

# Patient's Right to Obtain The Electronic Medical Record Contents in Therapeutic Contract According to Indonesian Civil Law Perspective

Anggra Yudha Ramadianto  
Politeknik Kesehatan YBA Bandung

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## ABSTRACT

The relationship between patients and health care providers is a contractual relationship. Health service providers have obligations to patients, one of which is to maintain medical records in health services. This obligation arises as a form of fulfilling the patient's right to obtain the contents of the medical record. The results showed that fulfilling the patient's right to obtain the contents of the record is one of the achievements in the form of giving something in a therapeutic contract. Meanwhile, violation of the fulfillment of these rights in a therapeutic contract is an unlawful act, so that this matter can be sued based on the provisions in Article 1365, 1366, and 1367 of the Indonesian Civil Law. However, based on the provisions of Article 1865 of the Indonesian Civil Law, the burden of proof in lawsuits against the law is borne by the patient as the litigant.

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## Corresponding Author:

Name: Anggra Yudha Ramadianto  
Institution Address: Jl. Cipagalo Girang No. 24, Margasari, Kec. Buahbatu, Kota Bandung, Jawa Barat 40286  
e-mail: [anggra.bigcat@gmail.com](mailto:anggra.bigcat@gmail.com)

## 1. INTRODUCTION

Every citizen has the right to health which is a form of human rights. Obtaining the quality and affordable health services is a form of the right to health. Providing access to proper quality health services is basically the main task of the government, which in its implementation can only be supported by the participation of the community. Article 2 of Minister of Health Regulations Number 47 of 2016 Concerning Health Service Facilities states that the forms of health services that can be obtained by the community include health services consisting of promotive, preventive, curative and rehabilitative efforts. The existence of law is of course needed to regulate the implementation of

health services in the community. The reason is none other than that the implementation takes place in an orderly manner and guarantees the fulfillment of the interests of each party.

Philosophically, the relationship between patients and health care providers can be seen as a form of relationship between dignified human beings. Based on this understanding, every human being should have an equal position before the law. Therefore, the relationship between patients and health service providers can also be seen as a form of legal relationship. The legal relationship that is formed in health services results in the emergence of rights and obligations between the parties.

One of the concrete manifestations of the consequences arising from legal relations in health services is in the form of an obligation for health service providers to organize electronic medical records. The obligation to carry out these obligations is not only imposed on medical personnels or health workers, but also on health service facilities.

The quality of health services cannot be separated from the quality of administering medical records in a health facility. Efforts to improve the quality of services in hospitals require support from various factors. One of the supporting factors is the administration of medical records which influences the assessment of the quality of health services. The implementation of the medical record in question starts from patient registration to the management of medical record data and information which is then presented in the form of a report. The process that takes place in the administration of medical records is a series of units that must be carried out in an orderly manner in order to produce accurate and accountable information (Apriyantini, 2016).

One of the goals that forms the basis for organizing medical records in health services is to fulfill interests related to services for patients. The existence of a medical record that contains the patient's identity, the health services provided by health workers, and the amount of treatment costs, can be used as a means to confirm the truth that the patient has received health services. Documented information in the medical record is also useful for facilitating communication between health workers who treat the same patient. In the end, this will of course help in determining treatment efforts for patients. If the health services provided to patients are not in accordance with what is expected to cause legal disputes, then medical records can also be used as valid legal evidence (Magentang, 2015).

Patients have the right to obtain information in health services. The patient's right to informations does not only manifest

in the form of the patient's right to obtain an explanation regarding the medical action that will be performed on him. However, this right also manifests itself in the form of authority for patients to be able to access and even obtain data in their electronic medical records. The existence of this right is one of the underlying reasons why quality medical record services need to be carried out in health services.

The patient's right to access and obtain the contents of electronic medical record needs to get strict legal protection. This is bearing in mind that at the technical level of health service delivery, it is not uncommon for patient rights to be violated. There are several forms of violation of the patient's right to the contents of his medical record. One of them is like the phenomenon found in a study at a hospital which found that health workers were reluctant to show and explain the contents of medical records to patients (Ampera, 2018). Other forms of violations can also arise because health workers who provide health services directly to patients do not document the health services provided to patients clearly, completely and accurately. This condition was found in a study at a Public Health Center which showed that in an incomplete analysis of the contents of medical records it was found that patient identities and diagnoses were incomplete in 3 out of 30 (10%) medical record files (Kushnawati, 2021). The incomplete information related to the patient's identity has the potential to cause obstacles in the process of granting the patient's right to obtain the contents of his medical record. In addition, incomplete information related to the diagnosis of the disease has the potential to result in patients accessing inaccurate information regarding their health conditions.

Based on the description of the problems that have been described, it can be understood that the patient's right to obtain the contents of his electronic medical record is a manifestation of the right to informations in health services. Even though patients have the authority to access the contents of their

medical records, in reality there are still violations of the fulfillment of this right. Based on that, there are two things to be studied in this research. First, to understand the civil aspect of the patient's right to obtain the contents of the medical record in the therapeutic contract. Second, to understand the form of protecting the patient's right to obtain the contents of the medical record from a civil law perspective.

## 2. METHODS

This research seeks to understand the civil law aspects of the patient's right to obtain the contents of the medical record in a therapeutic contract and the form of protection for this right from the civil law perspective. A juridical approach related to the issues studied is carried out in this study, hence this research is classified as a normative juridical research. Normative juridical research is a qualitative type of research method that takes an approach to legal norms contained in laws and regulations, results of court decisions, and laws that live in society. The approach in this study formulates the concept of legal norms which will be used as a benchmark for human behavior in relation to the problems studied (Ali, 2016).

Secondary data related to the problems studied are used in research that uses a normative juridical approach. Secondary data is used to formulate theoretical and scientific legal doctrines. The legal doctrine that has been formulated will then be used to analyze the issues discussed. Secondary data used in legal research is library material which is generally in the form of primary, secondary, and tertiary legal materials (Muhaimin, 2020).

This study uses primary legal materials in the form of laws and regulations and secondary legal materials consisting of explanations of primary legal materials, law books, and research results related to the patient's right to obtain the contents of his medical record. Apart from that, non-legal studies related to medical record

management were also used to help strengthen the analysis carried out in this study. Secondary data collection was carried out through a literature study.

The study conducted in this study was carried out by first analyzing the civil aspects of the patient's right to obtain the contents of the medical record in the therapeutic contract. The results of this analysis will be used as a basis for formulating arrangements related to the protection of patients' rights to obtain the contents of medical records based on provisions in civil law. Thus, this research is an analytical descriptive research. The intended analytical descriptive research in the context of legal research is a form of research in which the content of legal norms is determined which is positioned as a guideline for finding solutions to the legal issues being studied (Ali, 2016).

## 3. LITERATURE REVIEW

### 3.1 Legal Basis for the Implementation of Electronic Medical Records in Health Services in Indonesia

The term of "Medical Record" was only known and used in 1988 after being officially stipulated by the Ministry of Health and the Indonesian Language Development and Development Center, Ministry of National Education of the Republic of Indonesia. The word "Medical Record" which until now is commonly used in health services in Indonesia is a translation of a foreign term, namely Medical Health Record (Gunarti & Muchtar, 2019).

The definition of medical records can also be found in a number of laws and regulations in Indonesia which can be specified in the following provisions:

- 1) Article 1 of Minister of Health Regulations Number 24 of 2022 Concerning Medical Records explains that medical records are documents that contain patient identity data, examinations, treatment, actions, and other services that have been provided to patients.

- 2) Article 1 of Minister of Health Regulations Number 55 of 2013 Concerning the Work of Medical Records states that medical records are files that contain notes and documents regarding patient identity, examination, treatment, actions and other services for patients in health care facilities.
- 3) Article 1 of the Minister of Health Regulations Number 36 of 2012 Concerning Medical Confidentiality explains that medical records are files that contain notes and documents regarding patient identity, examination, treatment, action and other services provided to patients, including in electronic form.

The electronic medical record itself, as explained in Article 1 Number 2 of Minister of Health Regulation Number 24 of 2022 Concerning Medical Records, is an electronic system that is used to organize medical records. Arrangements regarding the obligation to maintain electronic medical records at health care facilities are generally regulated in Article 3 paragraph 1 of Minister of Health Regulation Number 24 of 2022 Concerning Medical Records. As mandated in Article 45 of Minister of Health Regulations Number 24 of 2022 Concerning Medical Records, all health service facilities must start using electronic medical records no later than December 31, 2023.

### **3.2 Patient's Right to the Electronic Medical Records Contents**

The contents of the medical record as stated in Article 27 paragraph 1 of Minister of Health Regulation Number 24 of 2022 Concerning Medical Records consist of administrative documentation and clinical documentation. In Article 27 paragraph 1 of Minister of Health Regulations Number 24 of 2022 Concerning Medical Records, it is stated that administrative documentation contains data obtained when the patient registers for the first time. Meanwhile, Article 27

paragraph 3 of Minister of Health Regulation Number 24 of 2022 Concerning Medical Records explains that clinical data contains all documentation of health services provided to patients in health care facilities.

Clinical documentation obtained in health services generally contains data in the form of reasons for patient visits, patient history and background (anamnesis, physical examination, current symptoms), results of examination and treatment, time of documentation, treatment results, summary of discharge (discharge letter), and identity of the note taker in the medical record. The anamnesis contains information obtained by the doctor based on the complaints and symptoms presented by the patient. The doctor will then examine the symptoms that have been reported by the patient. Based on the patient's information and examination results, the doctor can diagnose the disease and determine the name of the disease and which part of the body is affected by the disease. Meanwhile, patient data contained in the inpatient medical record consists of daily medical records containing the patient's condition and the progress of the treatment that has been given to the patient. The recording of daily medical data is usually carried out by nurses who provide care to patients every day. As for the discharge letter, it contains a summary of the entire series of treatments that have been carried out while in the hospital for a certain period and contains instructions regarding follow-up that must be carried out by the patient after returning from the hospital (Dalianis, 2018).

There is a dualism of medical records ownership. Article 25 paragraph 1 of Minister of Health Regulation Number 24 of 2022 Concerning Medical Records states that medical record documents belong to health care facilities. Meanwhile, the contents of the medical record as stated in Article 26 paragraph 1 of Minister of Health Regulation Number 24 of 2022 Concerning Medical Records belong to the patient.

The existence of regulations related to the ownership of the contents of the

electronic medical record has the consequence that the patient has the right to know the contents of his medical record. In addition, patients with certain interests also have the right to obtain and use their electronic medical record data. This is in accordance with the provisions in Article 33 paragraph 1 and Article 34 paragraph 1 of Minister of Health Regulation Number 24 of 2022 Concerning Medical Records which states that disclosure of the contents of medical records can be done with the patient's consent for the patient's own benefit.

There are several interests that form the basis of reasons for patients wanting to know and even wanting to obtain information related to the contents of their medical records, including in the form of:

- 1) Financial interest to know the amount of medical expenses to be paid by the patient or to be borne by the insurance company.
- 2) Legal interests where disputing parties should have the same opportunity to access the contents of medical records so that they have strong supporting data to file charges or defend in court.
- 3) The importance of treatment when the patient wishes to continue his treatment efforts at other health facilities based on the patient's medical data that has been obtained at the previous health service.
- 4) Interests related to the protection of personal data belonging to patients (Susanto, 2017).

### 3.3 Therapeutic Contracts in Health Services

The implementation of medical practice is based on an agreement. The agreement in question is an agreement between the patient and the health service provider consisting of doctors, dentists, and health care facilities. The existence of this agreement element shows that the legal relationship formed in health services is a contractual relationship. This is in

accordance with the provisions in Article 21 of the Minister of Health Regulation Number 2052 of 2011 Concerning Practice License and Implementation of Medical Practices which states that the medical practice is carried out based on an agreement based on a relationship of trust between doctors and dentists and patients in efforts to maintain health, prevent disease, improve health, treat disease and restore health.

The existence of the concept of agreement in the relationship between patient and doctor can be seen as a contractual relationship. This contractual relationship is known as a therapeutic contract. The object of the agreement in the therapeutic contract is in the form of medical services or healing efforts (Priyadi, 2020). Because the object of the agreement is in the form of effort, the agreement in this therapeutic contract is called *inspanning verbintenis*, namely an engagement must be carried out carefully and by exerting all efforts in accordance with professional standards so that it can be said that the result is uncertain. Thus, if the effort fails where the patient does not recover or even dies, the risk is borne by the patient and the doctor (Suganda, 2017).

Article 1313 of Indonesian Civil Law states that an agreement is an act in which one or more people bind themselves to one or more people. These provisions indicate that an agreement or contract can lead to an agreement between the parties who have agreed to bind themselves. An engagement is a legal relationship in the field of property law between two or more parties in which one party has the right to demand something from the other party and the other party is obliged to fulfill that claim. Article 1233 of Indonesian Civil Law also explains that an agreement is born either because of an agreement or law. In addition, Article 1339 of Indonesian Civil Law also states that the agreement is not only binding for things that are expressly stated in it, but also for everything that, according to the nature of the agreement, is required by propriety, custom, or law.

Based on this understanding, it can be stated that therapeutic contracts in health services also generate engagement between the parties. The parties referred to in this case are medical personnels, health workers, and health service facilities with patients. The engagement creates reciprocal rights and obligations from the parties who have agreed to bind themselves in a therapeutic contract. Obligations that must be carried out by medical personnels, health workers, and health service facilities as debtors in engagements arising from therapeutic contracts are referred to as engagement objects or achievements. is an obligation that must be fulfilled by the party being sued (debtor) against the claimant (creditor) (Muhammad, 2014).

#### 4. RESULTS AND DISCUSSION

##### 4.1 Civil Law Aspects of the Patient's Right to Obtain Medical Record Contents in Therapeutic Contract

Article 1319 of Indonesian Civil Law explains that all agreements, both those with special names and those that are not known by certain names are still subject to general requirements. These provisions of course also apply to therapeutic contacts. The general requirements for an agreement as stated in Article 1320 of Indonesian Civil Law can be described as follows (Fuady, 2010):

- 1) There is an agreement from the parties to the agreement,
- 2) There is the ability to act on the part of the parties,
- 3) There are certain matters, and
- 4) There is a permissible cause.

Article 1234 of Indonesian Civil Law states that the object of the engagement is in the form of an achievement in the form of giving something, doing something, and not doing something. Article 1235 of Indonesian Civil Law explains that achievement in the form of giving something is marked by the transfer of real control over an object from the debtor to the creditor or vice versa. For achievements in the form of doing something according to Article 1239 of Indonesian Civil

Law it is explained that an achievement is focused on real actions by the debtor as determined by the creditor. Meanwhile, what is meant by not doing something as understood through the provisions in Article 1242 of Indonesian Civil Law is an achievement of not carrying out the agreed action or maintaining an existing situation (Meliala, 2015; Muhammad, 2014).

It has been explained previously that the main object of the agreement in a therapeutic contract is in the form of therapy or healing efforts given to patients. The object of the agreement is the object of the engagement born from an agreement between health workers and health care facilities with patients. However, it should also be understood that the object of the engagement in a therapeutic contract is not only limited to what is born from the agreement. Bearing in mind that the provision of health services is also regulated in statutory regulations, the object of the engagement in a therapeutic contract is also regulated by law.

The therapeutic contract rests on two kinds of human rights which are rights. These rights include the right to self-determination and the right to informations (Suganda, 2017). The right to informations is a Human Right whose existence should be protected by the state. The Universal Declaration of Human Rights (UDHR) is a philosophical foundation which forms the basis for stating that the right to informations is a form of human rights inherent in every human person. Regarding the right to informations stated in Article 19 of the 1948 UDHR that every human being has the right to express opinions freely. This right includes the attitude to adhere to a certain opinion freely without any intervention from any party. In addition, this provision also states that every human being has the right to seek, receive, and convey information and thoughts through any means in the form of media without being limited by territorial boundaries (Saddu, 2016).

The right to informations in the context of national law is one of the

constitutional rights of every citizen. The provisions in Article 28F of Indonesian Constitution 1945 states explicitly that everyone has the right to communicate and obtain information in order to develop himself and his social environment. In addition, the provisions in the Indonesian Constitution 1945 also provide for the right for everyone to seek, obtain, possess, store, process and convey information using any means.

One of the rights to information in therapeutic contracts is manifested in the form of the patient's right to obtain the contents of his medical record. The existence of the patient's right to obtain the contents of the medical record creates an obligation for medical personnels, health workers, and health service facilities to provide electronic medical record services. The implementation of medical records is one of the achievements that must be made by health workers and health service facilities to fulfill patients' rights in health services. The obligation to maintain medical records by debtors, namely medical personnels, health workers, and health service facilities, is of course not based on an agreement from the parties but based on statutory provisions. It is on this basis that the obligation to administer medical records in health services is an achievement whose source of engagement was born from the law

Article 33 paragraph 3 of Minister of Health Regulations Number 24 of 2022 Concerning Medical Records states that either with the patient's consent or without the patient's consent, disclosure of the contents of the medical record is carried out as needed. That is, these provisions provide flexibility for patients to determine which electronic medical record data is accessed and given to them. This provision is of course more flexible than the previous provisions in the legislation regarding medical records. As one of them in Article 12 paragraph 4 Minister of Health Regulation Number 269 of 2008 Concerning Medical Records which states that only medical record summaries can be given, recorded, or copied by the patient or person authorized or

with the written consent of the patient or patient's family who are entitled to it.

It should also be noted that disclosing the contents of electronic medical records in order to fulfill patient rights can result in other legal events. The legal event referred to is in the form of disclosing the patient's medical secrets. When referring to the provisions in Article 1313 of Indonesian Civil Law, it can be said that in a therapeutic contract there are reciprocal rights and obligations of the parties. Patient rights are the obligation of health service providers to fulfill them. Vice versa, the rights of health service providers are a form of obligation for patients that must also be fulfilled. Thus, in the context of this study, patients have an obligation to fulfill procedures related to the disclosure of the contents of their electronic medical records as regulated in laws and regulations.

These procedures must be carried out solely for the sake of protecting the patient's own medical secrets. In addition, this procedure is also aimed at ensuring that the granting of access rights to the contents of medical records is addressed to patients who have property rights or to patients who are entitled to the information in the medical record. In fact, according to the provisions in Article 11 of the Minister of Health Regulations Number 36 of 2012 Concerning Medical Confidentiality, refusal to provide the access to the patient's medical record contents, which also means disclosing a patient's medical secrets, can be carried out by the person in charge of patient care or the head of a health service facility. Rejection by the health service facility can only be made if the request to access the contents of the medical record is contrary to legal provisions.

Based on the description above, it can be understood that patients in health services have the right to informations in the form of the right to obtain the contents of their electronic medical record. To be able to fulfill this right, access to the contents of the medical record must be given to patients either by medical personnels, health workers

or health service facilities. Fulfillment of the patient's rights can of course only be carried out after the patient fulfills a number of procedures for opening the contents of the medical record as stipulated in statutory regulations. Thus, it can be said that the form of achievement of the obligation to fulfill the patient's right to obtain the contents of his electronic medical record in a therapeutic contract is in the form of giving something.

#### **4.2 Protection of the Patient's Right to Obtain the Medical Record Electronic Contents According to the Perspective of Indonesian Civil Law**

There are several principles that should be used as the basis for achieving goals in health development. The principles referred to in this context include the principle of humanity, the principle of balance, the principle of benefit, the principle of protection, the principle of respect, the principle of gender justice, and the principle of religious norms. All of these principles should not only be used as mere principles, but should be used as a benchmark in health development in Indonesia (Marom & Buamona, 2015). The implementation of the principle of protection in health development can be carried out, one of which is marked by the presence of law to protect the interests of patients in health services. Legal protection is all efforts made to realize the protection and fulfillment of both rights and also includes providing a feeling of security for witnesses and/or victims. This form of legal protection can be carried out through providing compensation, providing compensation, providing medical services, and procuring legal aid (Simamora et al, 2020).

Violations in the form of non-fulfillment of achievements by one of the parties in the implementation of the therapeutic contract may occur. If the error is related to obligations originating from laws and regulations, this will result in an Unlawful Act (Onrechtmatigedaad). Classically, what is meant by "acts" in terms of Unlawful Act are:

- 1) Nonfeasance, which is not doing something that is required by law.
- 2) Misfeasance, which is an act that is done wrong, which action is an obligation or an act that he has the right to do.
- 3) Malfeasance, which is an act that is carried out even though the perpetrator has no right to do so.

The interpretation of phrase "against the law" was originally limited only to violations of written legal articles solely (violations of applicable laws and regulations), but since 1919 there have been developments in the Netherlands, by interpreting the phrase "against the law not only for violations of written laws solely, but also covering every violation of decency or appropriateness in social life in society. This can be seen in the decision of the Hoge Raad of the Netherlands on 31 January 1919 in the case of Lindebaum vs. Cohen.

Since 1919, the Unlawful Act are no longer meant to be limited to onwetmatige daad (violations of written law) only. In the Netherlands, and likewise in Indonesia, Unlawful Act have been broadly defined, which include one of the following actions:

- 1) Actions that are contrary with the rights of others.
- 2) Actions that are contrary to their own legal obligations.
- 3) Actions that are contrary to decency
- 4) Actions that are contrary to prudence or necessity in good social relations (Sari, 2020).

Violation of the patient's right to obtain the electronic medical record contents in the therapeutic contract is a form of Unlawful Act itself. This is based on the understanding that the patient's rights are regulated and protected in laws and regulations. In other words, medical personnels, health workers, and health service facilities violate the legal provisions which oblige health service providers to provide the information needed by patients in the electronic medical record.



The patients as human beings with dignity, in health services, have two basic human rights. One of them is the right to informations. The patient's right to access and obtain the contents of the medical record is one of the concrete manifestations of the right to informations. Thus, violations of the fulfillment of the right cannot be seen as mere violations of written laws, but also as a form of violation of a person's subjective rights.

Patients who suffers from loss by the violation of their right to obtain the the medical record electronic contents may file a lawsuit against the health service provider. The provision of lawsuits for Unlawful Act is regulated in Article 1365 of Indonesian Civil Law. The provision states that any Unlawful Act that results in harm to another person obliges the person who because of his mistake caused the loss, to compensate for the loss. The losses referred are including the material losses and the immaterial losses.

The liability for mistakes in civil law can be imposed on parties who commit the negligence. The negligence itself must cause harm to other parties. As stated in Article 1366 of Indonesian Civil Law a person is not only responsible for the losses caused by the intentional acts, but also responsible for his negligence or carelessness. In addition, the provisions in Article 1367 of the Civil Code also stipulate that a person is not only responsible for losses incurred due to unlawful acts he committed, but also for those who are under his responsibility (Dameria, Busro, & Hendrwati, 2017)

Referring to the provisions in Article 1366 of the Civil Code, it can be understood that liability for errors in violating a patient's right to obtain the electronic medical record contents can be imposed on a health service provider whose negligence causes harm to the patient. The health service provider must provide compensation to the patient for the violation. The lawsuits for violating the fulfillment of the patient's right to obtain the electronic medical records contents cannot only be filed against the medical personnels and the health workers. The provisions in

Article 1367 indicates that the head of health service facility can also be sued on the basis of this violation. This is considering that medical personnels and health workers are responsible to the head of health service facilities. Several forms of potential violations that can be subject to liability for errors based on the provisions in Article 1366 and Article 1367 of the Civil Code can be described as following:

- 1) The medical personnels who are authorized to input data into electronic medical records, such as doctors, dentists, clinical psychologists, and nurses, do not elaborately record the every health services given to the patients clearly, completely and accurately so that patients do not obtain the data needed.
- 2) The health workers who are responsible for medical record management, such as medical recorders, do not elaborately evaluate the completeness of medical record filling through quantitative analysis or qualitative analysis so that the integrity of medical record data is not fulfilled.

The provisions in Article 1365 of Indonesian Civil Law adhere to the principle of "liability based on fault". This is confirmed in Article 1865 of Indonesian Civil Law which states that every person who claims to have a right, or designates an event to confirm that right or to dispute another person's right, is obliged to prove the existence of that right or the event stated (Heriani, 2018). Hence, the burden of proof in the Unlawful Act lawsuit is borne by the patient as the litigant. Referring to the provisions of Article 1866 of Indonesian Civil Law, the patient as a litigant can use evidence in the form of written evidence, evidence with witnesses, allegations, confessions and oaths. In other words, patients with the evidence must be able to prove the harm they suffered from by fulfilling the four elements of Unlawful Act.

There are four elements to prove the Unlawful Act in the context of a violation of the patient's right to obtain the contents of the medical record in this therapeutic contract, four elements that must be proven in court can be described as following:

- 1) The patient is suffers from a loss.
- 2) The patient suffers from a loss caused by a violation of the patient's right to obtain the electronic medical record contents.
- 3) Violation of the patient's right to obtain the electronic medical record contents is carried out by medical personnel, health workers, and/or health service facilities
- 4) There is a causal relationship between violations committed by medical personnel, health workers, and/or health service facilities and the losses suffered by the patient.

Most of the patients are unfamiliar with how the medical service procedures should be conducted in accordance to the professional standards and standard operating procedures that apply in a healthcare facility. It is undeniable that this conditions put the patients into an unequal position with the,medical personnels, health workers, and/or health service facilities as the defendant. Putting the burden of verification

on the patient will certainly place the litigant in a disadvantageous position. If the patient cannot prove the elements of the Unlawful Act before the judge, the defendant, the medical personnels, health workers, and/or health service facilities have no obligation to provide the compensation for the patient.

## 5. CONCLUSION

There are two conclusions obtained from the results of the analysis and discussion in this study. The therapeutic contract creates an engagement between the health care provider and the patient. The obligation of health service providers to fulfill patients' rights to obtain the contents of medical records is one form of achievement in therapeutic contracts. This achievement in the form of giving something comes from the provisions of laws and regulations.

Violation of the fulfillment of the patient's right to obtain the electronic medical record contents is a form of Unlawful Act. Patients who suffer from loss by the violations file a lawsuit to medical personnel, health workers, and health service facilities based on the provisions in Article 1365, 1366, and 1367 of Indonesian Civil Law. However, the provisions of Article 1865 of Indonesian Civil Law states that the burden of proof is borne by the patient as the litigant.

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