

DENTINO
JURNAL KEDOKTERAN GIGI
Vol VII. No 1. March 2022

**DENTIST RESPONSIBILITIES USING DENTAL PHOTOGRAPHY
 IN SOCIAL MEDIA**

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ABSTRACT

Background: Information and communication technology develops very rapidly along with the development of the globalization era. Photography is a mixture of art and technology that is not merely a record of the real world but is a complex piece of art that gives meaning. In the world of dentistry, dental photography is one of the tools that can facilitate the imaging process of the patient. Dental photography can be a tool for legal documentation, enforcing diagnosis, determining treatment plans, facilitating the communications between dentists and laboratories, educational facilities, and consulting equipment with laboratories. Natural, beautiful, and interesting have a subjective meaning for every human being. The dentist's obligation is to understand what each patient wants and can lead the ideal thing for the patient. Nowadays many dentists are uploading the results of work to social media.

Purpose: The purposes of this writing are to provide explanation about the legality of dental photography and dentist reasonability in using dental photography in social media. **Method:** The research method used is normative juridical. **Results:** The dentist must keep the confidentially of the document or the patient's data, thereby avoiding document leakage that may be denied by the person who has no right. **Conclusion:** In Indonesia, we must comply with the law of dental photography, which is subject to the ITE laws, Health Law, Medical Practice Act, and other legal regulations.

Keywords: Dental photography, dentist, information, responsibility, technology

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INTRODUCTION

Technology is a tool that can help facilitate human life in all aspects of life, including economics, politics, arts and culture, the world of education, and the medical world.¹ Photography is one part of information technology. Photography is one form of nonverbal communication, in which photos are used to communicate without adding or removing facts from an event so this can aid in making it easier for humans to communicate with one another without being constrained by location or time.²

Photography is one of the mediums that helps the daily practice of dentistry in the millennial era. The use of intraoral digital photography has become the standard in today's daily dental practice. Today's digital photography can record events that occur in specific clinical practice and the results are easy to store. The advancement of photography in dentistry can be used as a means of communication

between dentists and patients, thereby improving the quality of care and service provided to patients. The photographs can be used as documentation, to aid in establishing a diagnosis and determining treatment plans, as well as for education between dentists and patients or between dentists and laboratories, as a medium for sharing knowledge between medical personnel, and to verify insurance.³

Uploading images to social media with positive aims, such as opening new perspectives or sharing inspirational stories, is not an issue, but it must have the patient's permission and not reveal the patient's identity, and dentists should use social media responsibly and professionally. This is in accordance with what is stated in the Indonesian Medical Code of Ethics in article 16, which states: "Every doctor is required to keep everything he knows about a patient private, even after the patient has died."⁴

Problems that arise from medical disputes are most often due to misunderstandings between

patients and dentists. The forms of medical disputes that occur are very diverse. The causes of medical disputes can be classified into administrative problems, codes of ethics, and professional discipline. Violation of the code of ethics itself is the most common cause of the three. This study was created in response to the numerous challenges that have occurred due to differences of opinion among dentist colleagues regarding what kind of dental photography results are allowed to be shared on social media pages and what is not allowed, as well as the complexity of resolving medical disputes in this case.⁵

RESEARCH METHODS

This research was conducted using a normative juridical research method and with a statutory approach, a conceptual approach, and a comparative approach. The statutory approach involved legal products that exist in the norm system in Indonesia related to the title of this research, where then the author used a conceptual approach, namely by understanding the concepts related to norming in legislation whether it is in accordance with the concept of law relating to dental photography followed by a comparative approach involving legal products that exist in the Australian norm system related to the title of this research.⁶

RESULTS

Digital photography has developed very rapidly in recent years with the introduction of various camera designs. In the medical world, many doctors and dentists have utilized photography as a key support tool in the communication process with patients.⁷ Photography will aid dentists in visualizing the patient's smile and explaining to the patient the best treatment that the patient should undergo to improve the condition of his teeth in the dentist-patient relationship. Before taking dental photography, the dentist should make a written agreement with the patient which aims to protect the patient's privacy. A written agreement between the doctor and patient regarding the consent to take dental photography is usually included in the medical record document.⁸ Dental photography is crucial not only as a diagnostic tool but also as an accurate documentation tool for analyzing a case and monitoring treatment progress (before treatment and after treatment is given).⁷

Teledentistry is part of telemedicine that provides convenience in dental health services. Lack of medical professionals, lengthy distances, financial constraints, and easier access to increasingly advanced technology have all fueled interest in teledentistry. Teledentistry has the potential to have a

significant impact on dental health care in rural areas, decreasing travel expenses and unproductive waiting periods.⁹

Health is one part of human rights contained in the Indonesian Health Law. Patients are legal subjects who are presumed to be capable of making decisions for themselves. Patients have the ability to protect themselves from potentially irresponsible health activities, and these rights will safeguard patients as recipients of health services from health professional practices that endanger their safety and health. As independent legal subjects, patients have the authority to determine the choice of health services offered by health workers in relation to the condition of the illness they are suffering from, except in some illnesses, which are governed by law, decisions can be taken unilaterally by health workers who address their situation, such as in a medical emergency. In addition to others regulated in the Constitution that are allowed without approval, health workers are obliged to make informed consent or approval of medical actions in accordance with PERMENKES 290/MENKES/PER/III/2008, as regulated in Article 45 paragraph 1 in the Law of Republic of Indonesia Number 29 of 2004 concerning Medical Practice that "Every medical or dental action to the patient must obtain consent". And continued in paragraph 2 "The approval as referred to in paragraph (1) is given after the patient has received a complete explanation". The approval as referred to is given after the patient has received a complete explanation, at least covering the diagnosis and procedure for medical action, the purpose of the medical action being taken, alternative actions and risks, risks and complications that may occur, and the prognosis for the action taken. The consent can be given either in writing or orally. The approval of the medical action planned by the health worker must be discussed with the patient before any medical action is taken which is known as informed consent. This is evidence for health workers that the actions taken have gone through the correct and legal procedures. The relationship between health workers and patients is built on the trust of patients who come to ask for medical help to cure their illness in a professional manner and keep all secrets about their illness. Thus the relationship between health workers and patients is categorized as a therapeutic transaction.¹⁰

A doctor has an obligation to safeguard patient confidentiality, both in terms of documents and information concerning the patient's sickness that he serves, as well as the patient's privacy rights. This is also reinforced by Article 73 paragraph (1) of the Health Personnel Law "Every Health Worker who provides health services is obligated to keep the health secret of the Health Service Recipient

confidential” which means that every health worker in the professional medical field as regulated in Article 11 paragraph (1) of the Health Personnel Law is strictly obligated to respect, protect, and not violate confidentiality, including patient privacy.¹¹

The use of social media by doctors varies greatly. A survey conducted on 4,000 doctors on a website showed that 90% of doctors use social media for personal activities and 65% of doctors use social media for professional purposes. With social media, medical personnel can more easily provide education to patients, patients’ families, and colleagues. However, if not used wisely, social media can have negative impacts, such as the emergence of several problems which are generally caused by violations of patient confidentiality and the emergence of unclear boundaries between doctors and patients.⁴

A person’s right to privacy is something that must be valued and respected because it is an inherent right of each individual. According to the Black’s Law Dictionary, the right to privacy is “the right to personal autonomy”. In Indonesia, the right to privacy is regulated implicitly in Article 28 G paragraph (1) of the 1945 Constitution of the Republic of Indonesia as follows: “Everyone has the right to personal protection, family, honor, dignity, and property under his control, and has the right to a sense of security and protection from the threat of fear to do or not do something which is a human right”. The state guarantees the protection for citizens of the protection of the right to privacy, the state in this case has the responsibility to control the invasion of privacy.¹²

Medical privacy and confidentiality are inseparable. Privacy is defined as the right to control personal data, the right to be left alone, the right not to be disturbed. Medical confidentiality is the protection of a patient’s health information including access to documents to avoid disclosure of patient’s health information by unauthorized means, alteration, loss, and misuse. Patient privacy is seen as something different from the confidentiality of patient documents, the right to privacy is the right to have full control in sharing information related to their health condition. Patient data security must be protected professionally. Access to patient health information in the form of document data as well as electronic data must be protected.¹³

A person’s right to privacy in Indonesia is not specifically regulated, while medical secrets are explicitly regulated in Article 57 paragraph 1 of the Law of the Republic of Indonesia Number 36 of 2009 concerning Health “Everyone has the right to the secret of his personal health condition that has been disclosed to the health service provider”. Furthermore, it is also regulated in Article 48

paragraph 1 of the Law of the Republic of Indonesia Number 29 concerning Medical Practices “Every doctor or dentist in carrying out medical practice is obliged to keep medical secrets”. The same thing is also stated in article 32 (i) of the Law of the Republic of Indonesia Number 44 of 2009 concerning Hospitals which reads as follows “Receive privacy and confidentiality of the illness, including medical data”. Every medical action that will be given to a patient must obtain permission and approval, both written and unwritten.¹¹

In this context, medical secrets are medical secrets that are documented in medical records. Minister of Health Regulation Number 269/MENKES/PER/III/2008 defines a medical record as a file containing records and documents including patient identity, examination results, a treatment that has been given, as well as other actions and services that have been provided to patients.¹⁴

The decision of the Constitutional Court Number 50/PUU-VI/2008 regarding the case for reviewing article 27 paragraph 3 of Law Number 11 of 2008 concerning Information and Electronic Transactions describes privacy, stating that “Every person intentionally and without rights distributes and or transmits and or makes accessible electronic information and or electronic documents that contain insults and or defamation” this is in accordance with what was conveyed and translated from article 12 of the Universal Declaration of Human Rights (UDHR).¹⁵

The use of dental photography is closely related to an online-based medical service called teledentistry.¹⁶ In practice, online-based medical services indicate a violation of patient privacy rights which could potentially become a legal problem because in practice some medical service applications display patient consultation history information that is easily accessed by unauthorized parties. For this reason, in its implementation, it is necessary to provide security guarantees for people who receive it in accordance with what is stated in Article 15 paragraph (1) of Law Number 11 of 2008 concerning Information and Electronic Transactions which stipulates that “Each Electronic System Operator must operate the electronic system reliably and safely and be responsible for the proper operation of the electronic system”.¹⁷

Health promotion on social media by individuals has not been specifically regulated regarding its content and regulations, however, when promoting health through health service facilities, such as hospitals and/or clinics, there are some limitations. Advertising restrictions from health service facilities are generally regulated separately and are more flexible as stipulated in the Minister of

Health Regulation (Permenkes) no. 1787/MENKES/PER/XII/2010. The promotion of health care facilities must pay close attention to the debate about the limits of doctors' advertising.¹⁸

DISCUSSION

The basis of the doctor's obligation is the existence of a professional contractual relationship between medical personnel and their patients, which creates general obligations and professional obligations for this medical personnel. Professional obligations are described in the oath of profession, rules of professional ethics, various service standards, and various operational procedures. Misunderstandings between patients, doctors, and hospitals are the most common cause of problems in medical dispute situations. The causes of medical disputes can be classified into administrative problems, codes of ethics, and professional discipline. Violation of the code of ethics itself is the most common cause of the three.⁵

Doctors are supported in their work by medical professional standards that serve as a guideline so that they do not diverge from the regulations of the profession. Not only doctors but all health workers are also required to comply with the provisions of the code of ethics, professional standards, service standards, and standard operating procedures.¹⁹ Dentistry is a medical science that specifically studies dental and oral health which has several scientific branches. Seven branches of dentistry are implemented in the form of specialized science. The difference in competence between dentists and specialist dentists is often a problem given that previously all dental procedures could be handled by all dentists. The division of competence has not been specifically regulated, this often creates uncertainty between the competence limits of dentists and dental specialists.²⁵

Doctors should try to minimize the risks of treatment. In addition, patients should be informed about the degree of risk of treatment and other treatment alternatives. Treatment options must be tailored to the facilities and infrastructure available in the health center. The advancement of dental photography is likely to aid doctors in their daily practice.²⁰

Violation of professional discipline is a violation of medical professional standards. Violations of medical discipline are often associated with medical malpractice. The term malpractice is often found in the professional world, especially the medical profession. Medical professionals such as doctors and dentists often come into contact with medical disputes that occur due to malpractice cases. Supposedly, malpractice is not only synonymous

with the profession of doctors or health workers, but also with other professions that practice.

Indonesian Medical Council Regulation Number 4 of 2011 concerning Professional Discipline of Doctors and Dentists (hereinafter referred to as the Indonesian Medical Council regarding the Professional Discipline of Doctors and Dentists), Professional discipline of doctors and dentists is adherence to the rules and/or provisions of the application of science in the implementation of medical practice. In terms of violations of the Professional Discipline of Doctors and Dentists, they are divided into three categories, namely carrying out medical practice incompetently; professional duties and responsibilities to patients are not carried out properly; disgraceful behavior that damages the dignity and honor of the medical profession.²¹

The act of taking dental photos should be carried out in compliance with medical standards. For example in aesthetic cases that require a detailed explanation of the treatment plan made by the dentist. However, this does not apply to handling emergency cases. For example, there is a patient who comes to the dentist in a state of extraoral swelling and severe pain, but dentists take a photo first without providing emergency assistance to the patient.²²

The use of dental photography is closely related to an online-based medical service called teledentistry. In practice, online-based medical services indicate a violation of patient privacy rights which could potentially become a legal problem, because in practice, some medical service applications display patient consultation history information that is easily accessed by unauthorized parties. For this reason, in its implementation, it is necessary to provide security guarantees for people who receive it in accordance with what is stated in Article 15 paragraph (1) of Law Number 11 of 2008 concerning Information and Electronic Transactions which stipulates that "Each Electronic System Operator must operate the electronic system reliably and safely and be responsible for the proper operation of the electronic system".¹⁷

Based on the provisions of Article 1 Paragraph (6) Letter an of the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions (hereinafter referred to as the ITE Law), stipulates that "Electronic System Operator is any person, state administrator, business entity, and community that provides, manages, and/or operates Electronic System, either individually or jointly to Electronic System users for their own needs and/or the needs of other parties." If a doctor uses electronic media in practice, he can be categorized as a doctor as part of

an electronic system operator because he fulfills the element of being a person who manages or operates an electronic system either individually or jointly for his own needs or the needs of other parties, then all legal consequences arising from health efforts provided to patients via online can be accounted for based on the provisions of the ITE Law.

The responsibility of the doctor as the organizer of the electronic system must be limited only regarding responsibilities related to his professional obligations or those that are only related to the health sector in the online medical service, for example, online therapeutic transactions which if violated and the patient suffers a loss, the basis for the claim for compensation is based on default and Article 38 Paragraph (1) of the ITE Law. The protection of privacy and personal data has a significant impact on the development of a country's digital economy, and Indonesia is no different. Privacy and personal data are important because users on the network will not carry out digital transactions if they feel that the security of their privacy and personal data is threatened. One of the privacy and personal data safeguards concerns how personal data will be used.

In Indonesia, the development of formal juridical informed consent is marked by the emergence of the Indonesian Doctors Association (IDA) statement regarding informed consent through PB-IDI Decree No. 319/PB/A.4/88 in 1988. Then it was reaffirmed by the Ministry of Health Regulations (Permenkes) No. 585 of 1989 concerning "Informed Consent". The latest regulation is Permenkes No. 290 of 2008 concerning Approval of Medical Actions. The contents of the informed consent are related to the patient's disease, including the form, goals, risks, benefits of the therapy to be implemented and alternative therapies.²³

In Australia, the use of dental photography in a patient's medical record requires prior agreement from the patient, and the practitioner is required to present the patient with a clear and complete explanation beforehand. The laws and regulations governing the electronic health system are regulated in the My Health Records Act 2012 (Cth), previously known as the Personally Controlled Electronic Health Records Act 2012 (Cth). Dental photography on social media is frequently related to health promotion. The use of dental photos for health promotion on social media in Australia is governed by an Australian Dental Association policy (ADA).²⁴ The legality of dental photography in Indonesia has not been explicitly regulated in the law. The use of dental photography in free social media has the potential to blur the line between personal matters and work professionalism, so that it can allow ethical

violations to occur because it is very closely related to patient privacy. In developed countries such as Australia, dentists must first consider the benefits for both patients and medical practitioners before uploading the results of dental photography on social media pages. Dentists should know what uses of photographs are permitted, particularly in relation to teaching and educational and research uses.

Dentists' responsibility to use dental photography on social media has legal implications. The usage of dental pictures on social media should respect the patient's right to privacy and be done with the patient's informed consent. If there is a violation of patient privacy by health workers, it can result in administrative sanctions in the form of a written warning and revocation of temporary permits or revocation of permanent permits. Dentists who want to utilize dental photographs on social media must pay attention to administrative completeness, practice in accordance with competency, professional standards, and standard operating procedures, thoroughness, and the pronunciation of the doctor's oath. In Australia the use of dental photography on social media tends to be associated with health promotion. This may be done but must respect the patient's right to privacy and be honest and not excessive.

REFERENCE

1. Ngafifi M., *Kemajuan Teknologi dan Pola Hidup Manusia dalam Perpektif Sosial Budaya*. Jurnal Pembangunan Pendidikan: Fondasi dan Aplikasi. 2014;2(1): 33-47.
2. Iskandar AD, Putri H., *The Importance of Visual Language In Learning Photography*. Teaching and Learning in The 21st Century: Challenges for Lectures and Teachers. 2014: 38-44.
3. Eswaran B, Geerthigan S., *Feature we Need to Know in Dentistry While Taking Photography for Intraoral*. International Journal of Innovative Science and Research Technology. 2020;5(10): 63-65.
4. Prawiroharjo P, Librianty N., *Tinjauan Etika Penggunaan Media Sosial oleh Dokter*. Jurnal Etika Kedokteran Indonesia. 2017;1(1): 31-4.
5. Santoso AD, Isharyanto, Sulistiyono A., *Penyelesaian Sengketa Medik Melalui Mediasi Oleh Majelis Kehormatan Disiplin Kedokteran Indonesia (MKDKI) Untuk Dapat Menjamin Keadilan Dalam Hubungan Dokter dan Pasien*. Jurnal Pasca Sarjana Hukum UNS. 2019;7(1): 29-38.
6. Djulaeka, Rahayu D. "Buku Ajar: Metode Penelitian Hukum", Cetakan Pertama, Edisi

- Pertama, Scopindo Media Pustaka, Surabaya. 2019. Hal 1-140.
7. Casaglia A, Dominic PD, Arcuri L, Gargari M, Ottria L., Dental Photography Today. Part 1: Basic Concepts. *Oral & Implantology*. 2015;8(4): 122-129.
 8. Haddock FJ, Hammond BD, Romero MF., Guide to Dental Photography. *The Journal of Multidisciplinary Care Decisions In Dentistry*. 2018;12(4): 1-4.
 9. Estai M, Kanagasingam Y, Tennant M, Bunt S., A Systematic Review of The Research Evidence for the Benefits of Teledentistry. *J Telemed Care*. 2018;24(3): 147-156.
 10. Zivanovic D, Ciric Z., Therapeutic Communication in Health Care. *SciFed Nursing & Healthcare Journal*. 2018;2(1): 1-7.
 11. Indonesia. Undang-Undang Nomor 36 Tahun 2009 Tentang Kesehatan. Lembaran Negara RI Tahun 2009 Nomor 144, Tambahan Lembaran Negara Republik Indonesia Nomor 506. Sekretariat Negara. Jakarta.
 12. Situmeang SMT., Penyalahgunaan Data Pribadi Sebagai Bentuk Kejahatan Sempurna Dalam Perspektif Hukum Siber. *Jurnal SASI Fakultas Hukum Universitas Pattimura*. 2021;27(1):38-52.
 13. Melanie S. Brodnik, Laurie A. Rinehart-Thomposon, Rebecca B. Reynolds., 2017.” Fundamental of Law for Health Informatic and Information Management Professional”, Chapter I, Third Edition, hal. 1-600, AHIMA Press, Chichago.
 14. Peraturan Menteri Kesehatan Republik Indonesia Nomor 269/MENKES/PER/III/2008 tentang *Rekam Medis*.
 15. Indonesia. Undang-Undang Republik Indonesia No. 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik. Lembaran Negara RI Tahun 2008 Nomor 58 Tambahan Lembaran Negara RI Nomor 4843. Sekretariat Negara. Jakarta.
 16. Desai V, Bumb D., Digital Dental Photography: A Contemporary Revolution. *International Journal of Clinical Pediatric Dentistry*. 2013;6(3):193-6.
 17. Masa MA., Strategi Pengembangan Implementasi Telemedicine Di Sulawesi Selatan. *InComTech Jurnal Telekomunikasi dan Komputer*. 2014;5(3): 22.
 18. Peraturan Menteri Kesehatan Republik Indonesia Nomor 1787/MENKES/PER/XII/2010 tentang *Iklan dan Publikasi Pelayanan Kesehatan*.
 19. Mangkey MD., Perlindungan Hukum Terhadap Dokter Dalam Memberikan Pelayanan Medis. *Lex et Societatis*. 2014;2(8): 14-21. Ricky., Aspek Hukum Peraktik Kedokteran Melakukan Tindakan Medis Yang Bukan Kewenangan Kompetensi Profesinya. *Lex Renaissance*. 2020;5(2): 403-419.
 20. Rimbing N, Sumilat VV., Perlindungan dan Penegakan Hukum Bagi Dokter yang Berhadapan dengan Hukum. *Lex Crimen*. 2021;10(6): 63-72.
 21. Peraturan Konsil Kedokteran Indonesia Nomor 4 Tahun 2011 tentang *Disiplin Profesional Dokter Dan Dokter Gigi*, Berita Negara Republik Indonesia Tahun 2012 Nomor 304.
 22. Kalpana D, Rao SJ, Joseph JK, Kurapati SKR., Digital Dental Photography. *Indian Journal of Dental Research*. 2018;29(4): 507-512.
 23. Peraturan Menteri Kesehatan Republik Indonesia Nomor 290/MENKES/PER/III/2008 tentang *Persetujuan Tindakan Kedokteran*.
 24. *Australian Dental Association Policy Statement 5.18 – Dentistry, Privacy and Confidentiality*.
 25. Mandasari M, Rahmayanti F, Derbi H, Wimardhani YS., Special care dentistry perception among dentist in Jakarta: An online survey study. *PLoS ONE*. 2021;16(4): e0249727.