is often leakage of identity and information that violates the rights of the positive Covid-19 patient.

Patients who are positive for Covid-19 also have rights equal to society, which must be obtained by everyone who has been there since birth, even before birth. According to Notonegoro, the right belongs to us, and its users depend on us. John Locke stated that this right is very basic (fundamental) for human life and life and is a natural right that cannot be separated from human life.

Permenkes Number 36 Year 2012 regulates Medical Secrets, article 5, which in principle stated certain matters could be disclosed but limited as needed. 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. Disclosure of medical secrets in the context of public interest, such as threats of extraordinary events or outbreaks of infectious diseases, and threats to the safety of other individuals or the general public, is carried out without disclosing the patient's identity.

During The Covid-19 pandemic, even though the patient's identity may be disclosed if necessary, attention to the patient rights stated in Law Number 39 of 1999 concerning Human Rights needs to be observed. In several articles, the law clearly states the protection and guarantee of citizens' right to privacy. In general, Article 29 concerns recognizing the right of every person to protect himself, family, honor, dignity, and property. This protection is not only in the context of a direct relationship but also for personal information or data. Meanwhile, Article 14 paragraph states that one of the rights to self-development is to seek, obtain, store, process, and convey information by using all available facilities.

Public Information During the Covid-19 Pandemic

The General Provisions of Article 1 of Law Number 14 of 2008 concerning Openness of Public Information define information as statements, ideas, and signs that contain values, meanings, and messages, both data, facts, and explanations that can be seen, heard, and read. It can be presented in various packages and formats following developments in information and communication technology electronically or non-electronically. This regulation describes the context of public information as information generated, stored, managed, sent, and/or received by a public body related to state administrators and/or administrators and other public bodies according to this Law and information.

ITE Law No. 19 of 2016 Article 26 Any information via electronic media relating to personal data is a part of a person's rights (privacy rights) must be carried out with the person's consent unless otherwise stipulated by laws and regulations. Private rights are the right to enjoy a private life and be free from all kinds of disturbances and the right to monitor access to information about personal life and personal data for the public. Any person whose rights have been violated can file a lawsuit for damages incurred under this Law.

According to Westin (1967), the right to privacy is a claim from individuals, groups, or institutions to determine when, how, and to what extent information about them is communicated to others[2]

The national legal system has several regulations classifying information on health into two domains. First, the general public law aspects such as general hospital service information systems in the form of fees, service mechanisms, operational standards). Second, health information that is of a particular public nature, including (report results) research on a disease, program for prevention and control of disease outbreaks, data on the development of types of infectious diseases, patterns of spread or transmission of disease, and areas of disease outbreaks.

The regulation of public information on health is regulated in Article 169 of the Health Law, which explains that in improving the public health status, the Government provides facilities for the public to access health information. The Government must apply transparent and actual information and literacy to the public in controlling the spread of the Covid-19 pandemic. Anticipatory steps include developing case management using drugs, blood plasma therapy, the rate of positive and negative cases of Covid-19, the number of deaths, the population of recovered patients, methods of preventing spread, treatment procedures, and the length of the quarantine period. Information that is accurate, open, and accountable is the right of all people and must be applied to reduce the increase in cases of Covid-19 in Indonesia.

The scope of the medical record consists of data and the patient's health condition, both written in the medical record data and known to the health service provider. Data information in medical records is a type of health information that is private and sensitive[3]The element of confidentiality in medical record data consists of reports which are the results of patient examinations that are not allowed to be disseminated to unauthorized parties because they involve the patient's personality. In principle, patients have the right to obtain confidentiality and privacy for the disease they experience. It is as regulated in Article 32 letter i of the Law. No. 44 of 2009 concerning Health.

Principally, medical record data consists of two aspects, namely confidential information, and non-confidential information. Information that does not contain confidentiality includes identity and non-medical information as long as a medical diagnosis does not accompany it. Information is classified as confidential if it consists of reports or examination results of the patient's health condition, which can define the illness so that the contents of this document cannot be disclosed or disseminated to unauthorized parties. Patient personal data

is exempted from being disclosed to the public at large and is disclosed under strict and limited circumstances. This data can only be opened with the owner's permission or based on the order of the laws and regulations. If anyone violates this provision, they will be subject to legal sanctions following the applicable laws and regulations.

The Central Information Commission has issued guidelines to prevent the misuse of personal data for Covid-19 patients through Circular Number 2 of 2020 concerning Public Information Services in Covid-19 Public Health Emergencies. This Circular Letter regulates data limits that are allowed to provide information services related to Covid-19, which include: types of disease, distribution, epicenter area, and prevention. Information is conveyed in a strict and limited manner while protecting the personal data of suspects, probable, positive patients, and people who are declared cured.

Protocol of the Task Force for the Acceleration of Handling the Covid-19 pandemic Chapter Coordination and Public Communication explains maintaining the confidentiality of the identity of Covid-19 patients. Public Communication Protocol for Handling Covid-19 Information that can be submitted after obtaining approval from the Central Government, and only submitted by the Covid-19 Spokesperson for the Regional Government:

- a. Number and distribution, people in special monitoring (ODP) in the area.
- b. The number and distribution of patients under surveillance (PDP), specifically in the area.
- c. The number and distribution of patients who have been declared healthy are specifically in the area.
- d. Number and distribution, specimens explicitly taken in the area.
- e. Number and distribution, laboratory examination results on specific specimens in the area.
- f. Patient data and identities are not disseminated to the public.

It refers normatively to the existing regulations and comparisons with countries experiencing similar things. In that case, the patient's medical information is confidential but in certain circumstances regulated explicitly in the Regulation of the Minister of Health of the Republic of Indonesia Number 36 of 2012 concerning Medical Secrets, Article 3. In contrast, medical secrets include data and information regarding patient identity, patient health, including anamnesis, physical examination, supporting examination, confirmation of diagnosis, treatment, and/or medical action, and other matters concerning the patient. The disclosure of medical secrets for the public interest is carried out without revealing the patient's identity. The public interest referred to, among others, is in the case of threats of extraordinary events/outbreaks of infectious diseases and threats to the safety of others individually or the community. In this case, the patient's identity can be disclosed not to the public but only to institutions or authorized parties to follow up under the provision's legislation.

With this in mind, it can be concluded that patient health data, including information that must be safeguarded and protected, can only be disclosed with the patient's permission with Covid-19 concerned or based on statutory regulations to be conveyed to the public. The right to medical secrets related to the condition of the patient's medical record is a limitation that must not be violated in obtaining the right of access to health information. The right to privacy in the patient's medical record data is part of the basic individual rights (the rights to self-determination) in health services. The right to protect the identity of Covid-19 patients is a patient's right that must be protected and not communicated to the public. This right is only limited to a team from the Health Office who will carry out contact tracing while maintaining its confidentiality.

Various countries in the world face the same problem in dealing with the Covid-19 pandemic, especially regarding the dilemma of disclosing the identity of Covid-19 patients. In practice, South Korea and Singapore have a solid legal basis in forming a strong personal data protection law. So even though there is a policy to access the personal data of patients who are suspected or have been infected with Covid-19 (Contact Tracing), the scope of personal data traced includes track records of activities that correlate with transmission and locations visited for approximately 14 days without disclosing personal identities. Singapore reports on the status of Covid-19 from an official government-run website by displaying a complete track record of activities and areas (locations) visited by positive patients and suspected Covid-19. However, only information about the location is displayed without revealing personal identities. In the United States, medical secrets are protected by

the Health Insurance Portability and Accountability Act (HIPAA) Policy. Disclosure of medical secrets related to Covid-19 infection without the consent of the individual concerned can be carried out responsibly when the individual needs help management and the obligation to report cases to public health officials authorized to prevent and control the spread of Covid-19. The practice remains to be taken to limit the disclosure of confidential information to a reasonable minimum. Dissemination of information and the status of a patient's medical record is still not permitted to be disclosed to the public unless it has the explicit consent of the data owner and the vital interests of the data subject

Aspects of Legal Protection Against the Identity of Covid-19 Patients confidentiality of medical record data is an individual right for each patient and an obligation for health service providers to keep occupational secrets. Safeguarding medical record data concerns the dignity of the human rights of Covid-19 patients and relates to the secrets of the professional position of a health service provider.

SatjiptoRahardjo said that the law in society is to integrate and coordinate interests that can collide with one another. The coordination of these interests is carried out by limiting and protecting these interests[4] To avoid conflict in society, a provision is needed that regulates the relationship between individuals and other individuals, between community groups and other community groups, in all aspects of human life[5]

Legal protection is protecting human rights that others have harmed. The protection is given to the community so that they can enjoy all the rights provided by law. Legal protection is a variety of legal measures that law enforcement officials must give to provide a sense of security, both physically and mentally, from interference and various threats from any party[6]

Philipus M. Hadjon said that there are 2 (two) types of legal protection, preventive legal protection and repressive legal protection. In preventive legal protection, the law prevents disputes, while repressive legal protection aims to resolve disputes.[7]

Legal protection and the authority of the Health Office in Indonesia to collect data on patients infected with a disease is the formal power (derived from the power given by law). The purpose of collecting this data and information is the main component in making strategies to respond to the outbreak. The existence, roles, and responsibilities of all health-related personnel in collecting this data are essential in achieving health development goals, especially in accelerating the handling of the Covid-19 pandemic. Even though the Health Office collects the patient information data following the instructions in the applicable law, there is still a legal responsibility to protect patient secrets and not disclose the data to people who are not authorized to know about it. The definition of *responsibility* itself is human awareness of behavior or actions, whether intentional or unintentional.[8]

If connected to Covid-19 patients' identity, legal protection can be interpreted as an action or effort to protect Covid-19 Patients from arbitrary actions by authorities who are not following legal rules in carrying out their obligations. It is hoped that legal protection can create order and peace to enable all people to enjoy their dignity as human beings without discrimination. In providing legal protection to the community in the Covid-19 pandemic, the government must have comprehensive regulations and protocols because the goal is that all Indonesians prosper without discrimination. The case of the uncovering of the identity of Covid-19 patients in Indonesia that has occurred so far shows that the legal protection provided by the government is not comprehensive for the protection of the personal data of Covid-19 patients.

In practice, the identity of Covid-19 patients is protected by the government in a preventive and repressive manner. There are sanctions in the event of a violation of the rights of Covid-19 patients. The act of disclosing secrets contained in medical records by the Covid-19 Task Force Team and health workers has the following legal responsibilities:

Administrative, legal responsibilities. Violation of administrative policies or provisions may result in legal sanctions in the form of revocation of business licenses or revocation of legal entity status for hospitals. For doctors and other health workers, it can be in the form of oral or written warnings and the revocation of practice permits.

Liability in civil law holds the principle of "whoever causes harm to others must provide compensation." The relationship between the health worker and the patient contains the law of a civil agreement. A patient who

feels aggrieved can ask for compensation based on Article 1365 of the Civil Code (KUHPerdata). The patient must experience a loss, and there must be an error. There is a causal relationship between error and loss that act against the law.

Legal responsibility for criminal proceedings adheres to the principle of "no crime without error." Furthermore, in Article 2 of the Criminal Code (KUHP), "the criminal provisions in Indonesian legislation are applied to every person who commits an offense in Indonesia." The formulation of this Article determines that every person in the jurisdiction of Indonesia can be held responsible for the crime he/she has committed.

For doctors or other health professionals who disclose medical secrets, he/she violates Article 322 of the Criminal Code. It reads, "wherein whoever deliberately opens a secret, according to his position or occupation, both current and former, he is obliged to keep it, shall be sentenced to imprisonment at the longest nine months or a maximum fine of Rp. 9,000. If this crime is committed against a specified person, then that act is only prosecuted upon complaint by that person. "

Determination of defamation must comply with the elements of defamation, referring to Article 310 of the Criminal Code. Also, there are reasonably large criminal threat disparities between the provisions of Article 310 of the Criminal Code and Article 45, paragraph (1) of the ITE Law. For defamation, Article 310 of the Criminal Code provides a maximum threat of 9 months in prison or a fine of three hundred rupiahs. Compare it with the provisions of Article 45 paragraph (1) of the ITE Law, which threatens the perpetrator with a maximum imprisonment of 6 years and / a maximum fine of 1 billion rupiahs. [9]

KIP constitution Number 14 of 2008 Article 54 explains that every person who intentionally and has no right to access or obtain or provide information that is exempted as regulated in personal rights will be sentenced to imprisonment of a maximum of 2 (two) years and a maximum fine of Rp.10,000,000.00 (ten million rupiahs).

PK Law Number 29 the Year 2004 Article 51 letter c stated health workers have to keep information about the patient, even after the patient dies. If a violation occurs, he will be punished with a maximum fine of Fifty million based on article 79 letters b and c jo. Constitutional Court Decision Number 4 / PUU-V / 2007.

The explanation above is a repressive law (sanction) that protects the identity of a positive Covid-19 patient. In carrying out their duties and responsibilities, the Covid-19 Task Force team members and health workers who play a role in response to the pandemic must act professionally and responsibly. In addition to carrying out disease epidemiology (tracing) duties, the team must also be responsible for existing regulations in protecting patient identities. Covid-19 patients who feel aggrieved because their identity is leaked due to someone's actions can report directly to the authorities according to applicable legal procedures. The judicial process related to the leakage of the identity of Covid-19 patients can use the regulations described above. However, in resolving disputes in the health sector, it is preferable to go through a mediation process first.

Legal protection in the United States of patient data confidentiality is in the Health Insurance Portability and Accountability Act (HIPAA) and Protected Health Information (PHI). Suppose there is treatment by health workers or health facilities for monetary gain or the purpose of retaliation for defaming the patient. It can be reported to the Office for Civil Rights (OCR) for further investigation. The amount of the monetary fine depends on the discretion of the decision and the level of losses incurred due to the violation.

All HIPAA criminal offenses are handled by the Department of Justice (DOJ). Apart from civil penalties, other fines can be imposed depending on the severity of the offense committed. If the HIPAA violations are caused by gross negligence and professional malpractice, the case can be brought to court. (Rayhan A. Tariq, 2020)

- a. HIPAA has created patient privacy rights regulations along with penalties for violating existing legal provisions:
- b. Ignorance: \$ 100 to \$ 50,000; \$ 1.5 million rupiah
- c. Reasonable causes: \$ 1,000 to \$ 50,000; \$ 1.5 million rupiah
- d. Deliberate (corrected) waiver: \$ 10,000 to \$ 50,000; \$ 1.5 million rupiah
- e. Deliberate Waiver (uncorrected): \$ 50,000; \$ 1.5 million rupiah

IV. CONCLUSION

From the results of this discussion, it can be concluded that legal protection of the identity of Covid-19 patients is the right to patient privacy to control access to information on their health records which must be protected. Safeguarding medical record data concerns the dignity of the human rights of Covid-19 patients and relates to the secrets of the professional position of a health service provider. The provisions regarding the right to secret health conditions do not apply in terms of statutory orders and the interests of public safety, such as in the Covid-19 pandemic. However, this must meet the principles of urgency and proportionality. During the Covid-19 Pandemic, the right to privacy was regulated by the Central Information Commission through Circular Number 2 of 2020. It concerns Public Information Services in Public Health Emergencies due to Covid-19 regarding the limitations of information data services that can be conveyed to the public, including types of diseases, distribution, the epicenter area, and prevention. Information is conveyed in a strict and limited manner while still protecting the personal data of suspected, probable, positive patients and people who are declared cured.

The government's responsibility for the identity of Covid-19 patients has an important role because the case of uncovering the identity of Covid-19 patients in Indonesia that has occurred so far shows that the protection provided legally by the government for the protection of the personal data of Covid-19 patients is not comprehensive. The Covid-19 Task Force Team and those who bear the obligation to know the identity in carrying out further efforts to control the outbreak must keep this confidential and do not leak to unauthorized people. Sufficient responsibility for perpetrators of violations of restrictions on public information related to the right to identity of Covid-19 patients can be subject to repressive sanctions following Government Regulation Number 10 of 1966 concerning compulsory preservation of medical secrets, Article 1365 of the Civil Code, Article 310 and Article 322 of the Criminal Code, Article 54 of the Law. KIP, Article 51 of the PK Law, Article 45 of the ITE Law.

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