

# Legal Protection of Medical Records as Evidence Tool in Law Enforcement Process

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**Abstract:** *Apart from the very important functions and roles in the health sector, the medical record is very important as proof in especially proof in health service disputes. Medical record files provide data to help protect the legal interests of patients, doctors and health service providers. Legal Protection of Medical Records as Evidence of Law Enforcement Process in the Court based on Article 50 letter (a) of Law Number 29 Year 2004 concerning Medical Practices. Medical records can be used as a means of proof as regulated in Article 1866 of the Civil Code and Article 184 of the Criminal Procedure Code. Provisions Article 13 Paragraph (1) letter c Regulation of the Minister of Health Number 269 / MENKES / PER / III / 2008 Concerning Medical Records. This is a normative legal research which examines the law as norms, rules that are in the We Act, and various statutory regulations. This research concludes that besides being able to function as a documentary evidence providing guidance to judges, medical records can also be used as material for an expert witness to explain the medical facts. This statement from the expert can be used as evidence in proving a malpractice case.*

**Keywords:** Medical Records, Evidence, Law Enforcement

## 1. Introduction

In the field of medicine and dentistry, medical records are one of the written evidences about the service process provided by doctors and dentists. In the medical record contains clinical data of patients during the process of diagnosis and treatment. Therefore, every medical service activity must have a complete and accurate medical record for each patient and every doctor and dentist must fill out the medical record correctly, completely and timely.

Besides that, the Medical Record profession is responsible for managing professional medical records by always monitoring the completeness of filling, making sure that the management of medical records is in accordance with standards and analyzing medical records qualitatively and quantitatively in order to provide input for quality control of medical services. And can not be separated also the responsibility of medical staff who have an important role in a hospital because directly the medical staff can determine the quality of service from the hospital to patients.

Medical records provide an overview of the quality standards of services provided by health care facilities as well as by authorized health personnel. The medical record file also provides data to help protect the legal interests of patients, doctors and health service providers.

Medical records are evidence both for patients and for hospitals and doctors in front of court hearings, because medical records contain about who, when, how, medical actions take place. Thus, a medical record guarantees legal certainty on the basis of justice in the context of enforcing the law and providing evidence to uphold justice. In this case, all the information was given by the patient himself during a visit to the doctor to check himself.<sup>1</sup>

Medical records are very important in aspects as evidence in court, apart from the very important functions and roles in the health sector, including in law enforcement efforts, especially proof in health service disputes. The medical record file provides data to help protect the legal interests of patients, doctors and health service providers, as the saying "Good medical record is good defense. Bad medical record is bad defense. No medical record is no defense. "

Arrangement of medical records as a means of legal protection for hospitals, doctors and patients adheres to the general policy line that forms the basis and at the same time the goal of the development of Indonesian law as stated in the Preamble to the 1945 Constitution, which is to protect the entire nation and to advance public welfare based on Pancasila which has been harmonized with the new paradigm in handling health problems and then spelled out in the Health Act, the Medical Law, the Hospital Law, and Permenkes No. 269 / MENKES / PER / III / 2008 concerning Medical Records, which shows that medical records can be used as a means of legal protection for hospitals, doctors and patients when there is a legal conflict in the maintenance and health services system involving the three parties.

Medical records are crucial in analyzing a case and as primary evidence that is accurate, especially when it comes to resolving disputes in health care. Medical records can be used as a basis for proving the existence of errors / negligence of doctors / dentists in carrying out the profession, and in other respects medical records can be used as a basis for legal defense / protection for doctors / dentists against lawsuits / claims directed at them.

Medical records can provide an overview of the quality standards of services provided by health service facilities as well as by authorized health personnel. The medical record file also provides data to help protect the legal interests of patients, doctors and health care facility providers.

<sup>1</sup>Bahder Johan Nasution, *Health Law Doctor's Liability*, (Jakarta: Rineka Cipta, 2005), hlm.62

Medical records are evidence both for patients and for hospitals and doctors in front of court hearings, because medical records contain about who, when, how, medical actions take place. Thus, a medical record guarantees legal certainty on the basis of justice in the context of upholding the law and providing evidence to uphold justice. The problem raised in this paper is how the legal protection and the strength of proof of medical records that serve as evidence of the process of law enforcement in court.

### Medical records

Medical Record is who, what, where and how to care for patients while in hospital, to complete the medical record must have sufficient data written in a series of activities to produce a diagnosis, guarantee, obstruction, and the final result. Medical record is a written and recorded information about the identity of the patient anamnese the physical determination of the laboratory, diagnosis of all services and medical measures provided to patients and treatment both inpatient, outpatient and those receiving emergency services. It explains all detail about the patient's history, clinical findings, diagnostic test results, pre and postoperative care, patient's progress and medication. The implementation of medical records is a process of activities that starts at the time of receipt of the patient, the activity of recording medical data of the patient as long as the patient receives service, handling medical record files which include storage, issuance of files to serve requests for patient and other needs, and processing medical records for the purposes of management and reporting.<sup>2</sup>

Medical Records according to the official explanation of Article 46 paragraph (1) of Law Number 29 Year 2004 concerning Medical Practices which states: "Medical records are files containing records and documents about patient identity, examination, treatment, actions, and other services that have been given to patients".

Definition of Medical Records according to Regulation of the Minister of Health of the Republic of Indonesia Number 269 / MENKES / PER / III / 2008 Concerning Medical Records in Article 1 Number (1) which states that: "Medical Records are files containing records and documents about patient identity, examination, treatment, actions and other services that have been provided to patients".

## 2. Overview of Evidence

Proof is seen from the perspective of criminal procedural law, which is a provision that limits court proceedings in the search for and maintaining the truth by judges, public prosecutors, defendants and legal advisors. All of them are bound by the provisions and procedures as well as the assessment of evidence determined by law. It is not justified to take independent action in evaluating evidence and must not conflict with the law.<sup>3</sup>

Evidence is anything that has to do with an act, wherein with the evidence, it can be used as material to prove the judge's belief in the truth of a criminal offense that has been committed by the defendant.<sup>4</sup>

Valid proofs are regulated in Article 184 paragraph (1) of the Criminal Procedure Code in the following sequence:

### a) Witness Statement

Article 1 number 27 of the Criminal Procedure Code states: "The witness's reluctance is one of the evidences in a criminal case in the form of a witness's testimony regarding a criminal event which he heard himself, saw for himself and experienced himself by stating his reasons and knowledge."

### b) Expert Statement

The definition of expert testimony as evidence can be found in Article 1 number 28 of the Criminal Procedure Code which states that expert testimony is information given by a person who has special expertise on matters needed to make light of a criminal case for the purposes of examination.

### c) Letter

Based on the Criminal Procedure Code, the evidence of a letter is only regulated in one article, namely Article 187 of the Criminal Procedure Code which states that: The letter as referred to in Article 184 paragraph (1) letter c, is made on oath of office or is strengthened with an oath.

### d) Hint

The evidence instructions have been explained in Article 188 paragraph (1) of the Criminal Procedure Code which states "The instructions are actions, events or circumstances, which because of their compatibility, both with one another, and with the criminal act itself, indicate that a criminal act has occurred. and who is the culprit " In principle, evidence evidence is a conclusion from the relationship of other evidence.<sup>5</sup>

### e) Defendant's Statement

Article 1 number 15 of the Criminal Procedure Code has explained that the defendant is a suspect who was prosecuted, examined and tried in court. Matters relating to the defendant's statement in the Criminal Procedure Code are regulated in Article 189 which states:

- The statement of the defendant is what the defendant stated in the hearing about the actions that he did or which he personally knew or experienced;
- The defendant's statement given outside the trial can be used to help find evidence in the trial, provided that the information is supported by a valid intention of proof as long as the matter is charged to him;
- The defendant's statement can only be used against himself;

<sup>2</sup> Susano Adhi, Yulianingsih, dan Niswati Za'imatun, *Development of a Medical Record Information System Using the FAST Approach to Support Evaluation of Public Hospital Services in Tangerang*, Jurnal. Tangerang, 2013

<sup>3</sup> Syaiful Bakhri, *Proof of Law in Criminal Justice Practices*, (Jakarta: Total Media, 2009), hlm.27

<sup>4</sup> Hari Sasangka dan Lily Rosita, *Proof Law in Criminal Cases for Students and Practitioners*, (Jakarta: Mandar Maju, 2003), p.11

<sup>5</sup> Rusli Muhammad, *Contemporary Criminal Procedure Law*, (Bandung: PT.Citra Aditya Bakti, 2007), hlm.196-197

- The defendant's statement alone is not enough to prove that he is guilty of committing the act charged with him, but must be accompanied by other evidence. The strength of the evidence of the five instruments above is free and not binding.<sup>6</sup>

### Research Methods

This type of research is normative legal research which examines the law as norms, rules that are in the We Act, and various statutory regulations. The problem approach used in this study is the normative juridical approach. For this reason research is needed which is a basic plan in the development of science. The data source used in the study was only one, namely secondary data sources. The data obtained were analyzed descriptively analytically to provide as detailed data as possible and describe the attitude of a situation and the causes of a particular symptom. To be analyzed by conceptual examination of an opinion, so as to obtain a clarity of meaning as contained in the opinion.

### 3. Results and Discussion

Disclosure of Medical Records as Evidence Medical Records have a very important purpose because they can be used in the interests of the law so that the background of the need to make a Medical Record according to Sofwan Dahlan is to document all incidents related to patient health and provide a medium of communication between health workers for the benefit of treating illnesses. now and in the future.<sup>7</sup>

Subekti states that proving is convincing the judge of the truth of the arguments or arguments presented in a dispute. As regulated in Law No. 29/2004 on Medical Practices, Articles 46-47 which states that medical records are files containing records and documents about patient identity, examination, treatment, actions and other services that have been provided to patients. Further on Permenkes no. 269 / MENKES / PER / III / 2008 in Article 13 paragraph (1) which states that medical records can be used / used as evidence in the process of law enforcement, medical discipline by MKDKI, enforcement of medical ethics and dentistry for the medical profession.

On the other hand in Article 2 paragraph (1) the Minister of Health affirms that the medical record must be made in writing, in full, and clear or electronically in the explanation of Article 46 paragraph (3) that the use of electronic information technology is possible in the recording of medical records. in Article 2 paragraph (1) Permenkes / PER / III / 2008 which allows two methods to be chosen, namely a complete medical record written "or" using electronics. This means that the medical record can choose one of the methods written or electronic.

From the point of proof of criminal law in court regarding errors in the health sector:

- a) The process of proving criminal cases in court is finding material truth or truth, meaning that proof does not only require written evidence but must be corroborated by other evidence, such as expert witnesses;
- b) In the proof, all or part of the information can be used as evidence to support the defense efforts for hospitals and health workers, especially doctors;
- c) Expert witnesses aside from having to provide correct information because they are sworn in, can also prove that their testimony is scientifically grounded as evidenced by the existence of all or part of the information in the RM of the relevant patient;
- d) Evidence in the form of RM and sworn expert testimony will be taken into consideration by judges, in deciding a case for a lawsuit whether there is a doctor's mistake or not;
- e) Lawsuit for criminal acts, due to an error that is strengthened by the existence of an element of intent / negligence from the doctor for not preparing everything to anticipate risks that can occur / arise, so that the patient suffers a fatal injury even to the point of disability or death.

Regarding the use of Medical Records as evidence in court, Y.A. Triana Ohoiwutun asserted that the existence of Medical Records is indispensable in every health care facility, both in terms of the implementation of health care practices and in terms of legal aspects. From the legal aspect, Medical Records can be used as evidence in legal cases. So, the explanation about the information in this Medical Record is limited or limited because it can only be used in special cases that are legalized and in the interest of the law.

Explanation of the contents of the Medical Record may only be done by doctors or dentists who treat patients with the written permission of the patient or based on statutory regulations. While the health service facility leader can explain the contents of the Medical Record in writing or directly to the applicant without the patient's permission based on statutory regulations.

In such case, by court order, the doctor, dentist in charge of patient care or hospital leadership can provide a photocopy of the Medical Record in addition to the conclusion (which is his opinion). This copy is indeed not confirmed in PERMENKES No. 269/2008, but it is the opinion of legal experts because Medical Records function as evidence.

This means that the judge can use the Medical Record as evidence in court, but is not binding in nature, and still depends on the judge's judgment. Thus, Medical Records can be used as a basis for proving the existence of errors / negligence of doctors / dentists in carrying out the profession, and in other respects Medical Records can be used as a basis for defense / legal protection for doctors / dentists against lawsuits / demands directed at them .

The use of Medical Records as evidence in court is only possible if the parties, namely doctors or dentists, patients and public prosecutors submit Medical Records as evidence to find material truth, and clarify whether there is a mistake /

<sup>6</sup> M. Yahya Harahap, *Civil Law Procedure*, (Jakarta: Sinar Grafika, 2012), pp. 332-333

<sup>7</sup> Sofwan Dahlan, *Law Signs for the Professional Doctor* (Semarang: UNDIP, 2000), hlm. 73

omission of the doctor or dentist in carrying out his profession.

Medical records can be used as a means of proof as regulated in Article 1866 of the Civil Code and Article 184 of the Criminal Procedure Code. The provisions of Article 1866 of the Civil Code state that evidence includes: written evidence; witness evidence; suspicion; recognition; and oath. While Article 184 Paragraph (1) of the Criminal Procedure Code, legal evidence in criminal law:

- (1) Witness testimony;
- (2) Expert statements;
- (3) Letters;
- (4) Instructions;
- (5) Defendant's statement.

Provisions Article 13 Paragraph (1) letter c Minister of Health Regulation Number 269 / MENKES / PER / III / 2008 Concerning Medical Records states: "Utilization of Medical Records can be used as evidence in the process of law enforcement, medical discipline and dentistry and enforcement of medical ethics. and dentistry. "

Thus the Medical Record is a proof that the doctor or dentist has tried as much as possible through the stages of the process of health care efforts to the most appropriate treatment options in the form of certain medical measures. For patients, Medical Records are evidence that can be used as a basis for whether certain medical actions performed by doctors or dentists against them are in accordance with professional standards.

Based on that, it can be concluded that Medical Records have a dual function as evidence, namely:

- (1) As evidence of expert testimony (Articles 186 and 187 of the Criminal Procedure Code).
- (2) As evidence of the letter (Article 187 of the Criminal Procedure Code).

Information given directly at the trial by an expert is categorized as evidence of expert testimony, while expert information provided outside the courtroom indirectly (in written form) is categorized as evidence of the letter. Medical records are evidences that are justified by the judge because their elements meet the elements in the documentary evidence and fulfill the conditions determined by the legislation.

#### **Proof of Medical Records as Evidence**

Proof is the central point of examination of court proceedings, in terms of promoting a truth. Proving is a part of the legal process where a process is needed to convince a judge about the truth of the arguments or arguments presented in a dispute or dispute. A judge has an obligation to examine and determine the validity of the propositions or propositions submitted to him.<sup>8</sup>

In carrying out the process, the judge must heed the rules of proof which constitute the law of proof, part of the

procedural law. This is merely to ensure that justice can be upheld in accordance with the principle of legal certainty. In Article 48 paragraph (2) of the UUPK, it is stated that medical secrets can be disclosed only for the benefit of the patient's health in fulfilling the demands of law enforcement officials in the context of law enforcement, the patient's own request, or based on statutory provisions.

Then it is strengthened in Article 51 letter c of the UUPK, that the doctor has an obligation to keep everything he knows about the patient even after the patient dies. If it violates this provision, it is faced with Article 79 letter c, which is a sentence of imprisonment for a maximum of 1 (one) year or a maximum fine of Rp. 50,000,000 (fifty million rupiah).

Both in criminal cases and in civil cases, judges need proof. If a doctor is sued by a patient for doing medical malpractice, then usually the basis for the demands made by the patient to the doctor include:

- a) The doctor was accused of default (broken promise), prosecuted under article 1239 of the Civil Code.
- b) Doctors are accused of carrying out acts against the law, charged under Article 1365 of the Civil Code.
- c) Doctors accused of negligence resulting in losses, are prosecuted under article 1366 of the Civil Code.
- d) Doctors are accused of neglect of work as a person in charge, prosecuted based on article 1367 paragraph (3) of the Civil Code.

If there is a medical dispute between the doctor and the patient in the form of suspected medical malpractice, then what must first be traced: is there a legal relationship between the doctor and the patient (Medical practice is organized based on an agreement between the doctor or dentist with the patient - Law no. 29/2004 on Practice Medicine, Article 39), and to determine the legal relationship between doctors and patients can be traced from the records in the patient's medical record.

Based on what is stated in Article 183 of the Criminal Procedure Code, the system of legal verification is negatively adopted (*negatief wettelijk stelsel*) adopted in Indonesia, in this system, a new judge may impose a criminal on someone if there are at least two legal evidence and he gained confidence that a crime had actually taken place and that the defendant had committed it.

Legitimate evidences are witness statements, expert statements, letters, instructions, and the defendant's statements. This is in accordance with what is stated in Article 184 of the Criminal Procedure Code. Although the evidence of the letter is sorted in the middle, it still has a value of importance.

Evidence has a very important role in the process of proving criminal cases in trials. Article 184 paragraph (1) of the Criminal Procedure Code has determined the limit of legal evidence according to the law. Outside the evidence, it is not justified to be used to prove the accused's guilt.

The Letter Concerning the evidence of the letter is regulated in Article 187 of the Criminal Procedure Code which states

<sup>8</sup> R. Subekti, *Proof of Law*, Cetakan 18, (Jakarta: Pradnya Paramita, 2010), hlm. 1-5



that: "The letter referred to in Article 184 paragraph (1) letter c of the Criminal Procedure Code, made on oath of office or confirmed by oath, is:

- a) Minutes and other official letters made by authorized public officials and which contain information about events or circumstances that were heard, seen or experienced by themselves, accompanied by clear and firm reasons for their statements;
- b) Letters made according to statutory provisions or those made by officials regarding matters which are included in the procedures for which they are responsible and which are intended for proof of a matter or situation;
- c) Statement from an expert who makes an opinion based on his expertise regarding something or a situation that is officially requested from him;
- d) Another letter that can only be valid if it has to do with the contents of other means of proof".

In the Criminal Procedure Code, a medical record can be used as evidence in a court of law based on article 187 paragraph (4) letter b of the Criminal Procedure Code. Letters made according to statutory provisions or letters made by officials regarding matters that are included in the procedures for which they are responsible and are intended to prove something or a situation. The letter evidence tool has a very important and absolute proof of strength. As stated in Article 187 of the Criminal Procedure Code letters a, b, and c are "perfect" evidence. Because the letter is made officially based on the procedure established by law.

The letter is also not a proof that has the power of proof binding. Medical Records that can be used as evidence before a hearing without asking for information from the doctor making the Medical Records can be categorized as evidence, because they are in accordance with the criteria for letter evidence in the Criminal Procedure Code Article 187 letter a.

Medical record is a letter made according to the provisions of the legislation namely the Medical Practice Law article 46 paragraph (1) to (3) and Permenkes No. 749a / Menkes / Per / XII / 1989 concerning medical records which according to article 81 of the Medical Practice Law still apply. This letter was made by an official (doctor) who is part of the governance of his responsibilities and is intended for something or a situation about the patient. This criterion meets article 187 paragraph (4) letter b of the Criminal Procedure Code so that the medical record can be used as evidence of a letter in court.

Medical records have a very important function and role in the field of health including law enforcement efforts, especially in the context of proving suspected medical malpractice. Medical records in criminal procedural law have a position as evidence of letters because the making of medical records has fulfilled the provisions as contained in Article 187 of the Criminal Procedure Code. This is also in accordance with Article 13 paragraph (1) letter c Minister of Health Regulation No. 269 / MENKES / PER / III / 2008 concerning Medical Records stating:

"Utilization of medical records can be used as evidence in the process of law enforcement, medical and dental

disciplines and the enforcement of medical ethics and dentistry."

The legal function of the medical record is because the medical record can function as evidence in the event of a dispute / demand from the patient and on the other hand as legal protection for the doctor. What is important is that the medical record which is a record of the carrying out of certain medical actions implicitly also contains the Approval of Medical Measures, because certain medical actions will not be carried out if there is no consent from the patient. If the medical record that has a multifunctionality is related to article 184 of the Criminal Procedure Code, the medical record in addition to functioning as a documentary evidence also functions as evidence of expert information as outlined and constitutes the contents of the medical record.

Thus the medical record is a proof that the doctor or dentist has tried as much as possible through the stages of the process of health care efforts to the most appropriate treatment options in the form of certain medical measures. For patients, medical records are evidence that can be used as a basis for whether certain medical actions performed by doctors or dentists against them are in accordance with professional standards. Therefore, the more complete the medical record the stronger its function as evidence that provides legal protection for doctors or dentists.

The documentary evidence submitted before the court came in third place after witnesses' and expert statements because the documentary evidence was supporting evidence because the medical record was not an authentic deed so that its existence still needed interpretation. In determining the verdict, the judge is convinced by the evidence contained in Article 184 of the Criminal Procedure Code, then in Article 183 of the Criminal Procedure Code, it states that "a judge must not convict a person, except if with at least two valid evidences he obtains confidence that a crime did actually occur and that the defendant is guilty of it".

On the basis of Article 183 of the Criminal Procedure Code, if the victim wishes to attach a medical record as evidence of a letter, then the victim must attach at least one more proof of evidence besides the documentary evidence in accordance with the contents of Article 183 of the Criminal Procedure Code so as to convince the judge to be able to determine his decision.

If a doctor is accused of a criminal offense and submitted to court as a defendant, the doctor's statement, letter and witness statement can provide instructions to the judge to prove the doctor guilty or not. The letter used as evidence that might be able to relieve the doctor is a medical record. Besides being able to function as a documentary evidence providing guidance to judges, the medical record can also be used as material for an expert witness to explain the medical facts. This statement from the expert can be used as evidence in proving a malpractice case.

#### 4. Conclusion

Legal Protection of Medical Records Used as Evidence of Law Enforcement Process in the Court: Article 50 letter (a)

of Law Number 29 Year 2004 concerning Medical Practice, "a doctor or dentist in carrying out medical practice has the right to obtain legal protection as long as he performs his duties in accordance with professional standards and operational procedure standards. Medical records can be used as a means of proof as regulated in Article 1866 of the Civil Code and Article 184 of the Criminal Procedure Code. Provisions Article 13 Paragraph (1) letter c Regulation of the Minister of Health Number 269 / MENKES / PER / III / 2008 Concerning Medical Records.

A doctor who is accused of a criminal offense and brought to court as a defendant, doctor's statement, letter and witness statement can provide instructions to the judge to prove whether the doctor is guilty or not. The letter used as evidence that might be able to relieve the doctor is a medical record. In addition to being able to function as documentary evidence providing guidance to judges, medical records can also be used as material for an expert witness to explain the medical facts. This statement from the expert can be used as evidence in proving a malpractice case.

The medical record as evidence of letters and evidence of expert testimony is very strong position to be able to prove that a doctor has committed malpractice, therefore it should be appropriate that the contents of the medical record determined by Law Number 36 Year 2009 concerning Health in Article 53 and Article 57 Paragraph (1) as the patient's property, must be given to the patient, so that the patient is aware of the situation and condition of the disease he is suffering from and the care / therapy given to him. So that if something happens to him that is related to a doctor's malpractice, the medical record is no longer difficult to find.

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