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Legal Aspect of Health Data and Information Protection after The Promulgation of Law No. 27 of 2022 about Protection of Personal Data

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Abstract

The issue of health data leakage in the PeduliLindungi application is an example that shows the urgency of managing personal data. Personal health information needs to be protected because it can be misused by those who use it unfairly. In addition to the development of information technology, the protection of health data and information is an urgent need at this time. Health data and information contain several important matters, including those related to medical confidentiality. It needs to be emphasized with regard to protection according to the mandate of the constitution. This paper is a normative legal study. The research specification used is descriptive analytic. The data collection method for this research is library research. This study uses secondary data as the main data, which includes primary legal materials and secondary legal materials, and the method of analysis is qualitative analysis. The results of the study show that the regulation on personal data protection based on Law no. 27 of 2022 has an impact on the protection of health data and information. Regulation of health data and health information after the promulgation of Personal Data Protection Act No. 27 of 2022 strengthens the position of health data and health information as personal data. Prior to the promulgation of the PDP Law, some health data and information were regulated in the Electronic Information and Transaction Law, the Public Information Disclosure Law, but the regulations were not complete. As a result, the legal protection of health data and information was also unclear. The implication after the promulgation of the PDP Law is enacted, legal protection will become clearer, including clarifying which legal entities must be responsible for health data and information as well as the legal consequences for violating this provision. In particular, the identification of health data and health information as personal data is closely related to the protection of medical secrecy.

Keywords: legal aspect, protection, personal data and health information, medical secrecy

INTRODUCTION

The development of information and communication technology is increasing rapidly, especially since the Industrial Revolution 4.0 era. This resulted in various opportunities and challenges. Opportunities for the development of information technology have caused major changes in communication, regardless of regional boundaries, and promoted globalization. The challenges faced are issues of security, capital, privacy, and employment, especially the risk of data leakage. This is because the use of information technology means that a person's personal information can very easily be collected and transferred from one party to another without the person's knowledge of the said personal information, thereby endangering the person's constitutional rights to the personal information. Various layers of society have used information technology systems, one of which is health data and information known as “electronic health” (e-health).

The management of personal data using information technology in the health sector is an unavoidable necessity. However, the collection and distribution of personal information is a violation of individual privacy, as the right to privacy includes the right to determine whether to provide personal information or not. In the health sector, it relates to medical confidentiality i.e. the patient's rights that need to be protected. Provisions of the Law on Public Information Disclosure No. 14 of 2008 state that health data is exempt from disclosure to the public, as specified in Article 17 (h), which reads: "Every public agency is obliged to open access to every applicant for public information to obtain public information, except for public information that, if disclosed and made available to applicants, can reveal personal secrets, that is:

1. History and conditions, of family members
2. A person's physical and mental health history, condition and treatment
3. A person's financial position, wealth, income, and bank account
4. Results of assessments relating to ability, intellect, and individual ability recommendations; and or
5. Records of individual activities in formal and non-formal education units

The pros and cons of opening the patient's medical record, as it was known when the positive patient was announced for the first time with COVID-19. This is related to the understanding that personal data is part of data protection. In practice, there are different interpretations between the right to privacy and the right to information. In the health sector, there is a conflict between the right to medical confidentiality and the right to public information. It is therefore interesting to conduct a study on the impact on health data from the promulgation of Law Number 27 of 2022 concerning Protection of Personal Data and whether this law creates a legal framework for protecting health data. Therefore, several questions were discussed related to: How is health data regulated before and after the implementation of the Personal Data Protection Act? How is health data and information determined as personal data? What are the implications for protecting medical secrecy?

RESEARCH METHODS

This paper is a normative legal study, namely library research. The research specification used is descriptive analytic. The data collection method for this research is a literature study. A literature study is carried out to obtain a theoretical and legal basis for the object to be studied. This study uses secondary data as the main data which includes primary legal materials and secondary legal materials, and the method of analysis is qualitative analysis.

DISCUSSION

This paper discusses the issue of protection of health data and information in three aspects, namely: regulation of personal data protection (before and after the promulgation of Law Number 27 of 2022 concerning protection of personal data) provisions for protection of health data and information as personal data, implications for maintaining medical secrecy, which are described as follows:

A. Personal Data Protection Arrangements (before and after the promulgation of Law Number 27 of 2022 concerning Personal Data Protection)

In the arrangements for the protection of personal data, the issue of the protection of data and health information is discussed before and after the implementation of the Personal Data Protection Act. Prior to the enactment of the Personal Data Protection Act, health data and information had not been partially regulated in several laws, namely the Information and Electronic Transactions Act, the Public Information Disclosure Act, and the Health Services Act. Nevertheless, the settings are very general and incomplete. With the promulgation of the PDP law, the provisions regarding the protection of health data and information will be clearer, so that legal protection will also be more certain.

To discuss this subject, it must be realized that people's lives must be regulated, both in written and unwritten regulations. All activities carried out by citizens are subject to the applicable laws and regulations. Indonesia has both written and unwritten laws that regulate citizens in the lives of society, nation, and state.¹

In discussing legal protection, it is better to state the opinion that there are two kinds of legal protection, namely internal legal protection and external legal protection. First, internal legal protection is legal protection created by an agreement made by each party with the aim of balancing the interests of the parties on the basis of a mutual agreement, with the condition that the positions of the parties are balanced or equal. Second, external legal protection is legal protection created by public authorities through the introduction of laws and regulations with the aim of preventing injustice, arbitrary treatment of the interests of others, and harming the weak.² Based on this opinion, it can be seen that the promulgation of the PDP Law includes a kind of external protection that through this law, aims to protect weak parties from possible unfair or arbitrary actions that can harm the owner of personal data.

¹ Michael Frans Berry, “Pembentukan Teori Peraturan Perundang-undangan”, 2018, Muhammadiyah Law Review, Vol. 2, No. 2, hal. 87

² Moch Isnaeni, 2016. *Pengantar Hukum Jaminan Kebendaan*, Surabaya : Revka Petra Media, hlm. 159

According to Article 1 (2) of Law Number 12 of 2011 concerning the Formation of Legislation, “Legislation” is a written regulation that contains generally binding legal norms, promulgated or stipulated by state institutions or authorized officials through procedures that are regulated in laws and regulations.

Legislation is a reference in all areas of human life, both individually and in society, as a nation and as a state. Therefore, the role of laws and regulations as a guideline for everyone in a country is very important. These laws are generally binding and coercive in the form of imposing sanctions on anyone, both individuals and corporations or institutions, who violates laws and regulations.³ Legislation (written law) is arranged in a hierarchy called the hierarchy of statutory regulations. The point is that higher laws and regulations are applied and based on even higher laws and regulations, and so on, until the laws and regulations reach at the highest level. Consequently, lower laws and regulations may not conflict with higher laws and regulations. Lower rights may not conflict with higher rights.⁴

Likewise, information technology related to health services is regulated through the establishment of laws and regulations as guidelines for health service systems that use information technology as a means. The government has a constitutional obligation to protect the entire Indonesian nation and all Indonesians. In connection with the development of information and communication technology, the goals of the state are manifested in the form of protecting the personal data of every resident or citizen of Indonesia. Prior to the promulgation of Law Number 27 of 2022, legal provisions regarding the protection of personal data were still partial and sectoral, so they could not offer or guarantee optimal and effective protection of personal data. Provisions regarding the protection of personal data can be found in the following laws and regulations:

1. Law Number 11 of 2008 Concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 Concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions;
2. Law Number 23 of 2006 Concerning Population Management, has been amended by Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 Concerning Population Management;
3. Law Number 14 of 2008 concerning Public Information Disclosure
4. Government Regulation Number 71 of 2019 Concerning Implementation of Electronic Systems and Transactions

In the provisions of the laws and regulations mentioned above, the definition of “personal” data is formulated as follows:

1. According to Article 1 paragraph (22) of Law Number 23 of 2006, as amended by law number 24 of 2013, “personal data is certain personal data that is properly and confidentially stored, maintained, and maintained.”
2. Article 1 paragraph (29) of Government Regulation Number 71 of 2019 concerning Implementation of Electronic Systems and Transactions contains the definition of personal data according to the government regulation as follows: a combination that is identified and/or identifiable with other information, either directly or indirectly through electronic and/or non-electronic systems.”

³ Ahmad Redi, 2018, *Hukum Pembentukan Peraturan Perundang-Undangan*, Jakarta: Sinar Grafika, hal. 1

⁴ Ni'matul Huda, 2005, *Hukum Tata Negara Indonesia*. Jakarta: Rajawali Perss, hal. 37

As for Article 26 paragraph (1) of Law 19 of 2016 concerning Electronic Information and Transactions (EIT Law), it reads: "Unless otherwise stipulated by laws and regulations, the use of information through electronic media related to a person's personal data can only be carried out with the approval of the data subject." In the elucidation section of Article 26 paragraph (1) of the ITE Law, it states: "In the use of information technology, protection of personal data is part of personal rights (privacy rights); personal rights have the following meanings:

1. The right to privacy is the right to live a private life and be free from any interference.
2. Privacy rights include the ability to communicate with others without being spied on.
3. The right to privacy is the right to control access to information about a person's life and personal data.

The protection of personal data is very urgent because it is related to the protection of human rights. The development of information technology has changed things that were originally included in the private sphere to be penetrated in the public sphere. Regulating personal data is part of the state's responsibility to recognize and protect basic human rights. In accordance with the mandate of the 1945 Constitution of the Republic of Indonesia, personal data protection is regulated in the form of a law. The provisions of Article 28G paragraph (1) state: "Every person has the right to personal, family, honor, dignity, and property protection under his control and has the right to feel safe and protected from threats of crime. "Fear when doing or not doing something that is a human right." On the basis of these provisions, Law Number 27 of 2022 concerning the Protection of Personal Data was promulgated, and since promulgation, namely on October 27, 2022, it has been declared forced (Article 27).

The background to the regulation of personal data protection according to data protection laws can be seen in the consideration section, including:

1. Declare that personal data protection is part of personal self-protection and that it is necessary to provide a legal basis for personal data security based on the 1945 Constitution of the Republic of Indonesia.
2. that the protection of personal data aims to guarantee citizens' rights to personal protection, increase public awareness, and guarantee recognition and respect for the importance of protecting personal data;
3. Whereas arrangements regarding personal data are currently contained in several laws and regulations, so that to increase the effectiveness of personal data protection, preventive measures are required to protect personal data under the law.

Starting from these provisions, it can be seen that the background to the regulation of personal data can be analyzed from three important aspects of laws and regulations, namely the philosophical aspect, the sociological aspect, and the legal aspect, which can be described as follows:⁵

1. From a philosophical aspect, regulation of personal data protection is a manifestation of the recognition and protection of human rights.
2. Sociological aspects: the formulation of personal data protection rules because of the need to protect individual rights in society related to the collection, processing, management, and dissemination of personal data

⁵ See, BPHN, Tanpa Tahun, Naskah Akademik RUU Perlindungan Data Pribadi

3. Legal Aspects, related to Article 28G of the 1945 Constitution: "Every person has the right to personal, family, honor, dignity, and property protection under his control, as well as to a sense of security and protection from fear of doing or not doing something." Article 28d paragraph (1) of the 1945 Constitution states that "everyone has the right to fair recognition, guarantees, protection, legal certainty, and equal treatment before the law".

Regulations regarding the protection of personal data cannot be separated from the purpose of the law. The purpose of law is the realization of justice, benefit, and legal certainty. Adam Smith propounded the doctrine of truth by realizing the truth, which held that the ultimate goal of godliness is to protect against harm. According to G.W. Paton, it turns out that the rights granted by law contain not only elements of protection and interests but also elements of will. Legal theory aims to explain legal values and their arguments down to their deepest philosophical basis.⁶ Law is essentially abstract, but in its embodiment, it can be concrete. A legal norm can be judged properly if the result of its application is goodness, the greatest happiness, and reduced suffering. One form of written law is a law. The purpose of forming law and legislation is to regulate and shape the life of the state in such a way that the people who are governed by law obtain security, benefits, and justice in the life of the state and society. Therefore, one of the main pillars in the administration of a rule of law is the formation of good, harmonious, and easy-to-apply legislation in society.⁷ Likewise, the regulation on the protection of personal data, especially health data and information, must fulfill aspects of fairness, benefit, and legal certainty.

The issue of personal data protection arises due to concerns about personal data breaches that may be experienced by individuals and/or legal entities. Such violations can cause both material and non-material losses. Therefore, in terms of justice, benefit, and legal certainty, the existence of a law on personal data protection is a necessity that cannot be stopped, because it is needed for various interests both nationally and internationally. It is the nature of this information technology to penetrate regional boundaries, whose impact must be anticipated.

B. Determination of Health Data and Information as Personal Data

With the stipulation of health data and information as personal data in the PDP Law, subjects and objects related to health data and information are protected. As in the PDP Law, Article 4(1) state, “Personal data consists of: a. certain personal data; and b. general personal data”. In the explanation section, it is stated that specific personal data is personal data that, if processed, can have a greater impact on the person's personal data, including acts of discrimination and greater harm to the person. Article 4 paragraph (2) states that specific personal data, as referred to in paragraph (1) letter a, constitutes health data and information. The explanation reads: "What is meant by "health data and information" are individual records. or statements related to physical health, mental health, and/or health services”. Based on this description, it becomes clear that determining health data and information as personal data that deserves protection is a constitutionally important concern.

⁶ Philipus M. Hadjon, 1989, *Perlindungan Hukum Bagi Rakyat di Indonesia*, Surabaya: Penerbit Bina Ilmu, hal. 205

⁷ Maria Farida Indrati S, 2007, *Ilmu Perundang-Undangan: Proses dan Teknik Pembentukannya*, Yogyakarta: Kanisius, hal. 124

The protection of personal data is related to the concept of privacy. ⁵ The right to privacy through data protection is a key element of individual freedom and dignity. Privacy is the engine for realizing political, spiritual, religious, and even sexual freedom (the right to self-determination).

In the era of information openness, everything seems to be “proper” and even “must” be known by the public (everyone), so that the boundaries between private and public spheres are very thin. It becomes problematic when it comes to data on a person's (patient's) health condition. Patient personal data information related to patient confidentiality (medical confidentiality) belongs to the general public (everyone). Medical confidentiality is a patient right that must be respected. Data protection regulations and health information can be found in the following regulations:

1. Health Information Regulations in the Public Information Disclosure Act No. 14 of 2008 (PID Law)

The Law on Public Information Disclosure states ³ that "public information" is information that is generated, stored, managed, sent, and/or generated by a public agency in connection with the administration and administration of the state and/or the administration and administration of other public bodies or received under the law relating to the public interest. Article 2 of the PID Law states that “all public information is open and can be accessed by every user of public information; paragraph (4) excluded public information is confidential according to law; adequacy and public interest are based on an assessment of the consequences of making information available to the public; and, after careful consideration, closing public information can protect greater interests than disclosing it or vice versa.” In the provisions of Article 6 (3) of the PID Law it states that "public information" cannot be provided by public bodies as referred to in paragraph (1), in particular points c and d, are information related to "private rights" and information related to "secret positions." In addition, Article 17 h (2) PID Law states that "one of the exempted information is public information, which, if disclosed and made available to applicants for public information, can reveal personal secrets, namely the history, condition, and treatment of a person, including physical and mental health care." Accordingly, it can be ascertained that one type of public information that is exempt from disclosure is information regarding a person's health status.

2. Health Data and Information Regulations in Law Number 36 of 2009 concerning Health, Article 7, state that "everyone has the right to obtain balanced and responsible information and education about health". In addition, Article 8 states that "everyone has the right to obtain information about his health data, including actions and treatment that he has received and will receive from health workers" such as personal health information i.e. only authorized persons in particular the patient concerned that can find out about it.

Article 57 paragraph (1) of the Law states: "Everyone has the right to the confidentiality of his personal health condition that has been notified to the health service provider." In Article 57 (2) of the act, a person can waive the provisions of Article 57 (1) if the right not to disclose health status does not apply to the public interest.

3. Regulation of Health Data and Information in Law Number 27 of 2022 Concerning Protection of Personal Data (PDP Law)

Article 4(1) of the PDP Law states that there are two types of personal data: specific data and general data. Paragraph (2) states that specific personal data includes health data and information. In the elucidation section of Article 4 paragraph (1) letter a, it is stated that certain types of personal data are personal data whose processing can have a greater impact on a person's personal data, including acts of discrimination and greater damage to the subject of personal data. Whereas in Article 4 paragraph (2) letter a, what is meant by "health data and information" are records or information about a person relating to physical health, mental health, and/or health services.

C. Implications of the Health Data and Information Protection (PDP) Law on the Protection of Medical Secrecy

The implications of specifying health data and information as personal data are specific to the PDP Law, related to the protection of medical confidentiality. Implications specifically include arrangements regarding who is the legal subject of medical confidentiality and what the legal consequences are if medical confidentiality is violated. Through these arrangements, it is intended to provide legal protection for medical secrecy.

According to Satjipto Rahardjo, in the midst of public life, law consists of integrating and coordinating various interests that can collide with each other. The way to coordinate these different interests is to limit and protect these interests.⁸ Thus, the regulation of personal data protection through the promulgation of the PDP Law shows that legal protection of the interests of a person's personal information is intended to guarantee the protection of that person's human rights so that they do not conflict with the human rights of other people.

As discussed above, one of the special types of data that is protected is health data and information. Health data and information contain sensitive information that must be protected to prevent discriminatory actions and actions that can harm individuals with personal data.

In health information, there is information that is public or that can be shared with the public, and there is information that is private or that cannot be shared with the public. Health information that can be made available to the public comes in various forms and types. Health information systems available to the public in hospitals include the forms and types of hospital services, service procedures, rates, health service facilities, and financing systems. A more specific example is an information system related to disease eradication, including information on the results of surveys of certain types of diseases (through reporting, data collection, and mapping), disease prevention programs, disease control efforts, data on the development of types of infectious diseases and their transmission areas, as well as information on their occurrence. certain diseases, which are all required by law.⁹

In hospitals health services, the issue of protecting health data and information is very important. Therapeutic relationships are built in hospitals where patients have medical confidentiality that must be respected. The right to medical secrets is a right that originates

⁸ Satjipto Rahardjo, 2014. *Ilmu Hukum*, Bandung: Citra Aditya Bakti, hlm. 45

⁹ Endang Wahya Yustina, 2014. “Hak atas Informasi Publik dan Hak atas Rahasia Medis: Problem Hak Asasi Manusia dalam Pelayanan Kesehatan”, *Jurnal Ilmu Hukum*, Volume 1, Nomor 2, hlm.255

from individual basic rights, namely the right to self-determination. As part of these basic individual rights, there is also the right to medical information, which is personal information. In several cases, health care providers are often faced with the choice of providing health information as a warning to help the public avoid disease transmission or maintaining medical secrets as an obligation to protect the privacy of their patients.¹⁰

Medical secrecy is a patient right that is guaranteed by law and must be respected by all legally mandated parties, such as doctors, dentists, and healthcare workers, including students, managers of healthcare facilities, and other legally mandated individuals. The obligation of confidentiality also applies forever, even until the death of the patient. Medical information is confidential and is a type of information that is prohibited from being disclosed under the Public Information Disclosure Act. Therefore, it can be concluded that the patient's health record does not contain information that can be opened to the public because the right to health information is the right of everyone who is limited by the right to medical confidentiality. This is consistent with the function of the law to protect people from harm and actions that may cause them to suffer and lose their lives at the hands of others. More than that, the law serves justice and is a means of realizing the welfare of all people.

As stated in the general elucidation of the PDP Law, the regulation on personal data aims, among other things, to protect and guarantee the basic rights of citizens relating to personal self-protection and to guarantee the public's right to take advantage of companies and public services such as acquire agencies, international organizations, and governments. Therefore, health data and information is one type of personal data that are guaranteed to be protected by the PDP Law.

The implication of the PDP Law on the protection of health data and information can be seen from several forms of wording, which we can interpret from the provisions of the following articles:

1. As reflected in Article 3(a) of the Principle of Protection and Article 3(h) of the Principle of Confidentiality, the main provisions of the PDP Law are a form of protection of health data and information. This means that the principles of protection and confidentiality form the basis for the regulation of personal data protection, particularly health data and information.
2. The Special Data Regime is a provision of the PDP Law that has implications for the protection of health data and information. This follows the provisions of Article 4, paragraph (2), letter a, which states that specific types of personal data are health data and information.
3. The data processing agreement in Article 16 (2), which states that "the processing of personal data as referred to in paragraph (1) will be carried out in accordance with the principles of personal data protection, including: a. personal data is carried out in a limited and targeted manner, lawful, and transparent", is also a health data and health information protection regulation that emphasizes protection guarantees.
4. Provisions regarding the obligation to process personal data also refer to the form of data protection and health information. Article 27 states: "The personal data controller must carry out the processing of personal data in a limited and specific, lawful, and transparent manner." Article 28 provides that "the controller of personal

¹⁰ *Ibid.*,

data must carry out the processing of personal data in accordance with the purposes for which the personal data is being processed." Article 34(1) states: "The controller of personal data processing must carry out a personal data protection impact assessment where processing of personal data poses potential risks to a high level of individual personal data". (2) The processing of personal data involves a high risk potential within the meaning of paragraph 1(b) "Processing of special types of personal data". Article 36 In processing personal data, the party responsible for processing personal data is obliged to maintain the confidentiality of personal data. Due to several provisions in the agreement regarding the processing of personal data, it is clear that health data and information are special data that must be processed properly, legally, and confidentially.

5. Institutional regulations are also a means of protecting health data and information, as formulated in Articles 58 to 61. This provision relates to the government's responsibility to formulate protection policies and strategies and supervise the implementation of personal data protection. This provision also guarantees the protection of health data and information.
6. The form of health data and information protection formulated in the PDP law is mainly reflected in the formulation of morning sanctions against violators, as formulated in Article 57 (administrative sanctions) and Articles 67 to 73, Criminal Sanctions for Violating the PDP Law.

From the several provisions above, it appears that the PDP Law regulates several matters related to health data and information. Therefore, the PDP Law is intended as a basis for implementing health data and information protection and as a basis for technical regulation of health data and information.

CONCLUSION

Health data is personal and private. The agreement on the protection of personal data has implications for the protection of health data and information, which can be summarized as follows:

1. Prior to the promulgation of the PDP Law, regulations on health data and information were spread across several laws, including the Information and Electronic Transaction Law, the Public Information Disclosure Law, and the Health Services Law, but the regulations were still incomplete. After the PDP Law was promulgated, the rules were clearer. The establishment of personal data protection is an urgent need in line with the rapid developments in the field of information technology.
2. Health data and information are certain types of personal data that concern confidentiality. Regulations regarding the protection of health data and information are formulated in several laws and regulations, including the Public Information Disclosure Act Number 14 of 2008 (PID Law); Law Number 36 of 2009 concerning Health; and Law Number 27 of 2022 concerning Personal Data Protection (PDP). Personal data has implications for data protection and health information. Because health data and information are a special type of data regulated by the PDP Law, this law becomes the legal basis for regulating health data and information, both in practice and in technical arrangements.
3. Implications of personal data protection and regulation of health information related to the concept of privacy. The right to privacy through data protection is a key

element of individual freedom and dignity.⁴ Personal data protection issues arise due to concerns about personal data breaches that may be experienced by individuals and/or legal entities. Such violations can cause both material and non-material losses. In several forms, the impact of the PDP Law on the protection of health data and information can be seen. Several provisions in the PDP Law have implications for the protection of health data and information, which we may know of in several formulations, including: the formulation of the principles of protection and confidentiality; the determination of health data and information as special personal data; precautions in data processing and obligations in data processing; an agreement on institutions; and an agreement on sanctions for violations of the PDP Law.

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