



Patient Access Rights to Medical Records Comparative Study Indonesian-Malaysian Law

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Abstract: Article 297 paragraph (2) of Law Number 17 of 2023 concerning Health explains that every patient has the right to access the information contained in medical record documents. The regulation of patient access rights to medical records in Indonesia has given rise to various interpretations. The public has interpreted the meaning of the patient's right of access to information in medical record documents for themselves. This is where the problem arises, hospitals often face patients for some reason requiring medical records. With access rights, patients can freely use the contents of medical records as they wish. Seeing these conditions, the author wants to compare Malaysia's approach to regulating patient access rights to medical records. Objective: to examine the legal position and gaps using a comparative analysis of patient access to medical records in Indonesia and Malaysia. The research method uses normative juridical data with secondary data and is analyzed using descriptive analysis.

Keywords: Patients, Right to Access Medical Records, Indonesian-Malaysian Law

INTRODUCTION

Background of the problem

In medical services, the role of medical personnel recording is very important and is inherent in service activities both in hospitals and private practices. These notes or recordings are very useful for reminding the doctor about the condition, examination results, and treatment that has been given when the patient comes back for further treatment.

The information contained in medical records is confidential. Maintaining information security, information accuracy and easy access to information is the responsibility of health service facilities, medical personnel, and health workers. Meanwhile, parties who need information must always respect patient privacy. Overall, security, privacy, confidentiality, and safety are tools that protect information in medical records. Medical records are created not only as a form of activity accountability document but also as a form of orderly administration to improve the performance of hospital services.

The problem with medical records is ownership. Article 297 paragraphs (1) and (2) of the Health Law, hereinafter referred to as the Health Law, medical record documents belong to health service facilities. Patients have the right to access the information contained in medical record documents. In the Elucidation of Article 297 paragraph (2) of the Health Law, to access information contained in medical record documents, including in the form of medical records or verbal explanations from Medical Personnel and/or Health workers or Health Service Facilities.

However, in practice, the right of patient access to information contained in medical record documents is often debated. Patients still assume that they have access rights, considering the patient as the owner of the contents of the medical record. Patients often insist on bringing or looking at medical records containing the history of their illness. This raises concerns for healthcare facilities that medical records will be misused by patients. Article 297 paragraph (2) of the Health Law and its explanation contains unclear regulations regarding patient access rights so it can give rise to multiple interpretations of the meaning.

Therefore, the author tries to conduct research using a Malaysian approach. With this comparison, researchers can obtain an overview of both the similarities and differences in the applicable laws that regulate patient access rights to information contained in medical record documents.

METHOD

In preparing this legal writing, the Approach Method is used, namely normative juridical and comparative study.

- a. The normative juridical approach method involves the analysis of library legal research. The data used is secondary data obtained from textbooks, articles, expert opinions, and journals. Normative juridical methods can make a significant contribution to understanding the law and solving legal problems.
- b. Comparative study by conducting legal comparisons between Indonesia and Malaysia. The main reason for the comparison with Malaysia is the strong historical ties, both Indonesia and Malaysia have similar colonial histories. Both countries were Dutch colonial territories, which had a significant influence on culture, language and government systems.

RESULT AND DISCUSSION

Analysis Indonesia Development of Medical Records in Indonesia

Medical record services in Indonesia have existed since the colonial era. However, attention to better improvements can be said to have started since the publication of the Decree of the Minister of Health of the Republic of Indonesia Number.031/Berhup/1972 which stated that all hospitals were required to carry out medical recording and reporting, and hospital statistics. From the Minister of Health's decision above, it can be seen that there is a serious effort to start fixing the medical record problem. These improvements are to expand medical recording and reporting, hospital statistics, and others, which we know as health information.

A series of regulations issued by the government regarding medical records are confirmed in detail in the Regulation of the Minister of Health of the Republic of Indonesia Number 749.a/Menkes/Per/XII/1989 concerning Medical Records. To complement Article 72 of the Minister of Health Regulation which states "technical matters that have not been regulated and instructions for implementing this regulation will be determined by the Director General according to their respective areas of duty". The Director General of Medical Services in 1991 also issued Guidelines for the Implementation of Medical Records in Hospitals (Decree Letter of the Director General of Medical Services Number 78 of 1991).

Minister of Health Regulation Number 24 of 2022 concerning Medical Records has revoked Minister of Health Regulation Number 269/MENKES//PER/III/2008. Currently, the government has issued Law Number 17 of 2023 concerning Health. Article 297 of Law Number 17 of 2023 concerning Health.

Furthermore, in the Elucidation of Article 297 paragraph (2) of Law Number 17 of 2023, it is explained that: "Access to information on medical record documents, including in the form of medical records or verbal explanations by medical personnel and/or health workers or health service facilities."

With the issuance of Law Number 17 of 2023 concerning Health, we can see that patients are no longer the owners of the contents of medical records. However, patients have the right to access the information contained in medical record documents.

Indonesia Patient Access to Medical Records

Medical records are records during the patient's treatment in the hospital. Medical records contain data regarding health history and contain health professional notes in the form of physical findings, results of diagnostic and therapeutic procedures, and patient responses.

The aspect of confidentiality and security of medical record files is something that must be considered and fulfilled by health service facilities. Referring to Article 198 paragraph (1) letter i of the Health Law, one of the hospital's obligations is to maintain medical records, and one of the rights of patients by Article 276 letter i of the Health Law is to obtain privacy and confidentiality of the disease they are suffering from, including their medical data.

The provisions of Article 296 of the Health Law explain that maintaining medical records is an obligation of health service facilities. Article one point one of the Minister of Health Regulation Number 36 of 2012 concerning Medical Secrets, explains the definition of medical secrets, namely data and information about a person's health obtained by health workers while carrying out their work or profession."

The obligation to maintain the confidentiality of medical records is contained in one of the paragraphs of the Indonesian Doctor's Oath based on Government Regulation Number 26 of 1960, which reads: "I will keep everything I know confidential because of my work and because of my knowledge as a doctor." To strengthen the confidentiality of doctors' positions and work, Government Regulation Number 10 of 1966 concerning the obligation to keep medical secrets has also been issued.

If medical records are linked to Article 499 of the Civil Code (Civil Code) they can be classified as objects. In the legal system in Indonesia, the term "material" is known, which includes the following meanings:

1. Goods (bodied objects, tangible objects) are visual objects, both movable and immovable, such as land, buildings, animals, cars and so on.
2. Rights (intangible objects, intangible objects) namely non-visual objects such as receivables, computer programs.

Furthermore, referring to Article 504 of the Civil Code, the form of objects is clarified which includes movable objects and immovable objects. If we refer to the grouping of objects, medical records can be categorized as movable objects. Medical records as movable objects can be owned by the party who has the rights to the material. A position of power is the position of a person who controls an object, either by themselves or through another person. Apart from that, you can also maintain or enjoy it as the person who owns the property. A position of authority over an object is obtained by carrying out the act of attracting the object under one's control, with the intention of retaining it for oneself. Strengthening medical records as objects because they can be owned. Strengthening medical records can be owned and can be seen in the provisions of Article 297 paragraph (1) of the Health Law that medical record documents belong to health service facilities.

Ownership of medical records is a conflict in hospitals. The patient tries to get the contents of the medical record to take home. This can determine the pain felt by the patient with the diagnosis written in the medical record sheet and/or the treatment the patient received while being treated. In this way, it shows the medical records of a very important component, which is often referred to as the heart organ of hospitals, health centers, clinics, doctors' and dentists'

practices as well as other health services. However, patients have the right to access the information contained in medical record documents.

Talking about rights, rights are divided into two parts, namely:

1. Absolute rights (Absolute Rights)

Absolute rights are rights that give someone the authority to carry out an action, which rights can be defended against anyone. Everyone must respect these rights.

2. Relative rights (relative rights)

Relative rights are rights that give authority to a certain person or certain people to demand that someone or several other people give something, do something or not do something.

The right of patient access to medical record document information is a relative right of the patient. The need to request access to each patient's medical information will vary from patient to patient. So it is not absolute authority, meaning that the patient can use or not use this right.

However, the author views that the approach to patient access rights to information contained in medical records in Indonesia can lead to different interpretations. This problem will be faced by doctors or hospitals, if patients use this right arbitrarily. If every patient always wants to see medical records because it is their right, where is the privacy of medical personnel and/or health workers and hospitals? There should be regulations regarding restrictions on the use of access rights to information contained in medical records so that the parties know their rights and obligations. Mochtar Kusumaatmadja in his writing entitled "The Function and Development of Law in National Development" said that the main and first aim of law is order. To achieve order in society, efforts are made to ensure certainty in interactions between people in society. The clarity of each of these laws is very important. Regulations must be clear, logical, unambiguous or not gray so that legal objectives can be realized through legal certainty.

Analysis In Malaysia

Medical Records Management in Malaysia

Malaysia has a dual system of health services, namely government and private health services. In the government sector, health services are regulated by the Ministry of Health which includes a series of activities and responsibilities ranging from treatment, promotion, rehabilitation to medical research. National health policy and important decisions regarding resource allocation fall under the jurisdiction of the Ministry of Health.

This raised social concerns about private health services, so the government enacted PHFSA to regulate private hospitals. The law requires private owners to apply for permission from the Ministry of Health and meet basic standards. Authorized officials at the Ministry of Health have the authority to examine and investigate if there are complaints. As a result, the Malaysian Government is heavily involved in the rapidly expanding private healthcare system.

In Malaysia there are several regulatory bodies apart from the Ministry of Health, namely the Malaysian Medical Council (MMC) and the Malaysian Medical Association (MMA). The Ministry of Health has limited authority and does not apply to private clinics and hospitals. The main function of the MMC is to grant doctors practice permits in Malaysia and ensure standards of practice (MMC, 1987). (MAH et al. 2021).

The Committee of Inquiry examines issues of ethics and discipline of physicians in the public service where the Board of Inquiry is usually conducted at the state level. The MMC may terminate, suspend or reassign a medical practitioner's license depending on the disciplinary outcome.

The medical record contains sufficient information to identify the patient. Medical records can support the diagnosis based on examination history and physical examination,

corroborating that given by management professionals, recording medical history and results. Next, ensure the continuity of care provided by practitioners and other health workers to patients". (Mohd Mokhtar 2020).

According to the Malaysian Medical Council Guidelines, "Patient medical records are the property of the medical practitioner and the health facilities and services retain all rights regarding ownership. Medical records based on MMC are documented information regarding the health of identifiable individuals recorded by doctors or health workers either personally or by individual instruction.

Therefore, any confidential notes will remain confidential, unless they must be disclosed in court as part of evidence. However, disclosure is limited to the extent required by the court. Thus, the plaintiff never saw the complete record or any part of the record that was withheld. Based on the provisions above, it can be concluded that in section 8 there are circumstances where disclosure of medical records can be made. However, based on Article 39 of the Law, there are limited disclosure conditions.

Malaysian Patient Access to Medical Records The Malaysian Medical Council (MMC)

The Personal Data Protection Act (PPDA) 2010 (Act 709) was passed to protect citizens' personal information, by providing general data and privacy protection. However, there are several weaknesses in this law, including not specifically mentioning 'data' in the form of medical records.

In this Australian case, the plaintiff sought an injunction and declaration that the committee's decision was invalid. Discovery is a procedure directed at obtaining a proper examination and determination of the matter, not to assist either party in the fishing expedition. Only documents relating to a matter in question may be discovered, but it is sufficient if they can, or will lead to investigative exercises that will advance one party's case or harm the adversary's case.

Discovery is a method of gathering evidence in civil litigation. The court must oversee the discovery process, the primary purpose of which is to determine the substance of the case. The High Court has the authority to determine such discovery orders. There are several stages which include pre-trial procedures, in requesting the proceedings of an action in the High Court. In this case, it occurs after the submission of the answer, defense of the claim, and defense is carried out after the issuance of the order.

Among other things, documents currently or previously in their possession, custody, or control upon general discovery request. For certain discoveries, a court order must be requested regarding the discovery of certain documents. Such orders are not effective unless a general discovery order has been obtained in the opinion of the court that such an order is necessary or desirable. This suggests that the discovery of documents will only be permitted upon request by one of the parties and a discovery order by the court. This procedure aims to provide all relevant information to the parties. Also, as documentary evidence it is expected that the other party will comply with the court order and show the documents. However, if it is found that the document is a medical record, it cannot be provided without the permission of the hospital director who acts as the record keeper. Steps to provide access to health care records after receiving a written request on behalf of the patient may occur before or during the discovery process.

Subpoenas are often used by parties to seek evidence. A court summons is issued by a judge to appear when a legal case is being heard. There are three types of subpoenas:

- (1) Subpoena to testify;
- (2) Subpoena to produce documents; And
- (3) Subpoena to provide testimony and show documents.

Given that a subpoena is used to initiate legal proceedings and enable discovery, the rule allows anyone who receives a subpoena to produce documents to comply. Therefore, when giving testimony, doctors who have been given a subpoena to produce documents are expected

to bring certain documents, usually original medical records. The subpoena may also order the defendant to immediately submit his or her papers to the clerk of court in certain civil cases before the Superior Court. If these documents are used as evidence, the hospital must first receive a warrant. Photocopies of records and original documents are retained and returned after copies are made to prevent data loss or damage. Hospitals may not violate subpoena orders. When hospitals do not comply this will be considered contempt of court. If there is a reason for not publishing records and refusing to provide evidence, the 'reasonable excuse' must be clarified before the Court during the subpoena hearing.

Comparative Indonesian-Malaysian Law

Indonesia's approach regarding the regulation of ownership of medical record documents states that medical record documents belong to health service facilities. Meanwhile, patients have the right to access the information contained in medical records. Health service facilities must maintain the security, integrity, confidentiality, and availability of data contained in medical record documents.

However, the regulation of patient access rights to medical record document information in Indonesia in the explanation of Article 297 paragraph (2) of the Health Law is not clear enough regarding the provisions for granting patient access rights. This condition often opens up conflicts between patients and health service facilities. This is due to the lack of clarity in these arrangements, patients often assume for themselves that the contents of the medical record belong to the patient. This can open up opportunities for abuse of access rights by patients.

Meanwhile, under the law in Malaysia, according to the FHSA, patients do not have the authority to access and store medical records. The parties who have the authority to store and access medical records are medical practitioners (who provide medical records) and hospitals clinics, or other health service institutions.

CONCLUSION

Regulations in Indonesia regarding providing patient access to information contained in medical records broader. Automatic granting of access, if requested by the patient to health service facilities. The government needs to determine the ideal format for regulating patient access rights to information contained in medical record documents as regulated Article 297 paragraph (2) of the Health Law. The establishment of regulations limiting the use of access to medical records by patients can provide legal certainty for the parties. This legal certainty is needed in implementing the rights and obligations that arise in the therapeutic legal relationship between patients, doctors and hospitals.

The underlying arrangements for patient access to medical records in Malaysia have a two-tier system that is regulated separately by different laws and policies. The main factor hindering wider patient access is guidelines.

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