

Legal Protection for Patient Privacy against the Misuse of Social Media by the Healthcare Workers

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Abstrak

Media sosial yang pada awalnya diciptakan sebagai sarana komunikasi dan interaksi, dalam perkembangannya telah dimanfaatkan pula sebagai media transaksi maupun sarana berekspresi. Pengguna media sosial berasal dari berbagai kalangan, termasuk mereka yang bekerja di bidang pelayanan kesehatan. Penggunaan media sosial sebagai sarana berekspresi oleh tenaga kesehatan berpotensi menimbulkan kerugian pada pihak pasien, khususnya terkait pelanggaran privasi. Beberapa tenaga kesehatan mendapatkan kecaman publik karena unggahannya di media sosial yang dianggap melanggar privasi pasien. Artikel ini membahas pentingnya perlindungan hukum privasi pasien terhadap penyalahgunaan media sosial oleh tenaga kesehatan di Indonesia. Artikel ini menggunakan metode penelitian hukum normatif dengan pendekatan undang-undang dan perbandingan. Penulis telah mengkaji peraturan perundang-undangan di bidang kesehatan dan peraturan lain yang relevan. Hasil penelitian menunjukkan bahwa peraturan perundang-undangan yang ada di Indonesia saat ini belum memberikan perlindungan hukum yang memadai kepada pasien dari potensi penyalahgunaan media sosial oleh tenaga kesehatan yang bersifat melanggar privasi. Penulis merekomendasikan perlunya dibuat ketentuan khusus untuk melindungi privasi pasien dari penyalahgunaan media sosial oleh tenaga kesehatan, baik dengan cara menyusun peraturan baru atau mengamendemen peraturan yang telah ada, baik peraturan hukum maupun kode etik.

Kata kunci: kode etik; tenaga kesehatan; privasi pasien; media sosial; Indonesia

Abstract

Social media initially created as a means of communication and interaction, has also evolved into a medium for transactions and expression. Social media users come from various backgrounds, including those in the health care sector. The use of social media as a means of expression by healthcare workers has the potential to harm patients, particularly concerning privacy violations. Several health care workers have faced public criticism due to their social media posts, which are deemed to infringe upon patient privacy. This paper discusses the importance of legally protecting patient privacy against the misuse of social media by healthcare workers in Indonesia. The research employs normative legal research methods with a statutory and comparative approach. The author has reviewed statutory regulations in the healthcare sector and other relevant rules. The research findings indicate that current laws and regulations in Indonesia do not offer sufficient legal protection to patients against the potential misuse of social media by healthcare workers that violates their privacy. The author recommends the implementation of special provisions to safeguard patient privacy against the misuse of social media by healthcare workers. This can be achieved by creating new or amendments to existing regulations, including legal regulations and codes of ethics.

Keywords: code of ethics; health care workers; patient privacy; social media; Indonesia

I. Introduction

Social media is defined as a “platform that allows people and groups to connect, interact, communicate, and in some circumstances cooperate or perform,” generally in the context of websites or digital phones.¹ It has broken down barriers to communications and established decentralized communication channels, making it possible for everyone to have an active role. Nowadays, the use of social media has evolved into an essential component of almost every facet of contemporary life and involves various parties, including those working in the medical field.

A growing number of healthcare workers, including doctors and other medical community members, are interested in using social media platforms such as Twitter, Facebook, and Instagram.² They increasingly use social media for personal and reference purposes, particularly among younger clinicians.³ The professional use of social media is often put towards developing professional networks, promoting organizational and individual health, and furthering professional education. It can link doctors with their colleagues, doctors with their patients, and between patients themselves, not only on a national scale but also on a global scale.⁴ Moreover, doctors and nurses may use social media to make it simpler for patients to get health care information and to interact with society in conversations about health policy.⁵

The use of social media makes it easier for physicians to acquire the latest medical news and scientific discoveries, both of which may broaden their scope of practice and contribute to their professional development.

Unfortunately, the exponential development in the use of social media platforms by our society today poses persistent privacy and liability problems for healthcare workers and institutions alike. These issues affect both private information and legal responsibility. Despite the many positive effects of using social media on health care and promotion, improper use of these platforms can have adverse effects.

Several fundamental rights, including freedom of expression and privacy, the boundaries of which are increasingly regularly questioned, are now at stake.⁶ There have been relatively few problems that have surfaced due to healthcare workers’ use of social media. Breaches of patient privacy may cause these problems: unclear boundary lines between doctors and patients, leakage of the practice’s trust, and the accuracy of information that may not be guaranteed, which leads to misinterpretation and misunderstanding among the community.

As a result, healthcare workers must consistently understand their legal and ethical responsibilities to balance a patient’s right to privacy and the therapeutic advantage of sharing their data. Failure to address these obligations may result in medical or ‘legal misadventure.’⁷ In other words, should anyone fail to fulfill these commitments, one may find themselves in a precarious medico-legal case.

Patients’ privacy and confidentiality are frequently breached because of physical difficulties in healthcare facilities or healthcare workers’ disregard for privacy and confidentiality. Further, numerous examples of patient privacy

¹ Darshana Karna and Ilsang Ko, “The Role of We-Intention and Self-Motivation in Social Collaboration: Knowledge Sharing in the Digital World,” *Sustainability (Switzerland)* 14, No. 4 (2022): 2.

² Genevieve M. Crane and Jerad M. Gardner, “Pathology Image-Sharing on Social Media: Recommendations for Protecting Privacy While Motivating Education,” *AMA Journal of Ethics* 18, No. 8 (2016): 817.

³ Marcio Von Muhlen and Lucila Ohno-Machado, “Reviewing Social Media Use by Clinicians,” *Journal of the American Medical Informatics Association* 19, No. 5 (2012): 779.

⁴ Jennifer Tingley, Richard C. Allen, and Anne Barmettler, “#OculoplasticsandSocialMedia: A Review of Social Media in Oculoplastics and Relevant Subspecialties,” *Orbit (London)* 41, No. 2 (2022): 142.

⁵ Muna Ahmead, Nida Hamamadeh, and Issa abu Iram, “The Effects of Internet and Social Media Use on the Work Performance of Physicians and Nurses at Workplaces in

Palestine,” *BMC Health Services Research* 22, No. 1 (2022): 1.

⁶ Monique Pyrrho, Leonardo Cambraia, and Viviane Ferreira de Vasconcelos, “Privacy and Health Practices in the Digital Age,” *American Journal of Bioethics* 22, No. 7 (2022): 55.

⁷ Michael B Weinstock and Heath Jolliff, “High-Risk Medicolegal Conditions in Pediatric Emergency Medicine,” *Emergency Medicine Clinics* 39, No. 3 (2021): 479–91.

violations also had been occurred in Indonesia. In the last two years, there have been three major examples of extremely viral cases of harassing content involving healthcare workers, which violates the obligation to safeguard patient privacy. These cases are certainly against the Law Number 36 of 2014 on Health Care Workers, which provides that healthcare workers are required to protect the confidentiality of the patients and violates the code of ethics.

To begin, in April 2022, a young doctor named Kevin Samuel Marpaung published a video showing an unethical gesture or behavior when handling a maternal patient about to give birth. After that, to prepare for an inspection of the patient's genital organs, Kevin held up two fingers (the index and the middle) while making alluring eye contact with the patient and biting his bottom lip.⁸ Kevin also bounces while rolling his eyes upwards, making a passionate look, and responding to questions. The expression on Kevin's face as a doctor, who should be regarded as a professional, is seen as improperly disturbing to women by the public.

The following case occurred in May 2022 when a nursing student in Yogyakarta made an unethical post that prompted outrage from the general public. In her post, she talks about her experience placing a catheter on a young patient of the opposite sex. She explicitly described the patient as gorgeous and the same age as herself and added an emoji of a burning candle. The nurse then slammed her phone on the table in what seemed to be an attempt to communicate her delight at the development.⁹ Although she does not provide specific patient information, the video has garnered much attention because it violates a professional guideline of ethics by expressing sexual harassment.

Ultimately, the most significant case in South Sumatra involved a healthcare worker

at the Martapura Regional General Hospital (RSUD), East Ogan Komering Ulu Regency. He broadcasted a life-streaming video while performing a surgery in TikTok. The life broadcast, which showed the room and patient's condition, was seen by up to 4,600 people at one point.¹⁰ This action subsequently went viral on social media and prompted public outrage.

Consequently, disciplinary or ethical accountability has been imposed upon the healthcare workers. All of them were found guilty of violating the code of ethics. They were sanctioned with a temporary suspension of up to 6 months along with postponement of license to practice, forced to withdraw, warned of a graduation suspension, and enforced a temporary suspension.¹¹

Healthcare workers seem to ignore ethical values when dealing with social media. Desire to go viral has frequently prompted unethical conduct on social media that may harm patient privacy. Therefore, the legal protection of patient privacy should become an ultimate concern for related stakeholders in this digital era.

It should be recognized that hospitalization is a stressful experience for patients.¹² Privacy infringement is one of the unfavorable scenarios that might occur to patients. It was discovered that various dimensions of privacy (psychological, social, and physical) are very important to patients. The widespread violation of patient privacy, especially in healthcare facilities, may discourage patients from seeking treatment, fearing that their health record may be divulged to others with whom they do not want to share it. People who have sexually transmitted diseases, for instance, are prevented from being tested owing to worries about their

⁸ Iis Arfiyani, "Ini Dia 3 Tenaga Kesehatan Yang Pernah Melanggar Kode Etik Lewat Aplikasi TikTok," Portal Banyuwangi, June 4, 2022, <https://portalbanyuwangi.laros.id/news/pr-2413524755/ini-dia-3-tenaga-kesehatan-yang-pernah-melanggar-kode-etik-lewat-aplikasi-tiktok?page=3>.

⁹ *Ibid.*

¹⁰ Andika Ramadhan, "Para Tenaga Kesehatan Yang Viral Karena Konten Pelecehan Hingga Langgar Etik," Kumparan News, November 5, 2022, <https://kumparan.com/kumparannews/para-tenaga-kesehatan-yang-viral-karena-konten-pelecehan-hingga-langgar-etik-1zBnav91bRZ>.

¹¹ *Ibid.*

¹² Neeraj Chhari and Satish C Mehta, "Stress among Patients during Hospitalization: A Study from Central India," *National Journal of Community Medicine* 7, No. 04 (2016): 274.

privacy. Because of this, it can result in not just money expenditures but also moral costs, such as causing damage to the good reputation of a patient or a professional institution.

Throughout their professional careers, healthcare workers deal with various patients in various clinical settings and with various nurses.¹³ While using social media, healthcare workers should be attentive to fundamental ethical codes to preserve patient privacy rights and the possible impact of communication on patients, employers, professionals, and themselves. Along with the advancement of information technology, individuals' health records become increasingly sensitive, necessitating the implementation of privacy safeguards. As a result, it is critical to expand healthcare workers' knowledge of the patient's rights issue and develop privacy consciousness.

Many studies on patient privacy protection in Indonesia have been conducted thus far. All these studies, however, were conducted by assessing the leakage of patient data from written texts and hospital records to other media outlets, particularly during the recent Covid-19 pandemic. For instance, the article written by Indah Maria Maddalena Simamora entitled "Perlindungan Hukum atas Hak Privasi dan Kerahasiaan Identitas Penyakit bagi Pasien Covid-19," the article written by Pukovisa Prawiroharjo along with Nurfanida Librianty entitled "Tinjauan Etika Penggunaan Media Sosial oleh Dokter," as well as the article written by Erna Tri Rusmala Ratnawati entitled "Perlindungan Hukum Pasien atas Hak Rahasia Kedokteran dalam Pelayanan Medis di Era Pandemi Covid-19."

Further, by referring to other articles written by foreign authors on the importance of patient privacy in the current developments in media and technology, as well as the fact that the majority of workers are progressively adapting to the times, the authors decided to find out how the attitudes and behavior of Indonesian

health care workers on social media affect patient privacy protection.

Because such a study has never been conducted before, this study will examine the legal protection of current regulations regarding enforcing patient privacy rights protection by healthcare workers using social media. Understanding the significance of Patient Privacy Rights and Confidentiality, in general, will begin the discussion. Consequently, are there any patient privacy regulations in Indonesia? What are the regulations? To understand how Indonesia regulates this issue, the authors discuss numerous rules and their interpretations. How does the legal protection of Indonesian regulations regarding the enforcement of patient privacy compare to the attitudes and behaviors of healthcare workers who misuse social media? Are there any specific regulations governing this?

This study is novel in examining how to protect patient privacy regarding regulations governing social media ethics, particularly for healthcare workers such as physicians and nurses.

II. Research Method

The type of research is that of normative legal research. This normative legal research relies on secondary data and a statutory comparative approach. The secondary data from primary and secondary legal sources were collected from library-based studies. Descriptive and qualitative analyses have been employed to address the urgency of the legal protection of patient privacy regarding healthcare workers' misuse of social media in Indonesia.

III. Patient Privacy Rights and the Issue of Confidentiality

People have privacy when protecting their private life or hiding confidential information.¹⁴ The English word "privacy" originates from

¹³ Benjamin Gray and Pam Smith, "Emotional Labour and the Clinical Settings of Nursing Care: The Perspectives of Nurses in East London," *Nurse Education in Practice* 9, No. 4 (2009): 254.

¹⁴ Indah Maria Maddalena Simamora, "Perlindungan Hukum Atas Hak Privasi Dan Kerahasiaan Identitas Penyakit Bagi Pasien Covid-19," *SIBATIK JOURNAL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan* 1, No. 7 (2022): 1090.

the Latin phrases “privatus” and “privo,” both of which imply “to deprive of.”¹⁵ In the past, it merely meant a person’s secrets. However, privacy encircled the personal space in the early modern period, with the notion of “my house is my fortress.”¹⁶ Consequently, it may also refer to the sensation linked with other individuals’ identities, personalities, and freedoms, in addition to their personal space.¹⁷ Accordingly, privacy is a right to freedom, including the right to remain alone. It allows individuals to govern their data, including limiting exposure to that information. Privacy, crucial in a person’s existence, is a fundamental human need and right.

On the other hand, someone is considered a patient if they consult their health problems with a healthcare worker, such as a doctor or dentist, to get the proper health services, either directly or indirectly.¹⁸ Privacy is an essential right in a doctor-patient relationship. A significant component of patient privacy in the context of health care is assuring and ensuring the confidentiality of potentially sensitive personal, physical, and psychological information and patient data.¹⁹ In this context, the concept of patient privacy encompasses the physical, psychological, social, and cognitive realms. One of these forms of privacy is cognitive privacy, and it relates to a patient’s capacity to regulate the status of another person’s access to their personally identifying facts.

According to the US National Committee on Vital and Health Statistics, health information privacy is a person’s choice to regulate the collection, utilization, or revelation of their health records.²⁰ Likewise, confidentiality, which is deeply linked, refers to individuals who obtain information’s duty to protect the private rights of persons to whom the data pertains.²¹ In other words, the patient has the right to determine how, when, and to what degree they expose details about themselves to others.

Additionally, patient privacy protects the patient’s medical information against unauthorized access. While diagnosing and treating a patient, healthcare workers may have access to a significant quantity of data about the patient, some of which may not have been disclosed to the patient. At this point, it is critical to keep this information private and discreet. In other words, patient privacy refers to the private portions and confidential info that individuals must disclose to healthcare workers to receive diagnosis, treatment, and care or for another reason that patients do not want others to know about.

This information may include medical histories, test results, and treatment plans. In any circumstance, those who work in health care have a responsibility to protect the privacy and confidentiality of their patients.²² Because of the close interaction between those in need of health services and those who provide them, the attitude of those who provide health services is especially important in determining the limits of what is considered private and in guaranteeing the right to privacy. In addition, as

¹⁵ Nneamaka Mariah Ilodigwe and Chidinma Stella Nwakoby, “Confidentiality in Health Care- Reflecting on the Rights of Covid 19 Patients,” *De JURISCOPE LAW JOURNAL* 1, No. 2 (2021).

¹⁶ Bert-Jaap Koops, “Privacy Spaces,” *W. Va. L. Rev.* 121 (2018): 611.

¹⁷ Gulhan Erkus Kucukkelepce, Didem Simsek Kucukkelepce, and Sinan Aslan, “Investigation of the Relationship between Nursing Students’ Privacy Consciousness and Attitudes Towards Patient Privacy,” *International Journal of Caring Sciences* 14, No. 3 (2021): 1713.

¹⁸ Law Number 29 of 2004 on Medical Practice of the Republic of Indonesia.

¹⁹ Ana Koren and Ramjee Prasad, “IoT Health Data in Electronic Health Records (EHR): Security and Privacy Issues in Era of 6G,” *Journal of ICT Standardization* 10, No. 1 (2022): 67.

²⁰ Kelly Caine and Rima Hanania, “Patients Want Granular Privacy Control over Health Information in Electronic Medical Records,” *Journal of the American Medical Informatics Association* 20, No. 1 (2013): 8.

²¹ Borja Martínez-Pérez, Isabel de la Torre-Díez, and Miguel López-Coronado, “Privacy and Security in Mobile Health Apps: A Review and Recommendations,” *Journal of Medical Systems* 39, No. 1 (2015): 5.

²² Lucia Hartigan et al., “Patients’ Perception of Privacy and Confidentiality in the Emergency Department of A Busy Obstetric Unit,” *BMC Health Services Research* 18, No. 1 (2018): 6.

healthcare personnel are often in contact with patients, they are responsible for protecting and respecting the confidentiality of their patient's medical information.

Protecting an individual's right to privacy and confidentiality, both a fundamental requirement and a human right is of the utmost importance in healthcare organizations. This is necessary to protect patients from being embarrassed, insulted, disappointed, judged, stigmatized, and discriminated against while also allowing patients to communicate freely and truthfully with healthcare workers. Patients worried about their privacy may be less willing to offer information, or they may not divulge their facts completely and honestly, which may lead to the prescription being withheld or not being supplied.²³ As a result, the confidentiality of medical records comprising data about patient's personal lives and the most confidential material they want to keep must be guaranteed.

Further, while the medical field has privacy regulations, the concept of privacy among healthcare workers is still unclear.²⁴ The perception of privacy among healthcare workers is important in determining service quality. Although no globally accepted health data privacy and confidentiality rules exist, some principles may be summarized. These principles include (1) consent for data gathering and an individual's right to review and obtain their information; (2) particular care for what information will be shared, with whom, and for how long; and (3) clarity about how privacy and confidentiality breaches will be handled.²⁵

In addition, even though it is a fundamental human right, the right to privacy is not absolute; rather, it is limited by the rights of others and

civic duties.²⁶ For example, no one can opt not to share their financial data from government revenue services because of privacy concerns. Still, the government agency cannot divulge such personal information to outsiders without the person's consent or a court order.

From a historical standpoint, all relevant instruments included an overview of legal instruments related to patient rights, including the American Hospital Association's Patient's Bill of Rights 1972, the World Medical Association's Declaration of Lisbon on the Rights of the Patient 1981, the Amsterdam Declaration on the Promotion of Patient's Rights in Europe 1994, the Bali Declaration 1995, and the European Charter of Patient's Rights 2002.²⁷ Besides that, other international organizations, such as the Canadian Nurses Association, American Nurses Association, and Turkish Nurses Association, strongly emphasize patient confidentiality and privacy.²⁸ In their most recent rules on ethical codes and principles, one of the essential standards was the preservation of the patient's privacy and confidentiality rights, and it was said that nurses were the most accountable.

IV. Regulatory Framework on Medical Confidentiality

As a human right, the right to health must be achieved by offering varied health efforts to the entire community through the execution of excellent health development. Patient privacy is a fundamental right codified in numerous general and specific legislations to provide legal protection for healthcare services.

In general, every Indonesian has the right to adequate health care. This is governed by Article 28 H paragraph (1) of the 1945 Constitution, which provides that everyone has the right to

²³ Nelson Shen et al., "Understanding the Patient Privacy Perspective on Health Information Exchange: A Systematic Review," *International Journal of Medical Informatics* 125 (2019): 3.

²⁴ Alessandro Acquisti, Curtis Taylor, and Liad Wagman, "The Economics of Privacy," *Journal of Economic Literature* 54, No. 2 (2016): 444.

²⁵ Peter Choi and Rachael Walker, "Remote Patient Management: Balancing Patient Privacy, Data Security, and Clinical Needs," *Contributions to Nephrology* 197 (2019): 40.

²⁶ Hans Kolstad, "Human Rights and Democracy—Obligations and Delusions," *Philosophies* 7, No. 1 (2022): 3.

²⁷ Nilüfer Demirsoy and Nurdan Kirimlioglu, "Protection of Privacy and Confidentiality as A Patient Right: Physicians' and Nurses' Viewpoints," *Biomedical Research (India)* 27, No. 4 (2016): 1442.

²⁸ Havva Öztürk et al., "Assessment of Nurses' Respect for Patient Privacy by Patients and Nurses: A Comparative Study," *Journal of Clinical Nursing* 30, No. 7–8 (2021): 1087.

health care. The triad of medical confidentiality (also called medical secrecy) in a medical service connection, namely informed consent, medical records, and medical confidentiality, is recognized as the implementation of individual basic rights in health services.²⁹

Article 1 of the Government Regulation Number 10 of 1966 on the Obligation to Keep Medical Secrecy illustrates that what is defined by medical confidentiality encompasses everything those persons in Article 3 know when or while working in the medical sector. According to this law, the need to safeguard medical confidentiality applies to doctors and healthcare workers, medical students, and students in charge of tests, treatment, and/or care.³⁰ Moreover, Article 4 paragraph (2) of the Health Minister Regulation Number 36 of 2012 has extended the obligation to keep medical confidential information to officials of health service facilities, personnel who are involved in health service financing, other staff with access to patient's medical data and information in health service facilities, legal entities/corporations, and/or health care facilities.³¹

This medical confidentiality is governed further in Article 3 paragraph (1) of Health Minister Regulation Number 36 of 2012, which explains that medical confidentiality includes data and information relating to patient identity; the patient's health, including the results of anamnesis, physical examination, supporting examinations, diagnosis, treatment, and/or medical action; and other matters about the patient. Thus, the protection of medical secrets is the responsibility of any parties involved in providing medical services or using patient data and information. Even after the patient has passed away, there will always be a need to keep medical information confidential. This obligation will never go away.

²⁹ Erna Tri Rusmala Ratnawati, "Perlindungan Hukum Pasien Atas Hak Rahasia Kedokteran Dalam Pelayanan Medis Di Era Pandemi Covid 19", *Jurnal Meta-Yuridis* 5, No. 2 (2022): 59.

³⁰ Government Regulation Number 10 of 1966 on Obligation to Keep Medical Secrecy.

³¹ Health Minister Regulation Number 36 of 2012 on Medical Confidentiality.

As a direct consequence, each patient has the right to privacy and confidentiality in relation to their health status, including the confidentiality of their medical data. This is reflected in the following statutory provisions:

1. Article 5, paragraphs (1) and (2) of the Law No. 36 of 2009 on Health which governs that everyone has the same right to acquire access to resources in the health sector, as well as the right to receive safe, quality, and affordable health services.³²
2. Article 58, letter c of Law Number 36 of 2014 on Healthcare Workers, underlines that healthcare workers are required to protect the confidentiality of the health service recipients.³³
3. Article 32 letter I of Law Number 44 of 2009 on Hospital provides that every patient is entitled to privacy and secrecy of his sickness, including his medical data.³⁴

Further, privacy and confidentiality are highly emphasized in codes of ethics approved by various medical communities and associations, particularly in Article 16 of the Code of Medical Ethics, which states that every doctor must keep anything he fully understands about a patient secret, even after the patient dies.³⁵ Thus, relying on the above explanation, it is evident that exposing medical secrecy is both unethical and illegal. As a result, healthcare workers, particularly doctors and nurses, must respect and be bound by ethical standards, legal norms, and professional discipline in carrying out their tasks.

However, it is feasible to reveal confidential medical information for certain causes. This is governed by Article 48 paragraph (1) of the Law on Medical Practice of 2004, which provides that "any doctor or dentist in carrying out medical practice is obliged to protect medical secrecy." Article 48, paragraph (2) also states that "medical secrecy may be released only for

³² Law Number 36 of 2009 on Health Care Workers.

³³ Law Number 36 of 2014 on Health Care Workers.

³⁴ Law Number 44 of 2009 on Hospital

³⁵ "The Indonesian Code of Medical Ethics." Indonesian Doctors Association, accessed 9 June 2023, <https://luk.staff.ugm.ac.id/atur/sehat/Kode-Etik-Kedokteran.pdf>.

the benefit of the patient's health, in the scope of law enforcement, at the patient's request, or by legislative regulations."

Moreover, the Health Law of 2009 and Health Minister Regulation Number 269 of 2008 also govern provisions for disclosing medical secrecy. Article 59 of the Health Law of 2009 provides that everyone has the right to maintain private his health condition that has been presented to the third party, and all matters concerning the rights to personally identifiable medical conditions do not apply if law orders, court rulings, appropriate permits, public interests, or the individual's desires.³⁶

Meanwhile, according to Article 10 of another Health Minister Regulation, while information about a patient's identity, diagnosis, medical history, examination history, and clinical history must be kept confidential by healthcare workers, management officers, and heads of health facilities, the above information can be publicly released, among other things, to comply with requests from law enforcement officials based on court orders and to comply with requests from institutions/agencies.³⁷

Patients have the right to get the finest health care available from health providers who are also required to ensure patient confidential information. In particular, Article 38 paragraphs (1) and (2) of Law Number 44 of 2009 stresses that, regarding patient rights and hospital responsibilities, each hospital must preserve medical secrecy, which can only be disclosed for the benefit of the patient's health, to fulfill requests from law enforcement officials, or based on statutory provisions. This Article essentially comprises two bases for the validity of personal data processing: (a) permission and (b) positive legal standards. These two concepts serve as the foundation for legitimate data processing.³⁸

It is important to remember that maintaining medical confidentiality places a major obligation on healthcare workers. This is because of the many laws and regulations that were presented earlier. When providing medical treatment, one of the most important things for staff members to remember is to treat patients with dignity and courtesy while protecting their privacy and rights. The notion that protecting their patients, which includes respecting their right to privacy, is the most important responsibility doctors have is widely held.³⁹ Clinicians are obliged to reassure patients at every point of contact that the confidentiality of their information will be maintained and that they are aware that revealing patients' confidences might be detrimental to the patient's health. Because of the high importance that medical and healthcare workers have on protecting their patients' privacy, doctors are expected to have a solid understanding of the accompanying problems, regulations, and confidentiality requirements.

The patient's privacy must be protected at all costs for a variety of reasons, including but not limited to preserving the mutual trust and confidence that exists between the patient and the treating physician, encouraging patients to seek treatment from a physician or health center, and releasing vital information that is helpful to the therapeutic process.⁴⁰ Benefits of maintaining patient confidentiality include increased patient compliance, protection of patient rights, and elimination of social, political, and economic discrimination based on a patient's health situation. Furthermore, protecting the patient's secrets enhances the doctor and patient's trust in one another and the efficiency and effectiveness of medical interventions and treatment processes. As a

³⁶ Law Number 36 of 2009 on Health.

³⁷ Health Minister Regulation Number 269 of 2008 on Medical Records of the Republic of Indonesia.

³⁸ Nilüfer Demirsoy, Hülya Öztürk, and Nurdan Ergün Acar, "A Cross-Sectional Study: Patient Privacy According to Doctors and Nurses," *Nursing Science Quarterly* 34, No. 2 (2021): 114–22.

³⁹ Cody A Koch and Wayne F Larrabee, "Patient Privacy, Photographs, and Publication," *JAMA Facial Plastic Surgery* 15, No. 5 (2013): 337.

⁴⁰ Leila Hosseini-Ghavam-Abad et al., "Patient Privacy: Awareness and Attitudes of Iran University of Medical Sciences Medical Students," *Medical Journal of the Islamic Republic of Iran* 33, No. 1 (2019): 66.

result, encouraging patients to divulge their knowledge accurately is vital.⁴¹

V. Legal Protection for Patient Privacy against the Misuse of Social Media by Health Care Workers

The rights of patients are now receiving a lot of attention. Patients' rights have been included in the legal framework in many countries. While some European countries have reviewed and revised the patient rights law that is already in place, others in the region have introduced whole new legislation.

In protecting patient privacy rights regarding the use of social media by healthcare workers, Indonesia does not presently have any clear law in place that would assure the thorough application of these principles at the statutory level. As the authors have previously described, several regulations in Indonesia govern the obligations of healthcare workers to protect all sorts of patient personal data. These responsibilities include ensuring the confidentiality of patient information.

Nonetheless, it must be noted that the rules governing the protection of patient privacy in Indonesia are still lacking and vague. This is because the rules comprise several distinct laws and regulations, and they only describe the concept of safeguarding patient privacy in a general sense. In addition, the following specific statutes exist:

1. Law Number 36 of 2009 on Health.
2. Law Number 36 of 2014 on Healthcare Workers.
3. Law Number 44 of 2009 on Hospital.
4. Law Number 29 of 2004 on Medical Practice.
5. Government Regulation Number 10 of 1966 on Obligation to Keep Medical Secrecy.
6. Health Minister Regulation Number 269 of 2008 on Medical Records.
7. Health Minister Regulation Number 36 of 2012 on Medical Confidentiality.

⁴¹ Amy L. Hader and Evan D. Brown, "Patient Privacy and Social Media," *AANA Journal* 78, No. 4 (2010): 274.

Apart from the statutes mentioned above and regulations, some other statutory provisions could be referred to as the legal basis for protecting patient's privacy towards the unacceptable conduct of healthcare workers in social media. These include Article 1 number 22 of the Personal Administration Law,⁴² which defines personal data as individual data that is stored, maintained, and protected for integrity and confidentiality. Based on this article, efforts are made to safeguard personal information. As stated in Article 79 Paragraph (1), Article 85 Paragraph (1), and Article 85 Paragraph (3), the Law also emphasizes that the government must ensure the protection of personal data.

Hence, regarding the protection of personal data from unauthorized use, Article 26 of the ITE Law stipulates that the data owner's consent is required to use any personal data in an electronic medium.⁴³ Everyone who violates this provision is liable for the resulting losses. This context explains that a person's data falls under their rights. In simple terms, any data and information in electronic media related to someone's private information must be done with the consent of the individual concerned.

Additionally, a patient who enjoys the health care facilities can be regarded as consumers. Hence, the Consumer Protection Law⁴⁴ also has two Article that globally regulate consumer protection, which states, "Consumer protection is based on benefits, fairness, balance, consumer security, and safety, as well as legal certainty." This law does not regulate the protection in terms of what consumers must procure, even though all consumer-related activities involve consumer personal information. Because it does not expressly assert and regulate this, the law is inadequate in protecting consumer personal information. It emphasizes the rights

⁴² Law Number 24 of 2013 on Amendments to Law Number 23 of 2006 on Population Administration of the Republic of Indonesia.

⁴³ Law Number 19 of 2016 on Amendments to Law Number 11 of 2008 on Information and Electronic Transactions (IET).

⁴⁴ Law Number 8 of 1999 on Consumer Protection.

and responsibilities of consumers and business actors in general who create economic value.

Thus, according to the study's findings, the rules presented up to this point, both from the Health Laws and other regulations, are insufficient to manage the code of ethics for healthcare workers when they use social media and to preserve patients' privacy. These regulations are only broad standards, and they do not address many of the challenges that may come up. As a consequence, specific rules regarding the use of social media by healthcare workers are essential to protect and defend patients' rights to their privacy.

Also, it is regrettable that, despite the fact that numerous legal instruments address this matter in a certain way, a great number of events still take place and do not have an effect that serves as a deterrent or provides fantastic information to other health staff. Even medical staff, notably nurses, have come under fire from the Indonesian Doctors Association (IDI) for spreading documentation of patient surgery.⁴⁵ This is because nurses are the healthcare workers with the greatest involvement with patients along the continuum of care and have a substantial role in treating those patients. In addition, nurses are the ones who are responsible for the most direct patient care.

On such grounds, nurses should regard and value the patient's right to privacy as essential to their job.⁴⁶ The respect nurses show for their patient's right to privacy is an essential component of the nurse-patient relationship and vital to therapeutic communication success.⁴⁷ The International Council of Nurses (ICN) emphasized the importance of nurses maintaining the confidentiality of patients'

personal information and exercising sound judgment when exchanging information.⁴⁸ In addition, satisfying patient's expectations about protecting their personal information improves the overall quality of the health care services they get.⁴⁹ False identification may have a detrimental effect on a patient's quality of care.

Nurses, doctors, and other healthcare workers must recognize that sharing narratives about patients' personal information on social media is a breach of the ethical code, especially if photos and videos are involved.

VI. Patient Privacy and Medical Confidentiality in the US

Healthcare workers' use of social media has been regulated in numerous European nations by the General Medical Council (GMC) in a document titled "Doctor's Use of Social Media" in 2013.⁵⁰ The GMC stressed in this release that clinicians must maintain boundaries with patients, keep medical records and patient personal information private, prevent defamation, and respect colleagues.

In light of this fact, it is recommended that physicians who participate in social media establish two distinct accounts: one as health educators (representing their profession as doctors) and one for personal expression. A physician cannot friend a patient or provide access to an account devoted to the patient's expression. Meanwhile, content that is only supposed to be seen by specialists should not be shared on social media accounts that are supposed to be used for health education if the level of privacy cannot be regulated or is only barely managed. As a result, everyone around the globe acknowledges this concept.

⁴⁵ H P Utomo, "Urgency of Legal Protection for Patients Personal Data in Technology-Based Health Services in Indonesia," *Dinamika Hukum & Masyarakat* 3, No. 2 (2021): 12.

⁴⁶ A. A. Ammouri et al., "Patient Safety Culture among Nurses", *International Nursing Review* 62, No. 1 (2015): 104.

⁴⁷ Aimee Milliken et al., "Advanced Practice Nursing: The Nurse--Patient Relationship and General Ethical Concerns", in *Nursing Ethics and Professional Responsibility in Advanced Practice*, 4th ed. (Burlington: Jones & Bartlett Learning, 2022), 78.

⁴⁸ Jean Barry and Nicholas R. Hardiker, "Advancing Nursing Practice through Social Media: A Global Perspective," *Online Journal of Issues in Nursing* 17, No. 3 (2012).

⁴⁹ Linghan Shan et al., "Patient Satisfaction with Hospital Inpatient Care: Effects of Trust, Medical Insurance and Perceived Quality of Care," *PLoS ONE* 11, No. 10 (2016): 9.

⁵⁰ Pukovisa Prawiroharjo and Nurfanida Librianty, "Tinjauan Etika Penggunaan Media Sosial Oleh Dokter," *Jurnal Etika Kedokteran Indonesia* 1, No. 1 (2017): 32.

A good and respectful clinical relationship must be established and maintained over time, which entails respecting confidentiality and privacy. Because of this, healthcare workers, most notably physicians and nurses, should pay greater attention to the patient's right to privacy while using technologies such as photography, videotape, computers, and photography in healthcare facilities. When interacting on social media, healthcare workers must maintain professional boundaries and respect their patients' privacy rights.

When a patient's identifying information is revealed, there is the potential for a breach of confidentiality to occur. The act of sharing work-related material online introduces not just new difficulties but also a greater potential for violations of confidentiality and allegations of unprofessional behavior.⁵¹ Additionally, liability for invasion of privacy may emerge when certain publications are extremely offensive to a reasonable person and are not of rightful concern to the public.

The foundation of diverse actions in health care performance is the application of medical practice. This must be done by physicians, nurses, and other healthcare workers with strong ethics, morals, experience, and authority. The urgent need to focus on providing legal protection and certainty to safeguard patient privacy rights on social media through regulations concerning the code of ethics for using social media, as well as how important it is to uphold patient privacy rights for health care workers, is deemed critical and deserves immediate priority.

The confidentiality of patient information is to be maintained at all times by healthcare workers (including record keepers) since this is not only required by law but also by professional ethics. Patient consent is required before any disclosure of this information.⁵² To successfully store and retrieve this information,

communication systems need to have the appropriate infrastructure in place. As a point of reference, Indonesia will learn from the legal system in the United States by adopting standards to offer a more comprehensive and in-depth effort at legal protection.

The Health Insurance Portability and Accountability Act (HIPAA) was enacted by the United States Congress in 1996, and it compelled the Secretary of Health and Human Services (HHS) to promulgate standards to address: "(1) The protections that a person who is a subject of personally identifiable information health insurance should have. (2) The procedures must be created for exercising such rights. (3) The allowed or mandated uses and disclosures of such information."⁵³ American patients have extensive privacy safeguards under federal law. The 1996 HIPAA and the Health Information Technology for Economic and Clinical Health (HITECH) Act created legal procedures to secure medical identification and protected health information privacy and security.⁵⁴ HIPAA established transactional security rules for transmitting and disclosing certain health information. HITECH enhanced HIPAA in several ways, requiring victims of breaches of protected health information stored by HIPAA-covered businesses and suppliers of personal health records to be notified.

The right to privacy of each patient and the commitment to privacy of each health care worker are independent of how this information is maintained or transferred, whether electronic images or biological samples.⁵⁵ These principles apply to all healthcare workers, including privacy and information confidentiality. As a reference, the US Health Insurance Portability and Accountability Act of 1996 (HIPAA) mandates that even full-face patient pictures or similarly identifying images be deleted from the

⁵¹ Susan J Westrick, "Nursing Students' Use of Electronic and Social Media: Law, Ethics, and e-Professionalism," *Nursing Education Perspectives* 37, No. 1 (2016): 16–22.

⁵² Roderick L B Neame, "Privacy Protection in Personal Health Information and Shared Care Records," *Journal of Innovation in Health Informatics* 21, No. 2 (2014): 86.

⁵³ Mehmet Kayaalp, "Patient Privacy in the Era of Big Data," *Balkan Medical Journal* 35, No. 1 (2018): 11.

⁵⁴ Julie K. Taitzman, Christi Macrina Grimm, and Shantanu Agrawal, "Protecting Patient Privacy and Data Security," *New England Journal of Medicine* 368, No. 11 (2013): 977.

⁵⁵ Roger Allan Ford, W Price, and I I Nicholson, "Privacy and Accountability in Black-Box Medicine," *Mich. Telecomm. & Tech. L. Rev.* 23 (2016): 1.

medical record for the data to be declared de-identified.⁵⁶

It has been stated repeatedly in guidance to health care workers (in what we will refer to as the “standard account”) that any flow of identifiable health information, absent a legal requirement, statutory gateway, or overriding public interest, must be based on an individual’s explicit or implied consent.⁵⁷ Disclosures of private information made for reasons directly linked to an individual’s care should be clearly distinguished from disclosures of private information made for other purposes in the standard account. As a result, healthcare workers are expected to make every reasonable effort not to use or disclose more protected health information than is essential to meet the intended purpose of using or disclosing protected health information. Even if the photographs are kept hidden as a part of the patient’s medical record, neglecting to get the patient’s permission before photographing them might be considered an infringement of their privacy. Permission must first be obtained from the patient to photograph them, and then further permission must be obtained before the photographs may be published.

Furthermore, in addition to developing a particular rule, the US Government’s Office of Inspector General cooperated with the US Centers for Medicare and Medicaid Services (CMS) to develop instructional teaching materials supporting privacy and data security.⁵⁸ Hence, Indonesia may learn from the United States by making more extensive efforts to address this issue because patients and healthcare workers must collaborate to protect patient information and avoid security breaches.

⁵⁶ Ioan C Cucoranu et al., “Privacy and Security of Patient Data in the Pathology Laboratory,” *Journal of Pathology Informatics* 4, No. 1 (2013): 4.

⁵⁷ Mark J. Taylor and James Wilson, “Reasonable Expectations of Privacy and Disclosure of Health Data,” *Medical Law Review* 27, No. 3 (2019): 435.

⁵⁸ Taitsman, Grimm, and Agrawal, “Protecting Patient Privacy and Data Security,” 978.

VII. Closing

A. Conclusion

Protecting patient privacy is an essential element of the code of ethics that all healthcare workers must adhere to. Nowadays, healthcare workers' massive use of social media as a medium of self-expression may affect the patient. Some cases of patient privacy infringement resulted from healthcare workers' misuse of social media in Indonesia. Unfortunately, the existing law gives inadequate legal protection for the affected patients.

B. Recommendation

Based on the above conclusion, this article recommends the need to issue special legal and ethical measures to protect patient privacy against healthcare workers' misuse of social media. This can be done by issuing a new regulation or amending the existing law and code of ethics.

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