

Limitations on the Use of Social Media in Health Services in Terms of Legislation

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Article Info

Received: 2024-11-20

Revised: 2025-01-10

Accepted: 2025-02-20

Keywords: Limitations, Legislation,
Health Services

Abstract

Abstract

Activities on social media have become a habit that is difficult for users to leave behind, making these activities take place continuously in order to continue to exist on social media. But not all of these activities are beneficial, they can also be disastrous for users and even other people. The urgency of this study is to focus on the limits of the use of social media in health care activities, which will see and know the rules governing the limits of the use of social media during health care activities. Reviewing whether the activity of recording health service activities is justified by law so that it will not interfere with health service activities. This study uses normative law which is descriptive analytical, using a comparative law and case approach. The data source uses secondary data sources, consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Data collection uses literature collection techniques with data collection tools in the form of document studies and legislation, with data analysis using qualitative research. This study concludes that in Indonesia, activities on social media have not yet been regulated, making it difficult for justice seekers to gain access if there is abuse of activities on social media, especially when providing health services.

1. Introduction

The internet plays an increasingly important role in the social, economic and political life of the globalized world. Every year the internet is increasingly influencing the lives of mankind, so it cannot be denied that technology has rapidly changed world civilization. Social media has become a very popular thing in society, even considered a necessity of life. Social media for the

community is now not only a substitute for the direct communication process, but with social media the community is facilitated both in the communication and information process.¹The communication process demands openness to the public so that the information is known. The demand for openness indirectly creates a thin line between personal privacy and public interest. In this case, the government as a controller is obliged to provide transparent and accurate news or information to prevent social disruption in society.²

Activities on social media have become an unavoidable habit, as if it has become an obligation for users to continue to exist on social media so that all audiences know their activities. These habits and activities on social media are in danger of being utilized and misused by other parties for other interests that can harm other users. What initially can provide positive benefits, it is used by a handful of people to commit crimes and take economic advantage of these technological advances.³The incident occurred in the case of Doctor T.G.A (initials) who was dragged and prosecuted for the crime of obstructing outbreak prevention as referred to in Article 14 paragraph (1) of Law Number 4 of 1984 concerning Communicable Disease Outbreaks. Doctor T.G.A was dragged in because he injected an empty Covid-19 vaccine into private elementary school students in Medan. So, based on this incident, the actions of doctor T.G.A as a vaccinator who gave vaccines to children not in accordance with the dose are actions that do not support efforts to overcome infectious disease outbreaks. The incident went viral because the student's parents had previously recorded the vaccination and uploaded the video to the student's parents' social media. Initially nothing happened, until one netizen (another social media user) found out and saw that the Plugger was not in a position to be filled with a dose of 0.5 Ml vaccine (zero point five millimeters), so he took the video and disseminated it to other social media. The incident immediately went viral and led to comments from other netizens on the actions taken by the T.G.A doctor. The urgency of this study focuses on the limitations of the use of social media in health care activities, which will see and know the rules governing the limitations of the use of social media during health care activities. Reviewing whether the activity of recording health service activities

¹ Rahmania Ginting, dkk, *Etika Komunikasi Dalam Media Sosial: Saring Sebelum Sharing*, (Cirebon: Insania, 2021), hal. 6-7.

² Rahandy Rizki Prananda, Batasan Hukum Keterbukaan Data Medis Pasien Pengidap Covid-19: Perlindungan Privasi VS Transparansi Informasi Publik, *Jurnal Law, Development & Justice Review*, Volume 3 Nomor 1, Juni 2020: 143.

³ Fatma Yunita, Aspek Hukum Penggunaan Media Sosial Berbasis Internet, *Jurnal Notarius*, Volume 2 Nomor 1, Januari-Juni 2023: 121.

is justified by law so that it will not interfere with health service activities. From the description above, it raises problems, among others, how is the legal regulation in Indonesia regarding the limits of events that can be recorded by patients in health services? Is the act of uploading health care activities to social media justified? How do other countries address the limitations on the use of social media in health services? The purpose of writing this article is to find out the legal arrangements in Indonesia regarding the limits of the use of social media by patients in health care activities, where social media can affect public perception and reveal legal challenges that arise along with technological developments.

2. Research Method

This study uses Normative Legal research, descriptive analytical in nature with a comparative legal approach and case approach. Normative legal research examines research based on applicable laws and regulations (law in books) or law is conceptualized as a rule or norm that is a benchmark for human behavior that is considered appropriate. The study is conducted through an examination of theories, principles, and laws and regulations that have relevance to this study.⁴ The data source uses secondary data sources, consisting of primary legal materials, secondary legal materials, and tertiary legal materials. Data collection techniques use library research techniques, with data collection tools in the form of document studies and legislation studies. The data analysis used is qualitative research data analysis, namely analyzing by understanding and describing the data that has been obtained to be arranged systematically, so that the final stage draws conclusions.

3. Results And Discussion

Legal Regulation of Restrictions on the Use of Social Media in Health Services

The development of information technology is growing very fast and rapidly, as evidenced by new innovations in the field of information technology in developing software and hardware on an ongoing basis. One of these developments is the

⁴ I Made Pasek Diantha, *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, (Jakarta: Prenada Media, 2016), hal 21.

existence of social media, which is a self-representation of a person to interact, cooperate, share, and communicate with other users and form virtual social ties.⁵ The presence of social media can penetrate the boundaries of the dimensions of life, space, and time of its users so that it can be used by anyone, anytime, and anywhere.⁶

Social media is defined as an internet-based platform for communicating with other users, allowing users to create profiles where they can upload personal information, personal contact services, and their daily activities. Social media is used as a medium to exchange information and create media content individually or in groups. In health care, social media can provide benefits and can also cause serious harm.

In healthcare, social media can be used as a tool to support the healthcare process, collect and share information, bring together people who share the same obstacles, and talk about health topics.⁷ In this way, it supports patient empowerment, which can lead patients to consult further to control their health needs remotely and without having to meet face-to-face.

Interactions within health services, especially social media interactions, are a fundamental component of many health promotion strategies designed to change health risk behaviors.⁸ Social media has the capacity to reach and influence millions of Indonesians simultaneously. The most obvious power of the media lies in the number of individuals they can reach. Social media can influence individual behaviors and community values that support both the environment and the individual, making it necessary to maintain a habit of health-conscious behavior change. In addition, as healthcare delivery patterns continue to change, the media can provide valuable information to the public about other options and viewpoints.⁹

In Indonesia, the use of social media is regulated by Law Number 11 of 2008 on Electronic Information and Transactions (ITE), which has now been amended to Law

⁵ Rulli Nasrullah, *Media Sosial: Perspektif Komunikasi, Budaya, dan Sosioteknologi*, (Bandung, Simbiosis Rekatama Media, 2017), hal. 32.

⁶ Tika Andarasni Parwitasari, Supanto, Ismunarno, Winarno Budyatmojo, Sulistyata, Kesadaran Hukum dan Etika Dalam Menggunakan Media Sosial, *Jurnal Gema Keadilan*, Volume 9 Edisi 1, Agustus 2022: 2.

⁷ Petya Eckler, Gregory Worsowicz, J Wesley Rayburn, Social Media and Health Care: an Overview, *PM R* 20102 (11):1046–50.

⁸ Julia M. Alber, Samantha Paige, Michael Stellefson, Jay Bernhardt, "Social Media Self-Efficacy of Health Education Specialists," *Jurnal Health Promotion Practice*, Volume 17, Nomor 6, May 2016: 915–921.

⁹ Muchammad Bayu Tejo Sampurno, Tri Cahyo Kusumandyoko, Muh Ariffudin Islam, Budaya Media Sosial, Edukasi Masyarakat dan Pandemi Covid-19, *Jurnal Sosial & Budaya Syar-I*, Volume 7, Nomor 6, 2020: 531.

Number 19 of 2016 on Electronic Information and Transactions. This law is present as a guardian so that the digital space in Indonesia is in a clean, healthy, ethical and productive condition. It was created to prevent and regulate violations that occur in the digital world such as violations on social media. The presence of this law is also motivated by the development and progress of information technology which is so fast and rapid that it has caused changes in human life activities in various aspects, one of which is the aspect of interacting through social media.

Furthermore, the presence of the ITE Law gives meaning to the need for law enforcement against violations in the use of information technology, one of which is for users who use social media in every activity. The legal basis that regulates these matters includes Article 27 paragraph (3), Article 28 paragraph (2), Article 45 paragraph (3), Article 45A paragraph (2) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions.

As for the sound of each of the articles above, namely:

Article 27 paragraph (3), reads:

“Every person intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain insults and/or defamation”.

Article 28 paragraph (2), reads:

“Every person intentionally and without rights disseminates information aimed at creating a sense of hatred or hostility of individuals and/or certain community groups based on ethnicity, religion, race, and intergroup (SARA)”.

Article 45 paragraph (3), reads:

“Any person who intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain insults and/or defamation as referred to in Article 27 paragraph (3) shall be punished with a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp.750,000,000.00 (seven hundred fifty million rupiah)”.

Article 45A paragraph (2), reads:

“Every person who intentionally and without the right to disseminate information aimed at creating a sense of hatred or hostility of individuals and / or certain community groups based on ethnicity, religion, race and intergroup (SARA) as referred to in

Article 28 paragraph (21) shall be punished with a maximum imprisonment of 6 (six) years and / or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah)".

The above rules imply that social media indirectly provides freedom of speech on social media to its users, but on the other hand it can also be a threat to users to the objects displayed.

3.2. Validity of Social Media Use in Healthcare

The internet as a medium of social interaction has occurred all over the world, including Indonesia, accompanied by the development of its growing number of internet users. The current situation reflects how influential social media is in every aspect of human life, especially social media users. Interestingly, life on social media can make an initially small event become big because of something. Internet usage activities caused by the influence of globalization are opening social networks and sending or receiving emails/messages, not only this, communication activities by writing on the homepage of their account, updating status, updating comments, uploading photos and videos to online gaming activities. The most familiar social media used include: Facebook, Twitter, Youtube, and Instagram. Each of these social media that arose due to the influence of globalization has a special advantage in attracting many social media users they have.

In the last ten years, social media has grown exponentially. In March 2017, the number of Facebook users reached 1.9 billion worldwide. This development is also followed by an increase in health services and health information so that there is engagement between health care providers and patients. The ease of access to internet devices makes people freely access internet health information from various sources, especially social media where communities are formed that have the same interests to obtain or provide health information.¹⁰

Social media has become a means to communicate and even social media is seen as having tremendous potential to help both medical educators, doctors, librarians and medical students to enter the technological era. Study results show that social media has a positive contribution to the implementation of health promotion, so it is necessary to design a health promotion and communication strategy based on social

¹⁰ Andini Tri Wijayanti, Angesti Drea, Arinahaq, Fiki Kusumasari, Rosa Selvia, Rovels, Penggunaan Media Sosial di Rumah Sakit: A Systematic Review, *Jurnal ARSI, Volume 6 Nomor 3*, Juni 2020: 133.

media. Along with the process of patient needs, social media is also used as an alternative social interaction between medical/health personnel and patients.

With regard to the case previously described in the introduction above, there was an upload of content on social media by a handful of individuals to spread health service activities carried out by a doctor, so that the content went viral and caused an uproar that reaped the pros and cons of other social media users (known as netizens). As a result of this content, it has bad consequences for the doctor, affecting the doctor's reputation until he is dragged into the realm of law. The defense of his reputation began with the incident of recording vaccination activities carried out by parents of students, then uploading them to social media and going viral. From this situation, an examination was carried out by the prosecutor's office which then gave charges to doctor T.G.A who was proven legally and convincingly according to the law to have been guilty of committing the crime of "deliberately obstructing the implementation of outbreak prevention" as referred to in Article 14 paragraph (1) of Law Number 4 of 1984 concerning Communicable Disease Outbreaks. The uploading activity on social media made a simalakama fruit for the doctor, where the video was too early to be used as evidence of what actually happened. However, because it has been watched by many people, it becomes incriminating for the accused doctor by public opinion.

The focus of this study is on the certainty of recording activities to be used as content during the ongoing health service activities by doctors. In the official page of the Indonesian Hospital Association (PERSI), taking photos in hospitals should not violate the privacy of patients, patients' families, and hospital staff. So that the recording activities carried out by someone on real events are not included in the violation of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Electronic Information and Transactions, because there is no electronic information transmission that is intercepted or intercepted.

It becomes a problem when the results of the recording are disseminated to social media and seen by many people because of the spread of content that is not true and contrary to one's privacy, especially if the spread of the content causes insults and / or defamation. Article 45 paragraph (3), states: "Any person who intentionally and without right distributes and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that contain insults and/or defamation as referred to in Article 27 paragraph (3) shall be punished with a maximum imprisonment of 4 (four) years and/or a maximum fine of Rp.750,000,000.00 (seven hundred and fifty million rupiah)".

3.3. Regulation of Social Media Use in Some Countries

The rapid development of technology and communication in human life brings positive and negative influences, like a double-edged sword. The use of information and communication technology on the one hand contributes to the improvement of human welfare and civilization. On the other hand, the advancement of information and communication technology can be used to commit acts that are against the law, attacking various legal interests, society, and the state. Starting from internet abuse, stalking, hacking, carding, fraud to defamation cases through social media which have recently occurred most frequently.

Governments around the world in recent years have begun to consider appropriate and necessary regulations to reduce the negative impact of social media. While social media has various benefits that are very helpful in obtaining information and circumstances at different times and places, it is also necessary to regulate provisions to minimize and prevent the negative impact of social media.

The following describes the provisions related to the use of social media in several countries, including:

1. United States

Regulation of social media is largely centered on the first amendment, the first amendment to prohibit government censorship, in the proposed amendment to Section 230 of the Communications Decency Act, stating that internet providers (such as social media) cannot be treated as publishers or speakers of content from third parties. Section 230 gives social media providers broad protection from liability for defamatory content, and broad scope to moderate discussions and remove or not remove posts.

Furthermore, in the United States, there is specific legislation governing the Platform Accountability and Consumer Transactions Act (PACT Act), which aims to impose new obligations on internet companies. The latest version seeks to make content moderation for social media platforms more transparent and improve consumer protection.¹¹ It also requires social media platforms to issue public statements on their

¹¹ U.S. Senator for Hawai'i Brian Schatz (17 March 2021). Schatz, Thune Reintroduce Legislation To Update Section 230, Strengthen Rules, Transparency on Online Content Moderation, Hold Internet Companies Accountable For Moderation Practices. <https://www.schatz.senate.gov/news/press->

policies regarding moderation, demonization, and removal of user content, in addition to publishing transparency reports summarizing their actions and statistics. The PACT Act also authorizes State Attorneys General to take legal action against platforms that violate federal civil laws.¹²

2. European Union

The European Union is made up of 27 sovereign and independent states (and their citizens), known as Member States, which have pooled some of their 'sovereignty', delegating some decision-making authority to shared institutions such as the European Council, European Parliament, and European Commission. Generally, the European Commission proposes new legislation, the European Parliament and the European Council adopt it, and then the Member States and the European Commission implement it. The passed regulations are applicable and binding on all Member States directly, and although they do not have to be passed into national law by Member States, national laws may need to be amended to avoid conflict with them.¹³

The European Union strives to be a global role model for the digital economy and promote its digital standards internationally. As a large and influential market, their regulation of social media contributes to setting global norms. Legislation proposed by the EU will have a significant impact on European democracy, and how they can balance market, state, civil society and free speech.¹⁴ The EU and its member states are seeking regulation in a range of areas, including artificial intelligence, digital markets and services, connectivity, cybersecurity, data and digital identity.¹⁵

[releases/schatz-thune-reintroduce-legislation-to-updatesection-230-strengthen-rules-transparency-on-online-content-moderation-hold-internet-companies-accountable-formoderation-practices](#)

¹² Frank Konkel, 'Bipartisan Bill Would Hold Tech Companies Responsible for Moderating Content', (17 March 2021), Nextgov. <https://www.nextgov.com/policy/2021/03/bipartisan-bill-would-hold-tech-companies-responsiblemoderating-content/172739/>; Ashley Johnson & Daniel Castro, 'PACT Act Would Increase Platform Transparency, But Undercut Intermediary Liability', (7 August 2020), Information Technology & Innovation Foundation <https://itif.org/publications/2020/08/07/pact-act-would-increase-platform-transparency-undercut-intermediary>

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https://eeas.europa.eu/archives/delegations/singapore/documents/more_info/eu_publications/how_the_european_union_works_en.pdf

¹⁴ Damian Tambini, 'Media Policy in 2021. As the EU takes on the tech giants, will the UK' (12 January 2021) London School of Economics <https://blogs.lse.ac.uk/medialse/2021/01/12/media-policy-in-2021-as-the-eu-takes-on-the-techgiants-will-the-uk/>

¹⁵ European Commission, Priorities 2019-2024, A Europe fit for Digital Age https://ec.europa.eu/info/strategy/priorities2019-2024/europe-fit-digital-age_en

The provisions of several European Union countries regarding the use of social media include:

2.1 Germany

Having a law that combats hate speech and misleading information on social media, the Network Enforcement Act (NetzDG) was implemented in 2017. While this law does not impose new requirements for social media platforms, it does impose hefty fines for non-compliance with existing legal obligations. Under NetzDG, platforms are required to respond to complaints about unlawful content and determine whether the content is illegal in accordance with the German Criminal Code. If illegal, the content must be removed within 24 hours, or in some cases, within seven days. Illegal content may include incitement to violence or hatred against national, religious, ethnic or racial groups. Penalties for non-compliance include fines of up to €50 million (\$79 million AUD) per violation. On June 28, 2021, the NetzDG was amended, to improve the content and comparability of social media providers' transparency reports as well as increase user-friendliness in reporting complaint channels. The amendments introduce an appeal procedure for actions taken by social networking platforms.¹⁶

2.2 Austria

Austria has a law that responds to the increase in hate speech, harassment, and the spread of false information on online platforms, The Communications Platforms Act came into force in 2021. Under the act, providers (domestic and foreign non-profit communications platform providers that have more than 100,000 users in Austria or revenue exceeding EUR 500,000) are required to establish effective and transparent procedures for reporting and removal. Removal must take place within 24 hours if the illegality is “obvious to a legal layperson”, or within 7 days if a detailed examination is required. Platforms are required to keep deleted posts for at least ten weeks for possible prosecution. Service providers are required to submit an annual review of the handling of illegal content, or a quarterly review for platforms with more than one million registered users. In case of non-compliance with the law, fines of up to EUR

¹⁶ Act to Improve Enforcement of the Law in Social Networks (Network Enforcement Act) https://www.bmfv.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/NetzDG_engl.pdf;jsessionid=AD99C47B2608D

10 million can be imposed on platforms, and fines of up to EUR 1 million can be imposed on managing board members.¹⁷

2.3 Sweden

Having arrangements to improve misinformation literacy among its citizens, through the Civil Contingencies Agency (MSB) releasing the Countering Information Influence Activities, A Handbook for Communicators in 2018. The publication provides a resource for communicators working in public administration in the event of an actual or anticipated disinformation influence campaign. Sweden's Digital Development Minister Anders Ygeman stated in early 2020 that he wants to introduce legislation to increase the accountability of social media platforms in removing offensive content.¹⁸

2.4 Spain

Spain has taken steps to promote digital transformation targeting digital connectivity, cybersecurity, and strengthening the digital skills of the general public through the Charter on Digital Rights in July 2021.¹⁹ Strengthens and expands citizens' rights, generates certainty in the new digital age, and increases people's confidence in the face of disruption represented by technology. The Charter covers the right to liberty, the right to identity in the digital environment, data protection, incognito, the right not to be tracked and profiled, the right to cybersecurity, and the right to digital heritage.²⁰

¹⁷ 4 European Commission, Draft Federal Act on measures to protect users on communication platforms (Communication Platforms Act), <https://ec.europa.eu/growth/toolsdatabases/tris/en/search/?trisaction=search.detail&year=2020&num=544>

¹⁸ 7 Fanny Svärd, 'Government wants to legislate against illegal content in social media', (18 February 2020), Radio Sverige <https://sverigesradio.se/artikel/7410502>

¹⁹ 9 Government of Spain, Digital Spain 2025 https://portal.mineco.gob.es/RecursosArticulo/mineco/ministerio/ficheros/210204_Digital_Spain_2025.pdf

²⁰ Carta Derechos Digitales https://www.lamoncloa.gob.es/presidente/actividades/Documents/2021/140721-Carta_Derechos_Digitales_RedEs.pdf ; Government of Spain, 'The Government adopts the Digital Rights Charter to articulate a reference framework to guarantee citizens' rights in the new digital age' (14 July 2021)

2.5 France

Having a Law to crack down on the spread of false information, requires online platforms to establish mechanisms for users to flag false information in an easily accessible and visible manner.²¹

3. Norway

In June 2021, in response to growing concerns around the impact of social media on the mental health and body image insecurities of the Norwegian population, the Norwegian Government passed a law requiring content creators to disclose when they have retouched or added filters to photos.²²

4. Singapore

A law to address the spread of fake news, known colloquially as the Fake News Law, was passed in Singapore's Parliament on May 8, 2019, and came into effect on October 2, 2019. This law aims to prevent fake news that may harm Singapore's security and bilateral relations with other countries due to acts of hate speech between different groups.²³ Any person who violates these provisions may be subject to a fine of up to \$50,000 Singapore dollars and/or imprisonment of up to 5 years, and companies may be liable for up to \$1 million Singapore dollars.²⁴

4. Conclusion

5. Legal arrangements regarding the use of social media in Indonesia currently have no legal umbrella that oversees it, the regulation is only implied in Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008

²¹ 9 Michael-Ross Fiorentino, 'France passes controversial 'fake news' law', (22 November 2018), EuroNews <https://www.euronews.com/2018/11/22/france-passes-controversial-fake-news-law>

²² 7 Vedtak til lov om endringer i markedsføringsloven mv. (merking av retusjert reklame) (Legislation amending the Swedish Marketing Practices Act) <https://www.stortinget.no/globalassets/pdf/lovvedtak/2020-2021/vedtak-202021-146.pdf>

²³ Protection from Online Falsehoods and Manipulation Act 2019, s4.

²⁴ Taylor Vinters, 5 things you need to know about Singapore's controversial new fake news law <https://www.taylorvinters.com/article/5-things-you-need-to-know-about-singapores-controversial-new-fake-news-law>; Tech Law for Everyone, POFMA: Singapore's anti-fake news law <https://www.scl.org/articles/10541-pofma-singapore-s-anti-fake-news-law>; Protection from Online Falsehoods and Manipulation Act <https://www.mlaw.gov.sg/files/news/others/POFMABrochure.pdf>

concerning Electronic Information and Transactions. This implies that social media indirectly provides freedom of speech on social media to its users, but on the other hand it can also be a threat to users to the objects displayed. It becomes a threat when the results of the recording are spread to social media and seen by many people because of the spread of content that is not true and contrary to one's privacy, then it is categorized as insulting speech and/or defamation.

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