

Legal Protection for Dentists Against Unauthorized Video Recording by Patients in Clinical Environments

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ABSTRACT

Background. The widespread use of smartphones with video recording capabilities has significantly impacted interactions in healthcare settings. Unauthorized recordings by patients, especially during clinical interactions, have become more frequent, raising serious privacy concerns. These recordings can lead to legal challenges, breach of trust, and even affect the quality of care. Patients sometimes use these videos to demand refunds or threaten to make them viral unless their demands are met, undermining healthcare professionals' privacy and creating an intimidating atmosphere.

Purpose. This study aims to examine the legal protections available to dentists against unauthorized recordings by patients, emphasizing the need for clear regulations and public education regarding the rights and responsibilities of both healthcare providers and patients.

Method. A qualitative research approach was used, involving interviews with dentists to explore their experiences with unauthorized recordings. The study also analyzed relevant legal documents, such as the Information and Electronic Transactions Law and the Personal Data Protection Law, to assess the current legal framework in Indonesia. Regulations from other countries were also reviewed to compare how different jurisdictions address unauthorized recordings in healthcare settings.

Results. The study found that existing regulations in Indonesia, including the Information and Electronic Transactions Law and the Personal Data Protection Law, offer inadequate protection for healthcare providers against unauthorized recordings. These recordings often lead to privacy violations, reputational damage, and a breakdown of the professional relationship between dentists and patients. The current legal framework does not fully address the issue, and there is a need for more explicit regulations.

Conclusion. There is a pressing need for clearer regulations to protect healthcare providers, especially dentists, from unauthorized recordings. These regulations should include guidelines for privacy protection, along with effective enforcement measures. Additionally, public education on privacy rights and responsibilities is essential to ensure a balanced and respectful relationship between healthcare providers and patients, thus preserving the integrity of care.

KEYWORDS

Clinical Environments, Video Recording, Legal Protection

INTRODUCTION

In recent years, technological advancements have brought significant changes in how people interact, communicate, and gather information (Fagerlund, 2022). The rise in the use of mobile devices, particularly smartphones equipped with video recording features,

Citation: Sarwono, P. A., & Redi, A. (2024). Legal Protection for Dentists Against Unauthorized Video Recording by Patients in Clinical Environments. *Journal of Multidisciplinary Sustainability Asean*, 1(5), 255–264.

<https://doi.org/10.70177/ijmsa.v1i5.1750>

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Received: December 14, 2024

Accepted: December 16, 2024

Published: December 30, 2024



has made it easy for individuals to document various events quickly and effortlessly (Chlasta-Twardzik, 2021). One increasingly common phenomenon is unauthorized video recording, whether done openly or secretly (Zhang, 2022). Generally, many individuals who feel wronged by others tend to use unauthorized recording as a means to gather evidence, which is then used against the party they believe has harmed them (Rodríguez-García, 2021). This phenomenon not only occurs in interpersonal interactions in public places but has also extended to more complex situations, such as in the workplace and public services, including healthcare (Ray, 2024).

In the medical sector, particularly in dental practice, the phenomenon of unauthorized recording by patients has become an increasingly concerning issue (Noman, 2021). Patients who feel dissatisfied or believe they have been wronged by medical professionals often record interactions with their dentists as a form of personal documentation. These recordings are frequently used as evidence or complaints that are spread on social media (Viegas, 2021). In clinical settings, this can occur in various situations, such as during consultations or even in the waiting room. This shows that patients, in expressing their dissatisfaction, are increasingly using technology to document and share their experiences (Butera, 2021).

This matter becomes even more complex when dissatisfied patients decide to return to the clinic to demand a refund. According to a source interviewed anonymously, who has been in such a situation, the dentist's patient recorded the entire discussion or argument with the dentist without the dentist's knowledge or consent (Pierce, 2021). This recording is often done with a specific goal, such as pressuring the dentist to meet the patient's demand (Su, 2021). The patient even threaten to make the video go viral on social media if his/her demand is not met (Anonymous, personal communication, October 10, 2024). Such actions not only create psychological pressure for the dentist but also have the potential to damage their professional reputation if the recording is shared out of context (Raso, 2021).

Unauthorized recording by patients has significant implications for the healthcare sector, especially regarding privacy and trust between patients and healthcare professionals (Ergezen, 2022). In dental practice, trust is a fundamental element that must be built and maintained to create a good and effective therapeutic relationship (Cant, 2021). This trust enables honest and open communication between the patient and the dentist, ultimately improving the quality of care provided (Leighton, 2021). When patients record without permission, it can erode this trust. It can cause the dentist to feel intimidated or threatened, as they do not know how the recording will be used in the future (Alpert, 2021).

Beyond issues of privacy and trust, unauthorized recording by patients also raises serious questions about the rights and obligations of both patients and healthcare professionals. Legally, this action can be considered a violation of privacy or even defamation, particularly when the recording is widely published with a narrative that harms the recorded party (Hardie, 2022). Patients often fail to understand that unauthorized recording in clinical environments, which are high-privacy areas, can have serious legal implications. Recording someone without permission and using it to coerce or threaten them can be categorized as extortion or intimidation, potentially subjecting the offender to criminal penalties. In this context, dentists can become victims of deliberate intimidation, where patients use the recording as leverage to gain personal benefits, such as requesting refunds for treatments that may not be medically justified (Gao, 2022).

Ethically, dentists have a duty to provide professional and quality care to every patient and to address complaints in a wise and ethical manner. However, the threat of publishing a one-sided, unauthorized video can damage the therapeutic relationship that should be based on mutual trust (Anderson, 2021). When dentists work under pressure and fear the negative consequences of a

recording that may be shared, this can affect the quality of care they provide. In many cases, the discomfort experienced by dentists due to patient actions can disrupt their concentration during medical procedures, potentially affecting treatment outcomes. In dental practice, where interactions between doctors and patients often involve procedures requiring high concentration and precision, unauthorized recording can increase the risk of errors (Triemstra, 2021).

To address this phenomenon, it is crucial to have clear and strict regulations regarding the rights and responsibilities of patients and healthcare professionals related to recording in clinical settings (Sanz-Ros, 2023). Legal protection for dentists should include a prohibition on unauthorized recording and impose strict penalties on those who violate it. Furthermore, there needs to be better public awareness about their rights and obligations as patients, including the ethical and legal consequences of unauthorized recording. This education is important to ensure that patients understand that while they have the right to obtain information about their treatment, the methods they use must still comply with legal provisions and ethical norms (Bekezhanov, 2021).

On the other hand, dentists also need practical guidelines on how to handle situations where patients record without permission or threaten to distribute such recordings. Dentists should be encouraged to document every interaction with patients more thoroughly, especially in situations that may lead to conflicts. This is crucial to protect themselves from unfounded accusations and to provide evidence if legal issues arise. Additionally, dentists need to know their rights to refuse further treatment or discussion when they feel threatened by unethical actions, such as unauthorized recording by patients (Mamak, 2021).

Therefore, strong regulations and legal protections are needed to safeguard healthcare workers, including dentists, from unauthorized recordings by patients. Such legal protection is important not only to preserve the privacy and reputation of medical professionals but also to ensure that the clinical environment remains a safe and comfortable space for all parties involved (Andraško, 2021). This study aims to thoroughly examine the legal protection for dentists in dealing with unauthorized video recordings by patients in clinical settings, reviewing various legal, professional ethical aspects, and the impact of this phenomenon on the quality of healthcare services and the therapeutic relationship between patients and doctors (Aditya, 2021).

With this comprehensive discussion, it is hoped that a better understanding of the legal and ethical implications of unauthorized recording will be achieved, along with providing useful recommendations to protect healthcare professionals and educators in carrying out their duties professionally and safely (Xiao, 2021).

RESEARCH METHODOLOGY

This study utilizes a normative or doctrinal legal research method, which is based on the analysis of legal norms found in various written legal sources such as legislation. The research is conducted by reviewing literature and secondary data to understand legal principles, with a particular focus on the principle of legality (Yilmaz, 2020).

This study employs a qualitative method to explore and deeply understand the phenomenon of video recording by patients in dental clinics and its legal implications for dentists (Ali, 2021). The qualitative approach was chosen as it allows the researcher to gain rich and detailed insights through the collection of descriptive data, which encompasses information gathered from primary, secondary, and tertiary data. Primary data were gathered through the applicable laws and regulations include legal documents such as Law No. 11 of 2008 on Electronic Information and Transactions (UU ITE), No. 19 of 2016 (Amendment to UU ITE), No. 1 of 2024 (Second Amendment to UU ITE), the Personal Data Protection Law (UU PDP) No. 27 of 2022, the Health

Law No. 17 of 2023, as well as related academic literature. These documents were analyzed to understand the applicable legal foundations and how these regulations can be applied in the context of video recording by patients (Mueller, 2020). Also, in-depth interview with dentist. This interview aimed to explore the experiences, perceptions, and views of respondents regarding video recording in dental clinic setting. Secondary data, such as previous research reports, journal articles, and books discussing legal and ethical aspects in the healthcare context, were also used to strengthen the analysis and interpretation of the data. Thematic data analysis was conducted to identify patterns, themes, and relevant categories from the collected data. And tertiary data, which serve as additional references, such as legal dictionaries and official websites related to the field of law (Hu, 2021). The validity and reliability of the data were maintained through method and data source triangulation, and by consulting legal and medical ethics experts to ensure that the data interpretation aligns with the relevant legal and ethical contexts (Yue, 2022).

RESULT AND DISCUSSION

Legal provisions in Indonesia regarding privacy and unauthorized recording in medical settings, particularly in dental practice, offer important protection but have several weaknesses that need to be addressed. In this context, several relevant laws include Law No. 11 of 2008 on Electronic Information and Transactions (Undang-Undang ITE), No. 19 of 2016 (Amendment to Undang-Undang ITE), No. 1 of 2024 (Second Amendment to Undang-Undang ITE), the Personal Data Protection Law (Undang-Undang PDP) No. 27 of 2022, and the Health Law No. 17 of 2023. These laws serve as legal instruments to protect the privacy and dignity of medical professionals, but the enforcement of these laws and specific regulations related to recording in medical environments remain inadequate.

Legal Protection in Indonesia Regarding Unauthorized Recording

The UU ITE provides a legal framework that protects individual privacy from the dissemination of harmful information, including through unauthorized recording. Article 27B Paragraph 2 of the UU ITE prohibits the distribution of electronic information with the intent to benefit oneself by threatening defamation or by threatening to reveal that the dental treatment results were unsatisfactory, which is highly relevant for dentists who are recorded without consent, especially if the recording is distributed with a negative narrative. This act can be categorized as defamation, which may result in criminal penalties, including imprisonment or fines. Article 32 Paragraph 1 and Article 35 of the UU ITE further regulate illegal access to electronic data, specifically the transmission and creation of someone else's electronic information or documents with the intent to use them as authentic data. According to UU ITE No. 19 of 2016 (Second Amendment to UU ITE), it is explained that electronic information includes but is not limited to writing, sound, images, maps, designs, photos, electronic data interchange (EDI), electronic mail (email, telegram, telex, telecopy, or similar), letters, symbols, numbers, Access Codes, symbols, or processed perforations that have meaning or can be understood by those capable of understanding them. In this case, videos created and produced using a smartphone can be considered part of electronic information. Therefore, unauthorized recording by patients to record the dentist in a medical environment can be considered a violation of privacy, especially if the recording is used without the dentist's consent or is publicly disseminated.

UU PDP No. 27 of 2022 strengthens privacy protection, specifically regarding personal data. In medical environments, video recordings that include faces, voices, or medical actions can be categorized as personal data protected by law. Dentists have the right to refuse unauthorized recording and can take legal action against patients who violate their privacy rights. Therefore, this

law serves as a foundation that protects the privacy rights of medical professionals, while also providing a legal basis to refuse unauthorized recording in clinical settings.

Additionally, UU No. 17 of 2023 on Health, particularly Article 273, offers further protection for healthcare professionals. This article states that healthcare workers have the right "to receive protection from treatment that is inconsistent with their dignity and honor." This means dentists have the right to stop providing healthcare services and pursue legal action if they experience treatment that degrades their dignity, including unauthorized recording, which can be considered a violation of their professional honor and dignity.

Unauthorized Recording as a Form of Bullying by the Patient

Unauthorized recording by patients can be categorized as a form of bullying, especially if done with the intent to harm the dentist professionally or personally. Bullying is defined by several key criteria: intent to harm, power imbalance, repetition, and psychological impact. In the context of unauthorized recording, these four criteria are often met, and dentists who become victims may suffer significant harm.

Patients who record without permission often do so with the intent to harm the dentist, particularly when they feel dissatisfied with the services provided. The recording may then be shared on social media with narratives that defame or damage the dentist's reputation. Such actions demonstrate a clear intent to harm, which is one of the main elements of bullying. This malicious intent not only damages the dentist's professional image but can also create significant emotional pressure.

While dentists have professional authority within the clinic, patients have a different type of power through social media and technology. The ability to publicly share unauthorized recordings gives patients undue control over the dentist's reputation. This power imbalance creates an unequal situation where patients can pressure the dentist by threatening to release the recording if their demands, such as refunds or additional services, are not met, even when such demands are not medically justified. This illustrates how technology can be used by patients to manipulate situations to the detriment of the dentist (Yeung, 2022).

Bullying often involves repetition, and this is also true in cases of unauthorized recording. Although the act of recording itself may happen only once, the continuous sharing of the video on social media creates repeated negative effects for the dentist. Each time the recording is shared or viewed by the public, the dentist faces repeated reputational damage. Thus, the harmful effects of the recording do not stop at a single moment but persist as long as the recording remains in the public domain (Stubenrauch, 2023).

The psychological impact of unauthorized recording and its distribution can be highly damaging for dentists. They may experience stress, anxiety, or even a loss of confidence due to the threat of the recording being shared. The fear of reputational damage and the loss of professional trust can lead to deep emotional trauma. Ultimately, this trauma directly affects the dentist's professional performance, which may be disrupted by the ongoing psychological burden. This psychological impact reinforces the bullying element inherent in unauthorized recording, adding layers of harm that are both professional and personal in nature (Maioli, 2021).

Comparison of Privacy Protections in Indonesia and the United States

Privacy protection in the healthcare sector, particularly concerning unauthorized recording, differs significantly between Indonesia and the United States. In the U.S., privacy for the general public is regulated by varying state Wiretap Laws, either one-party or all-party consent and also

HIPAA (the Health Insurance Portability and Accountability Act) focuses on privacy protection in the healthcare sector. In Indonesia, privacy is governed by UU ITE and UU PDP.

In one-party consent, U.S. states like Virginia or New York, only one party in the conversation needs to consent to recording, allowing patients to record healthcare interactions without informing the provider. In All-party consent states like California and Florida, all parties must give permission before recording. Violations can lead to criminal or civil penalties. However, HIPAA governs healthcare providers' handling of patient health information (PHI), but not recordings made by patients, which creates a gap in protections for healthcare providers. HIPAA only regulates healthcare provider-initiated recordings.

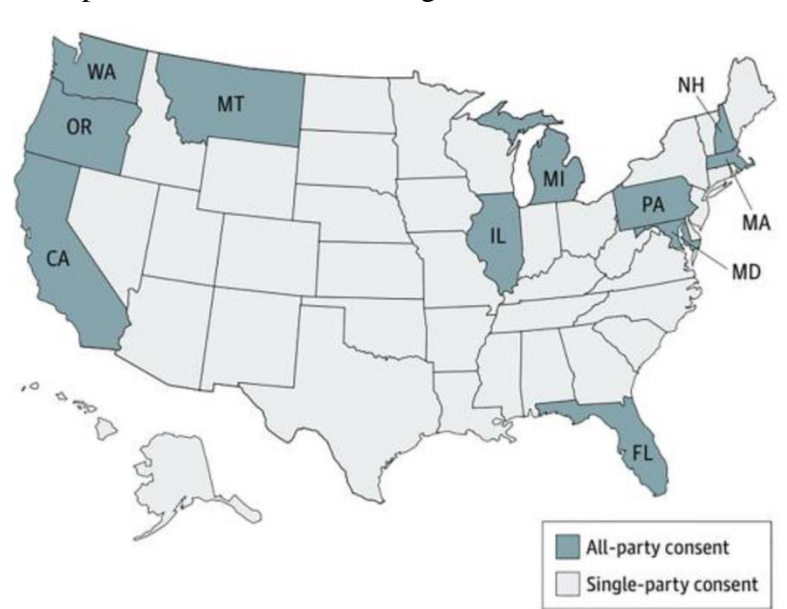


Figure 1. All-party consent across U.S. states: WA-Washington, OR-Oregon, CA-California, MT-Montana, IL-Illinois, MI-Michigan, PA-Pennsylvania, NH-New Hampshire, MA-Massachusetts, MD-Maryland, FL-Florida (Fitriani, 2023)

In Indonesia, the UU ITE and UU PDP address different aspects of privacy protection. The UU ITE focuses on defamation or the harmful dissemination of electronic information. For instance, if a patient records a conversation with a healthcare provider without their consent and shares it online with defamatory comments, they may be sanctioned under Law No. 19 of 2016, Article 26, Paragraphs 1 and 2. This law requires consent from all parties involved in the recording, similar to states with all-party consent laws in the United States.

UU PDP provides comprehensive personal data protection, including for audio and video recordings. However, it is still in the early stages of implementation, and its effectiveness in preventing unauthorized recordings is not fully realized due to the absence of specific all-party consent regulations for recordings. This leaves healthcare providers vulnerable to unauthorized recordings.

This can be observed in public behaviour in Indonesia, often aligns with the one-party consent principle, particularly in non-healthcare settings, where people frequently record viral incidents such as unique or amusing situations or even disputes between individuals who are unaware, they are being filmed. In these situations, one person records and posts the video on social media without the explicit consent of others involved, focusing more on the potential for virality than privacy concerns (Jaelani, 2023).

Preventive Strategies to Protect Dentists

To address the regulatory weaknesses that exist, dentists and clinics can implement effective preventive measures. One important step is to establish clear internal policies regarding recording in the clinic. Clinics can put up signs stating that unauthorized recording is not allowed, and require patients to sign written consent forms before treatment begins. This consent can serve as a legal basis if a violation occurs in the future (Jamin, 2022).

In addition, educating patients is crucial to reduce the likelihood of unauthorized recording. Patients need to understand their rights and obligations regarding medical professionals' privacy, as well as the legal consequences of unauthorized recording. With proper education, the risk of conflict can be minimized. Detailed and complete medical documentation is also essential for protection. In the event of a dispute, medical documentation can serve as evidence to support the dentist's claims and prevent the spread of misleading or harmful information (Schäfer, 2021).

If unauthorized recording still occurs, dentists should take immediate legal action. Consulting with legal counsel can help determine the appropriate legal steps, whether through criminal or civil channels. The UU ITE, UU PDP, and Health Law provide legal grounds that can be used by dentists to sue patients who record without consent and damage their reputation. By implementing clear clinic policies, educating patients, maintaining good medical documentation, and taking firm legal action, dentists can protect themselves from the risks of unauthorized recording while preserving their dignity and privacy as healthcare professionals (Rohmawati, 2021).

Consideration Based on the Principles of Legal Certainty, Justice, and Benefit in the Protection of Dentists Against Unauthorized Recording by Patients

In discussing legal protection for dentists against unauthorized recording, it is important to consider three main aspects: legal certainty, justice, and benefit. From the perspective of legal certainty, while the UU ITE, UU PDP, and Law No. 17 of 2023 provide privacy protection, the lack of specific regulations regarding recording in clinical settings creates uncertainty for medical professionals. The absence of clear rules prohibiting unauthorized recording in clinics leaves dentists in a vulnerable position, without clear guidelines on how they can protect their privacy and professional dignity. Therefore, more specific rules are needed to provide strong legal certainty and protect medical professionals from potential privacy violations (Kortukova, 2023).

From the standpoint of justice, dentists have the right to protection from harmful actions, including unauthorized recording done with the intent to defame or unfairly pressure them. The power imbalance between dentists and patients, especially regarding access to social media, calls for greater justice. Stronger regulations will provide better protection for dentists to safeguard their reputations without fear of unauthorized recordings being spread.

And the last, from the benefit perspective, clearer rules related to recording in clinics will benefit all parties. Dentists will feel safer and more protected in their work environment, while patients will better understand the boundaries when interacting with medical professionals. Ultimately, this will create a more harmonious and professional relationship between patients and doctors, improving the overall quality of healthcare services (Leheza, 2023).

CONCLUSION

Regulations in Indonesia, such as the UU ITE, UU PDP, and the Health Law, provide basic protection for medical professionals against unauthorized recording, but there are still shortcomings in the specific rules regarding clinical environments. Unauthorized recording, especially if disseminated with harmful intent, can be categorized as bullying because it involves intent to harm,

power imbalance, repetition, and psychological impact on dentists. These weaknesses, when compared to other country like the US, highlight the need for stricter and more specific regulations to protect the rights of medical professionals.

To mitigate these risks, preventive steps such as implementing clear clinic policies, educating patients, and maintaining good medical documentation are essential. Stronger protection, both in terms of regulation and law enforcement, is needed to ensure that dentists can work in a safe environment, protected from unauthorized recording, while maintaining their dignity and professional privacy.

AUTHORS' CONTRIBUTION

Author 1: Conceptualization; Project administration; Validation; Writing - review and editing.

Author 2: Conceptualization; Data curation; In-vestigation.

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